

**IN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA**

JOSHUA KYLE HILL,	)	Civil Action File
	)	No. 17-C-07188-1
Plaintiff,)	
)	
v.)	
)	
COMMERCIAL VEHICLE GROUP, INC.)	
and CVG NATIONAL SEATING)	
COMPANY, LLC, (f/k/a National Seating)	
Company))	
)	
Defendants.)	
)	

**DEFENDANTS COMMERCIAL VEHICLE GROUP, INC. AND CVG NATIONAL
SEATING COMPANY, LLC'S MOTION FOR RECUSAL**

COME NOW Defendants COMMERCIAL VEHICLE GROUP, INC. and CVG NATIONAL SEATING COMPANY, LLC (“CVG”) (collectively, “Defendants”), by and through their undersigned counsel, and hereby move that, for the reasons set forth below and in the accompanying Affidavit of Frederick N. Sager, Jr., the Honorable Emily Brantley recuse herself from presiding over the above-referenced case, including the trial thereof, and that the case be reassigned to another judge, respectfully showing as follows:

I. INTRODUCTION

Defendants file this Motion for Recusal because the statements and conduct at trial by Presiding Judge Emily Brantley have demonstrated substantial bias in favor of the Plaintiff Josh Hill and prejudice against Defendants and their counsel which renders a fair trial for the Defendants impossible. Most representative are Judge Brantley’s words to the jury to implore them to return after the conclusion of the stay of the trial because of the coronavirus judicial emergency: “I’m going to have to ask you to come back. I hate to ask y’all that, but I am. To get a fair trial for Josh, I need y’all to come back.” Tr. 3/17/20 (Exhibit B to Sager Aff.) at 15.

Plaintiff Josh Hill is a quadriplegic injured in a tractor trailer rollover who is asserting product liability claims against the maker of the driver's seat.

Judge Brantley's prejudice against Defendants and their counsel was reflected in her statements as she carried on with trial for a full day after Georgia Supreme Court Chief Justice Harold Melton mandated the suspension of civil trials in his Order Declaring Statewide Judicial Emergency (Amended) ("Emergency Order") (Exhibit A to Sager Aff.). In dismissing the health concerns raised by Defendants' counsel in seeking the stay required by the Emergency Order, Judge Brantley expressed apparent animosity toward the predecessor of Defendants' counsel's firm and was dismissive of the rights of Defendants to select the lawyers of their choosing to represent them. Judge Brantley stayed the trial only after Defendants filed an Emergency Petition for Mandamus in the Supreme Court. Also indicative of her bias is that on the one hand Judge Brantley has gone to great lengths to ensure that Plaintiff Josh Hill "is allowed to tell his story," regarding the cause of the accident at issue, Tr. 3/16/20 pm (Exhibit E to Sager Aff.) at 99, while at the same time prohibiting Defendants from introducing evidence from their experts and from Plaintiff's own experts indicating that Hill's exculpatory story is impossible. In short, Judge Brantley's apparent prejudice against Defendants and their counsel and bias in favor of Plaintiff Josh Hill so blinded her, that she was willing to put the lawyers, their families, the jurors and courtroom personnel at serious health risk despite the Chief Justice's Emergency Order. Judge Brantley must recuse.

II. ARGUMENT AND CITATION OF AUTHORITIES

A. Applicable Standard for Recusal

The displayed bias and prejudice of Judge Brantley warrants recusal in this case. As the Supreme Court of Georgia has underscored, "[i]t is vital to the functioning of the courts that the

public believe in the absolute integrity and impartiality of its judges, and judicial recusal serves as a linchpin for the underlying proposition that a court should be fair and impartial.” *Mayor & Aldermen of the City of Savannah v. Batson-Cook Co.*, 291 Ga. 114, 114, 728 S.E.2d 189 (2012) (citations omitted). Rule 2.11(A) of the revised Code Of Judicial Conduct [formerly Rule 3(E)] provides that “[j]udges shall disqualify themselves in any proceeding in which their impartiality might reasonably be questioned,” including when “[t]he judge has a personal bias or prejudice concerning a party or a party’s lawyer” *Mondy v. Magnolia Advanced Materials, Inc.*, 303 Ga. 764, 767, 815 S.E.2d 70, 75 (2018).

“To warrant disqualification of a trial judge, the affidavit supporting the recusal motion ‘must give fair support to the charge of a bent of mind that may prevent or impede impartiality of judgment.’” *Birt v. State*, 256 Ga. 483, 485, 350 S.E.2d 241, 243 (1986) (citing *Jones v. State*, 247 Ga. 268, 271(4), 275 S.E.2d 67 (1981)). It is not necessary that there be shown “any actual impropriety on the part of the trial court judge. The fact that his impartiality ‘might reasonably be questioned’ suffices for his disqualification.” *Birt* 256 Ga. at 485 (citing *King v. State*, 246 Ga. 386, 390(7), 271 S.E.2d 630 (1980)). The operative question is whether “a fair-minded and impartial person would have a reasonable perception of a judge’s lack of impartiality based upon objective facts set forth in the affidavit or reasonable inferences therefrom.” *Mondy*, 303 Ga. at 768, 815 S.E.2d at 75.

The procedure for recusal is established by Uniform State Court Rule 25.1 – 25.3 (which by the terms of the rules are identical to Uniform Superior Court Rule 25.1.-25.3.)¹ Per Rule

¹ Uniform State Court Rules are referred to herein as U.St.C.R” and Uniform Superior Court Rules as “U.S.C.R.” The only difference between the two in Rule 25 is Rule 25.4, which establishes the procedure for assignment of the motion to another State Court judge.

25.1, motions must be accompanied by affidavit(s) setting forth the evidence.² Rule 25.2 requires that the supporting affidavit “shall clearly state the facts and reasons for the belief that bias or prejudice exists, being definite and specific as to time, place, persons and circumstances of extra-judicial conduct or statements, which demonstrate either bias in favor of any adverse party, or prejudice toward the moving party in particular, or a systematic pattern of prejudicial conduct toward persons similarly situated to the moving party, which would influence the judge and impede or prevent impartiality in that action.”

Rule 25.3 provides:

When a judge is presented with a motion to recuse, or disqualify, accompanied by an affidavit, the judge shall temporarily cease to act upon the merits of the matter and shall immediately determine the timeliness of the motion and the legal sufficiency of the affidavit, and make a determination, assuming any of the facts alleged in the affidavit to be true, whether recusal would be warranted. If it is found that the motion is timely, the affidavit sufficient and that recusal would be authorized if some or all of the facts set forth in the affidavit are true, another judge shall be assigned to hear the motion to recuse. The allegations of the motion shall stand denied automatically. The trial judge shall not otherwise oppose the motion. In reviewing a motion to recuse, the judge shall be guided by Canon 3 (E) of the Georgia Code of Judicial Conduct [now Rule 2.11(A) of the revised Code Of Judicial Conduct].

Id.; see *Mondy* 303 Ga. at, 766-769 (discussing the requirements of Rule 25). Application of these rules “does not require the exercise of discretion; rather, they present questions of law, for which the appropriate standard of review is *de novo*. *Batson-Cook*, 291 Ga. at 119, 728 S.E.2d at 194.

Applying these rules, the Supreme Court of Georgia has repeatedly found that affidavits establishing a pattern of prejudicial conduct or relationships evidencing the potential for bias or

² Rule 25.1 requires that “filing and presentation [of motions] to the judge shall be not later than five (5) days after the affiant first learned of the alleged grounds for disqualification, and not later than ten (10) days prior to the hearing or trial which is the subject of recusal or disqualification, unless good cause be shown for failure to meet such time requirements.” Those time periods are presently tolled by the terms of the Emergency Order, which provides that during the judicial emergency, it “suspends, tolls, extends, and otherwise grants relief from any deadlines or other time schedules or filing requirements imposed by otherwise applicable statutes, rules, regulations, or court orders, whether in civil or criminal cases or administrative matters.”

prejudice are sufficient to invoke these Rules. *See, e.g., State v. Fleming*, 257 Ga. 700, 701-03, 267 S.E.2d 207, 208-09 (1980) (allegation that judge was personally biased and prejudiced against the district attorney and had improperly discharged defendant's retained counsel); *Birt v. State*, 256 Ga. 483, 485, 350 S.E.2d 241, 243 (1986) (allegations of demonstrated bias); *Batson-Cook*, 291 Ga. at 119, 728 S.E.2d at 194 (potential bias reflected by family relationship with counsel and communication between judge and counsel); *Stephens v. Stephens*, 249 Ga. 700, 701-03, 292 S.E.2d 689, 690-92 (1982) (potential bias from judge's son acting as counsel).

B. Judge Brantley's Personal Pleas to the Jury Clearly and Unequivocally Reflect Bias in Favor of the Plaintiff

Here, as reflected in the Affidavit of Frederick N. Sager, Jr., lead counsel for Defendants, Judge Brantley has demonstrated bias and prejudice as to the parties by statements and conduct at trial. The most significant example is the bias she exhibited in favor of Plaintiff Josh Hill when she informed the jury that the trial would be stayed until the end of the judicial emergency established by the Chief Justice Melton's Order Declaring Statewide Judicial Emergency (Amended) ("Emergency Order") (Exhibit A to Sager Aff.). Judge Brantley came off the bench, and immediately in front of the jury box told the jury: "I'm going to have to ask you to come back. I hate to ask y'all that, but I am. **To get a fair trial for Josh, I need y'all to come back.**" Exhibit B to Sager Aff.at 15. (emphasis added). Judge Brantley did not tell the jury that they needed to be impartial or keep an open mind until Defendants had had the opportunity to put on their case and all the evidence was closed.

