

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 02-01159A

MARCIA RHODES, HAROLD RHODES, *
INDIVIDUALLY, HAROLD RHODES, ON *
BEHALF OF HIS MINOR CHILD AND NEXT *
FRIEND, REBECCA RHODES, *
Plaintiffs *
VS. *
CARLO ZALEWSKI, DRIVER LOGISTICS, *
PENSKE TRUCK LEASING CORP., and *
BUILDING MATERIALS CORP. OF AMERICA *
d/b/a GAF MATERIALS CORP., *
Defendants *

BEFORE: DONOVAN, J. *
AND A JURY *

TRIAL TRANSCRIPT

September 8, 2004
Norfolk Superior Court
650 High Street
Dedham, Massachusetts 02026

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APPEARANCES:

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MARGARET PINKHAM, ESQUIRE
On behalf of the plaintiffs,**

**LAWRENCE BOYLE, ESQUIRE
JOHN P. KNIGHT, ESQUIRE
On behalf of defendant Zalewski,**

**JOHN B. JOHNSON, ESQUIRE
On behalf of defendant Penske Truck Leasing,**

**RUSSELL POLLACK, ESQUIRE
WILLIAM CONROY, ESQUIRE,
On behalf of defendant GAF Building Materials**

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Mr. Conroy

Mr. Johnson

WITNESS

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William Boultenhouse

(by Mr. Pritzker)

(by Mr. Boyle)

(by Mr. Johnson)

(by Mr. Pritzker)

(by Mr. Boyle)

Edward O'Hara

(by Mr. Pritzker)

(by Mr. Boyle)

(by Mr. Johnson)

(by Mr. Pritzker)

(by Mr. Boyle)

James Jaworek

(by Mr. Pinkham)

(by Mr. Johnson)

Carlo Zalewski

(by Mr. Pritzker)

(by Mr. Boyle)

(by Mr. Conroy)

(by Mr. Johnson)

(by Mr. Pritzker)

(by Mr. Boyle)

Marcia Rhodes

(by Mr. Pritzker)

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PROCEEDINGS

1
2 **THE COURT:** Now, I'll turn to
3 plaintiff's counsel. Would you like to make an
4 opening statement?

5 **MR. PRITZKER:** I would, your Honor.
6

7 **OPENING STATEMENT BY MR. PRITZKER:**

8 Ladies and gentlemen, good morning.
9 Once again, my name is Fred Pritzker. I work with
10 the law firm in Boston named as Brown Rudnick.
11 With me is Margaret Pinkham. She's going to be
12 asking questions of some of the witnesses along
13 with myself. And you may see, from time to time,
14 some of the people who have helped prepare this
15 case, Carlotta Patten on the right, Susan Holden
16 on the - I'm sorry, Carlotta is on your left, Susan is
17 on your right, and in the middle is Harold Rhodes
18 who is the husband of Marcia and one of the
19 plaintiffs. Ann Brown is sitting by Susan. So
20 those are people who will be helping us and you
21 may see them moving around, handing us papers
22 and so forth. They work with Margaret and myself.

23 **We represent the Rhodes family.**

24 **Harold, you just met, sitting in the middle of two**

1 lovely ladies. Marcia you will meet later. Marcia
2 is paralyzed. And it's very, very difficult for her to
3 get to a place like the courtroom as early as we
4 are here today. She will be here later. I hope
5 she'll be starting to testify today. And she will be
6 testifying tomorrow. And one of the things that
7 you will hear is the extraordinary efforts that have
8 to be made by her and on her behalf just to get her
9 here on time to testify.

10 But Marcia is the major plaintiff in the
11 case. Harold is also a plaintiff and his daughter,
12 Rebecca, who was 13 at the time of this accident
13 and who is now 16, is another plaintiff.

14 And they are here today as plaintiffs
15 suing the defendants. Who are the defendants?
16 Well, the driver of the truck, as you will soon hear
17 is Carlo Zalewski, and I think he's in the
18 courtroom way over in the corner. Carlo Zalewski
19 was driving a truck, but he was an employee of a
20 company called Driver Logistics Services, one of
21 the other defendants.

22 Now, why was he an employee for
23 Driver Logistics Services? Driver Logistics
24 Services is a company which provides drivers to

1 other companies who need trucking services. In
2 this case, the company that needed trucking
3 services was Building Supply Corporation of
4 America doing business as GAF Materials Corp. of
5 America. We refer to that whole big name as GAF.
6 And GAF in turn had rented the truck from Penske
7 Truck Leasing Company, which is the other and
8 final defendant.

9 So the cast of characters here is, the
10 Driver Logistics Services hired Zalewski to drive a
11 Penske truck on behalf of GAF. And those are the
12 defendants and the reason that they have been
13 sued in this civil case is because the plaintiffs, the
14 Rhodes' family is asking for money damages
15 because of an accident that you are about to hear.

16 So, how did that accident occur?
17 Well on January 9, 2002, the Rhodes family was
18 living as they had since Harold and Marcia got
19 married in Milford, Massachusetts. They lived two
20 blocks off of Route 109 directly east of Route 495,
21 if any of you are familiar with that area. And at a
22 little after 1 o'clock in the afternoon on January 9
23 of '02, Marcia left her house, traveled the two
24 blocks that it took, and when she got to the end of

1 James Road, which is one of her neighborhood
2 streets, she took a left on Route 109 going east,
3 which is away from Route 495.

4 As soon as she took that left, she
5 was in Medway, they live on the Milford/Medway
6 line. And the road there is straight. It goes up
7 slightly for about a quarter of a mile and then it
8 goes down for about 800 feet.

9 Marcia went up in her 1997 Toyota,
10 crested the hill and then she had 800 feet going
11 down. And as she was driving down, she saw a
12 police officer in the middle of her lane, the
13 eastbound lane of Route 109. Now Marcia's
14 memory of the accident and in fact, the injuries
15 that she sustained in the several weeks after the
16 accident are not complete. But what I am
17 representing to you are facts that the plaintiffs
18 will prove either through Marcia or through other
19 people. So we've got Marcia traveling down Route
20 109 on the slight decline. She sees the police
21 officer raise his hand to stop her and she sees
22 working going on on the right-hand side of Route
23 109. It turned out to be tree work, although she
24 didn't know it at the time.

1 **She stops. She has no difficulty**
2 **stopping and she stops. Now I would like you, if**
3 **you can, ladies and gentlemen of the jury to freeze**
4 **that frame for a minute. The police officer with an**
5 **orange vest on, white gloves, has his hand up and**
6 **Marcia Rhodes has stopped at his instruction on**
7 **the eastbound lane of Route 109.**

8 **And while that frame is stopped, I**
9 **want to draw your attention back to New Jersey at**
10 **4 o'clock a.m. that morning. That's the time that**
11 **Carlo Zalewski picked up the Penske truck at the**
12 **Penske truck leasing yard. He picked up his truck**
13 **and after doing the paperwork and a small**
14 **inspection of the truck, which is required of truck**
15 **drivers driving a large trailer truck, he went close**
16 **by to a yard where he picked up liquid asphalt that**
17 **was to be delivered to GAF in Millis,**
18 **Massachusetts.**

19 **After his tanker truck was loaded, the**
20 **total weight of the truck, the tank and the**
21 **material, the liquid asphalt, was approximately 80**
22 **thousand pounds. And Mr. Zalewski headed out**
23 **towards Millis, Massachusetts. Except for one**
24 **stop, he made a direct route toward Millis,**

1 ultimately getting on to Route 495 and then
2 exiting Route 495 onto Route 109 east.

3 Now you can unfreeze the frame that
4 I asked you to earlier today.

5 So here's Marcia Rhodes stopped by
6 the Medway Police Officer, with his hand up. Carlo
7 Zalewski has now gotten on to Route 109, he
8 crested the hill that I was talking about. He has
9 800 feet of clear view, straight road, nobody
10 between himself and Marcia Rhodes. He doesn't
11 slow down. He doesn't stop. He crashes into the
12 back of the 1997 Toyota, pushes Marcia Rhodes,
13 ultimately straight, finally into the woods where
14 she stops against a tree, and in that split second
15 Marcia Rhodes is paralyzed. She's rendered a
16 paraplegic for the rest of her life. The impact was
17 so severe that the back was fractured in what
18 they call a burst fracture. The spine was and the
19 spinal cord was severed to such an extent that
20 when they finally decided to do the operations
21 there was nothing that they could do about the
22 spinal cord.

23 That's the accident.

24 Now an interesting thing has

1 occurred in this case. The driver, Carlo Zalewski,
2 has admitted that he is responsible for this
3 accident. So one of the things that you will not be
4 asked to decide is whether or not Carlo Zalewski
5 is responsible. He's already admitted that, and we
6 will be putting into evidence that stipulation and I
7 will be reading it to you.

8 Driver Logistics Services as the
9 employer of Carlo Zalewski has admitted that they
10 had, by being his employer, control over Mr.
11 Zalewski and they're responsible for the accident.
12 So you won't be hearing evidence about Driver
13 Logistics and their control because they've
14 already admitted that they are responsible for the
15 accident.

16 GAF, being the common carrier for
17 whom Carlo Zalewski was driving on this day has
18 also admitted that they're responsible for the
19 accident. And so you won't be hearing much
20 evidence about the control or the common carrier
21 status of GAF. So as to those three defendants
22 why are you here? To determine what the
23 damages are that the Rhodes family is entitled to.

24 Now Penske Truck Leasing has not

1 admitted to liability. And so you will be hearing
2 evidence, because the Rhodes have sued Penske
3 as the owner of the vehicle; they have certain
4 legal responsibilities as being the owner of the
5 vehicle, for improper maintenance because you
6 will hear that one of the brakes of this tanker
7 truck was inoperable, and for control because you
8 will hear that Penske did have some control over
9 the activities of Mr. Zalewski, not only in general
10 but on the day of the accident.

11 Zalewski himself has stated that
12 when he finally tried to stop, that he put his foot
13 on the brakes and nothing happened for a period
14 of time before they locked up. The state police
15 who investigated the accident will tell you that
16 their investigation determined that one of the
17 brakes was inoperable.

18 Now the state police reconstruction -
19 accident reconstructionist will state that the
20 brakes were not the major contributing factor to
21 this accident. The major contributing factor, but
22 they will also testify that had all of the brakes
23 been working, the speed would have been less, at
24 least if you believe Mr. Zalewski, which he said he

1 put his brakes on before impact and consequently
2 the force of the accident might have been less.

3 Marcia injuries were extensive. The
4 complications severe. And the disability she will
5 have to endure for the rest of her life, awful.

6 There were so many injuries and
7 complications I can't recite them to you without
8 looking at my notes. So I'm going to look at my
9 notes and I apologize to you. But what happened -
10 I'm not going to go into detail with you because
11 unfortunately you're going to have to be subjected
12 to reams and reams of hospital and doctors
13 information, stacks of documents, that high. Will
14 you have to read them all? I hope not, although
15 they'll be available to you. I will be pointing out
16 certain highlights within these medical records,
17 the doctors who are going to testify will also be
18 making reference to certain of these records, and
19 they will be segregated for you so that you won't
20 have to be thumbing through all of them, but they
21 will all be there. And in the end, I assure you, you
22 will know more about paraplegia and about the
23 difficulties that a handicapped person who can't
24 use her legs has to endure than you ever wanted

1 to know.

2 The spinal cord injury rendered
3 Marcia's legs useless, worse than useless because
4 now they're dead weights that literally have to be
5 kind of carried and moved around wherever she
6 goes. She's lost all urinary function. She's lost all
7 bowel function. She's lost all sexual function.
8 Aside from the spinal cord injury itself, she
9 experienced multiple rib fractures. In comparison
10 those don't seem terrible except that she had to
11 wear for an inordinate period of time a body brace
12 just to stabilize her back which was broken and
13 the pain that she experienced because of the
14 broken ribs pressing in by this body brace that she
15 needed just for life support, you will hear from her
16 own lips.

17 She suffered from what's called
18 pneumothorax, which is air between the lungs
19 and the chest wall caused by the split ring of the
20 fractured ribs.

21 She had a cerebral hematoma, that's
22 kind of a bleeding inside the head. She had deep
23 vein clots in the chest and the leg that were so
24 dangerous that they had to surgically implant a

1 **blood clot filter in her body, which is permanent,**
2 **so that the clots wouldn't go to her heart or her**
3 **head.**

4 **She developed pancreatitis,**
5 **pneumonia, staph infection. She had a**
6 **gangrenous gall bladder which she couldn't**
7 **identify quickly because she has no pain below the**
8 **waist and so when the gall bladder became**
9 **infected, she didn't know it right away and by the**
10 **time they got to it, it was an emergency, it was**
11 **surgically removed.**

12 **She suffers from tendinitis, from**
13 **bursitis. She has suffered multiple leg fractures**
14 **because since she has no feelings in her legs, if**
15 **she moves the wheelchair the wrong way and it**
16 **hits something, she has no idea whether it's a hard**
17 **hit or not a hard hit, whether her leg has been**
18 **fractured or it hasn't been fractured and she has**
19 **suffered and continues to suffer from these leg**
20 **fractures. When you see her, you'll see she still**
21 **wears protective casts on her legs.**

22 **You will hear of visits and revisits to**
23 **hospitals and rehab centers to deal with these**
24 **problems. And you will hear what it takes just to**

1 get Marcia Rhodes through a day. It's not a pretty
2 picture, but it's one that you, as the jury, are going
3 to have to hear what she has been subjected to
4 because of this accident.

5 On the damages side, you're going to
6 hear how much has been spent on Marcia care to
7 date. A lot of that will be by certified records from
8 the doctors and the hospitals initially that will be
9 put into evidence. But in addition to that you will
10 hear about the doctors and hospital charges and
11 medicines and supplies and equipment which the
12 Rhodes' family itself had to expend after she was
13 ultimately released from her long stays in the
14 hospital and the rehab centers. Things like a
15 handicap van, exercise equipment, therapy
16 equipment I should say. Electric wheelchair,
17 hospital bed, which is forced now to sleep in.

18 You'll hear how much it has cost and
19 will cost to modify Marcia's home just so that she
20 can move around the home that she once enjoyed
21 with her family, first floor only.

22 You'll hear from an expert as to what
23 it is likely to cost to care for Marcia for the rest of
24 her life, it's called a life care plan and the amounts

1 are extraordinary. Those are all things that you
2 will have dollar values attached to by the
3 witnesses and expert witnesses that I will present
4 to you.

5 But there is another element to this
6 case which doesn't have a specific dollar amount
7 attached to it, but which you will hear a lot about,
8 from which you will ultimately be asked to access
9 damages for, and that is the pain and suffering.

10 The pain, the suffering, the
11 embarrassment, the loss of enjoyment of life that
12 she has been forced to endure since the day that
13 this unfortunate accident occurred.

14 And lastly you will hear how this has
15 affected Rebecca, whom I mentioned was 13 at
16 the time and now is 16, and her husband, Harold.

17 Marcia's time, her energy, her focus
18 has been consumed with her own injuries. You
19 might think that's selfish until you hear what she
20 has to endure just on a daily basis.

21 She's been severely limited in the
22 role she can play both as a mother and a wife.
23 Harold, in turn, you will hear has been consumed
24 with trying to care for and comfort his wife and

1 has assumed much of her former responsibilities.
2 Most of the old relationship of husband and wife is
3 gone.

4 Rebecca has lost the full enjoyment
5 of the parent/child relationship at age 13, some
6 would argue the most vulnerable age for a young
7 girl.

8 When you hear all of this evidence
9 against Zalewski, against Driver Logistics
10 Services, against GAF whom have admitted
11 liability and against Penske, whom I expect you
12 will find is also liable for this unfortunate
13 accident, I am confident you will fairly and
14 adequately represent - compensate the Rhodes'
15 family for the losses that they have sustained.

16 Thank you very much.

17 THE COURT: Thank you. All right.

18 Mr. Boyle.

19

20 OPENING STATEMENT BY MR. BOYLE:

21 Good morning. Again, my name is
22 Lawrence Boyle, I represent the two defendants,
23 Carlo Zalewski and Driver Logistics Services, also
24 called DLS.

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THE COURT: Have counsel all seen these?

MR. BOYLE: Yes, your Honor.

THE COURT: All right.

MR. BOYLE: Now, as you know there's no dispute here with respect to liability. We have admitted liability, we've stipulated to it that Mr. Zalewski didn't operate his tractor-trailer truck appropriate that day, he was distracted, took his eyes off the road and hit the plaintiff in the rear; that's not disputed. They admit liability. Mr. Zalewski takes full responsibility for the damages that he caused in this accident which are very significant.

Now it's an unusual case when we come to the Superior Court and there's not a dispute about liability and there's not a dispute about damages; so what's the dispute about? The dispute is about what is a reasonable compensatory damage figure and the parties have been unable to agree on that and that's why we both sought a jury trial, you folks, to tell us what a fair compensatory damages are in this case. And essentially it's a medical case and it's probably

1 going to take about more than a week to try the
2 case.

3 Now, Carlo Zalewski is a career truck
4 driver. He's 60 years old. Born and raised in New
5 Jersey. He only went to the 9th grade as far as
6 schooling. He's got three children and he's got
7 nine grandchildren and he will get on the witness
8 stand and will tell you, hey, my fault. I was
9 carelessly operation of his vehicle, I had an
10 obligation to keep it under control. I didn't and I
11 struck the plaintiff in the rear. DLS, which is his
12 employer, admits that he was working for them
13 and they are responsible for something called
14 vicarious liability for his operation of this vehicle.
15 That's not disputed.

16 Now, DLS was a company out of
17 Florida and the owner, Mr. Keenan is trying to
18 negotiate with the hurricane to get a flight up here
19 and I anticipate that you will see him in the
20 courtroom later in the week. He's not going to
21 testify. There's no issue with respect to the fact
22 that he was the employer of Mr. Zalewski. DLS is
23 a company operating out of Florida that employs
24 drivers that they sub out, so to speak, to different

1 **companies. They've got about 400 drivers and**
2 **they operate principally out east of the**
3 **Mississippi. Mr. Keenan is a former truck driver**
4 **who started this business out of his garage and**
5 **he's built it up and it's a good company and they**
6 **take responsibility for what their driver did.**

7 **Now, because you're going to be**
8 **hearing testimony from police officers and other**
9 **people about this accident, these photographs will**
10 **acquaint you with the scene of the accident. And**
11 **the scene of the accident is at the intersection of**
12 **Trotter Road and Route 109 in Medway. This is**
13 **Route 109 and this is Trotter Drive, and the**
14 **accident happened in this vicinity. You see this is**
15 **a hill that you heard Mr. Pritzker talk about and on**
16 **the other side of that hill, down about a half a**
17 **mile, is 495. So if you get up to 495, you will**
18 **immediately start to go up an incline and you will**
19 **crest a hill and approximately 750 - 800 feet you**
20 **will be at Trotter Drive. Trotter Drive is an**
21 **industrial park and probably, because you're a**
22 **Norfolk County jurors, you're familiar with 109.**
23 **109 connects 495 and it goes all the way through**
24 **Westwood to Route - what used to be called Route**

1 128, now it's 93. It's a long road, there's a lot of
2 businesses on this road. It's a busy road. There's
3 trucks. There's shopping centers. There's tractor-
4 trailer trucks, there's gas trucks and it's a heavily
5 traveled road. And at the scene of this accident,
6 the speed limit is 40 miles per hour. Now there's
7 going to be an officer from the state police who
8 did an accident reconstruction of this accident
9 and he will tell you that Mr. Zalewski was not
10 speeding. He was driving under the speed limit
11 and the accident happened because as Mr.
12 Zalewski is coming down this road a car pulled out
13 and came very close to the center line and looked

14 -

15 MR. PRITZKER: Your Honor, I'm
16 objecting at this point.

17 THE COURT: Sustained.

18 MR. BOYLE: Mrs. Rhodes will tell
19 you that as she approached this accident scene,
20 coming over this hill she saw no traffic control
21 signs or any alert that there was anything ahead
22 and as she came down the hill on the right where
23 a company called Jerry McMillian's Tree Service.
24 What they were doing at the accident scene -

1 **MR. PRITZKER:** Your Honor, it's not
2 my intention to interrupt in opening, but since this
3 defendant has already admitted to liability, I'm not
4 sure we need to go into the accident.

5 **THE COURT:** Well, I'll allow him to
6 explain a little bit about the tree service being
7 there.

8 **MR. BOYLE:** Jerry McMillian's Tree
9 Service, which I anticipate the plaintiff is going to
10 read in portion of his testimony, he was deposed
11 and I understand now resides in South Carolina,
12 was doing tree stump work and there was an
13 officer there, who I anticipate is going to be the
14 first witness. Officer Boltenhouse from Medway.
15 And as Mr. Pritzker just told you, this officer who
16 was alone put his hand up to stop the plaintiff.
17 And again Mrs. Rhodes will tell you, as will all the
18 other witnesses that there were no notice or signs
19 or anything to alert people coming eastbound on
20 Route 109 as for the presence of Jerry McMillian's
21 Tree Service. And Ms. Rhodes will say that as she
22 was - she was stopped, the police officer turned
23 his back towards the other lane, because he was
24 trying to regulate the two lanes by himself. She

1 saw in her rearview mirror Mr. Zalewski truck and
2 the accident happened within seconds, and
3 obviously a tremendous collision.

4 Now, at the time of this accident,
5 according to the police and the witnesses, the
6 road was damp. It was misty, overcast, and those
7 are the facts of the case. End of the day, Mr.
8 Zalewski is totally responsible for the operation of
9 that motor vehicle. Totally responsible for the
10 accident and totally responsible for the injuries
11 sustained.

12 At the end of this case we're going to
13 be asking you to return a fair verdict as to what
14 reasonable compensation will be and apart from
15 sympathy all of us have for the Rhodes' family,
16 that will be your job. And at the end of the case I
17 ask that you return a fair verdict.

18 Thank you.

19 THE COURT: Thank you. All right.

20 Mr. conroy.

21 MR. CONROY: May I please the Court.

22

23 OPENING STATEMENT BY MR. CONROY:

24 Good morning. My name is Bill

1 **Conroy and we met for the first time yesterday and**
2 **Mr. Rus Pollack is my partner who will also be**
3 **trying this case with me. And together we**
4 **represent one of the defendants in this case, we**
5 **call it GAF. And I think you understand now that**
6 **GAF was the company for whom this job is being**
7 **done, Mr. Zalewski was actually employed by a**
8 **company called DLS, and DLS had an agreement**
9 **with my client, GAF in terms of providing drivers**
10 **for these trucks. And when this accident**
11 **happened, Mr. Zalewski was doing a job, really at**
12 **the request of my client, GAF.**

13 **And you've heard that Mr. Zalewski**
14 **has taken responsibility for this accident and**
15 **you've heard Mr. Boyle and so is DLS, the**
16 **employer. And my client as well, GAF, also takes**
17 **responsibility. We acknowledge that what Mr.**
18 **Zalewski did wasn't safe, and under the law, GAF**
19 **acknowledges that we are responsible for this as**
20 **well.**

21 **So as to my client, the issue really is**
22 **one of damages, and what is fair and what is**
23 **reasonable for the Rhodes' family given this**
24 **accident and what their loss was here.**

1 **Now, you heard from Mr. Pritzker that**
2 **Mrs. Rhodes sustained a paralyzing injury. She**
3 **sustained a very bad injury to her spinal cord. It**
4 **was a T-12, or thoracic 12 level of her back, and**
5 **through various doctors you'll see diagrams that**
6 **show where in the bottom of her back the injury**
7 **was when this accident happened.**

8 **And there are things that Mrs. Rhodes**
9 **will simply not be able to do again. There's no**
10 **question about that. She has lost all function of**
11 **her legs. And she has issues with her bowels.**
12 **These are things that she'll never regain again.**
13 **There's no question about that. There are things**
14 **that T-12 paraplegics, like Mrs. Rhodes, will be**
15 **able to do and can do with the appropriate level of**
16 **strength training and rehabilitation and work. And**
17 **you will learn through the evidence to Mrs. Rhodes**
18 **credit she has worked very hard to get to this**
19 **point, and Mr. Rhodes has worked very hard with**
20 **her. I think you will learn about a couple that has**
21 **worked very hard in the face of a tragedy to their**
22 **credit. And there's the goal here of hope for of**
23 **things to improve in the future for them. And**
24 **that's really some of the things that you'll learn**

1 from the doctors and you'll learn through some of
2 the experts who study paraplegic injuries for a
3 living, they can identify what can be done to make
4 their lives better.

5 There's the hope that in the future
6 Mrs. Rhodes will be independent enough and
7 strong enough so that she can drive by herself.
8 She's now learning, she's taking driving lessons.
9 There's hope in the future that she'll be strong
10 enough to transfer herself from her bed to her
11 wheelchair, from her wheelchair to the toilet.
12 Things that she requires help with now because
13 from a strength standpoint, she's still trying to
14 strengthen her upper body. She's getting there.
15 She's trying hard.

16 The hope is that, in time, she will not
17 need to have the care of someone with her 8 hours
18 a day at her home helping her move. That she
19 becomes strong enough and becomes more
20 independent. This is the hope for the future.
21 She's had some complications in the past. After
22 this accident you will learn through the evidence
23 of things that set her back from where she
24 otherwise may be today. She encountered a staph

1 infection at the rehabilitation center where she
2 stayed for several weeks after this accident and
3 that slowed her down, unfortunately.

4 There was a point in time where both
5 of her legs were fractured because when she was
6 being transferred by assistance, she was dropped
7 and her legs were fractured. That slowed her
8 down. So, she's had some hurdles to get over
9 since the accident. Hopefully they're behind her.
10 Hopefully her condition is stabilized. And
11 hopefully she can move forward to maximize as
12 much as she can as far as her physical abilities,
13 recognizing that she will not be the same. There's
14 no question about that.

15 So from my clients standpoint, what
16 this case is really about is fair compensation to
17 Mrs. Rhodes and Mr. Rhodes and her daughter,
18 Rebecca. It's just - it's a very difficult situation
19 for this family. And there will be some things
20 you'll hear through the course of this testimony on
21 damages that are - it's shocking to some levels
22 because the injuries were bad here.

23 Now, one of the things that you will
24 be hearing from, both sides, is well, what going

1 forward, what will it cost to take care of Mrs.
2 Rhodes in terms of doctors, medicine, medical
3 equipment and attendant care, particularly as she
4 gets older, attendant care.

5 There's experts from both sides that
6 have looked at this issue and they have mapped
7 out what it will cost in the future for everything,
8 for all of these costs. So you'll have that
9 information available to you to consider in what
10 you think is the fair and the appropriate level of
11 damages here.

12 I think from, at least from the
13 plaintiffs own expert in this issue, there are future
14 health care plans that calls for expenses in the
15 range of one-and-a-half to two million dollars.
16 Present value money to cover the future needs of
17 Mrs. Rhodes. And that accounts for essentially
18 everything that she'll need day to day in the
19 future.

20 So that's what the case is about from
21 my clients standpoint. Again, we acknowledge
22 responsibility. Mr. Zalewski made a mistake.
23 You'll hear what happened that day. This wasn't a
24 question of speeding. It wasn't a question of

1 drinking or drugs. He made a very unfortunate
2 mistake and Mrs. Rhodes has paid a price for that.
3 And what we'll ask of you to consider through this
4 trial and what I'll ask you to do at the conclusion
5 of this case is to award a number that is correct
6 and is fair. You can't give back to Mrs. Rhodes
7 what she had, but with a fair and just award you
8 can help compensate her for this loss.