Further, Judge Brantley underscored her personal bias in favor of the plaintiff by stating to the jury "And I know it's a lot to ask to come back, and you can't talk about it, but I need you to do it for me, and I'm very appreciative. Okay?" *Id.* at 17. Her statements communicated to the

jury and to any objective observer that Judge Brantley's personal attitudes are skewed in favor of doing justice for Plaintiff.³

C. Judge Brantley Showed Conscious Disregard for Defendants' Lawyers Concerns Over the Dangers of COVID-19

Judge Brantley's expressions of bias against Defendants' counsel's firm, hostility to the right of Defendants to be represented by the lawyers of their choosing, and the willingness to violate the letter and clear meaning of the Chief Justice's March 14, 2020 Emergency Order even though in doing so she was putting the health of Defendants' counsel's family members who are highly at risk in potential jeopardy is beyond significant and alarming. Specifically, to address this public health emergency, the Emergency Order directs that courts should address where feasible "essential functions, and in particular courts should give priority to matters necessary to protect health, safety and liberty of individuals." Exhibit A to Sager Aff. at 1. The Order permits "trials in any criminal case for which a jury has been empaneled and the trial commenced" to continue to conclusion, but no such provision is made for civil trials to continue. *Id.* at 2. The Order applies to all judicial proceedings and is in effect through April 13, 2020. The plain meaning of the Order⁴ is that civil trials should be suspended immediately throughout the state. Sager Aff. ¶ 6.

Following the Chief Justice's Emergency Order on Saturday, March 14, 2020, Judge Brantley did not respond to multiple informal inquiries made by defense counsel to her staff

³ Judge Brantley stated to the jury "I have a duty as a judge to make sure everybody that walks in my courtroom gets a fair trial, but I also have to balance that with the safety and well-being of everybody that comes in my courtroom, and the community." Exhibit B to Sager Aff. at 16. This statement did not undo the communicated desire of Judge Brantley to have the jury return with the purpose of giving Plaintiff Josh Hill justice.

⁴ In a March 18, 2020 interview with WSB-TV, Chief Justice Melton stated that under his Emergency Order, "most civil matters should stop." He said that while judges can continue to work in chambers, "that doesn't involve bringing people into the courthouse." The Chief Justice further stated that judges should not "bring in groups of people into the courthouse unless it involves critical matters – critical matters are defined as those matters that deal with life and liberty." Sager Aff. ¶ 14; accessed 3/24/20 at <https://www.wsbtv.com/news/local/courthouses-across-georgia-limit-services-responding-covid-19/RB4KDDGCNZFSNBNJNSUCMJJE6I/>

attorney regarding the status of the trial in light of the Emergency Order. Sager Aff. ¶ 7. Defendants had no choice but to then file the next evening, March 15, their Emergency Motion to Stay or Suspend Trial and for Mistrial, seeking to implement the terms of the Emergency Order. Exhibit C to Sager Aff.

Defendants further supported their Emergency Motion with affidavits from trial team members Christopher Byrd and Gary Toman who have immediate families who are at high risk from COVID-19 under CDC guidelines. *Id.* David Dial, managing partner of Weinberg Wheeler Hudgins Gunn and Dial, also submitted an affidavit regarding the danger to professionals and staff of the firm and their families.

On the morning of March 16, Judge Brantley announced that the trial was going forward and refused to hear argument on Defendants' motion. She later agreed to hear the Emergency Motion after lunch. Tr. 3/16/20 am session (Exhibit D to Sager Aff.) at 1. When argument occurred later that day, Judge Brantley expressed apparent animus toward Defendants' counsel's firm. Judge Brantley, who had been a lawyer at predecessor Long Weinberg Ansley and Wheeler, did not become part of Weinberg Wheeler Hudgins Gunn and Dial after it was formed in July 1999 following the dissolution of Long Weinberg Ansley and Wheeler. Sager Aff. ¶ 9. Judge Brantley stated:

Mr. Byrd. I understand your concern about your child. I used to work for your firm – I guess everybody here knows that – for a long time. And the entire time I worked for what was Long Weinberg Ansley & Wheeler, I was a single mother of a little girl who spent her life in a wheelchair with compromised immune. **Do you think anybody gave me a break on trials or deposition or out-of-town travel?** I did it anyway. I found a way to make it happen and - because I had a client to represent. I'm not diminishing your concern. There's – how many lawyers y'all got? Fifty? They're all good. Mr. Ralston is good. He can step up in your place if that's necessary.

Exhibit E to Sager Aff. at 17 (emphasis supplied). Certainly, Defendants and their counsel recognize and are sympathetic towards the health issues faced by Judge Brantley's child. However, Judge Brantley's comments have nothing to do with the present situation and reflect an unfortunate animus regarding her previous employment. The coronavirus is a global pandemic where exposure of high-risk family members is dangerous and potentially fatal. Mr. Byrd was not seeking a "break"; he was describing the real danger created by the continuation of the trial despite the Chief Justice's Emergency Order. Sager Aff. ¶ 10.

Of great concern is also Judge Brantley's disregard⁵ for the right of Defendants to be defended by counsel of their own choosing. Partner Christopher Byrd gave Defendant's opening statement and conducted cross examination of numerous witnesses. Mr. Byrd has over twenty years of trial experience and has been involved in this case since its inception, has deposed many of the witnesses, was intricately involved in document production, and is integral to the defense of this case. Sager Aff. ¶11. Yet in rejecting his concerns about the risk to his son from continuing the trial despite the Emergency Order, Judge Brantley stated that he could be replaced by Ben Ralston, who is a fine young associate but has only three years of experience. Exhibit E to Sager Aff. at 17.

Judge Brantley likewise summarily dismissed the concerns for risks to the health of partner Gary Toman's family by stating that there was no need for him to attend trial.

He's an appellate. He is not participating at trial. He's just an attorney here to see if there's an appellate issue. So you can go forward with the trial without him.

Exhibit E to Sager Aff. at 8. Toman has over thirty-five years of trial and appellate experience. Sager Aff. ¶ 12. He was added to the trial team to provide input on trial matters and strategy and

⁵ While Judge Brantley was denying Defendant's Motion for emergency relief, the same day, March 16, a caption was placed at the top of the Gwinnett County web pages of Judge Brantley and other Judges expressly referring to the Chief Justice's Emergency Order. That caption is still in place

for appellate purposes. Defendants have an absolute right to have Byrd and Toman act as their counsel, and flagrant disregard of that right can reflect bias justifying recusal. *See State v. Fleming*, 245 Ga. at 701-03, 267 S.E.2d 207, 208-09.

Left with no alternative after Judge Brantley dismissed health concerns as a reason to stay the trial, Defendants filed an Emergency Petition for Mandamus in the Supreme Court of Georgia on the evening of March 16. The next morning, before the Supreme Court could rule but after the Plaintiff was allowed to rest his case at the end of the day on March 16, Judge Brantley reversed her decision and stayed the trial for the duration of the judicial emergency.

D. Judge Brantley Has Further Demonstrated Bias to Let Plaintiff Tell His Exculpatory Story but Barring Defendants from Introducing Evidence From Both Party's Experts that the Exculpatory Story is Not Supported By The Evidence.

This case involves the rollover of a tractor trailer that was loaded with paper rolls, and Plaintiff asserts product liability claims against the maker of the driver's seat. Further demonstrating her bias, during the trial, Judge Brantley has emphasized her insistence to let Plaintiff "tell his story" but at the same time denying Defendants the right to put on evidence to rebut key aspects of that story. Specifically, a significant issue at trial is the amount of fault that should be apportioned to Plaintiff for causing the rollover accident that led to his injuries. Plaintiff testified in deposition that just before the accident, he felt the load of paper rolls in the trailer shift. He even filed suit against Georgia Pacific, which had loaded the trailer with the paper rolls, for negligently loading the trailer and causing the accident. Sager Aff. ¶ 15. Yet the experts for both Plaintiff and Defendants agree that there is no evidence that any load shift occurred. Sager Aff. ¶ 16.

At trial, Judge Brantley permitted Plaintiff to testify to his perception that the load shifted, ruling "this man can get up and give his perception of what happened that day. And if

that means he wants to say it felt like a load shift, he could, but that's it. ... This is the only time you can talk about load shift. Exhibit E to Sager Aff. at 99. Judge Brantley concluded the discussion stating: "I want him to be able to tell his story what happened that day." *Id.*

Thereafter, at trial, Plaintiff Josh Hill was permitted to testify that immediately preceding the truck rolling onto its side, there was a "boom" and the "truck shifted:

At this particular time, as I'm going right into the beginning of the turn, I hear a loud boom. At that time, the truck shifted, I tried to catch it, and it really didn't do anything. It goes over on its side. Exhibit E to Sager Aff. at 58.

At the same time, Judge Brantley instructed counsel that none of the experts could discuss the issue of load shift, not even to give their opinion that there was no evidence of load shift. (*E.g.* Tr. 3/11/20, Exhibit F to Sager Aff. at 88-89.) Indeed, in a proffer, Plaintiff's expert Michael Sutton testified that Hill's load shift explanation was not possible in light of the evidence. *Id.* at 108-110 (proffer of Plaintiff's expert Michael Sutton). This evidence is highly relevant to rebut Plaintiff's testimony that he was not at fault but rather other forces, outside of his control, caused the accident. While Judge Brantley permitted Plaintiff Josh Hill to tell his story, however contrary to the actual evidence, Defendants were not permitted to present to the jury their story – that all experts agree that Plaintiff's account of load shift is contradicted by the actual evidence. Sager Aff. ¶ 19.

In sum, Judge Brantley's actions and comments reflect a palpable bias for Plaintiff Josh Hill and a prejudice against Defendants and their counsel. Under these circumstances, Judge Brantley's impartiality might reasonably be questioned, and therefore she must recuse.

WHEREFORE, Defendants respectfully request that Judge Emily Brantley recuse herself from further participation in this case, or that this motion be referred to another judge as provided by the applicable rules and that she be ordered to recuse.

This 25th day of March, 2020.

Respectfully submitted,

WEINBERG WHEELER HUDGINS GUNN
& DIAL, LLC

/s/ Frederick N. Sager

Frederick N. Sager, Jr.,

Georgia Bar No.: 622070

Christopher T. Byrd

Georgia Bar No.: 100854

Gary J. Toman

Georgia Bar No. 714651

Benjamin P. Ralston

Georgia Bar No.: 918489

Attorneys for Commercial Vehicle Group, Inc.,

and CVG National Seating Company, LLC

(f/k/a National Seating Company)

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Atlanta, Georgia 30326
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Fax: (404) 875-9433

CERTIFICATE OF SERVICE

This is to certify that I have this day served opposing counsel with a copy of the foregoing by filing the same in the Court's electronic filing system (Odyssey efileGA) which automatically sends a service copy via email notification to all counsel of record.

This 25th day of March, 2020.

Respectfully submitted,

WEINBERG WHEELER HUDGINS GUNN
& DIAL, LLC

/s/ Frederick N. Sager

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*Attorneys for Commercial Vehicle Group, Inc.,
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COMMERCIAL VEHICLE GROUP, INC.,)	
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LLC, (f/k/a National Seating Company),)	
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Defendants.)	
)	
)	
)	

AFFIDAVIT OF FREDERICK N. SAGER, JR.

COMES NOW Affiant, FREDERICK N. SAGER, JR., who after being duly sworn, deposes and says:

1.

My name is Frederick N. Sager, Jr. I am a partner at Weinberg Wheeler Hudgins Gunn & Dial, LLC and lead counsel for Defendants Commercial Vehicle Group, Inc., CVG National Seating Company, LLC. (collectively referred to herein as “CVG”) in the trial of the above-styled case. I am competent to give this affidavit based on my personal knowledge.

2.

Judge Emily Brantley has demonstrated bias and prejudice as to the parties by statements and conduct at trial. The most significant example is the bias she exhibited in favor of Plaintiff Josh Hill when she informed the jury that the trial would be stayed until the end of the judicial emergency established by Chief Justice Harold Melton’s Order Declaring Statewide Judicial Emergency (Amended) (“Emergency Order”) (Exhibit A hereto). On the morning of Tuesday, March 17, 2020, Judge Brantley came down off of the bench, and directly in front of the jury

box, told the jury: “I’m going to have to ask you to come back. I hate to ask y’all that, but I am. To get a fair trial for Josh, I need y’all to come back.” Tr. 3/17/20 at 15. (The transcript is attached as Exhibit B). Judge Brantley did not tell the jury that they needed to be impartial or keep an open mind until Defendants had had the opportunity to put on their case and all the evidence was closed.

3.

Judge Brantley further underscored her personal bias in favor of the Plaintiff by stating to the jury “And I know it’s a lot to ask to come back, and you can’t talk about it, but I need you to do it for me, and I’m very appreciative. Okay?” *Id.* at 17.

4.

These statements communicated to the jury and to any objective observer that Judge Brantley’s personal attitudes are skewed in favor of doing justice for Plaintiff.

5.

Also significant are Judge Brantley’s expressions of bias against Defendants’ counsel’s firm, the right of Defendants to be represented by the lawyers of their choosing, and her willingness to violate the letter and spirit of the Chief Justice’s Emergency Order even though in doing so she was putting the health of Defendants’ counsel’s family members who are highly at risk in potential jeopardy.

6.

Specifically, to address this public health emergency, the Emergency Order directs that courts should address where feasible “essential functions, and in particular courts should give priority to matters necessary to protect health, safety and liberty of individuals.” Ex. A at 1. The Order permits “trials in any criminal case for which a jury has been empaneled and the trial

commenced” to continue to conclusion, but no such provision is made for civil trials. *Id.* at 2. The Order applies to all judicial proceedings and is in effect through April 13, 2020. The plain meaning of the Order is that civil trials should be suspended immediately throughout the state.

7.

Following the Chief Justice’s Emergency Order on Saturday, March 14, 2020, Judge Brantley did not respond to multiple informal inquiries made by defense counsel to her staff attorney regarding the status of the trial in light of the Emergency Order. Defendants had no choice but to then file the next evening, March 15, their Emergency Motion to Stay or Suspend Trial and for Mistrial, seeking to implement the terms of the Emergency Order. (Exhibit C hereto).

8.

Defendants further supported the motion with affidavits from trial team members Christopher Byrd and Gary Toman who have immediate family members who are at high risk from COVID-19 under CDC guidelines. *Id.* David Dial, Managing Partner of Weinberg Wheeler Hudgins Gunn and Dial, also submitted an affidavit regarding the danger of the virus to professionals and staff of the firm and their families.

9.

On the morning of March 16, Judge Brantley announced that the trial was going forward and refused to hear argument on Defendants’ Emergency Motion. She later agreed to hear the Emergency Motion after lunch. Tr. 3/16/20 am session (Exhibit D) at 1. When argument occurred later that day, Judge Brantley expressed apparent animus toward Defendants’ counsel’s firm. Judge Brantley, who had been a lawyer at predecessor Long Weinberg Ansley and Wheeler, did not become part of Weinberg Wheeler Hudgins Gunn and Dial after it was formed

in July 1999 following the dissolution of Long Weinberg Ansley and Wheeler. Judge Brantley stated:

Mr. Byrd. I understand your concern about your child. I used to work for your firm – I guess everybody here knows that – for a long time. And the entire time I worked for what was Long Weinberg Ansley & Wheeler, I was a single mother of a little girl who spent her life in a wheelchair with compromised immune. Do you think anybody gave me a break on trials or deposition or out-of-town travel? I did it anyway. I found a way to make it happen and - because I had a client to represent. I'm not diminishing your concern. There's – how many lawyers y'all got? Fifty? They're all good. Mr. Ralston is good. He can step up in your place if that's necessary. Tr. 3/16/20 pm session, Exhibit E at 17.

10.

Certainly, Defendants and their counsel recognize and are sympathetic towards the health issues faced by Judge Brantley's child. However, Judge Brantley's comments have nothing to do with the present situation and reflect an unfortunate animus regarding her previous employment. This is a global pandemic where exposure of high-risk family members is dangerous and potentially fatal. Mr. Byrd was not seeking a "break"; he was describing the real danger created by the continuation of the trial despite the Chief Justice's Emergency Order.

11.

Of great concern is also Judge Brantley's disregard for the right of Defendants to be defended by counsel of their own choosing. Partner Christopher Byrd gave Defendant's opening statement and conducted cross examination of numerous witnesses. Mr. Byrd has over twenty years of trial experience and has been involved in this case since its inception, has deposed many of the witnesses, was intricately involved in document production, and is integral to the defense of this case. Yet in rejecting his concerns about the risk to his son from continuing the trial despite the Emergency Order, Brantley stated that he could be replaced by Ben Ralston, who is a fine young associate but has only three years of experience. Ex. E. at 17.

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Judge Brantley also summarily dismissed the concerns for risks to the health of partner Gary Toman's family by stating that there was no need for him to attend trial.

He's an appellate. He is not participating at trial. He's just an attorney here to see if there's an appellate issue. So you can go forward with the trial without him. *Id.* at 8.

Toman has over thirty-five years of trial and appellate experience. He was added to the trial team to provide input on trial matters and strategy and for appellate purposes. Defendants have an absolute right to have Byrd and Toman act as their counsel.

13.

Left with no alternative after Judge Brantley dismissed health concerns as a reason to stay the trial, Defendants filed an Emergency Petition for Mandamus in the Supreme Court of Georgia on the evening of March 16. The next morning, before the Supreme Court could rule on the Petition, Judge Brantley reversed her decision and stayed the trial for the duration of the judicial emergency.

14.