9 Thank you ladies and gentlemen.

10 THE COURT: Mr. Johnson.

11 MR. JOHNSON: Thank you, your
12 Honor.

13

14 OPENING STATEMENT BY MR. JOHNSON:

15 Good morning, ladies and gentlemen.

16 Again, my name is John Johnson and I represent
17 Penske Truck Leasing Corporation in this case.
18 Penske is a company located, with headquarters
19 down in New Jersey and it rents trucks to various
20 people. Whether it's large industries or individuals
21 coming in off the street.

22 In this particular case you'll hear
23 evidence that Penske had a relationship with GAF,
24 one of the defendants in this case represented by

1 **Mr. Conroy in which Penske leased trucks to GAF**
2 **for use in GAFs business.**

3 **The truck which Penske leased in**
4 **this case to GAF was a large tractor-trailer,**
5 **capable of carrying - I think you'll hear evidence**
6 **that the tractor-trailer without any weight on it**
7 **weighed about 35 or 40 thousand pounds. In this**
8 **particular case, on this particular day, Mr.**
9 **Zalewski was coming up from New Jersey with 40**
10 **thousand pounds of liquid asphalt in his tank. So**
11 **he was driving a vehicle that was about 80**
12 **thousand pounds of weight.**

13 **Now, you have heard from the other**
14 **attorneys that there are four defendants in this**
15 **case. Three of the other defendants have**
16 **admitted responsibility. Mr. Zalewski has come**
17 **forward and said, it was his fault. He caused this**
18 **accident. DLS has done the same thing. GAF has**
19 **done the same thing. Penske has not done that**
20 **because our evidence, I expect to show, will show**
21 **you that Penske did not have anything to do with**
22 **the cause of this accident. This case, from**
23 **Penske's point of view is primary about two**
24 **particular points. One is the terrible injuries that**

1 Mrs. Rhodes suffered. You've heard from the other
2 attorneys what the evidence will be about those.
3 The second is about the issue of causation. What
4 caused this accident to happened which Mrs.
5 Rhodes was injured?

6 Penske's evidence that we will be
7 able to present to you will show that the
8 equipment that Penske leased had absolutely
9 nothing to do with this accident involving Mrs.
10 Rhodes. We expect that the plaintiffs will put
11 forth evidence to you trying to show that one of
12 the brakes on this tractor-trailer was found to be
13 inoperative after the accident happened. This
14 tractor-trailer has ten brakes. It's an 18-wheeler,
15 5 axles, 2 brakes on each side for a number of 10.
16 After the accident 1 brake was found to be
17 inoperative and the plaintiffs say that was a cause
18 of this accident. Penske's evidence, as we will
19 present it to you, will show that the brakes were
20 not a factor in the happening of this accident.
21 That the equipment was not in any way the cause
22 of this accident. That this collision, this
23 unfortunate collision which Mr. Zalewski rear
24 ended Mrs. Rhodes car would have happened

1 **anyway whether or not one of the brakes were**
2 **working. And finally, the cause of this accident**
3 **was inattention by Mr. Zalewski as he drove down**
4 **Route 109.**

5 **Now, this is a picture of Route 109. I**
6 **know Mr. Boyle showed it to you before, but I'd**
7 **like to point out some other things on it, if I may.**

8 **You will hear evidence from Mr.**
9 **Zalewski I believe about the day of this accident.**
10 **About what he was doing as he approached the**
11 **scene. He picked up his truck, as you've heard,**
12 **down in New Jersey early in the morning. One of**
13 **the things a driver is required to do on these long**
14 **commercial drives, is to do what they call a walk**
15 **around of the truck to make sure everything is in**
16 **order, including the brakes before they take off**
17 **from the yard.**

18 **You'll hear evidence that on this**
19 **particular day it was raining down in New Jersey**
20 **and Mr. Zalewski did not do that walk around. He**
21 **did not do that check. What he did do was get the**
22 **truck out on the road and do what he called a road**
23 **test. Various types of stops and starts, making**
24 **sure his wheels were locking up. Making sure**

1 everything was in order in terms of the brakes and
2 Mr. Zalewski will tell you that those tests showed
3 him that all the brakes on that truck were working
4 fine. There was no problem whatsoever.

5 You'll also hear evidence that this
6 was the usual truck that Mr. Zalewski drove. For
7 instance, he had been on vacation at the very
8 beginning of January, 2002, but he came back. On
9 Monday and Tuesday, that's January 7th through
10 January 8th, he had taken this trip up from New
11 Jersey to Millis, Massachusetts, driving the same
12 truck with absolutely no problems in terms of the
13 brakes. Everything was fine.

14 Now on this particular day, he picked
15 up his truck in New Jersey, did the test that we
16 talked about and headed up to Massachusetts.
17 Mr. Zalewski was part of a schedule of drivers
18 driving for GAF, driving for DLS on behalf of GAF
19 delivering liquid asphalt from New Jersey up to
20 Millis, Massachusetts to GAF's plant. Each driver,
21 there were four drivers, I believe, each driver was
22 suppose to arrive every three hours and deliver his
23 load and then drive back to New Jersey. For
24 instance, Mr. Zalewski's delivery time was 12

1 noon. He was suppose to get there at 12 noon,
2 drop his load off and then head back to New
3 Jersey, do the same thing every day.

4 Now, on this particular day, the
5 accident happened about 1:15. Mr. Zalewski was
6 about an hour and fifteen minutes behind, and I
7 think he'll tell you it was because of weather;
8 there was some bad weather on the way. But as
9 he came off of Route 495, which again is down
10 toward the top of this picture, he stopped his
11 truck, everything was working fine. No problem.
12 He came down or he came up a slight hill that
13 you've heard about and then started to decline,
14 which all the police officers will tell you was
15 approximately 800 feet, with a clear view of the
16 area, Trotter Drive and Route 109. As he started
17 down that hill, there was a work project going on
18 right about here. Jerry McMillian's Tree Trimming
19 company was grinding stumps of trees along the
20 side of the road. Mr. McMillian's truck could not fit
21 off the side of the road, so it was partially in what
22 was called the eastbound lane, the eastbound
23 would be going this way, westbound is this way
24 going back towards 495.

1 So, McMillian's truck was partially in
2 the lane and a police officer from Medway, Officer
3 Boltenhouse, decided it wasn't possible to let both
4 lanes of traffic go at the same time while this
5 truck was partially out in the road; it wouldn't be
6 safe. Officer Boltenhouse decided, I will let one
7 lane go, stop the other and then just go back and
8 forth.

9 As Mr. Zalewski came down this hill,
10 he said there was nothing in front of him. He had
11 a clear view, unobstructed. Just prior to him
12 coming down that hill, Mrs. Rhodes had come
13 down it. She had turned off of James Street up
14 here, and was coming down, heading towards
15 Holliston. She saw Officer Boltenhouse in his
16 orange vest, his white gloves, she saw the tree
17 trimming truck on the side of the road and she saw
18 Officer Boltenhouse raise his gloved hand to stop
19 her. And she stopped. And you'll hear Officer
20 Boltenhouse testify that she stopped about 100 or
21 150 feet from where he was standing. And he
22 places her, as do most of the other officers that
23 investigated this, right, just beyond perhaps the
24 intersection of Trotter Drive and Route 109. She

1 stopped there and as she stopped there Mr.
2 Zalewski was coming down the roadway. Mr.
3 Zalewski's testimony will be that he saw no other
4 cars in the roadway. He saw no police officer in
5 the roadway. He saw no tree trimming work in the
6 roadway. In fact, it wasn't until after he struck
7 the Rhodes car that he saw Officer Boltenhouse
8 and he saw the tree trimming truck.

9 Mr. Zalewski says that his attention,
10 as he came down that street was on a car, he
11 described it as a small white car that was coming
12 out of Trotter Drive, apparently trying to turn left
13 to go back up towards 495. And Mr. Zalewski's
14 testimony, I expect will be, that he was totally and
15 completely focused on that car because he knew
16 from his experience driving along that roadway,
17 that because of the business of this roadway, cars
18 would dart out at any chance they could get when
19 there was a break in the traffic so that they could
20 get on the road. So as he came - as Zalewski
21 came down, he watched this car, which was
22 stopped at that intersection, he focused on that,
23 never saw the Rhodes car, never saw the police
24 officer, never saw the tree trimming truck.

1 **Mr. Zalewski will testify that as he**
2 **got just about to Trotter Drive this car, white car,**
3 **dashed out in front of him and he says when that**
4 **car came across his lane and turned left to head**
5 **back up the road, there was about one car lengths**
6 **difference between his truck and this white car.**
7 **He says he took his foot off the brake – foot off the**
8 **gas. He did not press on the brake at that point**
9 **because he thought the car was going to clear**
10 **without any problem, and the car did clear except**
11 **Mr. Zalewski will testify that as it made it's left-**
12 **hand turn, it started to fishtail and he was**
13 **concerned that this car, now turning out of Trotter**
14 **Drive and heading back towards 495, in its**
15 **fishtailing motion would come in contact with his**
16 **truck and there might be an accident. So he'll**
17 **testify that he watched from his – through the**
18 **front windshield, watched that car pass one car**
19 **length in front of him, and remember, he's up high**
20 **in that truck in the seat of the cab, and make a**
21 **left-hand turn, start to fishtail, and as it went by**
22 **him, he watched in his side view mirror to see if**
23 **there was going to be an impact between that car**
24 **and his truck. And he watched as the car**

1 **straightened out and continued up towards 495**
2 **without any contact with his truck.**

3 **And then what did he do? The**
4 **testimony will be that he turned back and there,**
5 **directly in front of him was Mrs. Rhodes car. He**
6 **says he stepped on the brake but the evidence will**
7 **be there was absolutely no opportunity for him to**
8 **stop that truck. He rear-ended her, pushed her off**
9 **the side of the road and he came to a stop right in**
10 **his lane, right where the police officer had been**
11 **standing. The police officer will tell you what he**
12 **did was, he had been – once he stopped Mrs.**
13 **Rhodes, he turned in the other direction to bring**
14 **that traffic on, so that the cars coming this way**
15 **would proceed. He heard a loud crash, he turned**
16 **to see the Rhodes car being driven off into the**
17 **woods, and the Zalewski truck coming right**
18 **towards him. He ran off into the woods to avoid**
19 **being hit. That's what happened in this accident.**

20 **The evidence will show you that this**
21 **accident happened because Mr. Zalewski**
22 **unfortunately wasn't paying attention. He was**
23 **watching everything else except directly in front**
24 **of him where Mrs. Rhodes was stopped.**

1 **The plaintiff claims – the plaintiff**
2 **alleges that the one inoperative brake that was**
3 **found after this accident was a cause of Mr.**
4 **Zalewski not being able to stop. They will try to**
5 **present that testimony to you through various**
6 **police officers who looked at the truck afterwards.**
7 **We expect the evidence to come in through, I**
8 **believe, two state troopers, one or two state**
9 **troopers, as well as a local police officers from**
10 **Medway, who will testify that after examining that**
11 **truck, the one inoperative brake out of 10 had**
12 **absolutely nothing to do with the happening of this**
13 **accident. It was not a factor.**

14 **Number two, they'll testify that the**
15 **collision under the circumstances that I just**
16 **described would have happened no matter what**
17 **the condition of the truck, even if all 10 brakes**
18 **had been operating perfectly because there wasn't**
19 **enough time for Mr. Zalewski to stop that truck.**
20 **Mrs. Rhodes was here, Mr. Zalewski was here**
21 **when this accident started and the impact**
22 **occurred. And you'll hear from these police**
23 **officers, that the cause of this accident was a fact**
24 **Mr. Zalewski's inattention to the roadway, his**

1 careless operation of the vehicle, and it did not
2 have anything to do with the brakes.

3 There is a second issue that plaintiff
4 is pursuing against Penske, Mr. Pritzker mentioned
5 the issue of control. The plaintiffs allege that
6 Penske had control over the work that Mr.
7 Zalewski was doing. Penske was the lessor of this
8 truck. They owned the truck, no question about it,
9 but the evidence will be that they had no control
10 at all over what Mr. Zalewski was doing. Mr.
11 Zalewski was an employee of DLS, one of the
12 other defendants in this case, making a delivery to
13 GAF, one of the other defendants in this case. He
14 was paid by DLS, all his benefits came from DLS,
15 his schedule going back and forth was set up by
16 DLS and GAF. There will be absolutely no
17 evidence to show that Penske had any sort of
18 control over Mr. Zalewski's operation of the truck.

19 In the end, this is a horrible case
20 because of the injuries that Mrs. Rhodes has
21 suffered. We're all sorry about that. But from
22 Penske's point of view, Penske did not do anything
23 to cause this accident. The one inoperative brake
24 that was found after this accident did not

1 contribute to cause this accident. It had nothing
2 to do with it. That will be the testimony and we
3 ask in the end that you find on behalf of Penske.

4 Thank you very much.

5 THE COURT: Thank you. All right. At
6 this point we'll take a morning recess. We'll take
7 a 15 minute recess. The jurors may go out to the
8 jury room.

9

10 (JURY RECESS)

11

12 WITHOUT JURY PRESENT

13 THE COURT: Before we recess, there
14 are a couple of in house rules, for everyone, even
15 people who are observing or participating in this
16 trial. One, there is no discussing the case as the
17 jury comes and goes from recess or from lunch.
18 So, the jury room is right out here.

19 Number two, I would ask you not to
20 stand near that jury room while the jury is in that
21 room.

22 And number three, this is a very small
23 little community. And as a result there's very few
24 restaurants around here. And you may be in a

1 restaurant with a juror. You are not to discuss the
2 case while the jury is at lunch. So you'll have to
3 find locations elsewhere to discuss the case.

4 Thank you. Fifteen minute recess.

5

6

(RECESS)

7

8

JURY PRESENT

9 THE COURT: I want to make sure all
10 of the cellular phones are off please.

11 All right. Mr. Pritzker, would you like
12 to proceed.

13 MR. PRITZKER: Yes. Sergeant
14 William Boltenhouse, please.

15 Your Honor, may I introduce Mrs.
16 Rhodes?

17 THE COURT: You may.

18 THE WITNESS: Good morning, your
19 Honor.

20 THE COURT: Good morning.

21 THE CLERK: Would you raise your
22 right hand, please. Do you solemnly swear the
23 testimony you'll give in the case on trial to be the
24 truth, the whole truth, and nothing but the truth,

1 so help you God?

2 THE WITNESS: I do.

3 THE CLERK: Thank you. You may be
4 seated or stand.

5 WILLIAM BOLTENHOUSE, SWORN

6 MR. PRITZKER: Ladies and
7 gentlemen, Mrs. Marcia Rhodes has now entered
8 the courtroom and there she is. So you've met two
9 out of the three plaintiffs.

10 DIRECT EXAMINATION BY MR. PRITZKER:

11 Q Sergeant, would you state your full name, please.

12 A William Boltenhouse.

13 Q Where do you live, sir?

14 A Bellingham, Massachusetts.

15 Q What is your date of birth?

16 A 3/4/62.

17 Q And what is your occupation?

18 A I'm a sergeant with the Medway Police
19 Department.

20 Q How long have you been a sergeant with the
21 Medway Police Department?

22 A Five-and-a-half years.

23 Q Prior to being a sergeant with the Medway Police
24 Department, were you with the Medway Police

1 Department?

2 A Yes, sir, I was a patrolman.

3 Q So you started out as a patrolman and then you
4 became a sergeant?

5 A Correct.

6 Q How long, totally, have you been with the Medway
7 Police Department?

8 A Just over 20 years.

9 Q Can you give me your educational background?
10 Did you graduate from high school?

11 A Yes, sir, I did. Medway High School.

12 Q Where?

13 A Medway Junior/Senior High School.

14 Q And after graduating Medway Senior High School,
15 did you go on to any further education?

16 A Yes, sir. I went to Dean Junior College and
17 received an Associates Degree in Law
18 Enforcement and then continued on to Western
19 New England where I eventually obtained a
20 Masters Degree.

21 THE COURT: I think you'll have to
22 keep your voice up.

23 MR. PRITZKER: Yes, he will. Why
24 don't I back up a little and I'll stand over here next

1 to Mrs. Rhodes and that will allow you to keep
2 your voice up a little bit.

3 Q So you went to Dean Junior College?

4 A Correct.

5 Q Then you went to where?

6 A Western New England College.

7 Q And ultimately got what kind of a certification or
8 degree?

9 A Masters Degree in Criminal Justice.

10 Q And when did you get that?

11 A In 2002.

12 Q When did you graduate Dean Junior College?

13 A 1996.

14 Q And from 1996 on, were you working with the
15 Medway Police Department?

16 A Yes, sir, I was.

17 Q Now can you tell me, Sergeant, what a detail is, as
18 it relates to police work?

19 A It's a paid shift outside an officers normal 40 hour
20 work week.

21 Q When you say a paid shift, can you give us some
22 examples of what you mean by a paid shift?

23 A Various sporting events, traffic posts, functions.

24 Q Places where I and the jury may see a police

1 officer on what's called a private detail?

2 A Correct.

3 Q Okay. And occasionally do you do detail work
4 concerning traffic control?

5 A Yes, sir.

6 Q And did you in 2002?

7 A Yes, I did.

8 Q Directing your attention to January 9th of 2002, did
9 you do a detail on that date?

10 A Yes, sir, I believe I did.

11 Q And what kind of a detail did you do?

12 A It was a traffic detail.

13 Q What was the purpose of the traffic detail?

14 A The town had contracted McMillian Tree to grind
15 stumps in various areas of the town.

16 Q And what was your function as it related to the
17 town hiring McMillian Tree?

18 A For traffic enforcement, traffic - directing traffic
19 around - if there were spots where he was in the
20 roadway.

21 Q Who assigned you to this detail?

22 A Actually they're assigned by an equalization basis
23 through the department.

24 Q Can you tell me how big the Medway Police

1 Department is?

2 A We have 20 full-time members.

3 Q Including yourself?

4 A Correct.

5 Q Who does the assigning typically?

6 A Typically the dispatchers do. It's - there's a chart,
7 if you take a shift your name goes to the bottom of
8 the list and then they - so they start from the top
9 and call out the work.

10 Q Who, in this case requested a detail officer?

11 A The tree warden.

12 Q In the Town of Medway?

13 A In the Town of Medway. Right.

14 Q What time did the detail start?

15 A I believe around 8, 8:30.

16 Q So, the detail went to different areas in the Town
17 of Medway?

18 A Correct.

19 Q And at some point did the detail wind up on Route
20 109?

21 A Yes, sir, it did.

22 Q About what time of day did McMillian start
23 grinding stumps on Route 109?

24 A We met after lunch, so I would say it was probably

1 **about 12:30 we met up on the 109 area.**

2 **Q If I understand correctly, you were working before**
3 **lunch with him?**

4 **A Correct.**

5 **Q Then you broke for lunch?**

6 **A Right.**

7 **Q And then after lunch you started working on Route**
8 **109?**

9 **A Correct.**

10 **Q And were you working your way east or west?**

11 **A East. Eastbound.**

12 **Q Okay. Directing your attention to a little bit after**
13 **1 o'clock. Where was the detail as of that time?**

14 **A Just east of Trotter Drive on 109.**

15 **Q I'm going to put up a board which has become**
16 **slightly warped, and ask if you can recognize that?**

17 **THE COURT: Counsel, if you people**
18 **wish to step up and take a look at it.**

19 **Q Do you recognize that as a non to scale**
20 **representation of Route 109 at the intersection of**
21 **Trotter Drive?**

22 **A It's a fair representation.**

23 **MR. PRITZKER: Could I have this**
24 **marked as a chalk, your Honor?**

1 **THE COURT:** Actually, we don't need
2 to mark a chalk, but if you want call it -

3 **MR. PRITZKER:** Could I have it
4 marked for identification?

5 **THE COURT:** Identification. A for
6 Identification that would be better.

7 **(Chalk marked as Exhibit A for**
8 **Identification)**

9 **Q** And what looks like a Z at the top right of Exhibit
10 A for identification, Sergeant, that's actually an N;
11 is that correct?

12 **A** Correct.

13 **Q** And that shows the northerly direction?

14 **A** Correct.

15 **Q** So that east would be coming down Exhibit A?

16 **A** Correct.

17 **Q** And could you, if you would, and with the Court's
18 permission, leave the stand, grab a marking pen
19 and mark for me where McMillian Tree was
20 working.

21 **THE COURT:** You may.

22 **Q** And I've handed you a blue marking pen. And if
23 you could just mark in where McMillian Tree was
24 at it related to this detail.

1 **A** **(Witness complies)**

2 **Q** **Now, you've shown that -- you've drawn a blue**
3 **oblong and it's partially over the line going on the**
4 **left-hand side of Exhibit A. And straddles the line.**

5 **A** **Correct.**

6 **Q** **What line is that?**

7 **A** **That's the fog line. White fog line.**

8 **Q** **And the fog line is the white line that you can**
9 **typically see on the edge of a roadway?**

10 **A** **Correct, sir.**

11 **Q** **And it's sometimes called the fog line; is that**
12 **correct?**

13 **A** **Yes, it is.**

14 **Q** **Now, jumping ahead a little bit, you were wearing**
15 **an orange vest?**

16 **A** **Yes, sir, I was.**

17 **Q** **Would you mark with an orange marking pen**
18 **approximately where you were, directing traffic,**
19 **directly before this accident.**

20 **A** **(Witness complies)**

21 **Q** **You've put an orange X as to where you were. And**
22 **as far as Mrs. Rhodes car, and I know I'm jumping**
23 **ahead a little bit, but in order to get you back on**
24 **the witness stand, could you mark where Mrs.**

1 **Rhodes car was when you stopped it. I'll give you**
2 **green.**

3 **A I don't know exactly where Mrs. Rhodes vehicle**
4 **stopped. I know it was in the vicinity of Trotter**
5 **Drive. I can't really say whether it was before,**
6 **after or even in the middle of Trotter Drive.**

7 **Q Okay. Can you give your best estimate as far as**
8 **an X is concerned? If you can't, then we will leave**
9 **that off.**

10 **A (Witness complies)**

11 **Q Now, if you would go back to the stand.**

12 **A (Witness complies)**

13 **Q I'm going to ask you some questions.**

14 **When McMillian Tree first set up the**
15 **operation on the point that you have identified on**
16 **Exhibit A, did you start directing traffic around it?**

17 **A Yes. Yes, sir, I did.**

18 **Q What were you wearing?**

19 **A Regular duty uniform with an orange traffic vest**
20 **and white gloves.**

21 **Q Was it raining?**

22 **A No, I don't believe it was.**

23 **Q Can you describe the road conditions?**

24 **A Fairly dry.**

1 Q And can you describe – are you familiar with this
2 area of Route 109?

3 A Yes, sir, I am.

4 Q Can you describe, looking back west, what you're
5 looking at?

6 A It's slight in grade going up towards the westbound
7 area, approximately where the – where the map
8 would end would be the top of the hill, it's a slight
9 hill.

10 Q So, going the other way, going eastbound on Route
11 109 it's a slight decline?

12 A Correct.

13 Q Going down to and beyond Trotter Drive?

14 A Correct.

15 Q You were wearing your yellow – I'm sorry, your
16 orange vest?

17 A Yes.

18 Q And your white gloves?

19 A Correct.

20 Q Had you, prior to the accident, stopped lines of
21 traffic in each direction?

22 A At that particular location?

23 Q Yes.

24 A I don't –

1 Q Was Mrs. Rhodes the first eastbound car -

2 THE COURT: We need an answer to
3 the first question.

4 MR. PRITZKER: I apologize.

5 THE COURT: If you can answer.

6 THE WITNESS: Okay. I believe so. I
7 don't totally recall.

8 Q You don't recall whether she was the first or
9 whether you had already stopped and then let go
10 other eastbound traffic?

11 A Yes, I don't recall. He had set up in several
12 different locations along that stretch there, so, I
13 don't recall if that was the first set up, if she was
14 the first vehicle.

15 Q In either event, what did you do as it related to the
16 blue Toyota that we know now was Mrs. Rhodes
17 Toyota?

18 A I signaled for the blue Toyota to stop by raising my
19 hand, which it did.

20 Q Okay. Now, can you stand up for a moment,
21 Sergeant, please.

22 A Certainly.

23 Q How tall are you?

24 A I'm 6'3".

- 1 Q How much do you weigh?
- 2 A About 260 pounds.
- 3 Q And you had an orange vest. Did the vest fit?
- 4 A Fairly well.
- 5 Q Can you describe while you're standing up, how
- 6 you stopped Mrs. Rhodes, understanding that you
- 7 had your orange vest on and your white glove.
- 8 A Yeah, facing in that direction, with one hand
- 9 raised.
- 10 Q Okay. Did you observe the blue Toyota stop?
- 11 A Yes, sir, I did.
- 12 Q And then what did you do?
- 13 A Then I turned my attention to the westbound
- 14 traffic and signaled for them to proceed.
- 15 Q Did you keep any signal up relating to the
- 16 eastbound side?
- 17 A Yes. I usually keep my hand up and signal with
- 18 the other hand to -- for the other lane to go.
- 19 Q Can you demonstrate how you remember you were
- 20 holding the eastbound traffic as you signaled the
- 21 left bound traffic?
- 22 A Certainly. Somewhat like this.
- 23 Q So you were watching the westbound side?
- 24 A Correct.

1 Q What is the next thing you observed or you
2 remember?

3 A I heard a loud – a loud crash.

4 Q Prior to hearing a loud crash, did you hear
5 squealing of brakes?

6 A I don't recall.

7 Q Did you hear a horn?

8 A I don't recall.

9 Q When you heard the crash, what did you do?

10 A My attention was immediately drawn to – back to
11 the – to the west, towards the eastbound traffic.

12 Q And what did you see?

13 A I saw an 18 wheel tractor-trailer pushing the blue
14 Toyota in my direction.

15 Q When you first saw the 18 wheel tractor pushing
16 the blue Toyota in your direction, how far away
17 from you was the blue Toyota?

18 A I'd say between 100 and 150 feet.

19 Q And it was coming from where you placed the
20 green X down towards where you placed the
21 orange X on Exhibit A?

22 A Correct.

23 Q What did you do?

24 A I screamed to Mr. McMillian to watch out and I ran

1 off into the side of the road.

2 Q At the time you ran off to the side of the road, was
3 the blue vehicle and the truck attached?

4 A Yes.

5 Q At some point did you observe anything else?

6 A I know at one point the blue vehicle turned sharply
7 to the right and went off to the side of the road.

8 Q If you could come down once again, Sergeant.

9 THE COURT: You may.

10 Q I'm going to give you back the blue pen - I'm sorry,
11 I'm going to give you the green pen. Can you make
12 a dotted line as to where you observed the blue
13 Toyota travel after you heard it crash?

14 A (Witness complies)

15 Q Can you put a dotted line going down Exhibit A,
16 and then a second green X off the road, which I
17 assumed is where the Rhodes vehicle wound up?

18 A Right here.

19 Q Thank you. You may resume your position and sit
20 down if you feel more comfortable.

21 A (Witness complies)

22 Q Sergeant, I'm going to show you a document which
23 is entitled Medway Police Department incident
24 report and ask if you recognize it?