Georgia Supreme Court Chief Justice Melton was interviewed on WSB-TV on March 18, 2020 regarding the Emergency Order that he issued four days earlier. The interview is posted at <https://www.wsbtv.com/news/local/courthouses-across-georgia-limit-services-responding-covid-19/RB4KDDGCNZFSNBNJNSUCMJJE6I/> (accessed 3/24/20.). In the interview, Chief Justice Melton stated that under his Emergency Order, "most civil matters should stop." He said that while judges can continue to work in chambers, "that doesn't involve bringing people into the courthouse." The Chief Justice further stated that judges should not "bring in groups of people into the courthouse unless it involves critical matters – critical matters are defined as those matters that deal with life and liberty."

15.

This case involves the rollover of a tractor trailer and asserts product liability claims against CVG, the maker of the tractor trailer's driver's seat which is located inside the tractor's cab. During the trial, Judge Brantley has further emphasized her insistence to let Plaintiff "tell his story" but at the same time denying Defendants the right to put on evidence to rebut key aspects of that story. Specifically, a significant issue at trial is the amount of fault that should be apportioned to Plaintiff for causing the rollover accident that led to his injuries. Plaintiff testified in deposition that just before the accident, he felt the load of paper rolls in the trailer shift. He even filed suit against Georgia Pacific, which had loaded the trailer, for causing the accident by improperly loading the paper rolls. Yet the experts for both Plaintiff and Defendants agree that there is no evidence that any load shift occurred.

16.

At trial, Judge Brantley permitted Plaintiff to testify to his perception that the load shifted, ruling:

this is what my order was, is that this man can get up and give his perception of what happened that day. And if that means he wants to say it felt like a load shift, he could, but that's it. He doesn't go beyond that and talk about previous times and previous load shifts and other experience and what somebody told him about a load shift or anything else. This is the only time you can talk about load shift. Exhibit E at 99.

17.

Judge Brantley concluded the discussion stating: "I want him to be able to tell his story what happened that day." *Id.*

18.

Thereafter, at trial, Josh Hill was permitted to testify that immediately preceding the truck rolling on its side, there was a “boom” and the “truck shifted:

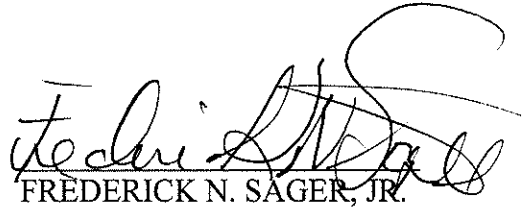
At this particular time, as I'm going right into the beginning of the turn, I hear a loud boom. At that time, the truck shifted, I tried to catch it, and it really didn't do anything. It goes over on its side. Exhibit E at 58.

19.

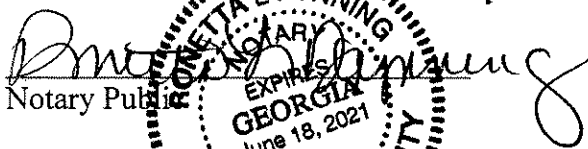
At the same time, Judge Brantley instructed counsel that none of the experts could discuss the issue of load shift, not even to give their opinion that there was no evidence of load shift. (*E.g.* Tr. 3/11/20, Exhibit F hereto at 88-89). Indeed, in a proffer, Plaintiff's expert Michael Sutton testified that Plaintiff's load shift explanation was not possible in light of the evidence. *Id.* at 108-110 (proffer of Plaintiff's expert Michael Sutton). This evidence is highly relevant to rebut Plaintiff's testimony that suggested to the jury that he was not at fault but rather other forces caused the accident. *Id.* While Judge Brantley permitted Plaintiff Josh Hill to tell his story, however contrary to the actual evidence, Defendants were not permitted to present to the jury their story – that all experts agree that Plaintiff's story is contradicted by the actual evidence.

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FURTHER AFFIANT SAYETH NOT.


FREDERICK N. SAGER, JR.

Sworn to and subscribed before me
this 24th day of March, 2020.


Notary Public
My commission expires

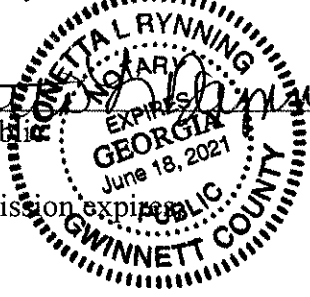
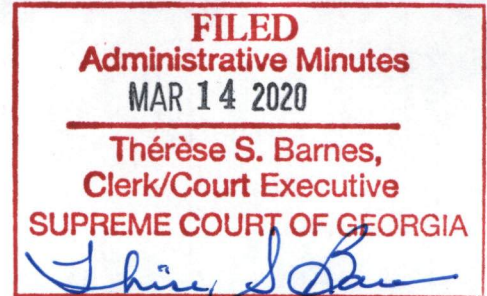


EXHIBIT A



SUPREME COURT OF GEORGIA



March 14, 2020
(Amended)

ORDER DECLARING STATEWIDE JUDICIAL EMERGENCY

WHEREAS, the Governor has determined that a Public Health State of Emergency exists in the State of Georgia due to the spread of the Coronavirus/COVID-19, and whereas that state of emergency constitutes a “judicial emergency” pursuant to OCGA § 38-3-60 et seq., see OCGA § 38-3-60 (2).

Now therefore, pursuant to OCGA § 38-3-61, the Honorable Harold D. Melton, Chief Justice of the Supreme Court of Georgia, DOES HEREBY ORDER AND DECLARE a Statewide Judicial Emergency in the State of Georgia. The nature of this emergency is the continued transmission of Coronavirus/COVID-19 throughout the State and the potential infection of those who work in or are required to appear in our courts.

Thus, in order to protect the health, safety, and liberty of all citizens in this State, the undersigned hereby declares a Statewide Judicial Emergency affecting all courts and clerk’s offices in the State as it relates to all judicial proceedings.

To the extent feasible, courts should remain open to address essential functions, and in particular courts should give priority to matters necessary to protect health, safety, and liberty of individuals. Essential functions are subject to interpretation; however, some matters that fall into the essential function category are: (1) where an immediate liberty or safety concern is present requiring the attention of the court as soon as the court is available; (2) criminal court search warrants, arrest warrants, initial appearances, and bond reviews; (3) domestic abuse temporary protective orders and restraining orders; (4) juvenile court delinquency detention hearings and emergency removal matters; and (5) mental health commitment hearings.

In addition, trials in any criminal case for which a jury has been empaneled and the trial has commenced as of the date of this order shall continue to conclusion, unless good cause exists to suspend the trial or declare a mistrial. The decision whether to suspend a criminal trial or declare a mistrial rests with the judge presiding over the case.

To the extent court proceedings are held, they should be done in a manner to limit the risk of exposure, such as by videoconferencing, where possible.

Pursuant to OCGA § 38-3-62, during the period of this Order, the undersigned hereby suspends, tolls, extends, and otherwise grants relief from any deadlines or other time schedules or filing requirements imposed by otherwise applicable statutes, rules, regulations, or court orders, whether in civil or criminal cases or administrative matters, including, but not limited to any: (1) statute of limitation; (2) time within which to issue a warrant; (3) time within which to try a case for which a demand for speedy trial has been filed; (4) time within which to hold a commitment hearing; (5) deadline or other schedule regarding the detention of a juvenile; (6) time within which to return a bill of indictment or an accusation or to bring a matter before a grand jury; (7) time within which to file a writ of habeas corpus; (8) time within which discovery or any aspect thereof is to be completed; (9) time within which to serve a party; (10) time within which to appeal or to seek the right to appeal any order, ruling, or other determination; and (11) such other legal proceedings as determined to be necessary by the authorized judicial official.

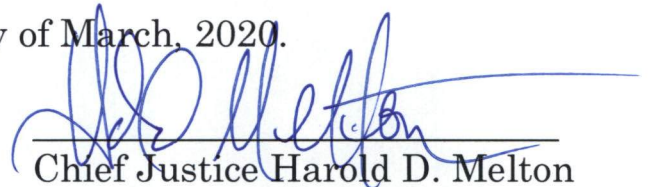
This Statewide Judicial Emergency shall terminate on April 13, 2020, at 11:59 p.m., unless otherwise extended.

Should the state of emergency extend beyond the period indicated above or should the nature of the emergency otherwise require modification, a determination of available alternative remedies for the conduct of court business will be made as necessary, and a corresponding order will be entered and distributed in accordance with Georgia law.

IT IS FURTHER ORDERED, pursuant to OCGA § 38-3-63, that notice and service of a copy of this Order shall immediately be sent to the judges and clerks of all courts in this State and to the clerk of the Georgia Court of Appeals, such service to be accomplished through means to assure expeditious receipt, which include electronic means; and

IT IS FURTHER ORDERED that notice shall also be sent to the media, the State Bar of Georgia, and the officials and entities listed below and shall constitute sufficient notice of the issuance of this Order to the affected parties, counsel for the affected parties, and the public.

IT IS SO ORDERED this 14th day of March, 2020.



Chief Justice Harold D. Melton
Supreme Court of Georgia

cc:

Governor Brian P. Kemp
Lt. Governor Geoff Duncan
Speaker David Ralston
State Bar of Georgia
Administrative Office of the Courts
Judicial Council of Georgia
Council of Superior Court Clerks of Georgia
Department of Juvenile Justice
Criminal Justice Coordinating Council
Council of Accountability Court Judges
Georgia Commission on Dispute Resolution
Institute of Continuing Judicial Education of Georgia
Georgia Council of Court Administrators
Chief Justice's Commission on Professionalism
Judicial Qualifications Commission
Association County Commissioners of Georgia
Georgia Municipal Association
Georgia Sheriffs' Association
Georgia Association of Chiefs of Police
Georgia Public Defender Council

Prosecuting Attorneys' Council of Georgia
Department of Corrections
Department of Community Supervision
Georgia Court Reporters Association
Board of Court Reporting
State Board of Pardons and Paroles

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the
minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto
affixed the day and year last above written.

 . Clerk

EXHIBIT B

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P-R-O-C-E-E-D-I-N-G-S

THE DEPUTY: All rise, come to order.

THE COURT: All right. Good morning, everyone. Please be seated.

All right. All right. As a judge, my duty is to provide access to the courts for everyone. I -- and I take that duty very seriously, and have tried to do this in this case to proceed in spite of the rapidly unfolding events that we have been faced with locally and as a nation. I have taken into consideration the wishes of those who began this trial over one week ago, especially the members of the jury.

I have consulted with the JQC in an attempt to ensure my conformity with the Supreme Court of Georgia's emergency order. My consideration of all the circumstances in this case has indicated that providing a forum for justice in this case was a necessary duty of this Court. However, last night I probably spent the better part of my night reviewing the most recent information going on with the CDC, as well as listening to recent information released by the President.

The situation as we face as a community and as a nation is rapidly changing, and has changed quite a bit since Friday until last night. The gravity of the situation has changed significantly; and in consideration of the

1 information that I have now learned, the most recent
2 information requires that this Court stay this trial at
3 this time. I have signed an order this morning staying the
4 case which reads as follows: "Whereas the Governor has
5 determined that a public health state of emergency exists
6 in the state of Georgia due to the spread of the
7 coronavirus; and whereas that state of emergency
8 constitutes a judicial emergency pursuant to
9 O.C.G.A. 38-3-60, and in consideration of the order
10 declaring a statewide judicial emergency issued pursuant to
11 O.C.G.A. 38-3-61, by the Honorable Harold D. Melton, Chief
12 Justice of the Supreme Court of Georgia, this Court does
13 hereby order that the above-styled matter be stayed until
14 further notice, and until such time as trial can be
15 continued in the interest of health, safety, and liberty of
16 all citizens in this state.

17 This action will be reset and notice will be issued to
18 all affected parties in due course. Signed this morning.
19 Stamp-filed copies will be provided to each of you.

20 Currently, pursuant to judicial order of this --
21 Gwinnett State Courts will be closed until April 13th. If
22 our courts reopen for business on the 14th, I will call
23 this case back in as soon as possible. I have been given
24 the full support of my bench to get this case called back
25 in and finished as quickly as possible. I will ask this

1 panel of jurors to return, but there's no guarantees, as
2 you know.

3 So I'm now going to call in the jury and advise them of
4 -- of this, the Court's decision.

5 MR. CONLEY: Thank you, Your Honor. And I -- I don't
6 know what the -- your power is, but I think that for all
7 the reasons we've already said, a restart kills us and
8 helps them. We all know that. And I think if you tell
9 this jury you want them to come back, and you ask them -- I
10 don't know if you can order them to. I don't know if
11 you're comfortable doing that, but if you ask them to come
12 back, Your Honor, I believe they will. And I believe that
13 not only because it inures to our client, but to the
14 benefit to this court system, and everybody else, that we
15 don't have to spend the time and effort to restrike another
16 jury.

17 And we understand that means our evidence is going to
18 be the most stable, because they haven't put up any. But
19 we're comfortable with that, and I think I would ask --
20 Judge, I've never asked -- never told you what to do, I
21 don't think, ever, and I'm not now, but I would ask that
22 you -- if you ask this jury in your way to come back, I
23 believe we'll get them back. And I sure hope we do. And
24 thank you.

25 MR. SAGER: I really don't know if Your Honor has the

1 power to order them to come back. I don't think you do.
2 Our position, I think Your Honor probably knows, is we
3 think a mistrial is the most appropriate and we would start
4 over, but with that said, that's all I really have to say
5 about it, Your Honor.

6 THE COURT: Well, the Court certainly is concerned as
7 to whether or not Josh Hill can get a fair trial now. It
8 recognized that plaintiff has put all their evidence,
9 defense has put up none, and that does place you at a
10 disadvantage. I certainly recognize that you've already
11 spent a great amount of resources putting up your evidence,
12 that the defense -- there's no harm to the defense. All
13 the harm that could come over a mistrial comes your way.
14 So I'll try my best to get this jury back. I can't
15 guarantee I can, you know --

16 MR. CONLEY: We understand that, Your Honor.

17 THE COURT: I'm going to talk to them and -- and I hope
18 that that can happen. This is the very -- I've never
19 experienced anything like this, ever, and was quite
20 surprised when I began to look at all the reports last
21 night, how quickly things have changed since when I checked
22 Friday and I asked them to come back this week. It's a
23 totally different picture now.

24 And, you know, I mean, as a judge, I have many roles,
25 and one is to make sure everybody that comes in my

1 courtroom, plaintiff and defendant, get a fair trial, but
2 also I've got to protect the people in my courtroom and the
3 community, and I am not comfortable that I can continue to
4 do that anymore. So I think -- I believe this is the right
5 decision. And as I said, if we're -- if we're --
6 hopefully, we're back in court in April. I will recognize
7 any leaves of absence that were filed before the trial
8 started. Any that were filed during the trial, or anytime
9 thereafter, will not be honored. And a court that is being
10 stayed and continued should take precedence over any other
11 civil or criminal matter. So there should be no legal
12 conflicts. And --

13 MR. SAGER: One -- I'm sorry.

14 THE COURT: -- and I don't know if I have the authority
15 to require them to come back. I will certainly research
16 that issue and reach out to the State bar as well as the
17 Council of State Court Judges, and whomever else I need to
18 seek -- you know, look to for advice to see if that is --
19 if I have such authority. I would rather they do it
20 voluntarily.

21 MR. CONLEY: And, Your Honor, may I make one point on
22 that issue that I've been thinking about on this, in the
23 event this moment came? Is there -- I don't believe there
24 is any doubt that if we got to a Thursday, and there was a
25 hurricane coming, that you could say, "Ladies and

1 gentlemen, for our safety, we're not going to have court
2 tomorrow or Monday, but you got to come back on Tuesday."
3 I've had that happen. I know that has happened, for
4 various reasons. Any number of reasons, "I've got a --
5 I've got a trip I've got to take Friday to attend a judge
6 meeting and it's Thursday, you got to come back Monday."
7 And I don't know why the change in the amount of that time
8 would alter your power. Does that make sense?

9 Because the only difference here is that we're talking
10 about a longer amount of time, not the Court's power. The
11 Court has the power to say, "We're taking three days off."
12 I mean, California, you might try a case Monday, Tuesday,
13 Thursday, come back ten days later. It happens all the
14 time. So when you're -- and we -- you always study this
15 stuff, and we appreciate it. And when you're studying it,
16 though, I want -- I would like you to have that thought in
17 mind that -- because so many times we think about it, and
18 we're in a weird time and we're all freaked out. We are,
19 we're all freaked out, but when you get rid of the
20 freakiness and you think about the logistics of it, the
21 only difference is we're talking about a longer amount of
22 time.

23 Now, the party that would object because of the longer
24 amount of time, would be us, because we would say, "Oh, no,
25 that's prejudicial to us because it's going to be a long

1 time. They're going to forget our case." We would be the
2 only people who would have an objection to that time that
3 the Court would normally have to do 1, 2, 3, 4 days, being
4 longer. We're not objecting in any way, shape, or form.
5 We are willing.

6 Everyone has got to pay a price from -- from this, and
7 that is a price we are willing to pay and I think we will
8 pay, I don't see the fundamental -- the question is not --
9 I don't believe the question is can the jury -- can the
10 Court make them come back. You can make them come back
11 tomorrow. The difference -- if I understand your ruling,
12 you're not doing that. I'm not trying to argue that. I'm
13 just saying when we -- when we get away from the furor and
14 we think, "Well, hey, we've got to take a break from the
15 trial, can we bring it back?" Unless the party harmed by
16 it objects, I think you can do that. And that's -- that's
17 really my main point on that issue.

18 And let me also just tell Your Honor. Our firm had
19 another trial that started March 9th in DeKalb County in
20 front of Judge Mike Jacobs, also a significant trial. They
21 adjourned on Friday and Judge Jacobs suspended the case at
22 the close of the plaintiff's evidence, and has ordered them
23 to come back June 15th with the same jury. So I think --
24 again, I'm not suggesting or telling the Court what to
25 go -- what to do, but I do know of another case, because it

1 directly implicates our firm, where another trial judge,
2 Mike Jacobs -- who I think is a very intelligent jurist --
3 has agreed to do that, and that jury is coming back when he
4 was available in June. So I offer that to the Court as
5 additional, perhaps, resource, whatever you want to do with
6 it. But I don't think what we're asking for -- when you
7 strip away the hysteria of what is going on -- is really
8 that unusual of a request, for many, many reasons, we could
9 list a thousand of them, the Court may not be able to go
10 forward for a little bit. And we just happen to have one
11 that is unprecedented in any of our lifetimes.