1 A Yes, sir, it's a copy of my report.

2 Q Is that a report that you prepared dealing with this
3 accident?

4 A Yes, sir.

5 Q When did you prepare it?

6 A I believe the file copy was turned in on the 18th.

7 Q When did you prepare the first copy?

8 A I don't recall. A day or two after the accident.

9 Q Is the original of this document, is that retained in
10 the police files?

11 A No. As it's edited to its final version, it's saved.

12 Q In a computer?

13 A Yes.

14 Q So, your signature never appears on any
15 documents, just in the computer?

16 A On reports that we turn in for official reports we
17 sign, with our signature.

18 Q Is this a report that you prepared?

19 A Yes, it is.

20 Q And to the best of your - and have you reviewed
21 this recently?

22 A Yes, I have.

23 Q To the best of your recollection, is it an accurate
24 narrative of the facts as you remembered them on

1 the day of the accident?

2 A Yes, sir, it is.

3 MR. PRITZKER: I would like to offer
4 it.

5 THE COURT: Any objection?

6 MR. BOYLE: No objection.

7 MR. CONROY: No objection.

8 MR. JOHNSON: No objection.

9 THE COURT: No objection, it may be
10 marked as Exhibit 1.

11 (Sergeant Boltenhouse police
12 incident report marked and
13 received as evidence as Exhibit
14 No. 1)

15 Q Would you turn to the second page of Exhibit 1,
16 Sergeant.

17 A (Witness complies)

18 Q And would you read to the jury the paragraph
19 starting on Wednesday, January 9th.

20 A "On Wednesday, January 9th, 2002, at
21 approximately 13:12 hours, I, Sergeant William K.
22 Boltenhouse, was working on" ---

23 THE COURT: Slow down, please. And
24 nice and loud, please.

1 **A** -- “was working a paid detail for the Town of
2 **Medway, the subcontractor was Professional Tree**
3 **Services from Ashland, Mass. I was dressed in a**
4 **duty uniform with boots, uniform pants, eight-point**
5 **hat, a cruiser jacket with patch, flag, and badge,**
6 **gold chevrons. On my cruiser jacket I wore an**
7 **orange police traffic vest and had white gloves on**
8 **either hand. Weather conditions were cloudy with**
9 **a slight mist just beginning to fall prior to the**
10 **accident.”**

11 **Q** **Would you continue on the next paragraph, please.**

12 **A** **“I was working on Milford Street, Route 109, off**
13 **the side of the road on the eastbound lane. Just**
14 **east of Trotter Drive and west of West Street. The**
15 **tree service truck, a Ford F-350 pick-up with a**
16 **stump grinding machine in tow was parked**
17 **straddling the fog line on the side of the roadway.**
18 **For the safety of the tree worker and myself, I was**
19 **stopping one lane of traffic at a time. I stopped a**
20 **blue Toyota which was traveling east in the area**
21 **of Trotter Drive.”**

22 **Q** **And keep going one more – a couple more**
23 **sentences.**

24 **A** **“Once I observed the Toyota had come to a**

1 complete stop, I turned my attention to the
2 westbound traffic, while signaling the eastbound
3 traffic to remain stopped by holding my arm with
4 palm extended. I signaled the westbound traffic to
5 proceed. While my attention was on the
6 westbound traffic, I heard a loud crash. I turned
7 to see an 18 wheeler tractor-trailer had hit the
8 rear of the Toyota and was pushing it eastbound in
9 my direction.”

10 Q Now, Sergeant, after you ran into the woods, did
11 you observe the Rhodes vehicle come to a stop?

12 A Yes, sir, I did.

13 Q Could you describe the scene at that time?

14 A The blue Toyota had sustained heavy rear end
15 damage and was facing into the woods
16 perpendicular to the roadway.

17 Q Did you have an opportunity to go over to the
18 vehicle?

19 A Yes, I did. I approached the driver side vehicle
20 and ascertained if the operator was okay.

21 Q Were you able to talk to the operator?

22 A I was. I was unable to access her through the
23 driver's side, which had sustained damage. So I
24 went around and climbed in through the passenger

1 side.

2 Q So you actually were able to get into the vehicle?

3 A Yes, sir, I climbed into the passenger side of the
4 vehicle.

5 Q When you climbed into the passenger side of the
6 vehicle, what did you observe about the interior of
7 the vehicle?

8 A The rear end of the car was severely damaged.
9 The trunk area of the vehicle was pushed into the
10 back seat and the back seat was just about
11 pushed up to the front seat. Mrs. Rhodes seat was
12 reclined somewhat, I assume from damage
13 sustained from the accident.

14 Q Before you climbed into the vehicle, did you have
15 a chance to observe the vehicle itself?

16 A Yes, sir, I did.

17 Q And did you continue to observe that vehicle at
18 several points thereafter during the emergency
19 procedures?

20 A Yes, I did.

21 Q At some point was medical attention requested?

22 A Yes, it was. Right away. I believe I borrowed
23 somebody's cell phone to call. For some reason I
24 couldn't get my cell phone to work, so someone

1 lent me a cell phone.

2 **Q** And did the medical personnel arrive?

3 **A** Yes, when I had talked to the dispatcher, they had
4 said that they had already received phone calls on
5 it, and that EMS and other police vehicles were en
6 route.

7 **Q** At some point did they need to do anything to the
8 vehicle in order to remove Mrs. Rhodes from it?

9 **A** Yes, sir. The fire department --

10 **Q** What did they do?

11 **A** The fire department had to use the jaws of life to
12 extricate Mrs. Rhodes from the vehicle.

13 **Q** I'm going to show you a couple of photographs and
14 ask whether or not you can recognize these
15 photographs.

16 **A** Yes, sir, I believe these are pictures of the Rhodes
17 vehicle.

18 **Q** And are they a fair and accurate representation of
19 the Rhodes vehicle after it reached a stopping
20 point and after Mrs. Rhodes was taken out of it?

21 **A** Correct.

22 **MR. PRITZKER:** Your Honor, I would
23 like the picture marked with a Number 003844
24 marked as the next exhibit.

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THE COURT: Any objection to either one of these?

MR. BOYLE: No objection, your Honor.

MR. JOHNSON: No objection.

MR. CONROY: No objection, your Honor.

THE COURT: All right. Exhibit 2 then.

(Photo marked and received as evidence as Exhibit No. 2)

MR. PRITZKER: And may I ask your Honor that, again, pass this around to the jury?

THE COURT: The court officer will pass it to the jury.

MR. PRITZKER: And the next is a series of three pictures with a marking 003848.

THE COURT: That may be marked as Exhibit 3.

MR. PRITZKER: Thank you, your Honor.

(Photo marked and received as evidence as Exhibit No. 3)

THE COURT: You may continue the examination.

1 Q Officer, I've jumped ahead a little bit, but I think
2 we left the chronological scene with you sitting in
3 the car next to Mrs. Rhodes. Were you able to
4 speak with her?

5 A Yes, I was.

6 Q Can you tell me what you said and what she said?

7 A I asked her, her name and where she was injured.

8 And I believe she told me her name was Marcia

9 and that her back was bothering her and she

10 asked if I would call her husband.

11 Q Did she give you her husband's phone number?

12 A Yes, she did.

13 Q Were you able to do that?

14 A I believe I was. I believe we did get a hold of him.

15 He did show up at the scene.

16 Q He did show up at the scene?

17 A I believe he did. Yes.

18 Q And now, were you the investigating officer of this
19 accident?

20 A No, sir, I wasn't.

21 Q Why not, since you were there and you're an
22 officer in Medway?

23 A I wasn't on duty and I was more of a witness than
24 - a participant of the accident rather than an

1 investigating officer.

2 **Q** **A witness and a possible victim?**

3 **A** **Correct.**

4 **Q** **Do you remember anything else you said to Mrs.**
5 **Rhodes?**

6 **A** **I don't. I don't recall.**

7 **Q** **Do you remember her asking you anything about**
8 **yourself?**

9 **A** **I remember her making some comment about she**
10 **was afraid she was going to hit me as they were**
11 **traveling down the road. She was inquiring if I**
12 **was all right.**

13 **Q** **I'm going to show you a few more pictures,**
14 **Sergeant, and just ask if you can recognize these.**
15 **First of all, you did say that you are familiar with**
16 **this stretch of Route 109; is that correct?**

17 **A** **Yes, sir, I am.**

18 **Q** **Why don't you look at the series.**

19 **A** **(Witness complies).**

20 **Q** **Tell me if these are a fair and accurate**
21 **representation of Route 109 at or near the scene?**

22 **A** **Yes, sir. There are several facing east, and**
23 **several facing westbound.**

24 **MR. PRITZKER: I would like to have**

1 **these marked in a sequence, your Honor.**

2 **THE COURT: Okay. Any objection?**

3 **MR. BOYLE: No objection, your**
4 **Honor.**

5 **MR. JOHNSON: No, your Honor.**

6 **MR. CONROY: No objection, your**
7 **Honor.**

8 **THE COURT: How many photographs**
9 **do we have?**

10 **MR. PRITZKER: One, two, three, four,**
11 **five.**

12 **THE COURT: All right. We'll mark**
13 **them as 4 through 8.**

14 **(Photos marked and received as**
15 **evidence as Exhibit Nos. 4**
16 **through 8)**

17 **MR. PRITZKER: May I approach the**
18 **witness, your Honor?**

19 **THE COURT: You may.**

20 **Q** **In reverse order to the marking, I'm showing you**
21 **Exhibit 8 and ask what that represents?**

22 **A** **It's a photograph facing westbound on Route 109**
23 **in the area of Trotter Drive.**

24 **Q** **So Exhibit 8 shows the eastbound lane that Mrs.**

1 **Rhodes was handling – was traveling, coming**
2 **towards the viewer of the picture?**

3 **A Correct.**

4 **Q Okay. And Exhibit 7, what does that represent?**

5 **A This is a picture, eastbound, facing the westbound**
6 **traffic coming towards it.**

7 **Q Okay. So it shows somewhat the decline of the**
8 **hill going down to Trotter Drive?**

9 **A Correct.**

10 **Q Exhibit 6.**

11 **A That picture is from the same angle facing**
12 **eastbound with the decline.**

13 **Q And then there's two pictures, Exhibit 5 and 4 that**
14 **have a truck coincidentally heading towards the**
15 **viewer, can you tell me what those depict?**

16 **A This is – these pictures are looking westbound**
17 **with a truck proceeding eastbound on Route 109.**

18 **MR. PRITZKER: May I show these to**
19 **the jury, your Honor?**

20 **THE COURT: You may.**

21 **Q I'm going to show you one more picture, Sergeant,**
22 **which appears to have been taken at the scene at**
23 **the time. Have you seen that before?**

24 **A Yes, sir, I have.**

1 MR. PRITZKER: May I have that
2 marked as the next exhibit?

3 THE COURT: Any objection?

4 MR. BOYLE: No, your Honor.

5 MR. CONROY: No.

6 MR. JOHNSON: No, your Honor.

7 THE COURT: Exhibit 9.

8 (Photo marked and received as
9 evidence as Exhibit No. 9)

10 Q Do you recognize this as the scene at the time?

11 A Yes, sir.

12 Q Do you recognize that, aside from the officer
13 directing traffic, there's a tanker truck in that
14 picture?

15 A Correct.

16 Q Where did the tanker truck wind up?

17 A Very close to the proximity on the map where I
18 was standing.

19 MR. PRITZKER: May I show this to
20 the jury, your Honor?

21 THE COURT: You may.

22 Q Did you have an opportunity to look at the tanker
23 truck after this accident happened?

24 A Briefly. Not thoroughly.

1 Q Can you identify that as the tanker truck at the
2 scene directly after the accident?

3 A Yes, sir, that appears to be the vehicle involved.

4 THE COURT: You'll have to keep your
5 voice up so everyone can hear you now.

6 THE WITNESS: I'm sorry.

7 THE COURT: What was that
8 response?

9 THE WITNESS: I believe that is the
10 vehicle involved. Yes.

11 THE COURT: All right.

12 MR. PRITZKER: I'd like that as the
13 next exhibit, your Honor.

14 THE COURT: Any objection?

15 MR. BOYLE: No objection.

16 MR. CONROY: No, your Honor.

17 MR. JOHNSON: No, your Honor.

18 THE COURT: Exhibit 10.

19 (Photo marked and received as
20 evidence as Exhibit No. 10)

21 MR. PRITZKER: I have no other
22 questions, your Honor.

23 THE COURT: All right. Cross-
24 examination.

1 **CROSS-EXAMINATION BY MR. BOYLE:**

2 Q Good morning, sir.

3 A Good morning.

4 Q I think you told Mr. Pritzker that you were
5 assigned to work a detail for Jerry McMillian Tree
6 Service on the date of the accident?

7 A Correct.

8 Q And after lunch you arrived in the vicinity of
9 Trotter Drive?

10 A Actually at the Chinese Restaurant just west of
11 Trotter Drive.

12 MR. BOYLE: May I approach, your
13 Honor?

14 THE COURT: You may.

15 Q Is this, in fact, the - on the left?

16 A Yes, sir.

17 Q That's a Chinese restaurant?

18 A Correct.

19 Q And this is heading eastbound?

20 A Yes, sir, it is.

21 Q Is that a fair and accurate representation
22 generally of what Route 109 looks like back there
23 on the day of this accident?

24 A I'd say so, yes.

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MR. BOYLE: I would offer it.

THE COURT: Any objection?

MR. CONROY: No objection.

MR. JOHNSON: No objection, your Honor.

MR. PRITZKER: No, your Honor.

THE COURT: Exhibit 11.

(Photo marked and received as evidence as Exhibit No. 11)

MR. BOYLE: And may Exhibit 11 be distributed to the jury, your Honor?

THE COURT: It may.

Q And you talked about an incline going up towards - on the hill before Trotter Drive. Does that show the incline before you get to the top where the Chinese restaurant is, you go down to the other side?

A Correct. Yes, sir, that's the incline.

MR. BOYLE: I offer it.

THE COURT: Any objection?

MR. CONROY: No objection.

MR. PRITZKER: No objection, your Honor.

MR. JOHNSON: No objection.

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THE COURT: Exhibit 12.

**(Photo marked and received as
evidence as Exhibit No. 12)**

**Q Now, Exhibit 12 is taken on a view as you head up
towards the hill going down Trotter Drive; correct?**

MR. PRITZKER: Objection.

THE COURT: Sustained.

Q This is Route 109 heading -

A That's Route 109 heading east.

**Q East. And that is a hill going up towards the
Chinese restaurant?**

A Yes, sir, it is.

**Q And if you were going, turned around and went
westbound, about how far is 495?**

A A quarter mile.

**MR. BOYLE: Your Honor, may this,
Exhibit 12 be distributed to the jury?**

THE COURT: It may.

**Q And Route 109 is a main thoroughfare through the
various towns between Route 495 and all the way
to Route 93; correct?**

A Yes, sir, it is.

**Q And I think that basically it started, Milford,
Medway and then you end up the other end of**

1 Westwood; right?

2 A Correct. Westwood, Dedham.

3 Q Now, when you arrived at the Chinese restaurant,
4 did you have a police cruiser?

5 A No, sir, I was driving my personal truck.

6 Q Does your personal truck have any police lights on
7 it?

8 A No, sir, it doesn't.

9 Q And when you parked it down and you were
10 running this detail, you told Mr. Pritzker about, and
11 the jury at Trotter Lane, where did you park your
12 personal vehicle?

13 A Quite a ways up Trotter Drive off, where it would
14 be safe.

15 Q Why did you do that? So it would be safe?

16 A Correct.

17 Q Safe from what?

18 A From traffic.

19 Q You didn't want your vehicle to be an impediment
20 for traffic heading east or west bound; correct?

21 A Correct.

22 Q So you took it right off the roadway?

23 A Yes, sir.

24 Q And there was no police car at Jerry McMillian's

1 tree stump operation on the day of the accident;
2 was there, sir?

3 A No, sir.

4 Q There was no flashing lights of any sort at the
5 scene of the accident; were there?

6 A No, sir.

7 Q You told Mr. Pritzker on his direct question that
8 you were wearing an orange police vest and he
9 had you stand up and tell the jury that you are 6'3"
10 and you weigh 240, something like that; correct?

11 A Yes, sir.

12 Q What was the purpose, sir, of you wearing that
13 orange vest and those white gloves that day?

14 A To be seen.

15 Q Seen by whom?

16 A By traffic.

17 Q Why? For safety reasons?

18 A Certainly.

19 Q Because you didn't want - because you were
20 attempting to slow vehicles down at the scene of
21 the accident; correct?

22 A Correct.

23 Q Or stop them?

24 A Correct.

1 Q And by the way, if one were driving down
2 eastbound on 109 where this accident happened,
3 there is no traffic light there at Trotter Lane; is
4 there?

5 A No, sir, there isn't.

6 Q So apart from what you were doing with respect to
7 telling traffic to stop, there was no other lights or
8 stop signs to tell traffic to stop; correct?

9 MR. PRITZKER: Objection. May we
10 approach the bench?

11 THE COURT: No. The objection is
12 overruled. You may answer.

13 Q There's no -

14 MR. BOYLE: I'm sorry?

15 Q You can answer that question. Do you want me to
16 repeat it?

17 A Yes, could you repeat the question, please.

18 Q As you come over that hill from where the Chinese
19 restaurant is, and you're heading down towards
20 Trotter Lane, there's no traffic light there?

21 A No, sir, there isn't.

22 Q Apart from Officer Boltenhouse telling Mrs. Rhodes
23 to stop, she would have just continued eastbound;
24 correct?

1 **A** **Correct.**

2 **Q** **Now, in addition to your orange vest, did you**
3 **augment the - your visibility by putting traffic**
4 **signs out, "Work ahead - be prepared to stop".**
5 **Did you do that?**

6 **A** **I didn't. No, sir.**

7 **Q** **Were there any at the scene?**

8 **A** **I don't recall.**

9 **Q** **You didn't see any?**

10 **A** **No, sir, I didn't.**

11 **Q** **And this was sort of a moving operation, you told**
12 **us on direct examination?**

13 **A** **Yes, sir, it was.**

14 **Q** **So Jerry McMillian would take down this stump**
15 **and then he would go someplace else?**

16 **A** **Correct.**

17 **Q** **A contract of some sort with the Town of Medway?**

18 **A** **Yes, sir.**

19 **Q** **Now you were alone; correct?**

20 **A** **Correct.**

21 **Q** **And in order for you to operate, you told Mr.**
22 **Pritzker that you had both simultaneously try to**
23 **control eastbound traffic, Mrs. Rhodes, tell her to**
24 **stop; correct?**

- 1 **A** **Yes, sir.**
- 2 **Q** **And then you were trying to control westbound**
3 **traffic telling them to move?**
- 4 **A** **Correct.**
- 5 **Q** **And behind you there's Jerry McMillian's truck and**
6 **his tree stump machine of some sort; correct?**
- 7 **A** **Correct.**
- 8 **Q** **What color was those machines?**
- 9 **A** **I don't recall, sir.**
- 10 **Q** **It was a pick-up truck towing some sort of a -**
- 11 **A** **Yes, a small trailer with a grinding machine on it.**
- 12 **Q** **And they were behind you; correct?**
- 13 **A** **More to my right and behind me. I was standing**
14 **more westbound of the truck.**
- 15 **Q** **Okay. And what color was his truck and what**
16 **color was his stump grinding machine, if you**
17 **recall?**
- 18 **A** **I don't recall, sir.**
- 19 **Q** **They weren't orange like your police vest; were**
20 **they?**
- 21 **A** **I believe they're red. I'm not sure though.**
- 22 **Q** **Okay. And by the way, where this accident**
23 **happened, there's no sidewalks, are there?**
- 24 **A** **No, sir.**

- 1 Q There's no breakdown lane; correct?
- 2 A No, sir.
- 3 Q And it's fair to say that the trees are pretty close
4 to the road?
- 5 A Fairly close.
- 6 Q In fact, was one of the reasons they were
7 removing these tree stumps because when you're
8 coming out of Trotter Lane, you couldn't see to the
9 right?
- 10 A I believe so.
- 11 Q So it was for safety reasons?
- 12 A Correct.
- 13 Q And showing you, sir, a blow-up photograph and I
14 ask you if you can recognize that scene?
- 15 A That's a view westbound from Trotter Drive.
- 16 Q And this is Route 109?
- 17 A Yes, sir, it is.
- 18 Q And up on the right, that yellow signs means the
19 Chinese restaurant?
- 20 A That's the Chinese restaurant.
- 21 Q And the left here, that's Trotter Lane on the left?
- 22 A Yes, sir, it is.
- 23 Q Is that a fair and accurate representation of the
24 set up of the roadway back at the time of this

1 accident?

2 A Yes, sir.

3 MR. BOYLE: I offer it.

4 THE COURT: Any objection?

5 MR. PRITZKER: No objection.

6 MR. CONROY: No objection.

7 MR. JOHNSON: No objection.

8 THE COURT: Exhibit 13.

9 (Blow-up photo marked and
10 received as evidence as Exhibit
11 No. 13)

12 Q Now, you said you were 6'2", weigh 240 pound and
13 you're standing up there with your white gloves
14 and your orange vest, sir, and you put your hands
15 up to Mrs. Rhodes and she obeyed your signal to
16 stop her vehicle; correct?

17 A Yes, sir, she did.

18 Q And you told us that you turned down to the west
19 and you tried to motion to the traffic coming west;
20 correct?

21 A Correct.

22 Q You never saw the truck until you heard something
23 and you turned back east and there's this tractor-
24 trailer pushing Mrs. Rhodes vehicle; correct?

1 A Correct.

2 Q Now is it fair to say that that tractor-trailer, that's
3 about 13 or 14 feet high?

4 A Fair to say.

5 Q And you never saw it at all anywhere on that
6 roadway until the accident occurred; correct?

7 A I - it never drew my attention to it, no.

8 Q Now, with respect to the diagram that was marked
9 as a chalk, Exhibit A, which you put some marks
10 on, when he asked you, where was Mrs. Rhodes
11 car when you stopped and he gave you a green felt
12 tip and you said, I don't know if it was before
13 Trotter Drive, at Trotter Drive or after Trotter
14 Drive; correct?

15 A Correct.

16 Q So it would be pure speculation where you drew
17 that X?

18 A Yes, sir.

19 Q Because you don't know.

20 A Correct.

21 Q So we could really put the X down here?

22 A Correct.

23 Q You would have drawn the X up here?

24 A Correct.

1 MR. PRITZKER: Objection.

2 THE COURT: The objection is
3 overruled.

4 Q So with respect to where her car was and Trotter
5 Drive was, that's just raw speculation?

6 A Yes, sir.

7 Q You're talking ballpark, you're here and she's
8 somewhere 100 feet westbound in the eastbound
9 lane?

10 A Correct.

11 Q Now, you told Mr. Pritzker on direct examination
12 that Jerry McMillian's tree truck was, in fact,
13 parked partially on the roadway, Route 109;
14 correct?

15 A Yes, sir.

16 Q And you thought that was a safety issue with
17 respect to traffic heading eastbound and
18 westbound?

19 A I believe in order to make things more safe for
20 myself and him, stopping one lane of traffic at a
21 time would be the best.

22 Q You could have - now in order for you to stop
23 westbound, you're trying to stop eastbound on one
24 side of Jerry McMillian's truck, meanwhile you're

1 **trying to stop the westbound traffic, they're behind**
2 **you at the other end of Jerry McMillian's truck and**
3 **trailer; correct?**

4 **A Correct.**

5 **Q So how far is this westbound traffic that you're**
6 **trying to control, if you've got your hand up for**
7 **Mrs. Rhodes to your left and you're looking**
8 **westbound, how far is this westbound traffic?**

9 **A Probably 100, 150 feet away.**

10 **Q Okay. So you've got 100 feet to your left and 150**
11 **feet to your right; correct?**

12 **A Correct.**

13 **Q Would it have been better, sir, for safety reasons**
14 **to have two police officers, one at that end and**
15 **one at this end; one controlling west, one**
16 **controlling east?**

17 **MR. PRITZKER: Objection.**

18 **THE COURT: Sustained.**

19 **Q Well, we can agree, sir - strike that.**

20 **And is it fair to say as you looked up**
21 **towards the Chinese restaurant on the right, you**
22 **can't see what's coming over that hill until it's up**
23 **by the Chinese restaurant, starting to come down**
24 **the hill towards Trotter Lane, correct?**

1 **A** **Correct.**

2 **Q** **And by the way, your report indicates that, in fact,**
3 **it was just starting to mist at the time of this**
4 **accident, or just before this accident, correct?**

5 **A** **Yes, sir.**

6 **Q** **And mist means moisture, correct? It was cloudy**
7 **and moisture was coming down from the sky, and**
8 **you wrote that in your report, which is marked as**
9 **an exhibit, correct?**

10 **A** **Yes, sir, I did.**

11 **Q** **And also in that report, it indicates that the**
12 **Medflight was not flying due to freezing rain,**
13 **correct? Is that correct, on Page 1 of your report**
14 **just marked by Mr. Pritzker as an exhibit? A life**
15 **flight was requested and wasn't flying because of**
16 **freezing rain, correct?**

17 **A** **Correct.**

18 **Q** **So we agree that the weather conditions were**
19 **such that Medflight couldn't fly, and you said it**
20 **was starting to mist before the accident, correct?**

21 **A** **Yes, sir.**

22 **Q** **And did you have an opportunity to see Officer**
23 **Kingsbury's report, which is referenced at the**
24 **bottom of Page 1 of your report? It says see Sgt.**

1 Kingsbury's -- see Sgt. Kingsly and Officer
2 Kingsbury's report for more information, correct?

3 A Correct.

4 Q And Officer Kingsbury's report indicates at the
5 time of the accident, it was raining, or strike that.
6 The road was wet. Light rain and sleet, overcast.
7 Is that fair to say? Have you seen Officer
8 Kingsbury's investigative report?

9 That's also a Town of Medway --

10 THE COURT: Wait, wait, we've got
11 the question before the witness. Have you seen
12 that before?

13 THE WITNESS: Yes, I have, your
14 Honor.

15 THE COURT: Now, the next question.

16 Q Is that a report just like the one that Mr. Pritzker
17 just marked, Official Police Report of the Town of
18 Medway concerning this accident in this case?

19 A Yes, sir, it was.

20 MR. BOYLE: I offer it.

21 THE COURT: Any objection?

22 MR. PRITZKER: No objection, your
23 Honor.

24 MR. JOHNSON: No objection.

1 MR. CONROY: No objection.

2 THE COURT: Exhibit 14.

3 MR. BOYLE: Your Honor, I've got one
4 that needs some -- I've highlighted some of it, so
5 we can substitute, with the Court's permission --

6 THE COURT: Certainly.

7 MR. BOYLE: -- a clean copy.

8 MR. PRITZKER: I have no problem
9 with that, your Honor.

10 (Police report of Officer
11 Kingsbury received and marked
12 Exhibit Number 14.)

13 Q And you told us that Officer Kingsbury was the
14 investigating officer, correct?

15 A Yes, sir.

16 Q He was taking control of evidence and giving
17 directions as far as photographs, et cetera?

18 A Correct.

19 Q And he indicated that on the last page, Page 5 --

20 MR. BOYLE: May I approach, your
21 Honor?

22 THE COURT: You may.

23 Q -- light rain -- light rain had -- and sleet had been
24 falling on and off during the day, making the

1 pavement wet, correct? That's in his report.

2 **A** That's in his report, yes.

3 **Q** Okay. Your report says that it had been misting
4 before -- it said it had been misting before the
5 accident.