12 But it doesn't -- at the end of the day, I have a --
13 I'm a person of faith and optimism, and I believe that when
14 we all go and we quit going to bars and restaurants and we
15 get in our houses and we stop the spread of this thing, and
16 warmer weather comes, and sanity returns to our lives,
17 we're going to come back. And when we are, Josh Hill is
18 still going to be in a wheelchair, the evidence is still
19 going to be what it is, and this jury is more qualified
20 than anybody else because they've already taken part of
21 that journey with us. And that's what I'm saying about --
22 and yesterday, you could have pushed me over with a feather
23 when you -- you gave a juror, in the middle of the worst
24 health scare in any of our lifetimes, the opportunity to go
25 home, and they unanimously said, "Press on."

1 That is the -- that is what our country is about, and
2 that's why I want you to tell these people, "Ladies and
3 gentlemen, thank you for being willing to go on. Everyone
4 is asked to sacrifice. We ask you, we know it's asking a
5 lot, but the Court asks you to please come back. When we
6 can do this, we're going to let you know and we're going to
7 finish this, and we hope you'll join us." Because that is
8 justice in this crazy, crazy time that we are living in.
9 And I believe, if you ask them, those people will do it,
10 because they know you care. As do we. Thank you.

11 THE COURT: Well, I did -- I'll let you -- I did send
12 out, you know, asking if anybody else had been faced with a
13 -- any type of situation like that, and I did have several
14 judges respond. Like one, that they had a bomb scare in
15 the courthouse. They had to send all the jurors home for
16 two days. It was, like, five, ten years ago, but,
17 basically, the only difference was the amount of time, it
18 was two days and not 30 days, but they had to ask the
19 jurors to come -- leave and come back, you know. So things
20 like that do happen.

21 A tragedy happens and maybe the Court -- so it -- it
22 has happened, to your point, Mr. Conley, and I -- but I
23 can't tell you what -- what gives me the authority right
24 now. I think I have it as well, but I'll have to research
25 that. But I am going to -- to ask them to come back.

1 MR. CONLEY: Thank you, Your Honor. That's all -- we
2 know you can't guarantee it.

3 MR. SAGER: And, Your Honor, I'll be -- I'll be brief.
4 The big concern we have -- I know it's a concern of the
5 Court, in a situation like this, which is unknown. We have
6 no idea how long this is going to be. We hope it's as
7 short as it can possibly be and we can get rid of this
8 thing and get back to normal life, is the concern we have
9 -- you have in every trial, which is the jurors at night
10 getting on the Internet. They're going to be bored, we're
11 all going to be stuck in our houses and -- and nobody knows
12 how long, is them researching, doing that sort of thing.
13 Would certainly ask Your Honor -- I'm sure you're probably
14 planning to do that if you're going to ask them to come
15 back, which you are, to please, please, please pay careful
16 attention to that. And that's a big concern of ours, as
17 well as the length of time. Who knows -- and I understand
18 Mr. Conley's point, if it's two or three days, or a month,
19 but if it's two months or three months, or however long it
20 is, it's going to be very difficult to just pick up where
21 we were with this jury. I mean, it just is.

22 And for those reasons -- and also -- and, Cale, you
23 know this better than me, but my understanding is with
24 Judge Jacobs' case -- and correct me if I'm wrong -- has
25 reserved the opportunity to declare a mistrial. That's our

1 understanding, and I was going to mention it yesterday but
2 I ran out of time. That case that is.

3 So for those reasons, Your Honor, that's our position,
4 a mistrial is more appropriate.

5 MR. CONLEY: I think the Court always reserves the
6 right to -- to grant a mistrial, or anything else --

7 THE COURT: I don't want y'all to underestimate the
8 Gwinnett County jurors. I have never -- they take this
9 serious, they take their duty and responsibility serious,
10 and I would be shocked if they don't follow my instructions
11 that they are not to research and talk about it. They are
12 very honorable people; they do a good job; I'm very proud
13 to represent them. I don't think that's going to be an
14 issue, Mr. Sager, but I will certainly address that.

15 MR. SAGER: Thank you.

16 MR. CONLEY: And yesterday when you instructed them, I
17 think it was a lot -- it had been a long day, we all know.
18 You said -- and I don't think you meant to say it the way
19 you did, but you said, "Don't watch the news," and I think
20 that got -- everyone has got to be able to watch the news
21 in a general sense, to know what's going on, but they --
22 that they're not -- first of all, there has been no press
23 coverage of this case. We've not attempted to, other than
24 CVN covering it, and I don't know anybody outside of the
25 courtroom that knows it's going on. But just to make it

1 clear --

2 THE COURT: Well, that's not true. I know a lot of
3 people that watch that that aren't lawyers.

4 MR. CONLEY: That's why I mentioned them. I'm not --
5 I'm not --

6 THE COURT: And it doesn't mean that, what is it? Tony
7 Thomas or -- won't come here and -- and do --

8 MR. CONLEY: I understand. I just, when you give the
9 instruction for the plaintiff, if you tell them they can't
10 watch any news for --

11 THE COURT: Well, I should have said that --

12 MR. CONLEY: -- the rest of this duration, I'm afraid
13 they won't come back, because --

14 THE COURT: Yeah.

15 MR. CONLEY: -- they're going to say, "To hell with
16 that, I'm watching the news." Just to be clear, that
17 they're not to watch any -- if something were to come on
18 the news or radio about the case --

19 THE COURT: I thought that's what I said.

20 MR. CONLEY: -- change the station.

21 THE COURT: I thought I said, "If you watch the news
22 and see anything about this trial, you've got to turn it
23 off or walk away"?

24 MR. CONLEY: You did in the precharge, I just want to
25 make sure.

1 THE COURT: Okay.

2 MR. CONLEY: I'm sorry, Your Honor. I'm not trying to
3 nitpick --

4 THE COURT: No, no, that's fine.

5 MR. CONLEY: -- it's just big. But we also agree -- in
6 fact, Georgia law is that the jury is presumed to follow
7 the instructions of the Court; so . . .

8 THE COURT: I've never had a problem with a Gwinnett
9 jury not -- not doing that.

10 MR. CONLEY: Okay.

11 THE COURT: They're really good, honorable people, and
12 they follow the instructions. Or that has been my
13 experience with them, so -- but I certainly will talk to
14 them about that again.

15 MR. CONLEY: Then Your Honor's ruling been made, I
16 think let's get them out of here. I would suggest that
17 while we're all here, can we handle -- once the jury is
18 gone, can we handle the tender of the evidence --

19 THE COURT: Oh, sure.

20 MR. CONLEY: -- that has piled up? Because we're going
21 to clear out of here.

22 THE COURT: Sure. You reserved that, yes.

23 MR. CONLEY: And while we just have it there, that way
24 we know we've tendered what was done. When we leave, that
25 we've reached that point. There is the exhibits. I

1 presume the Court will maintain those during the duration
2 of the stay?

3 THE COURT: Yes. And I want to go through those and
4 make sure we have -- we know what we have, so if we're
5 going to take care of them, we're -- I can seal them up. I
6 don't want anybody later to say, "We submitted an exhibit
7 and the Court lost it," so we can --

8 MR. CONLEY: That was my point.

9 THE COURT: We can take care of all that, but let me go
10 ahead and speak to the jurors now. Did you have anything
11 else, Mr. Sager?

12 MR. SAGER: No, Your Honor.

13 THE COURT: All right. Bring them in.

14 (Jury enters the courtroom at 10:10 a.m.)

15 THE BAILIFF: May I bring them in?

16 THE COURT: Yes. Okay, please be seated.

17 I know you know something's up --

18 JURY PANELIST: I just said, "She's coming around,
19 something's going on."

20 THE COURT: Yes. You know, ladies and gentlemen, the
21 last time I was down here was on Friday when I learned that
22 our Chief Superior Court judge, Judge Hutchinson, had
23 entered an order that the Courts would be closed, and --
24 but any case that was in progress could continue. And I
25 looked at what the CDC was saying, and what our -- our

1 President was saying, and, you know, tried to look at the
2 different news medias, as well as look at, you know, the
3 resources online about the coronavirus and to feel
4 comfortable bringing y'all back. God forbid anything
5 happen to one of you, that would be -- I don't know if I
6 could forgive myself.

7 But last night when I went home, I did that same type
8 of research, then went online. And from Friday until last
9 night, things have rapidly changed, and I no longer feel
10 that I could -- can provide you safety here, that we are
11 going to be okay. We have taken all kinds of precautions
12 to sanitize the courthouse, but the risk I now believe I
13 might expose you to, is one I'm not willing to take. And
14 for all these people here. You go home to families. There
15 is nothing more important in this world than family; you
16 know, the children, mom and daddy, husband and wives, I
17 just can't take that risk anymore. I'm going to have to
18 ask you to come back.