6 **A** Correct.

7 **Q** Now Officer -- now Jerry MacMillan's Tree Service
8 personnel were not helping you control traffic on
9 Route 109, correct?

10 **A** No, sir. It was just one man, Mr. MacMillan,
11 himself.

12 **Q** And your report says that for safety -- and that's
13 the report Mr. Pritzker just marked as an exhibit,
14 the first report -- safety, you were stopping one
15 lane of traffic, correct?

16 **A** Correct.

17 **Q** And if you felt -- strike that. You told us in your
18 deposition, sir, that it was standard safety
19 practice to put up warning signs or cones to alert
20 motorists that there was work ahead, need to
21 stop, correct?

22 **A** The contractors usually do, yes.

23 **Q** And you've worked with Jerry MacMillan five or
24 ten times before, and there had always been some

1 warning signs alerting traffic there's going to be
2 work ahead and they need to stop, right?

3 A Yes.

4 Q And there wasn't any this day, was there?

5 A I don't recall.

6 Q So we can agree, sir, that there was just one
7 police officer controlling both lanes of traffic?

8 THE COURT: I think we've been over
9 this, Mr. Boyle.

10 MR. BOYLE: Thank you, sir.

11 THE COURT: All right.

12 MR. BOYLE: Nothing further.

13 MR. CONROY: No questions.

14 CROSS-EXAMINATION

15 Q (by Mr. Johnson) Sergeant, you told us that you're
16 familiar with this area of Route 109 and Trotter
17 Drive, correct?

18 A Yes, sir.

19 Q And you're familiar with the area up around the
20 Chinese restaurant, which I believe is this yellow
21 sign right here.

22 A Correct.

23 Q And being familiar with that area, isn't it correct
24 for me to say that if I'm on the roadway up here at

1 **the Chinese restaurant, coming down towards**
2 **Trotter Drive, I would have a clear view of the area**
3 **where you were standing directing traffic at the**
4 **time of the Rhodes accident?**

5 **A Yes, sir, you would.**

6 **Q Now, you told us that Sgt. Kingsbury -- excuse me -**
7 **- Officer Kingsbury was the investigating officer; is**
8 **that right?**

9 **A Yes, sir.**

10 **Q And as part of this investigation, did he ask you**
11 **about what facts you knew or what observations**
12 **you had made concerning the accident?**

13 **A Yes, sir, he did.**

14 **Q And did you tell him the truth in terms of -- to the**
15 **best of your memory, in terms of what your**
16 **observations were?**

17 **A Yes, sir, I did.**

18 **Q If you would look at Exhibit 14, which is his report,**
19 **at the very bottom of Page 2 -- I'm sorry -- Page 3,**
20 **excuse me. The next to the last paragraph says,**
21 **"Sgt. Boultenhouse stated that the Toyota was**
22 **completely stopped in the intersection of Milford**
23 **Street and Trotter Drive at the time he started to**
24 **waive on the westbound traffic." Do you see that,**

1 sir?

2 A Correct, yes.

3 Q Was that your best memory at the time when you
4 told Officer Kingsbury about your observations of
5 the Rhodes car?

6 A Yes, sir.

7 Q And your memory at that time was that the car
8 was right in or very close to the intersection,
9 correct?

10 A Correct.

11 Q And the Rhodes car was the first car you had --
12 was the first car you had stopped coming
13 eastbound, correct?

14 A Yes, sir, it was.

15 Q For instance, there were no cars in the eastbound
16 lane between where Mrs. Rhodes had stopped and
17 where you were standing, correct?

18 A No, sir.

19 Q And you told us that the distance from where you
20 were standing to where Mrs. Rhodes had stopped
21 was about a hundred to a hundred and fifty feet I
22 think you said; is that right?

23 A Correct.

24 Q And you made -- you observed her car until it came

1 to a full and complete stop, didn't you?

2 A Yes, sir, I did.

3 Q And did it come to a gradual stop, a slow stop?

4 A I'd say gradual stop, yes.

5 Q Okay. As opposed to her having to step on the
6 brakes and screech to a halt.

7 A No, sir.

8 Q Okay. So she came to a gradual stop. At that
9 point, once you had seen her stop completely, you
10 did the actions which you described for us, that is,
11 holding your hand up to show her to continue to
12 stop, and then directing traffic -- or beginning to
13 direct traffic in the other direction, right?

14 A Correct.

15 Q And wasn't it when you started to begin to move
16 the traffic along to the westbound that you heard
17 the crash?

18 A Yes, sir.

19 Q And once you saw the tractor-trailer hit the
20 Rhodes' car and push it off to the side of the road,
21 you ran into the woods; is that right?

22 A Yes, sir.

23 Q And when you came back out of the woods to see
24 where that tractor-trailer truck was, it was still in

1 the eastbound lane, as shown in those
2 photographs; is that right?

3 A Yes, sir, it was.

4 Q And it had come to a rest just about in the area
5 where you had been standing directing traffic; is
6 that right?

7 A Correct.

8 MR. BOYLE: That's all I have. Thank
9 you.

10 THE COURT: Any redirect?

11 MR. PRITZKER: Yes, your Honor.

12 Before I do, your Honor, I would like
13 to have marked a certified copy of the U.S.
14 Department of Commerce weather report as it
15 relates to West Medway on the date and time of
16 this accident.

17 THE COURT: Any objection?

18 MR. BOYLE: No objection, your
19 Honor.

20 MR. CONROY: No objection.

21 MR. JOHNSON: No objection, your
22 Honor.

23 THE COURT: Exhibit 15.

24 (Certified weather report

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received and marked Exhibit
Number 15.)

REDIRECT EXAMINATION BY MR. PRITZER:

Q Sergeant, Exhibit 15, which is the National
Weather Service weather report for West Medway
indicates that on the night the --

MR. BOYLE: Objection, leading.

THE COURT: He hasn't asked the
question yet. Let's see where the question -- let's
see what the question is.

Q -- that on the night there was drizzle between 10
and 11 o'clock in the morning, and then there was
drizzle again from two o'clock to four o'clock in
the afternoon. Does that comport with your
memory of the weather conditions on the date of
the accident?

MR. BOYLE: Objection, leading.

THE COURT: The objection is
overruled. You may answer.

A Yes, sir.

Q And when Mr. Boyle asked you about the fact that
the Medflight couldn't fly because of freezing rain,
that was in Worcester, was it not?

A Correct.

1 Q How far is Worcester from West Medway?

2 A Between 20 and 25 miles.

3 Q Do you remember freezing rain being a factor in
4 this accident?

5 A No, sir.

6 Q Now, do you remember that Jerry MacMillan had
7 cones that he was using during this stump
8 grinding operation?

9 A I believe so, but I don't recall, sir.

10 Q If Mr. MacMillan testified that he --

11 THE COURT: Oh, no, no, no.

12 Q Strike that. As an officer on the Medway Police
13 Force, Sergeant, if it hadn't been for this detail,
14 but if someone had run out in front of Mrs. Rhodes'
15 car, and as a result she had to stop, would you
16 have expected traffic behind her to be able to
17 stop?

18 MR. BOYLE: Objection, your Honor.

19 THE COURT: Sustained.

20 MR. PRITZKER: I have no other
21 questions.

22 THE COURT: All right. Anything
23 further?

24 MR. BOYLE: Yes, your Honor.

1 THE COURT: Within the scope of the
2 redirect.

3 **RECROSS-EXAMINATION BY MR. BOYLE:**

4 Q You were asked about Officer Kingsbury's report.
5 Is he still a police officer in the Town of Medway?

6 THE COURT: That was outside the
7 scope.

8 Q You were asked about traffic controls. Is it fair to
9 say, sir, you testified in your deposition, Page 43,
10 you don't remember seeing any traffic cones or
11 traffic signs anywhere at that scene; isn't that
12 true, sir?

13 A I don't recall.

14 MR. BOYLE: Thank you.

15 THE COURT: All right. Thank you,
16 you may step down.

17 THE WITNESS: Thank you, your
18 Honor.

19 **WITNESS STEPS DOWN**

20 THE COURT: Next witness.

21 MR. PRITZKER: Your Honor, the
22 plaintiff would like to call Trooper Edward O'Hara.

23 THE CLERK: Raise your right hand,
24 sir. Do you solemnly swear that the testimony you

1 shall give to the court and the jury in the case now
2 on trial shall be the truth, the whole truth, and
3 nothing but the truth, so help you God?

4 THE WITNESS: I do.

5 THE CLERK: Thank you. You may be
6 seated.

7 THE WITNESS: Thank you.

8 EDWARD O'HARA, sworn

9 DIRECT EXAMINATION BY MR. PRITZKER:

10 Q Would you state your full name, please.

11 A My name is Edward O'Hara.

12 Q And where do you live, sir?

13 A I live in Hanover, Massachusetts.

14 Q What is your occupation?

15 A I'm a state trooper with the Massachusetts State
16 Police.

17 Q How long have you been a state trooper?

18 A Approximately eleven years.

19 Q Can you tell me where you went to high school?

20 A Boston College High School.

21 Q And after high school, did you go on to any higher
22 education?

23 A Yes, I did.

24 Q Where?

1 **A** **I went to St. Anselm's College in Manchester, New**
2 **Hampshire.**

3 **Q** **Did you graduate?**

4 **A** **Yes, I did.**

5 **Q** **With what degree?**

6 **A** **Bachelor's degree in Criminal Justice.**

7 **Q** **And any other education after St. Anselm's?**

8 **A** **No.**

9 **Q** **How long have you been an officer or a trooper or -**
10 **-**

11 **A** **I've been with the State Police for eleven years.**
12 **Prior to that I was a summer police officer for two**
13 **years.**

14 **Q** **Where are you presently stationed out of?**

15 **A** **The Collision Analysis and Reconstruction Section.**

16 **Q** **And how long have you been with the Collision**
17 **Analysis and Reconstruction Center -- Section.**

18 **MR. BOYLE: Objection.**

19 **A** **Approximately four years.**

20 **Q** **Were you in that position on January 9th, 2002?**

21 **A** **Yes, I was.**

22 **Q** **And at some point, were you asked or requested to**
23 **investigate and reconstruct an accident in**
24 **Medway?**

1 **A** **Yes, I was.**

2 **Q** **Who made that request?**

3 **A** **I was contacted by our headquarters, our troop**
4 **headquarters, which is a normal procedure, and**

5 **asked to contact Medway Police Department.**

6 **That they were looking for a reconstruction for a**
7 **collision that had occurred in that town.**

8 **Q** **Typically, why is your section contacted to**
9 **reconstruct accidents?**

10 **A** **Generally for a fatal motor vehicle collision or a**
11 **serious injury collision that is going to become a**
12 **fatality or there are some other circumstances like**
13 **a state vehicle or something like that involved in**
14 **any collision.**

15 **Q** **And did you understand that that were the**
16 **circumstances of the accident in Medway?**

17 **A** **I was contacted -- I was told that they had had a**
18 **serious collision, and when I contacted them, they**
19 **advised me of the circumstances. I contacted**
20 **them on the phone.**

21 **Q** **When did you do your accident reconstruction**
22 **work?**

23 **A** **I was called on the 10th. When I called them, they**
24 **advised me that the collision had actually**

1 occurred the afternoon prior to that. I then
2 responded to the Medway Police Department that
3 morning.

4 Q On the morning of the 10th?

5 A The morning of the 10th, yes.

6 Q And what did you do?

7 A Initially, I went to the Medway Police Department,
8 and I met with Officer Kingsbury who was the
9 investigating officer, and then he brought me to
10 the scene of the collision. And I, you know, made
11 observations and took measurements. And I had
12 conversation with him as to what he had observed
13 the day of the collision.

14 Q Can you tell me generally what your functions are
15 as an accident reconstructionist?

16 A We assist the State Police or local agencies if they
17 have a motor vehicle collision. We provide our
18 training and our experience, as well as use of -- we
19 use physics and things like that to determine
20 speeds and causation of collisions. And we
21 provide those services to any police department
22 that request it.

23 Q Is the focus on physical evidence?

24 A Our focus is on the physical evidence of what

1 **happened in the collision between the vehicles,**
2 **that's correct.**

3 **Q So first you met with Officer Kingsbury?**

4 **A Yeah.**

5 **Q Sergeant Kingsbury.**

6 **A I believe it was Officer Kingsbury then. He may be**
7 **a sergeant now.**

8 **Q Okay. And approximately how much time did you**
9 **spend with Officer Kingsbury?**

10 **A Initially at the police station itself, I believe we**
11 **were there for twenty minutes, possibly. And then**

12 **--**

13 **Q What was the purpose of that?**

14 **A Just to meet up with him and get another officer**
15 **to go out with us for traffic, for safety purposes**
16 **while I was standing in the road.**

17 **Q Did he give you any of the background of the**
18 **accident?**

19 **A At that time, yes, I believe he did.**

20 **Q And then you went to the scene?**

21 **A That's correct.**

22 **Q And this was the day after the accident?**

23 **A That's correct.**

24 **Q When you got to the scene, what did you do?**

1 **A** **Officer Kingsbury showed me the area, and we**
2 **walked through it on foot, which is what I would**
3 **do at any collision, walk through the scene. And**
4 **he pointed out some things in the roadway that he**
5 **had made observations of the day before as being**
6 **part of the -- as being part of the collision.**

7 **Q** **Is there anything else that you did other than look**
8 **at the physical evidence at the scene and to talk**
9 **to -- to Officer Kingsbury?**

10 **A** **I took some measurements of some of the**
11 **evidence in the roadway, and I did a drag sled test**
12 **of the roadway to find the co-efficient of friction.**

13 **Q** **Did you observe the vehicles?**

14 **A** **At the scene, I did not. I viewed them later that**
15 **day.**

16 **Q** **Did you look at Mrs. Rhodes' vehicle?**

17 **A** **Yes, I did.**

18 **Q** **And that was off site?**

19 **A** **Yes, that was at a storage yard, a tow yard in -- I**
20 **believe it was actually in Millis.**

21 **MR. PRITZKER: I'm going to --**

22 **MR. BOYLE: No objection.**

23 **MR. JOHNSON: No objection.**

24 **Q** **I'm going to show you a photograph, Trooper, and**

1 ask whether or not you can recognize that as the
2 Rhodes vehicle as you observed it the day after
3 the accident at a yard.

4 A Yes, that appears to the back of the Rhodes'
5 vehicle, the Toyota.

6 MR. PRITZKER: Could I have that
7 marked, your Honor?

8 THE COURT: All right. No objection,
9 Exhibit 16.

10 MR. PRITZKER: May I distribute it to
11 the jury?

12 THE COURT: You may.

13 (Photograph received and
14 marked Exhibit Number 16.)

15 Q Did you prepare a report?

16 A Yes, I did.

17 Q After doing your investigation?

18 A Yes, I did.

19 Q I'm going to show you a report which is identified
20 as a preliminary incident report. It is behind the
21 Collision Reconstruction Report. And I ask
22 whether or not you recognize that as reports that
23 you prepared.

24 A Yes, these are the reports that I prepared, the

1 preliminary report and the reconstruction report
2 for this case.

3 MR. PRITZKER: I would like to offer
4 it.

5 THE COURT: Any objection?

6 MR. JOHNSON: Objection, your
7 Honor.

8 THE COURT: I'll see counsel at side
9 bar.

10 (CONFERENCE AT THE BENCH, AS FOLLOWS:)

11 THE COURT: Is it both reports you
12 object to, or just --

13 MR. JOHNSON: I just object to the
14 last page, your Honor. I just object to the last
15 page where he offers opinions.

16 THE COURT: I'm sure he's going to
17 be asked his opinion.

18 MR. JOHNSON: I'm sure he is, but I
19 don't think they can --

20 THE COURT: No, I don't. If you want
21 it without the last page on it.

22 MR. PRITZKER: No, I want it with the
23 last page.

24 THE COURT: Well, I'll have to

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exclude it. His report is not admissible. So, there's been an objection to it, the objection just goes to the last page, which is his opinion.

MR. PRITZKER: I will offer it then without the last page, but I intend then to --

THE COURT: You can ask him about his opinion.

MR. PRITZKER: That's fine.

THE COURT: All right.

(END OF BENCH CONFERENCE)

THE COURT: Exhibit 17, subject to the side bar.

MR. PRITZKER: Perhaps, your Honor, we could have the preliminary incident report marked as A, and the collision reconstruction report marked as B on the same number.

THE COURT: 17A and B then.

(Trooper O'Hara's Preliminary report received and marked Exhibit Number 17A.)

(Trooper O'Hara's Reconstruction Report received and marked Exhibit Number 17B.)

1 Q As part of your reconstruction work, did you have
2 any interaction with Trooper Jaworek?

3 A Yes, I did.

4 Q And what interaction was that?

5 A I received a copy of a report that he had
6 completed. Officer Kingsbury advised me that day
7 that he had responded to the scene on the day of
8 the collision, and he provided me a copy of that
9 report -- of his report, of Trooper Jaworek's report.

10 Q And the report that he -- strike that. Did you
11 understand what the function of Trooper Jaworek
12 was at the scene?

13 A Yes.

14 Q What was it?

15 A He's assigned to the Commercial Motor Vehicle
16 Enforcement Section, the truck team. They
17 conduct truck inspections. In this case he was
18 called because a commercial vehicle was involved
19 in a collision, and he did an inspection of the
20 vehicle and completed a report. And I was -- I
21 obtained a copy of that report.

22 Q And did you use that report as part of your own
23 accident reconstruction work?

24 A I used portions of it, yes.

1 Q And what portions or what information from
2 Trooper Jaworek's report did you use?

3 MR. JOHNSON: Objection, your
4 Honor.

5 THE COURT: The objection is
6 overruled.

7 A As part of his report he -- or his inspection, he
8 checks the brakes of the truck and make sure --
9 make sure they're functioning properly. And he
10 advised Officer Kingsbury, and in his report, he
11 noted that one of those brakes was not -- was not
12 operable, was not working.

13 Q Do you remember which brake?

14 A I believe it was the right brake on axle number
15 five, which would be the rear axle, the back axle
16 of the truck.

17 Q Now, can you tell me was part of your function to
18 try and determine from the physical evidence how
19 fast Mr. Zalewski's truck was going?

20 A Yes. Medway Police Department asked me, if I
21 could, to determine the speed. And because there
22 was a skid mark in the roadway from the truck, I
23 was able to do that. And I was able to get a speed
24 using that mark.

1 Q How did you get it?

2 A We use a -- it's a formula, minimum speed formula,
3 it's called the slide to stop formula. Physically
4 measure the skid mark, get the distance that the
5 vehicle slid, and then use the co-efficient of
6 friction of the roadway, which is basically the
7 slippery -- how slippery the roadway is. A roadway
8 like, you know, concrete and asphalt would have
9 two different co-efficients of friction. A wet
10 roadway and a dry roadway would have different
11 co-efficient of friction. The way we measure it is
12 we have a drag sled which we pull along the
13 ground, and we divide the force needed, the
14 weight that we need to pull the sled by the weight
15 of the actual sled itself, and that gives us the co-
16 efficient. We use that with the distance traveled
17 while skidding, and we have a speed.

18 Q Now, in doing your work, what condition did you
19 assume the roadway was at the time of the
20 accident?

21 A I assumed it was dry at the time. Or I used a dry
22 roadway.

23 Q Now, were you in the courtroom -- I'm not sure you
24 were -- when the National Weather Service Report

1 was introduced into evidence.

2 A No, I wasn't.

3 Q Exhibit 15 is that report, which shows that --

4 MR. BOYLE: Objection, your Honor.

5 THE COURT: No, he may show it to
6 him.

7 Q Do you know how to read these National Weather
8 Service reports?

9 A I get some. I'm not sure if these are --

10 Q If I can point you to the line item for January 9,
11 and if you go across, you can see what the
12 weather conditions were at the times that are
13 marked on the time graph. Have you seen that
14 report or that kind of report before?

15 A I've never seen this type of report, no.

16 Q Well, if, in fact, the report indicates that drizzle
17 occurred in West Medway between 10 --

18 MR. PRITZKER: May I approach the
19 witness, your Honor?

20 THE COURT: You may.

21 Q -- between 10 and 11 in the morning, and then
22 again at between 2 and 4 in the afternoon, and
23 assuming that this accident happened prior to 2
24 o'clock in the afternoon, is that consistent with

1 your assumption that the roadway was dry?

2 MR. BOYLE: Objection, your Honor.

3 THE COURT: The objection is

4 overruled.

5 A It could be consistent. If it had rained earlier, it's
6 possible that the roadway remained wet.

7 MR. BOYLE: Objection. Move to
8 strike, speculation.

9 THE COURT: That may go out.

10 Disregard that, members of the jury.

11 Q What in calculating your formula that you just
12 described did you assume the roadway condition
13 to be?

14 A I used it as a dry roadway.

15 Q All right. And having made all of the
16 measurements that you indicated you had to
17 make, and using the formula, did you take into
18 account the fact that there was one inoperable
19 brake?

20 A Yes, I did.

21 Q And how did you take that into account?

22 A In order to calculate the co-efficient of friction,
23 you create what's called a drag factor, and you
24 have to adjust that for the braking efficiency. If

- 1 all four -- let's say in a motor -- a passenger
2 vehicle with four wheels, if all four brakes are
3 working and the wheels are locked, you'd have a
4 hundred percent braking. In a truck, because of
5 the weight and the way the brake systems work,
6 then only 70 percent braking is available to a
7 truck in general, and that's what we use, that's
8 what we're trained to use, and so we use in our
9 reconstructions. The rear wheels on axle 5 that
10 was inoperable, according to Trooper Jaworek's
11 report, provides 6 percent of the braking to the
12 truck. Each wheel has a different percentage of
13 braking. In this case, that wheel had 6 percent
14 braking, the rear wheels, and I took that from the
15 co-efficient of friction. I'm sorry. From the
16 percentage of available braking. So, in that case,
17 where he had 70 percent braking to start with,
18 take away the 6 percent, you end with 64 percent
19 braking. And I used that to adjust my drag factor.
- 20 Q So instead of 70 percent braking, this truck had 64
21 percent of braking capability.
- 22 A That's correct, based on that brake being
23 inoperable.
- 24 Q Am I correct that that's approximately 9 percent

1 less braking capacity?

2 MR. JOHNSON: Objection.

3 THE COURT: Sustained.

4 Q Well, let me ask you this, Trooper. If the brakes
5 had -- strike that. Based upon your calculation
6 that the braking efficiency was at 64 percent, can
7 you calculate the speed?

8 A Yes.

9 Q And what did you calculate the speed at?

10 A The minimum speed was 38 miles an hour.

11 Approximately 38 miles an hour.

12 Q When?

13 A That would have been at the beginning of that skid
14 mark that I measured, the start of the skid mark.

15 Q So at the point where the brakes finally locked.

16 A Yes, that I saw that day. Yes, that's correct.

17 Q Can you tell me whether or not, assuming that the
18 brakes locked sometime before impact, whether or
19 not the speed would have been greater or less on
20 impact had all of the brakes been operable?

21 MR. JOHNSON: Objection, your
22 Honor.

23 THE COURT: The objection is
24 overruled.

1 **MR. JOHNSON: Your Honor, may I**
2 **approach side bar?**

3 **THE COURT: No.**

4 **Q You may answer.**

5 **A If the truck was braking prior to impact --**

6 **Q Yes.**

7 **A -- it would be going slower before impact,**
8 **depending, and how slow would depend on where**
9 **impact was from where it began braking.**

10 **Q But it would be slower?**

11 **A Yes.**

12 **Q And would that affect the impact itself?**

13 **MR. JOHNSON: Objection, your**
14 **Honor.**

15 **THE COURT: Sustained.**

16 **Q Do you know whether or not that would have had --**
17 **strike that. Did you do any work, Trooper, to**
18 **determine whether or not the brake lights on**
19 **Marcia Rhodes' Toyota were operable?**

20 **A Yes, I did.**

21 **Q Can you tell me what you did?**

22 **A As part of my inspection of the vehicle, I examined**
23 **the rear lights of the vehicle, the rear bulbs. The**
24 **light bulb filament in a vehicle is made of**

1 tungsten, which is very -- it's very strong, but it's
2 very soft when it's heated, when it's on. And when
3 a -- it sustains an impact or a shock, the filament
4 will stretch out. It's coiled up like a spring
5 normally. And it softens up as it's heated, and if it
6 suffers a shock or an impact, the filament will
7 stretch out and spread out. I examined the Toyota
8 for that, and I observed that in the brake lights.
9 The left and the right brake light, and in the rear
10 mount stop light on the -- which would be in the
11 rear deck, the third stop light, which indicated to
12 me that they were illuminated when they
13 sustained an impact.

14 Q So you found that they were illuminated?

15 A Yes.

16 Q And in fact, did you, on your collision
17 reconstruction report, did you make reference to
18 that? And I draw your attention to Page 5 of
19 Exhibit -- if I may -- 17B. I'm sorry. I've given you
20 the wrong section. It's on Page 8 of that same
21 report. Do you see the section that indicates
22 Lamp Inspection?

23 A Yes.

24 Q Would you read that for the jury, please.

1 **A** **Under Lamp Inspection, "The rear lights were**
2 **seriously damaged as a result of this collision. All**
3 **the rear light bulbs were broken, except for the**
4 **rear high mount stop light. And right and left side**
5 **brake light filaments were damaged but intact and**
6 **revealed hot shock. This indicates that these**
7 **filaments were incandescent at the time they**
8 **sustained an impact."**

9 **Q** **And incandescent means --**

10 **A** **It means on.**

11 **Q** **-- that they were --**

12 **A** **They were on or lit. "The rear mount stop light**
13 **housing and the bulb were intact, and this filament**
14 **indicated hot shock. This means that this bulb**
15 **was incandescent at the time it sustained an**
16 **impact."**

17 **Q** **Now, did you come to any conclusion about the --**
18 **strike that. Did you come to any conclusions**
19 **about what caused this accident?**

20 **A** **Yes, I did.**

21 **Q** **What were your conclusions?**

22 **A** **My conclusion, my opinion was that -- is that the**
23 **operator of the truck failed to use care in**
24 **stopping. Most likely this was caused by some**

1 type of inattention or distraction to the driver.

2 Q Did you make any conclusions concerning the
3 effect, if any, of the one inoperative brake?

4 A Yes, I did.

5 Q And what conclusion did you make about that?

6 A I concluded that it was not a major factor in this,
7 in the collision that occurred between the truck
8 and the Toyota.

9 Q Did you ever conclude that it wasn't any factor at
10 all?

11 A No.

12 MR. PRITZKER: I have no other
13 questions.

14 THE COURT: Okay. Cross-
15 examination.

16 **CROSS-EXAMINATION BY MR. BOYLE:**

17 Q One of your opinions, Officer O'Hara, was that
18 speed was not a factor in this case, correct?

19 A It was not a factor in the collision.

20 Q Right.

21 A That's right.

22 Q And you didn't -- in fact, your scientific analysis
23 was that Mr. Zalewski was going under the posted
24 speed limit of 40 miles per hour, based upon your

1 analysis, correct?

2 A That's correct, yes.

3 Q And I think you told plaintiff's counsel that it was
4 approximately 38 miles per hour he was going
5 before he started making those skid marks,
6 correct?

7 A About 38 at the start of the skid, that's correct.

8 Q Approximately.

9 A Approximately, yes.

10 Q Now, we can agree, sir, that when you're analyzing
11 the co-efficient of friction analysis, that Mr.
12 Zalewski would be going slower if there was any
13 moisture on the ground at the time of the
14 accident, correct?

15 A That's correct, sir, yes.

16 Q Because a more slippery surface, then co-efficient
17 of friction would be reduced, correct?

18 A That's correct, yes.

19 Q So you told us your definition -- in fact, Mr. --
20 Officer Kingsbury's report was the weather
21 conditions that it was -- if the pavement was wet,
22 then Mr. Zalewski would have been going one to
23 four miles per hour slower than what you had
24 calculated, correct?

1 **A** I don't recall specifically what I said in that
2 deposition.

3 **Q** We can agree, and I know you didn't do the
4 calculations, but --

5 **MR. BOYLE:** May I approach, your
6 Honor?

7 **THE COURT:** You may. Members of
8 the jury, before the case comes to trial, the
9 attorneys have an opportunity to obtain
10 information from witnesses and from parties to the
11 action, and they can use different means to do
12 that. One is a deposition. It is very similar to
13 what happens here in court. A person is brought
14 in to be asked questions, they give answers, and a
15 person's placed under oath. There's a reporter
16 such as we have here, who takes down the
17 questions and the answers, and then transcribes
18 them into a readable form. And that's what we
19 have here, a deposition.

20 All right.

21 **Q** I show you, Officer, what -- Page 93 of your
22 testimony of your deposition July 1, 2003. I just
23 ask you if you can read that over, to see if that
24 refreshes your memory about testimony you gave.

- 1 **A** **Aloud sir or just to myself?**
- 2 **Q** **Just read it to yourself.**
- 3 **A** **(Witness complies.)**
- 4 **Q** **Do you recall, sir, if the weather conditions, the**
5 **road was not dry but wet, that that would lower**
6 **Mr. Zalewski's speed anywhere from one to four**
7 **miles, correct?**
- 8 **A** **That's what I stated in there, yes.**
- 9 **Q** **And that's ball park, right?**
- 10 **A** **It's in there somewhere, yes.**
- 11 **Q** **Okay. So he could have been going 34 miles per**
12 **hour, based upon your -- and your physics you're**
13 **applying, correct?**
- 14 **A** **Based on the calculations that I used, yes, that's**
15 **correct.**
- 16 **Q** **You did prove that with a dry road he's not**
17 **speeding, correct?**
- 18 **A** **That's a minimum speed, yes.**
- 19 **Q** **Right.**
- 20 **A** **The speed I calculated was 38, that's correct.**
- 21 **Q** **And with a wet road, he would have been going**
22 **even slower, correct?**
- 23 **A** **Than my calculated speed, that's correct, sir.**
- 24 **Q** **And you were at the accident scene the following**

1 day, correct?

2 A That's correct.

3 Q And you told us that you talked to Officer
4 Kingsbury and he provided you with information as
5 to what happened the day before when you
6 weren't there, correct?

7 A That's correct.

8 Q Now, in connection with your accident
9 reconstruction report, which has been marked as
10 an exhibit, you conducted a view of the scene,
11 correct? You went to the scene --

12 A That's correct, yes.

13 Q And you took a distance reading, how long from
14 the top of the hill heading eastbound down to
15 Trotter Lane, correct?

16 A That's correct. I think I left that out when I talked
17 about being at the scene before, that's correct.

18 Q Right. It was about 750 feet, give or take a few
19 feet --

20 A That's --

21 Q -- from the top of the hill, on a site line, down to
22 where the accident scene was, correct?

23 A That's correct, sir.

24 Q And at the -- and in your report, you talked about

1 something called perception and reaction,
2 correct?

3 A That's correct, sir.

4 Q And that perception and reaction is how long it
5 takes someone driving a motor vehicle can begin
6 to do something when they see a hazard up ahead,
7 correct?

8 A Yes. That includes that perception time to
9 perceive it and then react to it by with a motor
10 vehicle braking or steering.

11 Q And a standard in your business is 1.6 seconds,
12 correct?

13 A Yes.

14 Q And that's --

15 A For daytime, that's correct.

16 Q Right. And it could be longer depending upon if
17 there's a so-called complex issue going on ahead
18 of you, correct?

19 A That's correct. It could be, yes. Among other
20 reasons, yes.

21 Q You assumed 1.6, which is basically an
22 approximation?

23 A It's an average, yes.

24 Q Okay. And at 1.6 seconds, if Mr. Zalewski's truck

1 is moving while he's perceiving and figuring out
2 what to do, steer, brake, as any motorist would do,
3 correct?

4 A That's correct.

5 Q And if he was going 40, and we know he wasn't,
6 but if he was going 40, just for purposes of the
7 math, he'd be traveling about 58.6 seconds -- feet
8 per second, correct?

9 A Yes, 58, 59, somewhere in there.

10 Q And so in that one and a half seconds which you
11 say he would have taken to perceive and react,
12 he's traveling 93 seconds -- strike that -- 93 feet
13 before the vehicle starts to -- before his brakes are
14 on and he starts stopping, correct?

15 A That's correct, yes.

16 Q Now, if he's coming down that 750 feet hill, and
17 assuming for the math that he's going 40, it takes
18 him about 12 point seconds to get 750 feet at 40
19 miles per hour, correct?

20 A I don't -- I didn't do that calculation.

21 Q Well, just 40 times -- just 58.6 times -- divided into
22 750. Because we know he's traveling at 40, 58.6
23 feet per second, correct?

24 A That's correct.

1 Q My calculator says if you divide that, you get 12.7.

2 A Okay.

3 Q I brought a calculator. I'm not a math whiz.

4 A I have mine, too, but I didn't do it. But --

5 Q So from Mr. Zalewski, when he's in a sight line
6 that you say in your report, up that hill from the
7 accident scene, at the speed limit, we know he's
8 going under the speed limit, it's about 12.7
9 seconds, right?

10 A Yes.

11 Q And then you talked about perception and reaction
12 being 93 feet. So he's got about 1.6 seconds, he's
13 got to be stopping well before he gets in that zone
14 where he's going to hit Mrs. Rhodes, no matter
15 what he does, correct? Because when stopping,
16 there's a braking factor, too.

17 A From when he perceived --

18 Q Right.

19 A -- a hazard of a vehicle stopped in the road.

20 Q And he brakes -- you said it was a hundred and
21 nine feet of skid marks?

22 A A hundred and nine feet, that's correct.

23 Q And that's your analysis, what a tractor-trailer
24 would leave going the milage per hour that you

1 **said he was going, correct?**

2 **A Yes. Based on the calculation.**

3 **Q And then it takes 93 feet to perceive and react**
4 **before we would start laying that down, correct?**

5 **A That's correct.**

6 **Q So coming over a hill like that, you'd want as much**
7 **notice as possible of what was going on in order to**
8 **be able to perceive and react early enough to**
9 **bring your vehicle to a stop. Isn't that true?**

10 **A You would want it, yes, that's correct.**

11 **Q Yes. And you asked Officer Kingsbury, you were**
12 **asked about in your deposition, in connection with**
13 **your analysis of what happened, he told you that**
14 **there were no warning traffic signs anyplace in the**
15 **eastbound lane, didn't he?**

16 **A That's correct, yes.**

17 **Q So Mr. Zalewski, until he saw what was going on**
18 **and figured it out, perceived and reacted, wouldn't**
19 **be alerted by some sign: Be prepared to stop,**
20 **Officer ahead, Workmen in roadway, anything like**
21 **that?**

22 **A There were no signs according to --**

23 **Q Right.**

24 **A -- Officer Kingsbury.**

1 Q The only thing was at the bottom of the hill was
2 one officer and Jerry MacMillan's Tree Service
3 operation, correct?

4 A Yeah, a tree service. I don't -- I don't know the
5 name, but --

6 Q Okay.

7 A Yes.

8 Q By the way, with respect to the car damage that
9 you saw and which were introduced by the way of
10 photographs and evidence, those were taken after
11 the fire department or the emergency people had
12 used the jaws of life to extract Mrs. Rhodes,
13 correct?

14 A The vehicle that -- the picture that I saw was --
15 appeared to be at the tow yard, so it would have
16 been after -- correct. That's correct.

17 Q And you wrote in your report that the pillars had
18 been cut and the roof had been peeled back and
19 all of that other was called --

20 A Rescue damage.

21 Q Okay.

22 A Yes, it had been removed by the fire department.

23 MR. BOYLE: Thank you, Officer, no
24 further questions.

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MR. CONROY: No questions.

CROSS-EXAMINATION BY MR. JOHNSON:

Q Officer -- Trooper, let me ask you this. Isn't it a fact that based upon all your calculations that you did and told us about, that this collision would have happened even if all brakes had been working on the truck?

A That's correct.

Q So the one inoperative brake made no difference because the collision would have happened, correct?

A Yes, that's correct.

Q And isn't it a fact, based on all the observations that you made and all the measurements that you did, that from where Mr. Zalewski was driving his tractor-trailer when he first observed Mrs. Rhodes, he was not going to be able to stop before that collision occurred, correct?

A That is correct.

Q You told us that you talked to Officer, now Sergeant, Kingsbury in terms of preparing your report; is that right?

A At the -- not directly preparing my report.

Q Well, to get information --

1 **A** **To get information.**

2 **Q** **-- in terms of what you needed to know to do your**
3 **report, correct?**

4 **A** **That's correct, yes.**

5 **Q** **One of the things he told you was that Trooper**
6 **Jaworek had found that one brake was inoperable,**
7 **correct?**

8 **A** **Yes.**

9 **Q** **And did Officer Kingsbury also tell you that**
10 **Trooper Jaworek had said this --**

11 **MS. PINKHAM: Objection, your**
12 **Honor.**

13 **THE COURT: Sustained.**

14 **Q** **-- was not a factor in the accident?**

15 **MR. JOHNSON: That's all I have, your**
16 **Honor.**

17 **THE COURT: Redirect?**

18 **MR. PRITZKER: Just a few questions,**
19 **your Honor.**

20 **REDIRECT EXAMINATION BY MR. PRITZKER:**

21 **Q** **Trooper, I just want to make sure that I**
22 **understand the dialogue that you and Mr. Boyle**
23 **had. Zalewski had 1.6 seconds, approximately, of**
24 **time that it would ordinarily take to react.**

1 **A** **Yeah, the perception and reaction time to perceive**
2 **a hazard and then react to it.**

3 **Q** **Based upon your calculations of speed, from the**
4 **time he crested the hill, he had 12.7 seconds,**
5 **true?**

6 **A** **Based on what I was told here, that's correct. If**
7 **that's correct.**

8 **Q** **When you -- you did travel this route, did you not?**

9 **A** **I did, yes.**

10 **Q** **In your cruiser?**

11 **A** **Yes.**

12 **Q** **And you're somewhat lower than presumably the**
13 **tractor-trailer was?**

14 **A** **Yes.**

15 **Q** **Did you have any difficulty seeing the 750 feet**
16 **down to the accident site?**

17 **A** **No, I did not.**

18 **Q** **Would you have needed a sign in order to see a**
19 **stopped vehicle at the accident site with her**
20 **brake lights on?**

21 **A** **No.**

22 **Q** **Would you have needed a sign in order to see a**
23 **police officer who stands six feet four and is**
24 **wearing an orange vest, standing in the middle of**

1 the road?

2 A Not from the position I was, no.

3 Q Now, even if you take 1.6 seconds off of the 12.7
4 seconds that it took approximately for Mr.
5 Zalewski to travel from the crest of the hill down
6 to the point of the accident, that leaves 11
7 seconds in which Mr. Zalewski was traveling with
8 no impediment to his vision when he did not react?
9 Is that true?

10 A That's correct.

11 MR. PRITZKER: I have no other
12 questions.

13 THE COURT: Anything further?

14 **RECROSS-EXAMINATION BY MR. BOYLE:**

15 Q Well actually, Officer, it's not 11 seconds because
16 you've got to include the time it takes to stop the
17 vehicle after he does start braking, correct?

18 A That's correct, yes.

19 Q So how long it takes to bring an 80,000 pound
20 truck to a stop, the perception and reaction before
21 he starts braking, before the vehicle stops, you
22 have to have stopping distance, correct?

23 A That's correct, yes.

24 Q So if he -- in 11 seconds, he's just got time to be

1 hitting the brakes at impact?

2 A Well, he would have time to observe the --

3 Q He'd need more notice to be able to stop the
4 vehicle, a lot more than 11 seconds.

5 A I don't know how much he would need. I didn't do
6 that calculation. But he would need time for
7 stopping, yes.

8 Q And you were asked about your observations of
9 the scene by Mr. Pritzker when you went out there
10 and what you could see. Did you see the vehicle
11 come out Trotter Lane when you were driving
12 down that roadway?

13 A I don't recall. I stopped. I drove through it and I
14 also stopped. I don't recall if a car came out or
15 not.

16 Q But your report indicates that you had received
17 information from Officer Kingsbury that there had
18 been statements that a car had come out of there
19 that caused a distraction, and that's one of the
20 reasons you wrote that Mr. Zalewski was
21 distracted at the time of the accident, correct?

22 A It is a possibility that's what caused it. And it's
23 based on him telling me that, that's correct.

24 Q Right.

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MR. BOYLE: Thank you. Nothing further.

MR. PRITZKER: No other questions, your Honor.

THE COURT: All right. Thank you, you may step down.

THE WITNESS: Thank you your Honor.

WITNESS STEPS DOWN

THE COURT: All right. Members of the jury, we'll suspend at this point for our lunch recess. You can leave your notebooks closed on the chair, and they'll be there when you return from lunch. I'd ask you to be in the jury room at about ten minutes of two. We'll start as soon as everyone is gathered.

(LUNCHEON RECESS)

THE COURT: Would you like to call your next witness, Ms. Pinkham.

MS. PINKHAM: Thank you, your Honor. The plaintiffs call James Jaworek.

THE CLERK: Raise your right hand. Do you solemnly swear the testimony you shall

1 give to the Court and the jury in the case now on
2 trial shall be the truth, the whole truth, and
3 nothing but the truth, so help you God?

4 THE WITNESS: I do.

5 THE CLERK: Thank you. You may be
6 seated.

7 JAMES JAWOREK, sworn

8 DIRECT EXAMINATION BY MS. PINKHAM:

9 Q Good afternoon. What is your name?

10 A My name is James Jaworek.

11 Q And where do you work?

12 A I'm a State Police officer assigned to the
13 Commercial Vehicle Enforcement Section.

14 Q And Trooper Jaworek, what barracks are you
15 assigned to for the Commercial Vehicle
16 Enforcement Section?

17 A Well, our team is divided up into troop areas in the
18 state. Our headquarters is at the Concord
19 Barracks, and we have a team assigned to each
20 troop of the state.

21 Q And what troop are you assigned to?

22 A Troop C, Central Mass.

23 Q How long have you been a state trooper?

24 A November 4th it will be 30 years.

1 Q And could you briefly describe the positions and
2 assignments you've had in the approximately 30
3 years you've been a trooper?

4 A Upon graduation from the State Police Academy, I
5 was assigned to the State Police Barracks in
6 Brookfield, Massachusetts, Sturbridge,
7 Massachusetts, and I was assigned to the Troop
8 Headquarters at the State Police Barracks in
9 Holden. Assigned to the Troop C 55 Team, which
10 is speed enforcement. And then on September 6th
11 of 1981, I got my current assignment to the
12 Commercial Vehicle Enforcement Section.

13 Q In 1981, you said?

14 A Yes.

15 Q And as a trooper assigned to the Commercial
16 Enforcement Section, did you receive special
17 training?

18 A Yes, I did.

19 Q Could you describe what type of training you
20 received?

21 A It started in-depth in 1986, when Massachusetts
22 adopted the Title 49 Code of Federal Regulations
23 for Motor Carrier Safety.

24 THE COURT: I think you'll have to

1 keep your voice up so everyone can hear you now.

2 THE WITNESS: Yes, okay.

3 A And up until that time we would be enforcing
4 Massachusetts laws in conjunction with the
5 Federal DOT Inspectors who would be at the
6 roadside inspections with us.

7 Q When you say a DOT inspector, what is a DOT
8 inspector?

9 A U.S. Department of Transportation.

10 Q I'm sorry, I interrupted you.

11 A And then we would work in conjunction with them,
12 and then the federal government decided to train
13 the states to take up those duties.

14 In 1986, I went to Albany, New York,
15 for a training course in the federal motor carrier
16 rules, and inspection of trucks and drivers as they
17 relate to the trucks. And then periodically
18 throughout my career, we have seminars and
19 training courses in the mechanic related fields of
20 that and hazardous materials; all the motor carrier
21 rules involved in recertification courses and other
22 seminars.

23 Q And so what entity certifies a trooper who
24 inspects commercial vehicles?

1 **A** **Well, it's under the auspices of the United States**
2 **Department of Transportation. Currently,**
3 **Massachusetts is the lead agency in the training**
4 **and certification of DOT inspectors for the**
5 **northeast region.**

6 **Q** **And so that the continuing courses that you have**
7 **described, are those ones in which other state**
8 **police actually teach?**

9 **A** **That is correct.**

10 **Q** **And how often is the certification renewed?**

11 **A** **We recertify yearly. Part of that being a minimum**
12 **amount of inspection required to maintain your**
13 **certification. And then we have refresher courses**
14 **throughout also.**

15 **Q** **And when was the last time, you, yourself were**
16 **recertified as an inspector?**

17 **A** **We're recertified annually, calendar year, which**
18 **would be January.**

19 **Q** **Of this year?**

20 **A** **Yes.**

21 **Q** **Trooper Jaworek, approximately how many**
22 **inspections of commercial vehicles do you do on a**
23 **monthly basis?**

24 **A** **Average number would be around 50 to 60.**

1 **Q** **And what types of vehicles are the commercial**
2 **vehicles that you inspect?**

3 **A** **These would be any vehicle in commerce, 10,001**
4 **pounds and up, on gross vehicle weight rating. So**
5 **these would be straight trucks, tractor-trailer**
6 **units, cargo tankers, hazardous materials**
7 **explosive transporters. Any type of commercial**
8 **vehicle you'd see on the highway.**

9 **Q** **Okay. Could you describe how you came to be**
10 **called to the scene of an accident that took place**
11 **on Route 109 on January 9th of 2002?**

12 **A** **Yes, I was directed via the radio in my cruiser to**
13 **respond to Route 109. I believe they stated the**
14 **Milford-Medway line. It was just a local PD, with a**
15 **serious accident involving a tractor-trailer unit and**
16 **a car.**

17 **Q** **And so did you go right to the scene?**

18 **A** **Yes, I did.**

19 **Q** **And once you got to the accident scene, what did**
20 **you do?**

21 **A** **Well, I would -- when I go to a scene, I ascertain**
22 **who the driver is from the policeman there at the**
23 **scene. And if they're done with gathering his**
24 **information, I will, for my report purposes, verify**

1 his license, his registration, medical certificate,
2 and log book.

3 Q And did you do that --

4 A Yes.

5 Q -- on January 9th?

6 A Yes.

7 Q And apart from verifying the driver information,
8 what else did you do as part of your investigation?

9 A I perform a standard Level 1 inspection, vehicle
10 inspection.

11 Q What is a Level 1 vehicle inspection?

12 A That is the most in-depth inspection that we would
13 do in my unit. That entails getting under the truck
14 on a creeper and actually going underneath the
15 entire truck, checking the brakes, the suspension,
16 the tires, the frame.

17 Q And the creeper is just a piece of board mounted
18 on wheels that slides under --

19 A Like a wide skateboard, yes.

20 Q Okay. And did you go under the truck with the
21 creeper on January 9th --

22 A Yes.

23 Q -- 2002?

24 A Yes, I did.

1 Q And so could you explain the purpose of going
2 under there?

3 A As I said, I was inspecting the entire vehicle. And
4 when I go to an accident scene, I
5 compartmentalize myself from whatever issues
6 may have caused or whatever the -- I just deal
7 with the truck and the driver as he relates to the
8 truck. Not any moving violation or anything like
9 that. So I would just inspect the truck, just as a --
10 if it came into a weigh station, from bumper to
11 bumper, noting any discrepancies.

12 Q And when you're done with your inspection, do you
13 prepare a report?

14 A Yes.

15 MS. PINKHAM: May I approach, your
16 Honor?

17 THE COURT: You may.

18 Q Trooper Jaworek, I'm handing you a document and
19 ask if you recognize that.

20 A Yes, I do.

21 Q What do you recognize it to be?

22 A This is a Level 1 inspection report.

23 Q And is that the inspection report that you prepared
24 in connection with the accident on January 9th,

1 2002?

2 A Yes.

3 MS. PINKHAM: I would offer it.

4 THE COURT: Any objection?

5 MR. JOHNSON: I object. May we
6 approach side bar?

7 THE COURT: Yes.

8 **(CONFERENCE AT THE BENCH, AS FOLLOWS:)**

9 MR. JOHNSON: Your Honor, my
10 objection is this. This is the original report, and a
11 second report was set up because it was
12 determined two of the administrative violations
13 were not, in fact, violations. So they just changed
14 it. This one has the brake, inoperative brake on it,
15 but they took off the two administrative violations
16 as not actually being violations. So I have no
17 problem in terms of this report as long as we
18 redact the two administrative violations.

19 MS. PINKHAM: I'm not asking any
20 questions about it anyway.

21 THE COURT: Okay.

22 MR. JOHNSON: All right.

23 THE COURT: But as an exhibit in the
24 case, it will have to be redacted if, in fact, that's

1 what they did, they changed their opinion as to
2 administrative violations.

3 MR. JOHNSON: I don't think
4 administrative violations are actually a part of
5 their case, but I still would like to have them
6 taken out.

7 THE COURT: Redacted.

8 MS. PINKHAM: That's fine.

9 MR. JOHNSON: Thank you, your
10 Honor.

11 THE COURT: All right.

12 (END OF BENCH CONFERENCE)

13 THE COURT: Mark it as Exhibit 18,
14 subject to the side bar conference.

15 (Inspection report received and
16 marked Exhibit Number 18.)

17 Q And Trooper Jaworek, I invite your attention back
18 now to the inspection that you performed. As part
19 of the inspection that you performed of the
20 tractor-trailer, did you examine the braking system
21 on the tractor-trailer?

22 A Yes, I did.

23 Q And could you describe the steps that you took to
24 examine the brakes?

1 **A** **Yes. What I do is make sure the vehicle is in a**
2 **safe stationary position with the wheels chaked**
3 **and the engine not running. And then I will make**
4 **sure there's sufficient air in the brake system.**
5 **And then I get under the truck, and I mark the**
6 **push rods with a soapstone. And then I have a**
7 **person, whether it be the driver or somebody from**
8 **the tow company, apply the foot brake, normal**
9 **foot brake application, and I measure the travel of**
10 **that push rod from the point I marked it to the**
11 **point it extends to upon the foot brake application.**

12 **Q** **And why is it that you measure the push rod itself?**

13 **A** **That determines, through a formula, that I don't**
14 **have, but it is a standard set forth in the Title 49**
15 **Code of Federal Regulations, relating the amount**
16 **of push rod travel to the amount of leverage that's**
17 **placed on the brake shoes going out against the**
18 **brake drum.**

19 **Q** **I'm sorry. I interrupted you to ask about the push**
20 **rod, so you can continue.**

21 **A** **No, that was it.**

22 **Q** **Okay. And the brakes on the tractor-trailer that**
23 **you inspected on January 9th, did you form any**
24 **opinions as to whether any or all of the brakes**

1 were operating at the time of the accident?

2 **A** There are ten brakes on the tractor and trailer
3 unit, and of those ten brakes, nine were
4 functioning within the limits, and one was
5 inoperative.

6 **Q** And which brake was inoperative?

7 **A** The number 5 axle, which would be the rearmost
8 axle. We count them on the inspections as the
9 steering axle being the first axle. One through
10 five. This is the right rear brake on the trailer unit.

11 **Q** So that would be the axle that's closest to the
12 license plate on the trailer?

13 **A** That would be the number -- number 5 right,
14 curbside, farthest one to the back.

15 **Q** Okay. And so the right would be what I would call
16 the passenger side?

17 **A** Yes.

18 **Q** And what about the measurements that you took
19 made you conclude that the number 5 brake on the
20 trailer -- the right number 5 was inoperable?

21 **A** Upon application of the foot brake, there was no
22 push rod travel at all. It was in an extended
23 position, which in my experience, means that it's
24 already gone past its farthest extreme, and we

1 call it cam over in the trucking end of it. Without
2 getting too mechanical, it goes past where it
3 should, and then it will not return in. It goes past
4 the operative point where it pushes the brake pads
5 out and it rotates past that and the push rod is not
6 allowed to cycle back and return back to its rest
7 position. So at that point, it's not functioning at
8 all.

9 Q So there was no pressure being applied to the
10 brake drum?

11 A Right.

12 Q Now, sir, is there a difference between having an
13 inoperable brake and one that is just out of
14 adjustment?

15 A Yes.

16 Q And what is the difference?

17 A I mean there's absolutely no function at all taking
18 place upon the application of the foot brake.

19 Q And that's when it's inoperative?

20 A Right.

21 Q If a brake was out of adjustment, could that also
22 be a violation of the federal regulation?

23 A It could be a violation. There are certain limits on
24 -- the one that is known that is inoperative, if that

1 had had a push rod travel of over two inches, it
2 would have been listed on there with the notation
3 as inoperable. It would have had the digit 2 and a
4 quarter, two and a half or whatever, and it would
5 have been a violation.

6 Q And you record all the measurements of the push
7 rods and all of the brakes on the report that you
8 prepared?

9 A Yes.

10 Q Trooper Jaworek, you had described some of the
11 training that you had received as part of the
12 Commercial Enforcement Section. Is the
13 Commercial Enforcement Section different from
14 the Accident Reconstruction Section?

15 A Yes, it is.

16 Q Do troopers in the Commercial Enforcement
17 Section receive different training than the
18 troopers in Accident Reconstruction?

19 A Yes.

20 Q Have you yourself ever been certified as an
21 accident reconstructionist?

22 A No.

23 Q Trooper Jaworek, what's the process or procedure
24 that a driver who receives a vehicle examination

1 report is supposed to follow once he gives the
2 driver a report?

3 A They, at the first opportunity, give it back to the
4 motor carrier. In this case here, it was GAF
5 Building Materials, the motor carrier, who was
6 responsible for the vehicle. And then if it's
7 somebody else's truck -- a lot of times there's
8 lease companies and owner-operators. Whoever's
9 responsible for the truck is supposed to receive
10 this and take note of the violations noted here and
11 send it back to our office within 15 days. There's
12 an instruction on there to tell them how to certify
13 that the repairs have been made and the condition
14 has been repaired.

15 Q And who is the motor carrier that is identified on
16 Exhibit 18 in your report?

17 A GAF Building Materials.

18 Q What happens if the motor carrier does not
19 respond to your report?

20 A Up in our office, after a certain period of time, the
21 computer generates a -- what's called a blue
22 letter. It's printed. It's a notice that's printed on a
23 blue piece of regular paper, and it's sent out to the
24 -- to the addressed person, inquiring why we

1 haven't heard of the condition being repaired or
2 remedied.

3 Q Trooper Jaworek, if the motor carrier wanted to
4 question the violation that was contained on the
5 report, is there a process for that?