19 I hate to ask y'all that, but I am. To get a fair
20 trial for Josh, I need y'all to come back. Okay?

21 Okay. I am so proud of y'all. I really am. You stuck
22 with me, you've agreed to come back, even knowing there
23 were -- I know you knew there was some risk to you but you
24 came back anyway. You, everyone of you, you should be
25 proud of yourself. Pat yourself on the back. If I could

1 hug you, I would, because you are what makes this system
2 great. Remember when I talked to you about how good our
3 system of justice is? Every one of you carry that, because
4 you've hung in there with us and you've come back, even
5 when it wasn't convenient. You could have stayed at home,
6 you came back. I'm very proud of you, all of you. But
7 your health and well-being, I mean, I -- is first. I have
8 a duty as a judge to make sure everybody that walks in my
9 courtroom gets a fair trial, but I also have to balance
10 that with the safety and well-being of everybody that comes
11 in my courtroom, and the community.

12 So I am going to -- I have signed an order this morning
13 that stays the trial, and I will be asking y'all to return.
14 This case should be -- we should -- when you come back, the
15 defense is telling me about a day and a half, two days to
16 present their evidence, closing arguments, and y'all
17 deliberate. No more than a week of your time. I have to
18 ask you, it's going to be hard but you got to -- I know
19 you'll do it for me. I know you will. You can't talk
20 about it. So, you know, you'll go back and everybody is
21 going to say, "Where have you been all this time?"

22 "Well, I was in Judge Brantley's courtroom for a
23 trial." You can tell them it's a product liability case,
24 but you can't tell them anything about it. And they're
25 going to want to know what went on, what happened? And

1 you're going to have to tell them you're under an order of
2 silence. That you can't discuss it.

3 If any one of you do discuss it, I'd have to mistry it.
4 You can't do any research. You've heard a lot about the
5 parties and about this is product liability about seats and
6 seatbelts and everything, you can't do any research. Your
7 decision has to be based upon the evidence that you heard
8 during this trial, and that you will hear. Any of you who
9 did it, do any research, I would have to mistry it.

10 These -- these lawyers want you trying it, so this is
11 important. And I know it's a lot to ask to come back, and
12 you can't talk about it, but I need you to do it for me,
13 and I'm very appreciative. Okay? So I want y'all to go
14 home, take good care of yourself. I don't want to hear --
15 I don't want any of y'all to get sick. I'm going to pray
16 for each and every one of you. I'm going to -- I've got
17 used to looking at y'all's face every day, I'm going to
18 miss you. And I am going to very much look forward to
19 seeing you again. Okay? So to each of you I say,
20 "Namaste."

21 JURY PANELIST: Thanks.

22 JURY PANELIST: Thank you.

23 THE COURT: All right. Thank you.

24 JURY PANELIST: Do we just come back --

25 THE COURT: This is what I'll ask when you go back, I

1 ask you to give your telephone number -- which we all have
2 but give us a telephone number -- and if you have an
3 e-mail. We will be getting in touch with you in advance,
4 you know. If you have employers, you can put them on
5 notice, "Judge Brantley is going to order us to come back."
6 If they've got a problem, they can call me or e-mail me.
7 In fact, we have cards. Will you make sure they get cards?
8 That will have my e-mail, the Court, so if you have any
9 questions. But we'll -- we'll let you know. We'll give
10 you -- you know, right now it's closed through April 13th,
11 so that means April 14th, but I don't know, it may be
12 closed longer, you know. But we'll -- we'll tell you as
13 quickly as we can. Okay? And I thank you. I appreciate
14 it.

15 JURY PANELIST: All of our notes will be kept here?

16 THE COURT: They will be -- I will have them -- yeah,
17 we will -- we will seal them. I'll have our bailiffs seal
18 them. They will be put in my chambers. No one will see
19 them.

20 JURY PANELIST: What about our badges?

21 THE COURT: Yeah. We will -- are those just -- do they
22 have your number on them?

23 JURY PANELIST: Uh-huh. Yeah.

24 THE BAILIFF: Give them to Abby Carter in jury
25 assembly.

1 THE COURT: We will also take those up, put those in
2 one of our envelopes, right now, in my division, so we can
3 give you back your -- your same documents.

4 But, yeah, when you come back, we'll give you back your
5 badges and your pad and pens, and we'll continue just like
6 we were going forward today. All right?

7 Okay. Thank you so much.

8 (Jury leaves the courtroom at 10:19 a.m.)

9 THE COURT: Do we have the orders for these? And I'll
10 go back up on the bench; okay?

11 THE DEPUTY: All right.

12 THE COURT: Y'all can be seated.

13 THE DEPUTY: Remain seated, come to order.

14 THE COURT: All right. Mr. Conley, at this time if you
15 would like to tender some evidence.

16 MR. CONLEY: I would, Your Honor. I'll start off -- as
17 you may recall, Plaintiff's Exhibit 484 that we've
18 discussed quite a bit, Mr. Sager and I now have fully gone
19 through it. You had asked Mr. Popper to tab some pages, so
20 I didn't remove the tabs, but we have agreed -- we have
21 removed a bunch of the documents, or pages from this --

22 THE COURT: Yes. So I don't think I need to see the
23 tabbed portion.

24 MR. CONLEY: I just didn't want them removed. You had
25 ordered them and I didn't want to remove them in any -- in

1 any violation of your order.

2 THE COURT: No. You certainly may remove them now.
3 That was only if y'all couldn't reach agreement and I had
4 to look at them.

5 MR. CONLEY: And we did reach agreement, Mr. Sager and
6 I did, as of this morning, and I believe I can now tender
7 PX484 as amended by agreement of the parties without
8 objection.

9 THE COURT: Is that true?

10 MR. SAGER: That is, Your Honor.

11 THE COURT: All right. So Plaintiff's Exhibit Number
12 PX484 is admitted into evidence without objection.

13 (Plaintiff's Exhibit Number PX484 was admitted.)

14 MR. CONLEY: And that was also identified previously as
15 Exhibit 3 of Blankenship.

16 THE COURT: All right.

17 MR. CONLEY: And I think Mr. Popper or Mr. Abrams are
18 addressing the rest of them that came in mainly over the
19 last few days.

20 MR. POPPER: The other one, Your Honor, was PX208.
21 This was Ms. Vargas' life care plan tables. And we
22 discussed it with defense counsel, the redaction of the
23 page about the specific vehicle, and I believe no objection
24 over redaction?

25 MR. SAGER: Well, that's over objection. I think we

1 had objected to the whole thing yesterday, but y'all were
2 going to redact that. So we still have our -- we reserve
3 -- we still have our objection to this coming in, Your
4 Honor.

5 THE COURT: Okay. What's the basis of your objection?

6 MR. SAGER: It's a report. I mean, it's -- I don't
7 think we have --

8 THE COURT: Let me see it. Go ahead, Mr. Sager.

9 MR. SAGER: -- reports going back to the jury. She
10 testified to all of this. We contend it's hearsay
11 duplicative of her testimony.

12 (Hands document to the Court.)

13 MR. CONLEY: Your Honor, it's not hearsay. She wrote
14 it and testified about it, so I --

15 MR. SAGER: Well --

16 THE COURT: Yeah, it's not -- and I don't consider this
17 continuing witness rule either. It's just the items, the
18 purpose, and the costs, sort of like medical bills and
19 expenses.

20 Well, why do we need -- all right. All right. There's
21 one page here that just has three sentences, I don't know
22 if that's necessary, but --

23 MR. ABRAMS: I would be fine with taking that
24 sentence -- that out.

25 THE COURT: Okay. So we'll -- it's Bates-stamped 05164

1 of Exhibit PX208. You're willing to take that out?

2 MR. ABRAMS: Yes, Your Honor.

3 MS. ALABI: Okay. If you would remove that.

4 MR. POPPER: Yes, Your Honor.

5 MR. SAGER: Could I see the sentence, just to make
6 sure?

7 MR. POPPER: Yes.

8 MR. SAGER: Thank you. Okay.

9 MR. POPPER: So, Your Honor, we will completely remove
10 that page.

11 THE COURT: All right. And you're going to put this
12 down with the other exhibits?

13 MR. POPPER: Yes, Your Honor.

14 THE COURT: All right. So Plaintiff's Exhibit PX208 is
15 admitted into evidence over objection.

16 (Plaintiff's Exhibit Number PX484 was admitted.)

17 MR. POPPER: The next one, Your Honor, is PX389. And
18 this would have been Plaintiff's Exhibit 2 to the
19 deposition of Lynn Wray. It's the prehospital care report
20 discussed in his deposition, and we've shown this to
21 defense counsel.

22 MR. SAGER: No objection.

23 THE COURT: All right. It's PX what?

24 MR. POPPER: 389, Your Honor.

25 THE COURT: Plaintiff's Exhibit PX389 is admitted into

1 evidence without objection.

2 (Plaintiff's Exhibit Number PX389 was admitted.)

3 MR. POPPER: The next one, Your Honor, is PX390. This
4 is Exhibit 3 to the deposition of Lynn Wray I played
5 yesterday. This has also been provided to defense counsel.