6 A Well, the -- our number -- our phone number and
7 address is here. They could contact one of the
8 supervisors.

9 Q After you issued the examination report that's
10 been marked as Exhibit 18, did anyone ever
11 question you about your conclusion of the
12 inoperable brake --

13 A No.

14 Q -- that's listed?

15 A No.

16 MS. PINKHAM: May I approach, your
17 Honor?

18 THE COURT: You may.

19 Q Trooper Jaworek, I'm handing you another piece of
20 paper, and ask if you recognize that? Do you
21 recognize that?

22 A Yes.

23 Q And what do you recognize it to be?

24 A A copy of a blue letter, not blue, but --

1 Q And this is the letter that gets generated from
2 your office?

3 A Yes.

4 Q And what's the date on this letter?

5 A March 11th, 2002.

6 MS. PINKHAM: I would offer it, your
7 Honor.

8 THE COURT: Any objection?

9 MR. BOYLE: No objection.

10 MR. JOHNSON: No objection.

11 THE COURT: All right. That may be
12 marked as Exhibit 19.

13 (Copy of blue letter dated 3/11/02
14 received and marked Exhibit
15 Number 19.)

16 Q Trooper Jaworek, is the inoperable brake violation
17 still listed --

18 A Yes, it is.

19 Q -- on the blue letter?

20 A Yes.

21 Q And approximately how much time passed
22 between the date of the accident and the date of
23 that blue letter?

24 A A month. A little over a month. I'm sorry, two

1 months.

2 Q Two months?

3 A Two months. A long day.

4 Q Trooper Jaworek, the fact that this blue letter was
5 issued on March 11th, and still lists the inoperable
6 brake --

7 A That's correct.

8 Q -- as a violation --

9 A Right.

10 Q -- can you draw any conclusions as to whether GAF
11 responded at all to the inoperable brake?

12 A Looking at this, I'd say they hadn't.

13 MS. PINKHAM: I have nothing further.

14 THE COURT: All right. Cross-
15 examination.

16 MR. BOYLE: No, your Honor.

17 MR. CONROY: No questions, your
18 Honor.

19 **CROSS-EXAMINATION BY MR. JOHNSON:**

20 Q Trooper, how are you?

21 A Good.

22 Q As part of the investigation that you did, you were
23 working with the Medway Police Department; is
24 that right?

1 **A** Well, I was assisting them, yes.

2 **Q** You were assisting them.

3 **A** Yeah.

4 **Q** And in terms of assisting them, you were assisting
5 Officer Kingsbury who was running the
6 investigation, weren't you, sir?

7 **A** I don't recall the officer's name.

8 **Q** But you were dealing with an officer there who you
9 considered to be part of the investigation?

10 **A** Well, there were several officers there at the
11 scene, yes. And, you know, I arrive, and I explain
12 to them that I'm there to assist them and inspect
13 the truck, yes.

14 **Q** Well, let me ask you this, sir. In terms of your
15 investigation and the work you did in checking
16 this one inoperative brake, did you conclude that
17 that was not a factor in the accident?

18 **MS. PINKHAM:** Objection, your
19 Honor.

20 **THE COURT:** The objection is
21 overruled.

22 **A** At this point --

23 **THE COURT:** You need to lay a
24 foundation though.

1 **Q** **Did you talk to people, specifically Officer**
2 **Kingsbury of the Medway Police Department, and**
3 **tell him that as a result of your investigation, this**
4 **one inoperative brake, which is one of a system of**
5 **ten brakes, would not be a factor in the accident,**
6 **and you concluded that the condition of the**
7 **tractor-trailer in no way contributed to the**
8 **accident which appeared to have been caused by**
9 **driver error?**

10 **MS. PINKHAM: Objection.**

11 **THE COURT: Sustained. Let me see**
12 **counsel at side bar.**

13 **(CONFERENCE AT THE BENCH, AS FOLLOWS:)**

14 **THE COURT: Just because he's a**
15 **State Police officer, I'm not sure that he is**
16 **qualified to set forth an opinion. As a matter of**
17 **fact, he has said that he's not trained as a**
18 **reconstruction expert. And so --**

19 **MR. JOHNSON: He --**

20 **THE COURT: Well, no, that's his**
21 **opinion, and many people give opinions who are**
22 **not qualified to give opinions. Unless you can lay**
23 **a foundation that he is qualified, which I think you**
24 **might have some difficulty doing, I'm not going to**

1 let that opinion in.

2 MR. JOHNSON: Note my objection,
3 your Honor.

4 THE COURT: Certainly.

5 (END OF BENCH CONFERENCE)

6 Q Do you remember, sir, at all, having conversations
7 with the members of the Medway Police
8 Department concerning your examination?

9 A I spoke with several officers at the scene, yes.

10 Q And over the years that you've examined brakes
11 and found brakes to be inoperative, have you,
12 based upon your training and experience, in terms
13 of the impact, that an inoperative brake would
14 have, have you been able to form opinions as to
15 whether or not the inoperative brake would
16 contribute to the happening of an accident?

17 MS. PINKHAM: Objection, your
18 Honor.

19 THE COURT: Sustained. I think you
20 need to lay a foundation.

21 Q Do you have any training in terms of trying to
22 determine whether what you're looking for
23 underneath a truck in any way contributes to the
24 happening of an accident?

1 **A** Well, no. As I said, I try to divorce myself from the
2 whole issue, compartmentalize this thing, and just
3 -- I give a copy of the report to the accident recon.
4 guy --

5 **Q** All you did then in this case was find one
6 inoperative brake?

7 **A** No, there were some --

8 **Q** And that was it.

9 **A** -- other items, but not brakewise.

10 **Q** In terms of what we're talking about here, one
11 inoperative brake.

12 **A** Right, yeah.

13 **Q** Okay. And by the way, do you have any way of
14 knowing whether that was inoperable before this
15 accident happened or as a result of the accident?

16 **A** If you'd ask me a gut feeling, I would --

17 **THE COURT: No.**

18 **Q** No, do you have way of knowing?

19 **A** No.

20 **MR. JOHNSON: Thank you. That's all**
21 I have.

22 **THE COURT: All right. Any redirect?**

23 **MS. PINKHAM: Nothing further, your**
24 Honor.

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THE COURT: All right. Thank you,
you may step down.

WITNESS STEPS DOWN

THE COURT: Next witness.

MR. PRITZKER: The plaintiff would
call Carlo Zalewski, please.

THE CLERK: Raise your right hand,
sir. Do you solemnly swear the testimony you
shall give to the court and the jury in the case now
on trial shall be the truth, the whole truth, and
nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you, you may be
seated.

CARLO ZALEWSKI, sworn

DIRECT EXAMINATION BY MR. PRITZKER:

Q State your full name, please.
A Carlo Zalewski.
Q You're going to have to keep your voice up, sir.
Where do you live?
A 5 Crossroads, Apartment 304B, Mahwah, New
Jersey.
Q How long have you lived there?
A Since April.

1 Q Prior to that, where did you live?

2 A 50 Beaconlight Avenue, Keansburg, New Jersey.

3 Q Are you working?

4 THE COURT: I think you have to keep
5 your voice up more.

6 Q Are you working?

7 A Yeah.

8 Q What do you do?

9 A Driving a dumptruck.

10 Q For whom?

11 A JJ Trucking.

12 Q Where?

13 A Old Bridge, New Jersey.

14 Q How long have you been working for them?

15 A Almost a year.

16 Q Prior to that, where did you work?

17 A Since the accident, I hadn't.

18 Q But you've been working for the past year for JJ?

19 A Yeah.

20 Q Prior to the accident, for whom were you working?

21 A GAF -- DLS rather, excuse me.

22 Q DLS was the employer?

23 A Right.

24 Q You were working on behalf of GAF?

1 A Yeah.

2 Q How long had you been working on behalf of GAF?

3 A Oh, about four years.

4 Q And prior to Driver Logistics Service, there was
5 another provider to GAF?

6 A Yeah.

7 Q Do you remember who that was?

8 A Vanguard.

9 Q And when you were working for Vanguard, were
10 you also assigned to GAF?

11 A Yes.

12 Q So for approximately four years, you were driving
13 from New Jersey to Millis on behalf of GAF?

14 A Yes, sir.

15 Q And for the last several months, at least, that was
16 with Driver Logistics Service as your employer?

17 A Yeah, I think it was about six months, something
18 like that.

19 Q Six months? Did you graduate high school?

20 A No.

21 Q What was the last grade of education?

22 A Ninth.

23 Q I'm sorry?

24 A Ninth grade.

1 Q Ninth grade. I'm going to direct your attention to
2 January 9, 2002.

3 A Mm-hmm.

4 Q Do you remember what time you got up that day?

5 A No, not really.

6 Q Do you remember what day of the week it was?

7 A I think it was a Wednesday.

8 Q Wednesday?

9 A I think so. I'm not positive.

10 Q Had you been driving Monday and Tuesday?

11 A Yeah, yeah.

12 Q Do you remember what time you got to the Penske
13 yard?

14 A On the 9th?

15 Q On the 9th.

16 A It was around 4, I think.

17 Q I can't hear you.

18 A Around 4, I think.

19 Q In the morning?

20 A Yeah.

21 Q You picked up your truck?

22 A Yeah.

23 Q Was it your usual truck?

24 A The tractor was, the trailer wasn't.

1 Q Okay. But the tractor is the part that you drive?

2 A Right.

3 Q That was your usual tractor?

4 A Yeah.

5 Q The trailer was a new trailer?

6 A Uh --

7 Q When I say new, I mean different from your usual
8 trailer?

9 A It was a different trailer. It was --

10 Q How come?

11 A Well, I was on vacation. When I -- I came back on
12 a Monday, and when I came back, my trailer
13 wasn't there, somebody else was using it.

14 Q So --

15 A The trailer was sitting. I had to connect them
16 together.

17 Q So you connected them together on Monday?

18 A Mm-hmm.

19 Q And you drove --

20 THE COURT: You have to answer yes
21 or no.

22 A Yes.

23 THE COURT: Okay.

24 Q So yes, that you -- the trailer was connected on

1 **Monday? And then you drove the tractor and the**
2 **trailer on Monday?**

3 **A Yes.**

4 **Q From New Jersey to Millis, Massachusetts?**

5 **A Yes.**

6 **Q And then you drove again on Tuesday?**

7 **A Yes.**

8 **Q From Millis -- from New Jersey to Millis,**
9 **Massachusetts?**

10 **A Yes.**

11 **Q So on Wednesday, you had driven this tractor and**
12 **trailer for the prior two days.**

13 **A Yes.**

14 **Q Right?**

15 **A Yes.**

16 **Q Okay. And you were certainly familiar with the**
17 **tractor.**

18 **A Yes.**

19 **Q Right? And you were familiar with the route?**

20 **A Yes.**

21 **Q And you were familiar with the procedures**
22 **because they're the same procedures that you**
23 **followed for the last four years; isn't that so?**

24 **A Yes, sir.**

1 Q And would you tell the jury what those procedures
2 were. After you picked up the tractor and the
3 trailer, what did you do?

4 A Went from there to South Kearny.

5 Q Well, before you started driving, was there
6 anything that you did?

7 A Just an inspection of the truck. Start my log.

8 Q Okay. Let's take it one step at a time if we can,
9 Mr. Zalewski. The first thing you did is start the
10 log or did you inspect the truck?

11 A Usually I start my log.

12 Q Do you remember what you did that Wednesday?

13 A Offhand, no.

14 Q Who provides the log for you?

15 A GAF.

16 Q And the log is in the truck?

17 A No, the log stays with me.

18 Q So you had it where, in your car?

19 A Yeah.

20 Q Okay. When you start the log, what does that
21 mean?

22 A That starts my time. I have to enter my time onto
23 the log. It's a schedule paper with the hours from
24 12 to 12.

1 Q And you did that in the car or in the truck?

2 A I do that in the truck.

3 Q Okay. So you took the log from your car, got into
4 the truck --

5 A Right.

6 Q -- started writing in the log.

7 A Right.

8 Q When you finished writing in the log, you got out of
9 the truck?

10 A Mm-hmm.

11 Q And what did you do?

12 THE COURT: You have to answer yes
13 or no.

14 Q You have to answer yes or no.

15 A Excuse me.

16 Q What did you do then?

17 A Walked around the truck, checked the tires,
18 checked brakes. Everything I could do on the
19 outside. Go inside, start the truck. Checked my
20 air pressure.

21 Q Is that what you typically do?

22 A Yes.

23 Q Do you remember doing that on that Wednesday?

24 A That Wednesday, no.

1 Q So you did something different on Wednesday?

2 A Yes.

3 Q What did you do?

4 A In the morning, there was puddles on the ground,
5 it's a dirt yard. There was no way of just walking
6 around, it was raining at the time. So I started the
7 truck up, built my air pressure up. I released my
8 brakes for the rear, for the trailer, and started --
9 tried to pull off, and the tractor brakes held. Did
10 the same thing for the trailer, released the tractor
11 brakes and the brakes held. And then I -- I went
12 out to work.

13 Q Is it fair to say, Mr. Zalewski, that you were
14 supposed to check under the truck and the trailer?

15 A Physically go under the truck? No.

16 Q How about the trailer?

17 A No.

18 Q What was it that you were supposed to do that you
19 didn't do that day because it was raining and
20 because there were puddles?

21 MR. BOYLE: Objection.

22 THE COURT: The objection is
23 overruled.

24 A Walk around and see if everything was in place

1 and everything was there.

2 Q Who tells you to do that?

3 A By law.

4 Q By law?

5 A Mm-hmm.

6 Q And it's also by Penske procedure, isn't it?

7 A Yeah.

8 Q Penske was the owner of the truck and the trailer,
9 correct?

10 A Right.

11 Q True?

12 A Right.

13 Q And they tell you you've got to fill out certain
14 steps as far as maintenance inspections are
15 concerned.

16 A Right.

17 Q Right?

18 A Right.

19 Q And they even give you forms to fill out.

20 A Right.

21 Q This is Penske now. It gives you the forms to fill
22 out and they tell you what you've got to fill out,
23 right?

24 A Mm-hmm.

1 Q And you didn't do it that morning, at least you
2 didn't do the whole thing?

3 A No.

4 Q Now, you mentioned that you filled up the air in
5 your brakes.

6 A Yeah.

7 Q What does that mean?

8 A You have -- for your brakes, the brakes work off
9 air. Your air pressure is either all the way up or
10 depleted partially or completely depleted. You
11 have to start the truck up so the compressor can
12 build up your air.

13 Q And how do you start the build-up of air? Do you
14 have to do anything?

15 A Turn the key on the truck.

16 Q So when you said you were filling up the air, what
17 you really did was just start the truck.

18 A Start the truck up, right.

19 Q All right. And then at some point, you did what
20 you said you did, which is to disconnect the trailer
21 brakes to see if the tractor brakes were grabbing.

22 A Right.

23 Q And then you disconnected the tractor brakes to
24 see if the trailer brakes were grabbing.

- 1 **A** **Right.**
- 2 **Q** **And you know that they were.**
- 3 **A** **Yes.**
- 4 **Q** **You didn't, of course, test them at high speed,**
5 **right?**
- 6 **A** **Later on on the highway, but I wasn't in excessive**
7 **speed, and I didn't try to brake -- brake hard.**
- 8 **Q** **Nor did you disconnect one or the other when you**
9 **were on the highway, isn't that so, sir?**
- 10 **A** **No.**
- 11 **Q** **All right.**
- 12 **A** **No.**
- 13 **Q** **So what you're saying is every once in a while,**
14 **you'd put your brakes on and they seemed to be**
15 **working okay.**
- 16 **A** **Right.**
- 17 **Q** **And you had no way to know whether they were up**
18 **to a hundred percent or they weren't up to a**
19 **hundred percent, did you?**
- 20 **A** **Right. No, I didn't.**
- 21 **Q** **Okay. By the way, how did you get the keys to the**
22 **truck?**
- 23 **A** **We had the keys.**
- 24 **Q** **When you say "we had the keys," who's "we"?**

- 1 **A** **Each -- each driver has keys for his own truck.**
- 2 **Q** **Okay. And who gave you the keys?**
- 3 **A** **We got them from Penske.**
- 4 **Q** **When you came on that Monday back from**
5 **vacation --**
- 6 **A** **Right.**
- 7 **Q** **-- and you found your trailer gone -- your tank**
8 **trailer gone --**
- 9 **A** **Mm-hmm.**
- 10 **Q** **-- what was the procedure? Who told you which**
11 **was the new tanker to take?**
- 12 **A** **We had four tankers down there. And if somebody**
13 **took your tanker, you took the next tanker.**
- 14 **Q** **But how did you know that that one was available?**
- 15 **A** **Because it was sitting in the yard.**
- 16 **Q** **Just because it was sitting there?**
- 17 **A** **Yes.**
- 18 **Q** **Did you have to talk to anybody?**
- 19 **A** **Four o'clock in the morning, there's nobody to talk**
20 **to.**
- 21 **Q** **So when you got there on Monday, you saw an**
22 **empty tanker, and you just took it?**
- 23 **A** **Right.**
- 24 **Q** **Prior to this, had Penske approved this process?**

1 In other words, if there's an empty tanker, just
2 take it?

3 MR. JOHNSON: Objection.

4 THE COURT: The objection is
5 overruled.

6 A I would say yeah because nobody ever said
7 anything to us. If there was one -- one truck had
8 to go out and one trailer was there, you put it
9 together and you went.

10 Q Did you ever have circumstance when there wasn't
11 any either truck or trailer there when it was
12 supposed to be?

13 A It was being worked on.

14 Q And then what did you do?

15 A Cancel that scheduled run.

16 Q Did you talk to anybody?

17 A Over there, we'd find out what was wrong with the
18 trailer, how long it was going to be out. Because
19 if it was going to be out for any amount of time,
20 we'd have to call up GAF and let them know we
21 had no trailer.

22 Q All right. So the first thing you would do if there
23 wasn't a truck or a trailer available, was talk to
24 somebody at Penske?

- 1 **A** **Yes.**
- 2 **Q** **Who?**
- 3 **A** **Head mechanic, whatever mechanic, shop**
4 **manager, whatever.**
- 5 **Q** **And they would either tell you, well, it'll be**
6 **available soon, or it may not be available.**
- 7 **A** **Correct.**
- 8 **Q** **Getting back to January 9th --**
- 9 **A** **Mm-hmm.**
- 10 **Q** **-- 2002, you did what you said you did and then you**
11 **headed off somewhere, right?**
- 12 **A** **Yes.**
- 13 **Q** **Where did you head off?**
- 14 **A** **South Kearny. That's --**
- 15 **Q** **How far is that?**
- 16 **A** **Oh, about four, five miles.**
- 17 **Q** **What's in South Kearny?**
- 18 **A** **South Kearny's a plant where we picked up the**
19 **blacktop.**
- 20 **Q** **The blacktop being --**
- 21 **A** **The asphalt.**
- 22 **Q** **-- liquid asphalt.**
- 23 **A** **Liquid asphalt. Yeah.**
- 24 **Q** **Do you know, by the way, what GAF used the liquid**

- 1 asphalt for?
- 2 A For making shingles.
- 3 Q Roofing shingles?
- 4 A Yes.
- 5 Q After you picked it up, was there a weigh-in
- 6 procedure?
- 7 A Yeah.
- 8 Q Yes?
- 9 A Yes.
- 10 Q How much did the load weigh? Approximately.
- 11 A I think that load was gross weight, 78,000. 78,000
- 12 and change.
- 13 Q Well, when you say 78,000 and change, you're
- 14 talking about the weight of both --
- 15 A Right.
- 16 Q -- the trucks, the tanker, and the load?
- 17 A Yes. Gross weight.
- 18 Q That's what you mean by gross weight?
- 19 A Yes.
- 20 Q So you had a truck that was a little shy of 80,000
- 21 pounds.
- 22 A Yes.
- 23 Q Were you used to driving a truck that heavy?
- 24 A Every day.

1 Q For four years?

2 A Right.

3 Q You knew that when a truck is that heavy, it acts
4 different than if you're driving your own car, true?

5 A True.

6 Q And this liquid, and even that acts a little different
7 than if you had a solid load; isn't that true?

8 A Yes.

9 Q There can be shifting. When you stop, you're
10 liable to get a surge forward, isn't that so?

11 A Yes.

12 Q And you knew all that?

13 A Yes.

14 Q Now, what route did you take from New Jersey to
15 Massachusetts?

16 A I went up 17 to the thruway, 87. And then went up
17 towards Albany and came off 84 all the way up to
18 the Pike.

19 Q By the way, what time did you finally get out of the
20 yard with a full load?

21 A I don't recall.

22 Q Do you recall that you were late?

23 A Getting out of the yard?

24 Q Yes.

1 **A** **No.**

2 **Q** **You had to be in Millis at 12 o'clock noon --**

3 **A** **Right.**

4 **Q** **-- didn't you?**

5 **A** **Yeah.**

6 **Q** **You knew at some point you weren't going to be at**
7 **Millis at 12 o'clock noon, isn't that so?**

8 **A** **When I was up upper Connecticut or Mass., yeah.**

9 **Q** **Did you do anything to advise GAF that you were**
10 **going to be late?**

11 **A** **No.**

12 **Q** **You knew that there was a schedule that they**
13 **were relying on; isn't that so?**

14 **A** **Yes, I do.**

15 **Q** **And that schedule required you to be there at**
16 **noon.**

17 **A** **Yes, it did.**

18 **Q** **And you were late.**

19 **A** **Yes.**

20 **Q** **Now, you're on the Mass. Pike, right?**

21 **A** **Mm-hmm.**

22 **THE COURT: You have to answer yes**
23 **or no.**

24 **A** **Yes.**

- 1 Q Where do you exit the Mass. Pike?
- 2 A On 495. Yes, 495, I think it's 11 --
- 3 Q You get onto 495 in any event?
- 4 A Yes.
- 5 Q And then from 495, where do you exit?
- 6 A Exit 19 off on 109.
- 7 Q And your intention is to go 109 east, true?
- 8 A Yes.
- 9 Q And then what?
- 10 A Go into Millis.
- 11 Q And is the GAF plant right off of 109 in Millis?
- 12 A It's actually between -- 109 loops around, and the
13 Millis plant is like in between.
- 14 Q Okay. Now, when you got onto Route 109, you
15 were going east, right?
- 16 A Yes.
- 17 Q So you came off of 495 --
- 18 A Right.
- 19 Q -- and you took a left on 109.
- 20 A Yes.
- 21 Q And it's a straight road, isn't it?
- 22 A Fairly.
- 23 Q Did you stop at all?
- 24 A On 109?

- 1 Q Yes.
- 2 A No.
- 3 Q Okay. So --
- 4 A The first -- the first street or so I slowed down
5 because there was a car making a left-hand turn.
6 I'm talking about the car in front of me was
7 making -- no, before that.
- 8 Q Okay. So before that car cut in front of you
9 making a left turn?
- 10 A No, it didn't cut in front. It was in front of me, and
11 it was making a left-hand turn and I had to slow
12 down for it.
- 13 Q All right. So there was a car in front of you, and
14 the blinker went on to make a left turn --
- 15 A Right.
- 16 Q -- you slowed down and he made the left turn.
- 17 A Then I --
- 18 Q Then you sped up again?
- 19 A I picked up speed, and I started going up the hill.
- 20 Q Okay. And there's a slight incline that goes up --
- 21 A Yes.
- 22 Q -- right? For about how long?
- 23 A Oh. I don't really remember.
- 24 Q Okay. At some point does the hill crest and then

1 start going down?

2 A Yes, it does.

3 Q And when you got to the crest of that hill, what
4 were you looking at?

5 A When I was coming down, I noticed a white car on
6 Trotter Drive.

7 Q When did you notice that, just as you were
8 cresting?

9 A After I crested the hill.

10 Q Let me get out Exhibit A. Can you see that, Mr.
11 Zalewski?

12 A Yes, I can.

13 Q I show you Exhibit A for Identification. And you're
14 heading in this direction.

15 A Yes.

16 Q From left to right on Exhibit A?

17 A Yes.

18 Q And if you assume that the crest of the hill is here,
19 do you know approximately how long it is from the
20 crest of the hill down to Trotter Drive?

21 A Not exactly, but I heard 750 feet.

22 Q Do you have any reason to doubt that?

23 A No.

24 Q Okay. When you first crested the hill, what did you

- 1 see in front of you?
- 2 A Nothing.
- 3 Q You saw nothing in front of you?
- 4 A When I crested the hill, I see an open road.
- 5 Q An open road, and you didn't see any cars in front
- 6 of you?
- 7 A No.
- 8 Q You didn't see a car stopped with their brake
- 9 lights on?
- 10 A No.
- 11 Q You didn't see a police officer with an orange
- 12 vest?
- 13 A No.
- 14 Q You saw nothing?
- 15 A No.
- 16 Q And you kept driving down.
- 17 A No, after I -- after I came across the top of the hill.
- 18 --
- 19 Q Yes.
- 20 A -- I saw the white car --
- 21 Q Okay.
- 22 A -- sticking out of Trotter Drive.
- 23 Q Right here?
- 24 A Yeah.

1 Q Okay.

2 A That's where my attention was.

3 Q So you were watching a car over here?

4 A Yes.

5 Q Can you come off the stand, with the court's
6 permission.

7 MR. PRITZKER: Your Honor?

8 THE COURT: You may.

9 Q And I'm going to ask you, would you come down to
10 me, Mr. Zalewski. Would you take this pink
11 marker, on Exhibit A, and mark this car that you
12 were looking at when you first saw it.

13 A (Witness complies.)

14 Q You put a pink oblong, right?

15 A Yes.

16 Q You may go back. Thank you. How long were you
17 watching it?

18 A Until I got close to the intersection.

19 Q So you had your eyes on this white car?

20 A Yes.

21 Q The whole time from the crest of the hill --

22 A Yes.

23 Q -- down as you were approaching Trotter Drive?

24 A Yes.

1 Q And once again, you were seeing this, but you
2 weren't seeing this, being the pink square that you
3 put on Exhibit A, but you never saw what was
4 beyond that?

5 A I wasn't worried about what was beyond that. I
6 was worried about that car coming --

7 Q I didn't ask you what you were worried about, sir.
8 I asked you what you were looking at.

9 A That white car.

10 Q You never saw anything aside from this white car.

11 A My attention was on the white car.

12 Q The white car hadn't pulled out yet, right?

13 A No.

14 Q But you were watching this white car, and you're
15 not watching what's ahead of you? Right?

16 A Right.

17 Q Okay. Now, at some point, what happened?

18 A The white car pulled out, like I figured it would.

19 Q And when it pulled out, did you consider that
20 dangerous to you?

21 A That road I considered dangerous at all times.

22 Q It was so dangerous that you were watching this
23 white car, and you weren't watching what was
24 ahead of you, sir? That's how dangerous it was?

- 1 **A** **The danger was between my truck and the white**
2 **car, if it came out and I ran it over.**
- 3 **Q** **Okay.**
- 4 **A** **Beyond that, there's something different.**
- 5 **Q** **Did you slow down?**
- 6 **A** **I took my foot off the brake when I seen the car**
7 **come out, that was it. I thought he was going to**
8 **stay, but he didn't. He came out at the last**
9 **minute.**
- 10 **Q** **Before he came out, sir, did you slow down?**
- 11 **A** **Before he came out?**
- 12 **Q** **Yes.**
- 13 **A** **No.**
- 14 **Q** **All right. When he came out, did you put your foot**
15 **on the brake?**
- 16 **A** **I took my foot of the fuel --**
- 17 **Q** **Did you put your foot on the brake?**
- 18 **A** **-- I was going to put it on the brake. No, I didn't.**
- 19 **Q** **All right. And, in fact, he made it in front of you.**
- 20 **A** **And I was going to put my foot back on, but as he**
21 **came in front of me, he fishtailed, and I thought he**
22 **was going to go under my back wheels.**
- 23 **Q** **Okay. So if I have your story correct, you never**
24 **put your foot on the brake.**

- 1 **A** **No.**
- 2 **Q** **You started to put your foot back on the**
3 **accelerator.**
- 4 **A** **Right.**
- 5 **Q** **And at the same time, you were watching him?**
6 **You watched him go around you?**
- 7 **A** **When he went around me, yes.**
- 8 **Q** **You're watching him out of your front windshield**
9 **or your side mirror?**
- 10 **A** **When he came -- he shot out and I looked over to**
11 **the side, because that's where he went.**
- 12 **Q** **So he comes straight, if you follow the line of your**
13 **oblong, and then takes a left around you, correct?**
- 14 **A** **No. He -- he came out and he was going into the**
15 **turn.**
- 16 **Q** **Did he go over the center line?**
- 17 **A** **Yes, he did.**
- 18 **Q** **How close to this truck -- to your truck did he**
19 **come?**
- 20 **A** **I don't know. Maybe a car length.**
- 21 **Q** **And then what happened?**
- 22 **A** **I looked to my rearview mirror, to make sure he**
23 **didn't come under me. He straightened out, and I**
24 **turned back.**

- 1 Q When you turned back, what did you see?
- 2 A I saw Mrs. Rhodes' car sitting there.
- 3 Q How far in front of you did you see Mrs. Rhodes'
- 4 car?
- 5 A Past the intersection.
- 6 A How far in front of you did you see Mrs. Rhodes'
- 7 car?
- 8 A Exactly, I couldn't tell you.
- 9 Q What did you do?
- 10 A I jammed my foot on the brakes.
- 11 Q You jammed your foot on the brakes before
- 12 impact?
- 13 A Yeah.
- 14 Q Or after you hit her.
- 15 A Before.
- 16 Q What happened?
- 17 A Nothing. The truck just kept going.
- 18 Q Did you see anything besides Mrs. Rhodes' car?
- 19 A When I saw Mrs. Rhodes' car, I seen the officer
- 20 standing out in the road.
- 21 Q Did you have any trouble seeing him at that point?
- 22 A At that point, no.
- 23 Q Did you see any workmen over on the side?
- 24 A Afterwards.

1 Q Not before you hit Mrs. Rhodes' car?

2 A No. My attention was on her car.

3 Q Do you remember seeing her brake lights?

4 A No, I don't, but I would imagine they were on.

5 Q But you do remember seeing the officer?

6 A Yeah.

7 Q Did you hit your horn?

8 A I don't remember. I don't think I did.

9 Q So you hit the brakes.

10 A I hit the brakes.

11 Q And what happened?

12 A It just kept rolling. Kept -- kept going until I hit
13 her.

14 Q Never locked?

15 A I didn't feel them lock up until after I hit her.

16 Q Isn't it a fact, sir, that these were anti-lock
17 brakes?

18 A Yes.

19 Q And had you been familiar with the operation of
20 anti-lock brakes not locking?

21 A Anti-lock brakes are not supposed to lock, but as I
22 was told, if you --

23 MR. JOHNSON: Objection.

24 THE COURT: Sustained.

- 1 Q Did you feel any pulsation?
- 2 A No.
- 3 Q You felt nothing at all?
- 4 A Nothing.
- 5 Q At some point did you start skidding?
- 6 A Yes.
- 7 Q So at that point, you knew that the brakes were
- 8 working a little bit?
- 9 A Yeah.
- 10 Q What happened, a little bit at a time, after impact?
- 11 A After -- after the impact, I watched the back of her
- 12 car crumble.
- 13 Q You watched the back of her car crumble?
- 14 A Yes.
- 15 Q Was it in contact with your car?
- 16 A In contact with the truck, yes.
- 17 Q I want to make sure to get this straight. You're
- 18 sitting up in your cab, you hit her back.
- 19 A Yes.
- 20 Q And it starts to crumble. Is her car moving
- 21 forward when it's starting to crumble?
- 22 A No.
- 23 Q So before it starts moving forward, it crumbled.
- 24 A Yes.

- 1 Q How can you describe this crumbling?
- 2 A The roof of her car looked like an accordion.
- 3 Q So you actually struck above the wheel line?
- 4 A Yes.
- 5 Q Did you hit the trunk line?
- 6 A Above the trunk line.
- 7 Q You hit above the trunk line?
- 8 A Yes.
- 9 Q And you watched her car -- the roof --
- 10 A Yeah.
- 11 Q -- fold up like an accordion?
- 12 A Yes.
- 13 Q Then what did you observe?
- 14 A It disappeared. I thought I -- I went over top of it.
- 15 And --
- 16 Q Did it ever reappear?
- 17 A Yeah, it shot out to the right.
- 18 Q So your -- from your vantage point, you're going
- 19 literally over the top of this vehicle, and it's
- 20 crumpling as you're going on top of it?
- 21 A Yes.
- 22 Q And at some point, you crumpled so far up the
- 23 length of the Toyota, that you can't see it
- 24 anymore. Is that an accurate statement?

- 1 **A** **Yes.**
- 2 **Q** **And then it reappears going off to the right?**
- 3 **A** **Yes.**
- 4 **Q** **By this time are you moving it?**
- 5 **A** **Yes.**
- 6 **Q** **And did you keep going?**
- 7 **A** **The truck kept moving. After she went off, it**
8 **stopped a little past that.**
- 9 **Q** **When you first saw it reappear, what did you**
10 **observe about the car?**
- 11 **A** **That the whole back end was smashed in.**
- 12 **Q** **Was it just smashed in or was it actually ripped**
13 **from the rear axle?**
- 14 **A** **It looked like a flatbed in the back.**
- 15 **Q** **I'm sorry?**
- 16 **A** **It looked like a flatbed in the back.**
- 17 **Q** **Do you remember me asking you some questions**
18 **at a deposition?**
- 19 **A** **Yeah.**
- 20 **Q** **I'm going to show you a piece of that.**
- 21 **A** **Okay.**
- 22 **Q** **And I'm going to read it with you, and you read**
23 **along with me to make sure I'm reading it**
24 **correctly, okay? Page 104. "So" -- I'm going to**

1 start at the top of the page. "So there" -- and I'm
2 asking the following question. "So there were
3 three truck lengths between your truck and the
4 Rhodes vehicle when you applied the brakes."
5 And your answer was? Did you say "Mm-hmm"?

6 A Yeah.

7 Q Does that mean yes?

8 A Three truck lengths. I don't know, I might have
9 said that.

10 THE COURT: You'll have to keep your
11 voice up now so everyone can hear you.

12 A I might have said that, yeah.

13 Q And I asked you, "And your best estimate is that
14 you were doing about 30 miles an hour?"

15 And your answer is, "About, yes."

16 And then I said, "Once the vehicle
17 was struck by your truck, how far did your truck
18 go?"

19 MR. JOHNSON: Your Honor,
20 objection. Side bar, please?

21 (CONFERENCE AT THE BENCH, AS FOLLOWS:)

22 THE COURT: Yes?

23 MR. JOHNSON: I think the responsive
24 answer is the truck went a short distance after

1 that. What everybody else was saying is totem
2 pole hearsay. It's totem pole hearsay.

3 THE COURT: What other people have
4 said?

5 MR. PRITZKER: I'm sorry?

6 THE COURT: He's making reference
7 to what other people had said.

8 MR. PRITZKER: He goes on, your
9 Honor.

10 THE COURT: Well, why don't you just
11 read the portion where "everybody else was saying
12 it's a hundred and something feet. But I don't
13 know, I didn't measure it. As soon as I" -- pick it
14 up with "as soon as I" -- all right?

15 (END OF BENCH CONFERENCE)

16 MR. PRITZKER: May I re-approach
17 the witness?

18 THE COURT: You may.

19 Q So my question to you, Mr. Zalewski, back at this
20 deposition, which was taken, by the way, in June
21 of '03, do you remember that?

22 A Yes, I do --

23 Q -- was, "Once the vehicle was struck by your truck,
24 how far did your truck go?" And I'm going to pick

1 it up here. "As soon as I crumpled, I watched the
2 roof crumple, and then the car dropped out of
3 sight. It scared the shit out of me. I thought it
4 went underneath the truck. That had to have been
5 where her rear wheels were broken, busted." Do
6 you remember seeing her rear wheels broken or
7 busted?

8 **A** Afterwards, the rear wheel on the side of the road,
9 the rear wheels were both flat.

10 **Q** So you don't remember seeing that at the time of
11 the accident, but you remember seeing that after
12 she came to rest?

13 **A** Yeah. There was no way I could have seen that at
14 the time of the accident. I was eight foot up in the
15 air, she was down on the ground.

16 **Q** Do you remember the tires blowing?

17 **A** No, I just imagine that had to be the point when I
18 couldn't see the car no more.

19 **Q** Well, you say, as part of the same answer, picking
20 it up, "That had to have been when her rear
21 wheels were broken, busted, and then a
22 continuation of skid marks after that. As far as I
23 say, seventeen feet, and I feel that's all I pushed
24 her was seventeen feet because the car didn't

1 start moving until I actually crinkled the roof up on
2 impact. And then after the tires blew, and it went
3 down, that's when it started moving." Do you
4 remember saying that?

5 A Yes.

6 Q And was that your observation from your vantage
7 point up in this high truck at the time of the
8 impact?

9 A That's what I felt at the time, yes.

10 Q And then the car went into the woods?

11 A Shot off into the woods.

12 Q Do you remember the policeman was wearing an
13 orange vest?

14 A Yes, yes he was.

15 Q Do you remember there was a hearing at the
16 District Court in Wrentham involving this accident?

17 A Yes.

18 Q And do you remember that at that hearing you
19 admitted to facts sufficient to warrant a finding of
20 liability on your behalf?

21 A Uh -- yeah, that was -- that wasn't a guilty plea. It
22 was supposed to be a -- just that they could find
23 me at fault.

24 Q I'm sorry. I didn't hear your answer.

1 actually entitled a Rental Agreement. With that
2 notation, I have no objection.

3 THE COURT: Does anyone else have
4 any objection?

5 MR. CONROY: No objection.

6 MR. BOYLE: No objection.

7 THE COURT: All right. It may be
8 marked as Exhibit 20.

9 (Penske rental agreement
10 inspection received and marked
11 Exhibit Number 20.)

12 Q Now, Exhibit 20, Mr. Zalewski, does that say on
13 the left-hand side, Penske Truck Rental, and the
14 second page says Rental Agreement. But what
15 does the top say?

16 A Inspection report.

17 Q And right above where you signed this report, Mr.
18 Zalewski, on the last page of Exhibit 20, it says
19 here "Customer acknowledges that he has been
20 briefed on the safe driving tips. Customer
21 acknowledges that he must stop at all weigh
22 stations." And you signed that, right?

23 A Yes, I signed the agreement.

24 Q And underneath that, there's a line for a Penske

1 **representative to sign, isn't there?**

2 **A Right, yes.**

3 **Q And it looks like there's a signature there?**

4 **A Yes.**

5 **Q I'm going to show you another document, Mr.**
6 **Zalewski, which has an identification on it of**
7 **Zalewski Deposition Exhibit 8, and ask you if**
8 **you've ever seen that before.**

9 **A Yes.**

10 **Q Now on this one, the top seems to have been cut**
11 **off a little bit, but would you agree with me that**
12 **this is a Rollins Vehicle Inspection Report?**

13 **A Yes.**

14 **Q And Rollins is the -- was the rental company that**
15 **was acquired by Penske; isn't that so?**

16 **A Yes.**

17 **Q And Penske, as well as Rollins, required you to**
18 **sign documents like this, correct?**

19 **A Yes.**

20 **MR. JOHNSON: No objection.**

21 **MR. CONROY: No objection.**

22 **MR. BOYLE: No objection.**

23 **THE COURT: All right, that will be**

24 **Exhibit 21.**

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(Rollins rental agreement
received and marked Exhibit
Number 21.)

Q At some point, Mr. Zalewski, did you fill out a
Driver Logistics accident report?

A Yes, I did.

Q I'm going to show you a document that's entitled
DLS accident report, and ask whether or not that's
the report that you filled out.

A No, I didn't.

Q Well, would you look at the last page of it, and see
whether or not your signature appears, the last
page. One more.

A Yes. That's not mine though.

Q The top part isn't yours?

A No. No, that's not my handwriting.

MR. JOHNSON: Your Honor, may we
approach side bar?

THE COURT: Yes.

(CONFERENCE AT THE BENCH, AS FOLLOWS:)

MR. JOHNSON: My objection, your
Honor, is Mr. Zalewski says that the last page is
his, but the other pages are not his. So I have no
objection to the last page, your Honor. But if

1 somebody else filled out the pages, then it's not
2 his report.

3 THE COURT: Well, this is the DLS
4 accident report?

5 MR. BOYLE: Are you talking to me,
6 your Honor?

7 THE COURT: Yes. Your company.

8 MR. BOYLE: Yes, your Honor.

9 There's no question this is our report.

10 THE COURT: Do you know who wrote
11 it out? Have that person come in and testify?

12 MR. BOYLE: I wasn't at the
13 deposition of DLS, but the document --

14 MR. PRITZKER: The testimony was
15 that the DLS personnel filled out the remainder,
16 other than the last page, based upon interviews
17 and information from Mr. Zalewski, which I will
18 inquire of.

19 COURT OFFICER: A juror needs a
20 break, your Honor --

21 THE COURT: -- let her go.

22 COURT OFFICER: -- individually?

23 THE COURT: Yes, individually.

24 MR. BOYLE: I didn't object, your

1 Honor. This is Mr. Johnson's objection.

2 THE COURT: Well, I'll just say that
3 this is admissible against DLS.

4 MR. CONROY: No objection.

5 THE COURT: No objection. We'll
6 leave it at that.

7 (END OF BENCH CONFERENCE)

8 THE COURT: We'll have to wait a
9 minute, we're missing a juror.

10 (Pause)

11 THE COURT: All right. We'll mark as
12 exhibit -- the next exhibit, Exhibit 22, the DLS
13 accident report. And I'm going to instruct the
14 jurors that this is admissible against all of the
15 defendants except Penske. So this is not
16 admissible against Penske, but it is admissible
17 against the other defendants. And so I'll explain
18 to you when you eventually go to deliberate the
19 case, when you're looking at this document, the
20 information contained in it can be only used
21 against the other defendants and not Penske.

22 (DLS accident report received
23 and marked Exhibit Number 22.)

24 THE COURT: Thank you.

1 Q Mr. Zalewski, directing your attention to Exhibit
2 22, do you remember talking to anybody and
3 specifically your employer, DLS, about how the
4 accident happened?

5 A Yes.

6 Q And do you remember being asked a question
7 about whether or not there were mechanical
8 defects or failures apparent on your vehicle at the
9 time of the accident?

10 A I don't remember.

11 Q Well, can you see on Exhibit 22 to their question,
12 there's a circle around the word "yes"? Should I
13 point it out to you, sir?

14 A Yeah.

15 MR. PRITZKER: May I?

16 THE COURT: You may.

17 Q And what does it say underneath that?

18 A Brakes.

19 Q Did you tell DLS that the brakes failed?

20 A That the one brake was -- was out.

21 Q You did tell them?

22 A Yes.

23 Q And that's how it got on this report?

24 A Yes.

- 1 Q Now, on the last page, sir, there's a handwritten
2 description of the accident; is there not?
- 3 A Yes, there is.
- 4 Q Is that in your handwriting?
- 5 A Yes, it is.
- 6 Q And then you signed it?
- 7 A Yes, I did.
- 8 Q I'd like to read what you wrote. Would you read
9 along with me to make sure that it's accurate.
- 10 A Yeah.
- 11 Q "I was driving on Route 109, a car came out on my
12 right, cut in front of me. I turned to my left to see
13 the car. I looked back and saw the car stopped in
14 front of me. I stepped on the brakes. The brakes
15 locked up and the truck slid into the car." Have I
16 read that accurately?
- 17 A From what's on here, yes.
- 18 Q Well, this is your own writing, is it not?
- 19 A I don't remember that part, but it is my writing.
- 20 Q And you signed it right underneath that, didn't you,
21 sir?
- 22 A Yes, I did. I was taking a physical at the time --
- 23 Q But sir, did you sign it right underneath it?
- 24 A Yes, I did. Yes, I did.

1 **Q** I'm going to show you a document, Mr. Zalewski,
2 which has a previous marking on it as the
3 Zalewski deposition Exhibit 9, and which appears
4 to be a series of different kinds of forms, all with
5 Penske's -- I take that back -- all with Penske's
6 name on top. And ask if you can identify those as
7 various forms which you have to either acquire or
8 keep in connection with your job?

9 **A** Yes, it is.

10 **MR. PRITZKER:** I'd like to introduce
11 that as the next exhibit.

12 **THE COURT:** Any objection?

13 **MR. CONROY:** No objection.

14 **MR. JOHNSON:** No objection, your
15 Honor.

16 **MR. BOYLE:** No objection.

17 **THE COURT:** Exhibit 23.

18 **(Penske paperwork received and**
19 **marked Exhibit Number 23.)**

20 **Q** Now, directing your attention to Exhibit 23, Mr.
21 Zalewski, very briefly, what does the first page
22 say?

23 **A** Fuel ticket.

24 **Q** That's a fuel ticket.

1 A Yes.

2 Q And it says Penske Truck Leasing Fueling Receipt
3 on the top of it?

4 A Yes.

5 Q And that's something that you kept as part of your
6 paperwork?

7 A Yes.

8 Q And the next page, what is that?

9 A That's an inspection. Inspection form.

10 Q And is it a Penske inspection form?

11 A Yes, it is.

12 Q Penske required you to fill that out every day?

13 A Yes.

14 Q And for you to sign it?

15 A Right.

16 Q And what's the next one?

17 A It's a weight ticket.

18 Q So that deals with the weight of the truck?

19 A Yes.

20 Q And that's something that you had to do as part of
21 your job as well?

22 A Yes.

23 Q And the last document is what?

24 A It's another Penske form, driver trip report.

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THE COURT: Wait. What is it called?

THE WITNESS: Driver's trip report.

Q Is that the log that you testified about earlier?

A No.

Q So this is another report that you had to fill out on a daily basis?

A Yes.

Q Required by Penske?

A Right.

Q On a Penske form?

A Yes.

MR. PRITZKER: I have no further questions of this witness.

THE COURT: All right. Cross-examination.

CROSS-EXAMINATION BY MR. BOYLE:

Q Mr. Zalewski, who's fault was this accident?

A Mine.

Q You take responsibility, sir, for causing Mrs. Rhodes' injuries that resulted?

A Yes, I do.

Q Were you distracted just before the accident happened, sir?

A Yes, I was.

1 Q Now, at your deposition, Mr. Pritzker asked you to
2 draw a diagram. Is this, sir, a copy of the diagram
3 that you drew, Exhibit 2?

4 A Yes.

5 Q And does that show the car that pulled out?

6 A Yes, it does.

7 Q Not to scale, obviously?

8 A Right.

9 MR. BOYLE: I offer that.

10 THE COURT: Any objection?

11 MR. PRITZKER: No objection, your
12 Honor.

13 THE COURT: Exhibit 24.

14 (Diagram received and marked
15 Exhibit Number 24.)

16 Q And sir, showing you Exhibit 24, is "R" Mrs.
17 Rhodes' car?

18 A Yes.

19 Q You didn't see the car until you looked up after
20 looking back in the rear-view mirror as you've told
21 this jury?

22 A Yes.

23 Q Was she after Trotter Drive on your right?

24 A Yes.

1 Q Now, by the way, sir, how old are you?

2 A Sixty.

3 Q And what is your marital status, sir?

4 A Divorced.

5 Q Do you have any children?

6 A Three.

7 Q Do you have any grandchildren?

8 A Nine.

9 Q What ages are the grandchildren?

10 A Seven to twenty-four.

11 Q And you said you're presently employed as a
12 dumptruck driver?

13 A Yes.

14 Q How long after the accident before you became re-
15 employed as a dumptruck driver?

16 A It was a year and a half.

17 Q Now, with respect to your arrival up here in Millis,
18 where you were heading, sir, at the time of the
19 accident, you were asked about the fact that you
20 were delayed. And I understand your testimony to
21 the jury to be, there was a weather problem
22 coming up the east coast?

23 A Yes.

24 Q Is that not unusual in the trucking business, that

1 weather will delay a trip?

2 A Yes.

3 Q So it wasn't a big deal that you were delayed.

4 A No.

5 Q What was the weather that day?

6 A It was freezing rain all up the east coast.

7 Q What were the road conditions at the place where
8 this accident happened?

9 A Wet.

10 Q I'm showing you, sir, a photograph. Do you
11 recognize this, sir, as the photograph of the scene
12 of the accident?

13 A Yes.

14 Q And is it a fair and accurate representation of the
15 way the road looked afterwards, sir?

16 A Yes.

17 Q Did you see water on the ground on the roadway
18 there, sir?

19 A Yes.

20 Q And by the way, was there also snow on the
21 ground?

22 A On the sides, yes.

23 MR. BOYLE: I offer --

24 THE COURT: Would you keep your

1 voice up, please.

2 A It was on the sides, yes.

3 THE COURT: Any objection?

4 MR. PRITZKER: No objection, your
5 Honor.

6 THE COURT: Exhibit 25.

7 (Photograph received and
8 marked Exhibit Number 25.)

9 Q Now, with respect to --

10 MR. BOYLE: May I approach the
11 witness, your Honor?

12 THE COURT: You may.

13 Q Sir, with respect to Exhibit 25, you just said you
14 saw water. I don't want to be blocking people.
15 I'm going to put it over there. Would you -- where
16 do you see water? Just hold it up to the jury.

17 A Right along here.

18 Q Was there water on the -- moisture on the
19 roadway?

20 A Yes. Right here.

21 MR. BOYLE: May Exhibit 25 be
22 passed amongst the jurors?

23 THE COURT: It may.

24 Q With respect to this photograph, sir, do you see

1 your truck in this photograph at the scene of the
2 accident?

3 **A** Yes, I do.

4 **Q** Was that positioned approximately in its final
5 resting spot?

6 **A** Yes.

7 **Q** With respect to the background, the trees and
8 whatnot, is that the way the so-called background
9 was at the time of the accident?

10 **A** Yes.

11 **Q** And just after the accident scene, does the road
12 curve left or right, or does it go straight?

13 **A** It curves to the left.

14 **MR. BOYLE:** I offer this, your Honor.

15 **THE COURT:** Any objection?

16 **MR. CONROY:** No objection.

17 **MR. PRITZKER:** No objection.

18 **THE COURT:** Exhibit 26.

19 (Photograph received and
20 marked Exhibit Number 26.)

21 **MR. BOYLE:** Your Honor, may this
22 exhibit be --

23 **THE COURT:** It may.

24 **Q** Now, Mr. Zalewski, as you approached the so-

1 called crest of the hill that Mr. Pritzker was asking
2 you about -- strike that. Is this a photograph, sir,
3 of the approach to the crest of the hill?

4 A Yes.

5 Q And can you see over the hill to Trotter Drive when
6 you were in the position at the bottom of this
7 photograph?

8 A No.

9 Q And on that left, that yellow sign is some sort of a
10 restaurant or something?

11 A Yes.

12 MR. BOYLE: I offer this.

13 MR. PRITZKER: I object. Relevance,
14 your Honor.

15 THE COURT: The objection is
16 overruled. It may be marked as Exhibit 27.

17 THE COURT: Any objection?

18 MR. PRITZKER: I have no problem.

19 THE COURT: Okay. No problem.

20 (Photograph received and
21 marked Exhibit Number 27.)

22 MR. BOYLE: Your Honor, may Exhibit

23 27 be --

24 THE COURT: It may.

1 Q Now, Mr. Zalewski, as you drove up that hill, over
2 the crest and down towards Trotter Drive, as you
3 were asked by Mr. Pritzker, did you see any signs,
4 sir, alerting you that there was some roadwork or
5 tree work being done at the bottom?

6 A No.

7 Q You told us that you first noticed the police officer
8 and the fact that there was some equipment after
9 the accident.

10 A Yes.

11 Q Or after you were coming in contact with Mrs.
12 Rhodes' vehicle.

13 A Yes.

14 Q What -- did you see any lights at the scene,
15 flashing lights or anything?

16 A No.

17 Q Would you describe what the truck looked like,
18 Jerry MacMillan's Tree Service vehicle?

19 A A black -- it looked like a rack truck. Racks on the
20 back. Small truck.

21 THE COURT: You're going to have to
22 keep your voice up so everyone can hear.

23 Q A rack truck?

24 A Rack.

1 Q Was it pulling something?

2 A Yes, there was a machine behind it.

3 Q Was that partially on the roadway?

4 A Off. Most all the way to the -- to the right side.

5 Q It was somewhat straddling the fog line? If you
6 know.

7 A Just barely, yes.

8 Q By the way, you traveled this road frequently you
9 said, delivering asphalt to the plant in Millis,
10 correct?

11 A Yes.

12 Q And at this particular stretch in the road, there is
13 no traffic light to stop eastbound and westbound
14 traffic, is there?

15 A No.

16 MR. PRITZKER: Objection.

17 THE COURT: Sustained.

18 Q Is there any traffic control devices at the area of
19 Trotter Lane on Route 109, sir?

20 A No.

21 MR. BOYLE: That's all I have. Thank
22 you, sir.

23 MR. CONROY: Just briefly.

24 CROSS-EXAMINATION BY MR. CONROY:

1 Q Mr. Zalewski, good afternoon.

2 A Good afternoon.

3 Q I understand that you began -- you started work
4 about what time that day?

5 A Around 4, I think; 4 o'clock.

6 Q And the accident happened around 1 o'clock in the
7 afternoon, correct?

8 A Yes.

9 Q And was this your usual timing of events that day,
10 as far as when you would start work, when you
11 would pick things up and the route that you took?
12 A typical day?

13 A The way I did it was typical, a typical day, but the
14 time schedule was off because of the weather.

15 Q Because of the weather. And you had taken this
16 path, this particular route how many times, do you
17 think? Over several years?

18 A Yes.

19 Q All right. So you were accustomed to, for
20 example, the layout of Route 109 in the area
21 where the accident happened?

22 A Yes.

23 Q And am I correct that the speed limit for that
24 roadway is 40 miles an hour?

1 A Yes, it is.

2 Q Now, as you've indicted, you were running about
3 an hour late that day because of the weather?

4 A Yes, sir.

5 Q Now, you've also, I think, you told Mr. Pritzker on
6 direct examination that you were traveling in the
7 neighborhood of 30 miles an hour when this
8 accident happened?

9 A Yes.

10 Q And you're pretty comfortable that you were
11 traveling under the speed limit, sir?

12 MR. PRITZKER: Objection.

13 THE COURT: Sustained.

14 Q Were you tired that day?

15 A No.

16 Q And I think what you told the ladies and gentlemen
17 of the jury is that your attention, after you came
18 over the crest of the hill, was focused on a white
19 car that was -- from your viewpoint, coming out
20 was stopped at Trotter Lane; is that correct?

21 A That made my immediate attention, yes.

22 Q And that's what you were focused on, instead of
23 what lay ahead, beyond Trotter Lane.

24 A Yes.

1 Q And that was the mistake that you made, sir?

2 A Yes, it was.

3 Q And you were concerned about this car in Trotter
4 Lane pulling out in front of you?

5 A Yes.

6 MR. PRITZKER: Objection.

7 THE COURT: Sustained.

8 Q Did the car on Trotter Lane eventually pull out in
9 front of you?

10 A Yes, it did.

11 Q And once it did, did you try to follow the path of
12 that car in front of you and to the side?

13 A Yes, I did.

14 Q And then you looked in front of you, and that's
15 when you saw -- you described it was Mrs. Rhodes'
16 car?

17 MR. PRITZKER: Objection.

18 THE COURT: We've covered all this.

19 It has been covered by various counsel.

20 Q I think you told us you regret, you're sorry for what
21 happened that day, aren't you?

22 A Yes.

23 MR. CONROY: That's all I have.

24 Thank you.

1 CROSS-EXAMINATION BY MR. JOHNSON:

2 Q Mr. Zalewski, when you came down Route 109
3 watching that car, that white car that was at
4 Trotter Drive, your attention was focused on it,
5 when that car did pull out onto Route 109 --

6 A Yes.

7 Q -- it was only about one car length distance
8 between where that car was and where the front
9 of your tractor-trailer was, correct?

10 A Yeah.

11 Q So as that car pulled out and made its left-hand
12 turn, you continued to go ahead because you
13 didn't step on the brake, correct?

14 A Correct.

15 Q So you were now into the intersection of Trotter
16 Drive, watching this car that had gone past you,
17 and you were watching in the side-view mirror,
18 correct?

19 A Yes.

20 Q And the first time you saw Mrs. Rhodes was after
21 you -- while you were in that intersection, looking
22 at that other car when you took your eyes off the
23 white car and came back and there was Mrs.
24 Rhodes' car?

1 **A** **Right.**

2 **Q** **Before you went to work for -- well, strike that. At**
3 **the time this accident happened, you were an**
4 **employee of DLS; is that right, sir?**

5 **A** **Yes.**

6 **Q** **And DLS were the people who paid you, correct?**

7 **A** **Yes.**

8 **Q** **And DLS were the people who had hired you,**
9 **correct?**

10 **A** **Yes.**

11 **Q** **DLS was the company that eventually fired you**
12 **after this accident, correct?**

13 **A** **Yes.**

14 **Q** **DLS were the people you reported to whenever you**
15 **had some issues about medical benefits and**
16 **things like that; isn't that right?**

17 **A** **Yes.**

18 **Q** **And in fact, DLS paid or provided you with health**
19 **and medical benefits, correct?**

20 **A** **Yes.**

21 **Q** **DLS provided you with workers' compensation**
22 **coverage correct?**

23 **A** **Yes.**

24 **Q** **On a typical day, when you'd go into the plant, you**

1 would meet with -- to do one of your runs, you'd
2 deal with the dispatcher; isn't that right, sir?

3 A Yes.

4 Q And that dispatcher's name was Mike Kelly; is that
5 right?

6 A Yes, it was.

7 Q Did Mr. Kelly work for DLS?

8 A No.

9 Q Did he work for GAF?

10 A Yes.

11 Q So Mr. Kelly worked for GAF and he was the
12 dispatcher, correct?

13 A Yes.

14 Q And Mr. Kelly would be someone you'd deal with
15 on a daily basis concerning the load that you
16 would bring in from New Jersey or vice versa,
17 correct?

18 A Yes.

19 Q And as a dispatcher, I take it that means -- as a
20 dispatcher, I assume that meant he sent the
21 trucks out onto the road, correct?

22 A Yes.

23 Q So Mr. Kelly from GAF was the man sending these
24 trucks out on the road for the daily runs between

1 **New Jersey and Millis, Massachusetts, correct?**

2 **A Yes.**

3 **Q Let me show you --**

4 **MR. JOHNSON: May I approach the**
5 **witness?**

6 **THE COURT: You may.**

7 **Q Mr. Zalewski, let me show you what has been**
8 **marked as Exhibit Number 20, and it's entitled at**
9 **the top Rental Agreement Inspection Report. Do**
10 **you see that, sir?**

11 **A Yes, I do.**

12 **Q And you told us earlier that that's a form that you**
13 **signed, correct?**

14 **A Yes.**

15 **Q And in fact, doesn't that form have to do with the**
16 **rental or lease of a substitute vehicle because**
17 **your regular truck was being repaired that day?**

18 **A Yes.**

19 **Q And that is about six or nine months before this**
20 **accident happened; isn't that right?**

21 **A Yes.**

22 **Q Okay. So typically, if you needed a replacement**
23 **vehicle in order to go up, because your truck was**
24 **in for repairs, you'd have to go in and get a**

1 replacement vehicle from Penske, which was the
2 provider of the vehicle, and you have sign this
3 typical rental agreement inspection report.

4 A Yes.

5 Q And that's what that is. This is for one day, one
6 substitute truck, right?

7 A Right.

8 Q Now, earlier -- by the way, I think before you went
9 to work for DLS, you worked for a company called
10 Vanguard; is that right?

11 A Yes.

12 Q And you were doing essentially the same type of
13 work that you --

14 A Exactly the same, yeah.

15 Q -- did for Vanguard, correct? But it happened that
16 GAF was switching to use DLS as the provider of
17 drivers; is that right?

18 A Yes.

19 Q So then you filed an application for employment
20 with DLS; is that right?

21 A No, we just switched over.

22 Q But didn't you complete a whole application?

23 A Oh, yes.

24 Q Yes. You completed an application, and then you

1 **became an employee of DLS, correct?**

2 **A I was working for them before I did the**
3 **application.**

4 **Q And essentially in terms of the trucks that were**
5 **used as part of this work, before Penske became**
6 **involved, there was a company called Rollins who**
7 **was providing the trucks; isn't that correct?**

8 **A Right.**

9 **Q And one day you learned that Rollins had been**
10 **purchased by Penske; isn't that right?**

11 **A Yes.**

12 **Q So someone from GAF then told you you were now**
13 **going to be using Penske trucks; is that right?**

14 **A Yes.**

15 **Q Now, the -- there are some forms here that have**
16 **been marked as Exhibit Number 21. And these**
17 **forms are essentially, are they not, vehicle**
18 **inspection forms?**

19 **A Yes.**

20 **Q And those were vehicle inspection forms that you**
21 **completed for Rollins, correct?**

22 **A Yes.**

23 **Q Okay. So Rollins Leasing Company had the same**
24 **forms essentially that Penske had, correct?**

1 A Yes.

2 Q And in both cases, the companies were asking you
3 as the driver to walk around the vehicle and make
4 an inspection for safety purposes of that vehicle
5 before you took off on the road; is that right?

6 A Yes.

7 Q And as far as you know, don't all leasing
8 companies require the same thing as a
9 commercial driver?

10 MR. PRITZKER: Objection.

11 THE COURT: Sustained.

12 A Yes.

13 THE COURT: That's to go out.

14 Disregard that, members of the jury.

15 Q Have you dealt with any other companies, sir, or
16 worked for any other companies that require the
17 same sort of vehicle inspection report?

18 A No.

19 Q But Rollins required it and Penske required it.

20 A Yes.

21 Q Now I'd just like to show you what's been marked
22 as Exhibit 23, which has been identified as various
23 forms with Penske's name on it. Do you recognize
24 those, sir?

1 A Yes.

2 Q Okay. Now, the top form is entitled Penske Truck
3 Leasing Fuel Receipt, correct?

4 A Correct.

5 Q And as part of your work, you would fill up with
6 fuel at a Penske station, correct?

7 A Yes.

8 Q Okay. So that's what this receipt is for on this
9 particular date, for instance? I'm looking for a
10 date, but I don't -- it looks like September 10th,
11 2001, you filled up for your trip at a Penske fueling
12 station.

13 A Yes.

14 Q Okay. Now the next form is another Penske form,
15 and I think there are several of these that have
16 been marked, but this also is for the date of
17 September 10th, 2001. And on that particular day,
18 you had to do a driver's vehicle inspection report,
19 correct?

20 A Yes.

21 Q And that's what this form is. And that's the form
22 we were just talking about that Rollins requires
23 and Penske requires.

24 A Yes.

1 Q The third page here is entitled electronic scale
2 ticket. That has nothing to do with Penske, does
3 it, sir?

4 A No.

5 Q Okay. That is something that another company
6 requires that's part of this whole process, correct?

7 A Yes.

8 Q In fact, is this an Owens-Corning --

9 A Yes, it is.

10 Q -- form? And Owens-Corning is part of this process
11 as the company that provides GAF with the liquid
12 asphalt, correct?

13 A Yes.

14 Q So as part of your daily routine, once you go to the
15 yard with your keys and pick up your truck, you
16 then fill it up with gas at a Penske station.

17 A Yes.

18 Q Then you go to the Owens-Corning lot and fill the
19 truck, first the truck if filled up -- strike that. First
20 the truck is weighed to determine how much it
21 weighs in an empty condition; is that right?

22 A Yes.

23 Q And then it's filled up and you receive an
24 electronic scale ticket from Owens-Corning,

1 correct?

2 A Yes.

3 Q And then once you have that, they weigh the truck
4 to know how much liquid asphalt you have in the
5 truck, and you're on your way?

6 A Yes.

7 Q And the final ticket that is part of this Exhibit 23 is
8 another Penske truck leasing form, and this is
9 entitled Driver Trip Report. Now this actually asks
10 you to provide mileage in terms of the truck,
11 correct?

12 A Yes, it does.

13 Q Because Penske wants to know how many miles
14 their trucks are used; is that right?

15 A Yes.

16 Q And it also requires you to tell about what tolls
17 you've paid, correct?

18 A Yes.

19 Q And the reason you want to know what tolls you've
20 paid is because you're given a bank, and you may
21 use money from that bank to pay the tolls, and
22 then you're reimbursed, correct?

23 A Right.

24 Q And you're reimbursed by DLS, correct?

1 A Yes.

2 Q Now, that driver inspection report that we just
3 talked about is a form that you're supposed to
4 make out every day, correct?

5 A Yes, it is.

6 Q On the particular day of this accident, we know
7 that you didn't make it out for the reasons you've
8 told us, correct?

9 A Right.

10 Q But that was on a Wednesday morning, Wednesday
11 being the day of this accident. On Monday and
12 Tuesday, you had driven that truck, and you made
13 out the report, and everything was fine, correct?

14 A Everything looked fine.

15 Q Okay. And you had no problems with your brakes
16 driving up on either Monday, Tuesday or
17 Wednesday, correct?

18 A No, none at all.

19 Q That's correct?

20 A Correct.

21 Q Now, earlier I asked you about Rollins being the
22 initial company that was providing vehicles being
23 taken over by Penske. Do you remember that, sir?

24 A Yes.

1 Q Is it your memory that Penske took over for Rollins
2 sometime in the fall of 2001, several months
3 before this accident?

4 A Yeah, yes.

5 Q And the safety meetings that you referred to
6 earlier were safety meetings that were put on by
7 GAF, correct?

8 A Yes, they were.

9 Q So safety meetings were put on about once a year
10 by GAF; is that right?

11 A Yes.

12 Q And the one meeting that you had a chance to go
13 to once Penske had taken over for Rollins was a
14 meeting you never went to, right?

15 A Right.

16 Q So you have no idea whether Penske people went
17 to those safety meetings, correct?

18 A Right.

19 Q Correct?

20 A Yes.

21 Q Because you were never at one that they were
22 there, correct?

23 A Right.

24 Q Okay. And finally, sir, that accident report that

1 you made out that has been marked as Exhibit 22 -
2 -

3 **A** Yes.

4 **Q** -- that was an accident report that you were
5 required to make out for your employer, DLS; is
6 that right?

7 **A** Yes.

8 **Q** And you told us this last page is your own
9 handwriting, and you signed it on January 11th,
10 2002, two days after the accident, right?

11 **A** Yes.

12 **Q** And that's your description of how the accident
13 happened as you recalled it at that time, correct?

14 **A** More or less, yes.

15 **MR. JOHNSON:** Okay. That's all I
16 have. Thank you very much.

17 **THE COURT:** All right. Any redirect?

18 **MR. PRITZKER:** Very briefly, your
19 Honor.

20 **REDIRECT EXAMINATION BY MR. PRITZKER:**

21 **Q** The last three pictures that were marked. Mr.
22 Zalewski, Exhibit 24 --

23 **MR. PRITZKER:** May I approach, your
24 Honor?

1 THE COURT: Yes.

2 Q -- Exhibits 24 and 25, make sure I got that right, 25
3 -- 25 and 26, those were taken after the accident
4 occurred, weren't they?

5 A Yes.

6 Q And you heard testimony earlier and you heard
7 about the National Weather forecast that said that
8 rain started about 2 o'clock, drizzle started around
9 2 o'clock in West Medfield. Do you remember
10 hearing that?

11 MR. BOYLE: Objection, your Honor.

12 A Yes, I heard that.

13 THE COURT: Sustained. It's up to
14 the jury to recall what the testimony was.

15 Q Do you have any reason to believe that that was
16 an accurate reflection of the puddles at the actual
17 moment of the impact?

18 A Can you give me that again?

19 Q Do you have any reason to know whether or not
20 those puddles that you pointed out on Exhibits 25
21 and 26 were there at the time of the impact?

22 A Yes, because after the impact, I was walking in
23 them.

24 Q Directly after?

- 1 **A** **Right after I hit the car, my truck stopped, I was**
2 **out of my truck by her car.**
- 3 **Q** **All right.**
- 4 **A** **And I had to walk through the puddles to get**
5 **there.**
- 6 **Q** **And where was her car, sir?**
- 7 **A** **In this picture?**
- 8 **Q** **Yes.**
- 9 **A** **Where those red lights are. Right there. Right**
10 **there where the red lights are.**
- 11 **Q** **So where the red lights are, way beyond --**
- 12 **A** **Mm-hmm.**
- 13 **Q** **-- where this picture shows --**
- 14 **A** **Yes.**
- 15 **Q** **-- you saw puddles.**
- 16 **A** **Yes.**
- 17 **Q** **This picture doesn't show those puddles, does it?**
- 18 **A** **That picture, no.**
- 19 **Q** **Does this one? I'm now showing you 25 and 26.**
- 20 **A** **Yes. Across here.**
- 21 **Q** **When you say "across here," you're talking about**
22 **on the other side of the fog line?**
- 23 **A** **Yes.**
- 24 **Q** **So on the other side of the fog line where you**

1 further.

2 THE COURT: All right. Anything
3 further?

4 MR. PRITZKER: No, your Honor.

5 MR. JOHNSON: No, your Honor.

6 THE COURT: All right. Thank you,
7 you may step down. Next witness.

8 WITNESS STEPS DOWN

9 MR. PRITZKER: The plaintiff would
10 like to call Marcia Rhodes, please.

11 THE COURT: Next witness.

12 MR. PRITZKER: The plaintiff would
13 call Marcia Rhodes to the stand.

14 THE CLERK: Would you raise your
15 right hand, please. Do you solemnly swear the
16 testimony you'll give in the case on trial to be the
17 truth, the whole truth, and nothing but the truth,
18 so help you God?

19 MARCIA RHODES, SWORN

20 DIRECT EXAMINATION BY MR. PRITZKER:

21 Q Would you state your full name, please.

22 A Marcia Ann Goldy Rhodes.

23 Q You've got to talk up. I'm going to keep going
24 back so you're going to have to yell.

- 1 **A** **All right. Marcia Ann Goldy Rhodes.**
- 2 **Q** **What is your date of birth?**
- 3 **A** **June 22, 1955.**
- 4 **Q** **Where did you grow up Mrs. Rhodes?**
- 5 **A** **In Whippany, New Jersey.**
- 6 **Q** **Did you go to high school there?**
- 7 **A** **Yes, I did.**
- 8 **Q** **What was the name of the high school?**
- 9 **A** **Whippany Park High School.**
- 10 **Q** **And did you go on to college?**
- 11 **A** **Yes, I did.**
- 12 **Q** **Where did you go?**
- 13 **A** **I went for two years to Dean Junior College. I**
14 **went for two years to Babson College.**
- 15 **Q** **Did you graduate Dean Junior?**
- 16 **A** **Yes, I did.**
- 17 **Q** **And what kind of a degree?**
- 18 **A** **Associates of Science and Business.**
- 19 **Q** **And did you then graduate from Babson?**
- 20 **A** **Yes.**
- 21 **Q** **And what kind of degree?**
- 22 **A** **A Bachelors in Science, majoring in marketing,**
23 **accounting and management.**
- 24 **Q** **And after you graduated from Babson, did you go**

1 to work?

2 A I - well, to school fellowship.

3 Q And where was the school fellowship?

4 A Northeastern University.

5 Q And what was the fellowship - what were the
6 subjects of the fellowship?

7 A I was teaching account 101 to the freshmen class
8 coming in, and in return I would take night classes
9 as a graduate student.

10 Q So you were working towards a degree?

11 A Yes.

12 Q Did you ever receive enough credits for that
13 degree?

14 A No.

15 Q At some point did you go to work?

16 A Yes.

17 Q Can you track your work history?

18 A Yes. After I left Northeastern I went to work for a
19 company called Siegrist and Hargrazes, which is a
20 CPA firm.

21 Q What were you doing for them?

22 A General accounting.

23 Q And approximately when was this?

24 A 1980.

1 Q And -

2 A After Segress and Hargraves I went to Stride Rite,
3 I worked for Sperry Topsider for about a year and a
4 half.

5 Q What did you do there?

6 A They're I was a financial analyst. It was my
7 responsibility to create a brand new accounting
8 department because it was newly acquired from
9 Uniroyal, a new acquisition, so they didn't have
10 any accounting staff at all. So, they had a
11 controller and then they hired me to hire and then
12 train all of the jobs.

13 Q By the way, Mrs. Rhodes, before we go any further,
14 I noticed every once and a while you were sitting
15 over there, and you were doing some exercises.
16 Could you tell the jury what you're doing?

17 A Yeah. Every twenty or thirty minutes I'm suppose
18 to relieve the pressure like this, (showing) so the
19 circulation flows and I don't get pressure sores.
20 And husband got me this ridiculous watch, they
21 make funny noises and vibrates when I have to.

22 Q So you're doing pressure -

23 A Pressure release for that, yes.

24 Q In fact, do you have any pressure sores right now?

1 **A** **Actually I do.**

2 **Q** **We'll get to that in a little bit, but I interrupted and**
3 **I apologize. You were at Stride Rite.**

4 **A** **I was at Stride Rite, oh, yeah.**

5 **Q** **How long were you there?**

6 **A** **I was there for about a year and a half.**

7 **Q** **And then where did you go?**

8 **A** **Then I went to Zayre Corp.**

9 **Q** **Doing what?**

10 **A** **I was a corporate internal auditor.**

11 **Q** **And how long were you there?**

12 **A** **I was there for about a year and a half. And then I**
13 **started my own practice.**

14 **Q** **Approximately when did you start your own**
15 **practice?**

16 **A** **Let's see, 1983. Yeah, 1983.**

17 **Q** **Did you have a name?**

18 **A** **Accounting Plus.**

19 **Q** **Accounting Plus?**

20 **A** **Yes.**

21 **Q** **And what was the business of Accounting Plus?**

22 **A** **Taking companies with manual accounting**
23 **systems and transferring them into a computerized**
24 **system and then teaching the staff how to use the**

1 computer.

2 Q And you were doing that as a consultant?

3 A As a consultant. Different kinds of companies.

4 Q And how long did you remain running the business
5 of Accounting Plus?

6 A I did that until 1990, and then simultaneously I
7 was also teaching at Mt. Ida on a part-time basis.

8 Q What were you teaching?

9 A Whatever business course needed to be taught.

10 Q Can you give some examples?

11 A Considered behavior, accounting 101, marketing,
12 you know, ethics; things like that.

13 Q Do you still work the Accounting Plus?

14 A No, I started - I stopped doing that and I started
15 my own antiques and collectibles business.

16 Q So you changed careers completely?

17 A Yes.

18 Q And when did you start working in the antiques
19 and collectibles?

20 A 1990.

21 Q And could you just briefly describe what the
22 antiques and collectibles business is? I know you
23 can get into a lot more detail about that later on.

24 A Okay. Briefly, you acquire through different

1 sources, at yard sales, flea markets, auctions,
2 estate sales, whatever, antiques – well, I don't do
3 – I do mostly collectible things that you feel the
4 public is willing to buy and you rent space for
5 some times some people have their own store but,
6 I rent space in stores and I put in the merchandise
7 in the stores and then people come – hopefully
8 come and buy all the merchandise and then I keep
9 restocking the shelves with new merchandise.

10 Q That's what you were doing before the accident?

11 A Yes.

12 Q I'm going to switch a little bit to your family.

13 When and where did you meet Harold?

14 A I met Harold in '82, July of '82 at the pool in Natick
15 Village.

16 Q You were living in Natick Village?

17 A Yeah.

18 Q Harold was living in Natick Village?

19 A Harold was living in Natick Village, yeah.

20 Q And you met him at the neighborhood pool?

21 A Yep.

22 Q You started to date?

23 A Yes.

24 Q How long did you date?

- 1 **A** **We were married in April of 1988, so we were – we**
2 **dated for less than a year. I mean, not '88, '83, I'm**
3 **sorry. '83.**
- 4 **Q** **You had me worried for a minute.**
- 5 **A** **Yeah. No, no.**
- 6 **Q** **So you got married in '83?**
- 7 **A** **Yes, we were married in '83. We met in '82 and**
8 **got married in '83.**
- 9 **Q** **Do you have any children?**
- 10 **A** **We have one daughter.**
- 11 **Q** **What's her name?**
- 12 **A** **Rebecca.**
- 13 **Q** **When was Rebecca born?**
- 14 **A** **April 8th, 1988.**
- 15 **Q** **Did you have any other attempts at children?**
- 16 **A** **Yes, we had two miscarriages.**
- 17 **Q** **You had two miscarriages?**
- 18 **A** **Yes.**
- 19 **Q** **Prior to Rebecca's birth?**
- 20 **A** **Yes.**
- 21 **Q** **When you got married, where did you live?**
- 22 **A** **We almost immediately moved into the house in**
23 **Milford, Massachusetts.**
- 24 **Q** **And is that the house that you're still living in?**

1 A Yes.

2 Q And when you moved to Milford, what work were
3 you doing at that time?

4 A I was still - I was starting the antique business.

5 Q So starting the antique business?

6 A Right.

7 Q And what work was Harold doing?

8 A Harold is a high tech consultant.

9 Q So he was a consultant in the high tech area?

10 A Yes, he consults with marketing departments and
11 all these new start-ups that we find out about
12 technology now, three years from now, he's
13 working on the marketing that will - we'll see
14 three years from now, because they're all
15 engineering firms. They don't know anything
16 about marketing, they need marketing person in
17 there to sell their product. So that's what he does.
18 He goes in and he creates a marketing for them
19 and helps them sell their product.

20 Q Before Rebecca was born, did you both continue
21 to work?

22 A Yes.

23 Q Were you able to start saving some money?

24 A Yes.

1 Q The money that you saved, did you consider that a
2 joint savings?

3 A Yes.

4 Q Can you describe the things that you used to do
5 together before Rebecca was born.

6 A Before Rebecca was born?

7 Q Yes, I'm talking now about recreational.

8 A Well we - we, every once a month we went down
9 to New York City where Harold's grandmother
10 lived to visit her. Otherwise we went out to
11 dinner, went out with other friends, shopping, just
12 the usual, movies, the usual things that couples
13 do.

14 Q Did you go on vacations together?

15 A We went on vacations up to New Hampshire and
16 down to the Cape.

17 Q And did Harold ever accompany you in any of your
18 antiquing or collectible functions?

19 A He came with me from time to time to flea
20 markets and the collectibles. I went once with
21 him to England, his company paid for me to go.
22 They have great collectibles in England.

23 Q Now, you purchased a house in Milford?

24 A Right.

1 Q Can you describe it?

2 A It is a – well, it's an eight room – seven or eight
3 room colonial. It's got a living room, a dining
4 room, kitchen, and a den on the first floor, four
5 bedrooms and a full bath on the second floor. And
6 there's also a half bath on the first floor. And
7 there's a semi-finished basement.

8 Q And is the basement used for anything?

9 A Harold uses that as his office.

10 Q Other than that?

11 A Washer, dryer.

12 Q When was Becca born, did you say?

13 A 4/8/88.

14 Q So she's how old now?

15 A Sixteen.

16 Q How old was she when the accident happened?

17 A Thirteen.

18 Q Could you describe your relationship with Becca
19 before the accident?

20 A We had a pretty close relationship. We did lots of
21 things together. We hung out. We'd go shopping
22 or we'd play hooky from school some days. I
23 believe that Harold doesn't even know that. We
24 just hung around with each other. Just did

1 **whatever – mostly what Becca wanted to do. But**
2 **we spent a lot of times in arcades, and she also**
3 **went with me to flea markets and yard sales,**
4 **things like that.**

5 **Q Did she have any hobbies that you assisted with?**

6 **A She collected – well, different times, different**
7 **trading cards. Like the Pokemon series, the**
8 **Digimon series, she collected Beanie Babies,**
9 **before the craze started, she was collecting**
10 **Beanie Babies. We have a large collection of**
11 **collectibles that some day will be worth**
12 **something.**

13 **Q Is it fair to say you spent a fair amount of time just**
14 **the two of you together?**

15 **A Yes, we did. We spent a lot of time together.**

16 **Q Can you describe right before the accident, what**
17 **kind of activities you used to do with Harold.**

18 **A With Harold. We mostly – we would try to eat as a**
19 **family at least Friday nights was Shabbat, if you're**
20 **Jewish, and we would try to go out as a family to**
21 **dinner at least one other night of the week.**
22 **Harold and I also made a point of going out to**
23 **dinner with just each other or maybe with another**
24 **couple, things like that. Otherwise, we went to**

1 the mall. We went to Cape Cod. We rented a
2 house for two weeks in Cape Cod. Went up to
3 Hampton Beach, you know. And visited his
4 grandmother a lot.

5 Q What about visiting friends?

6 A I visited my friends a lot. I didn't take Harold with
7 me because I usually was going to visit my friends
8 and we'd play Mah-jong and my husband can't
9 handle Mah-jong.

10 Q Did you used to go and visit your friends homes?

11 A Yes, I used to go - each week a different person in
12 the group would sponsor it, where, you know, have
13 to have the Mah-jong game at their house and you
14 were responsible for feeding them, you know,
15 giving them potato chips and M&M's and whatever
16 else if you were the hostess. So that there were
17 five people in the group, so one week out of every
18 five weeks they'd come to my house, and
19 otherwise I'd be going to their houses.

20 Q Do you still visit your friends homes?

21 A No, I can't get into their houses now.

22 Q Why not?

23 A They're all stairs. There's no ramps or wheelchair
24 accessibility.

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THE COURT: I think we'll suspend at

this point.

(RECESS)

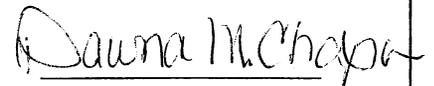
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COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

I, Dawna M. Chapin, an Official Court Reporter in and for the Commonwealth of Massachusetts, do hereby certify that the foregoing transcript represents a complete, accurate and true copy of my notes taken in the above-entitled matter, to the best of my knowledge, skill, and ability.



Dawna M. Chapin

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