6 MR. SAGER: No objection.

7 THE COURT: Plaintiff's Exhibit PX390 is admitted into
8 evidence without objection.

9 (Plaintiff's Exhibit Number PX390 was admitted.)

10 MR. POPPER: The next one, Your Honor, is PX391. It
11 was Exhibit 5 to the deposition of Lynn Wray.

12 MR. SAGER: No objection.

13 THE COURT: Plaintiff's Exhibit PX391 is admitted into
14 evidence without objection.

15 (Plaintiff's Exhibit Number PX391 was admitted.)

16 MR. POPPER: The next one, Your Honor, is PX392. It
17 was Exhibit 4 to the video deposition of Lynn Wray.

18 MR. SAGER: No objection.

19 THE COURT: Plaintiff's Exhibit PX392 is admitted into
20 evidence without objection.

21 (Plaintiff's Exhibit Number PX392 was admitted.)

22 MR. POPPER: The next one, Your Honor, is PX393, and it
23 was Exhibit 6 to the deposition of Lynn Wray yesterday as
24 well.

25 MR. SAGER: No objection.

1 THE COURT: Plaintiff's Exhibit PX393 is admitted into
2 evidence without objection.

3 (Plaintiff's Exhibit Number PX393 was admitted.)

4 MR. POPPER: The next one is PX394. It was Exhibit 7
5 to the video deposition of Lynn Wray yesterday.

6 MR. SAGER: No objection.

7 THE COURT: Plaintiff's Exhibit PX394 is admitted into
8 evidence without objection.

9 (Plaintiff's Exhibit Number PX394 was admitted.)

10 MR. POPPER: PX517 is a medical record. It was
11 Exhibit 2 to the video deposition of Dr. John Lin
12 yesterday.

13 MR. SAGER: No objection.

14 THE COURT: Tell me the number again.

15 MR. POPPER: PX517.

16 THE COURT: Plaintiff's Exhibit PX517 is admitted into
17 evidence without objection.

18 (Plaintiff's Exhibit Number PX517 was admitted.)

19 MR. POPPER: The next one, Your Honor, is PX518. It's
20 also a medical record that was Exhibit 3 to the video
21 deposition of John Lin yesterday, Your Honor.

22 MR. SAGER: No objection.

23 THE COURT: Plaintiff's Exhibit PX518 is admitted into
24 evidence without objection.

25 (Plaintiff's Exhibit Number PX518 was admitted.)

1 MR. POPPER: The next one, Your Honor, PX519. This was
2 Exhibit 4 to the deposition of Dr. John Lin yesterday.
3 Another Shepherd Center medical record.

4 MR. SAGER: No objection.

5 THE COURT: Plaintiff's Exhibit PX519 is admitted into
6 evidence without objection.

7 (Plaintiff's Exhibit Number PX519 was admitted.)

8 MR. POPPER: The next one, Your Honor, is PX520.
9 Again, a Shepherd Center medical record, and it was
10 Exhibit 5 to the deposition of John Lin yesterday.

11 MR. SAGER: No objection.

12 THE COURT: Plaintiff's Exhibit PX?

13 MR. POPPER: 520, Your Honor.

14 THE COURT: Is admitted into evidence without
15 objection.

16 (Plaintiff's Exhibit Number PX520 was admitted.)

17 MR. POPPER: And PX522, this is one of Defendant's
18 Exhibits to the deposition of Dr. John Lin yesterday. It's
19 a medical record as well.

20 MR. SAGER: No objection.

21 THE COURT: Plaintiff's Exhibit PX522 is admitted into
22 evidence without objection.

23 (Plaintiff's Exhibit Number PX522 was admitted.)

24 MR. POPPER: PX523 was Defendant's Exhibit 2 to the
25 deposition of John Lin yesterday. It's a photo of

1 radiology.

2 MR. SAGER: No objection.

3 THE COURT: Plaintiff's Exhibit PX523 admitted is into
4 evidence without objection.

5 (Plaintiff's Exhibit Number PX523 was admitted.)

6 MR. POPPER: PX524 is also a radiology photo that was
7 an exhibit to Dr. John Lin's deposition yesterday.

8 MR. SAGER: No objection.

9 THE COURT: Plaintiff's Exhibit PX524 is admitted into
10 evidence without objection.

11 (Plaintiff's Exhibit Number PX524 was admitted.)

12 MR. POPPER: And, finally, Your Honor, is PX525, and it
13 is a photo of Mr. Hill that was an exhibit to Dr. Lin's
14 deposition yesterday.

15 MR. SAGER: No objection.

16 THE COURT: Plaintiff's Exhibit PX525 is admitted into
17 evidence without objection.

18 (Plaintiff's Exhibit Number PX525 was admitted.)

19 THE COURT: All right. And what I would suggest,
20 Mr. Popper, is just so these exhibits are not in just -- so
21 inorganized that when the jurors get them, they don't --
22 they're looking through them and trying to organize and
23 separate them, is let's put all of the, like, medical
24 records of Shepherd, all of those exhibits together and
25 maybe put a clip. If we can do some kind of organization

1 so they're just not inundated with all these documents and
2 they're trying to separate them.

3 Do you mind doing that?

4 MR. POPPER: No. I'm happy to, Your Honor.

5 THE COURT: And I've some bigger clips also, and rubber
6 bands.

7 MR. BYRD: We have some to enter, Your Honor.

8 THE COURT: Okay. And I'm just --

9 MR. POPPER: Is it okay if we do some organization like
10 that after they tender theirs in?

11 THE COURT: Sure. Yeah. As long as -- I just want to
12 make sure I get them all. And y'all verify that I have
13 what I'm supposed to have before I take possession of them.
14 And I can give you clips and things. I'll get you some
15 more, but here's some. So we can keep them all organized.

16 All right. Did -- did the plaintiff have any more
17 exhibits?

18 MR. CONLEY: Not that we're aware of, Your Honor.

19 MR. POPPER: Not that we're aware of.

20 MR. SAGER: And the defendants have some to move in as
21 well, Your Honor.

22 THE COURT: Sure.

23 MR. SAGER: We would like to move in Defendant's
24 Exhibit C353B, which are the driver's logs which we covered
25 with Mr. Hill on the stand yesterday.

1 MR. CONLEY: No objection.

2 THE COURT: Defendant's Exhibit C353B is -- did you say
3 B?

4 MR. SAGER: B as in boy.

5 THE COURT: Yeah. Is admitted into evidence without
6 objection.

7 (Defendant's Exhibit Number C353B was admitted.)

8 MR. SAGER: Also, Defendant's Exhibit C291, which is
9 the bill of lading covered with Mr. Hill yesterday.

10 MR. POPPER: No objection.

11 THE COURT: Defendant's Exhibit C291 is admitted into
12 evidence without objection.

13 (Defendant's Exhibit Number C291 was admitted.)

14 MR. SAGER: And then my last one, and then I'll pass it
15 to Mr. Byrd, is Defendant's Exhibit C353A, which is the
16 Strava information about Mr. Hill's bike rides for two
17 days, that's on the same page, December 26 and 27, which we
18 covered with him on the stand yesterday.

19 MR. POPPER: No objection.

20 THE COURT: All right. Defendant's Exhibit C353A is
21 admitted into evidence without objection.

22 (Defendant's Exhibit Number C353A was admitted.)

23 THE COURT: And you're going to put those up here?

24 MR. SAGER: I will. Thank you, Your Honor.

25 THE COURT: Okay.

1 MR. BYRD: And we've gone -- the plaintiffs have looked
2 through this this morning. I don't think there's any
3 objection to these. If there is, they can speak up. So we
4 would move in Defendant's Exhibit C107, which is the
5 Kenworth T660 data book.

6 MR. CONLEY: No objection. Can I just say, I think we
7 can make this quicker by saying: We think that's a whole
8 lot to put back on the jury, but we don't have any
9 objection to them. And if he wants to just read out all
10 the numbers at one time, I don't -- we don't feel a need to
11 go through each document. While that is -- there is some
12 air of formality to that that is kind of nice --

13 THE COURT: Well --

14 MR. CONLEY: We don't need -- if he wants to read all
15 the numbers, what I'm going to say is: No objection.
16 So . . .

17 THE COURT: Okay. The only reason I've had problems in
18 the past when we've done that is they'll say, "No, that
19 wasn't admitted," and then I didn't repeat it. So that's
20 the reason I go through that painstaking process of
21 repeating them. But, listen, it's not --

22 MR. CONLEY: I normally like it but, you know.

23 THE COURT: But I have to say this, I told y'all this
24 at the beginning of the trial, don't send a bunch of
25 manuals back there that they're going to read.

1 MR. CONLEY: I mean, that is -- that is -- I mean, that
2 is our only, quote, objection, close quote, is there's a
3 lot of stuff in there that isn't -- I mean -- I mean, I'm
4 not saying it's irrelevant, but there's a whole lot of
5 stuff there that is a concern, but, you know, I take -- you
6 ask what's my legal objection? I've got to have a legal
7 objection, and I don't -- there's no way we can go through
8 every page and pull pages out and do all that, I just -- so
9 that's our position, Your Honor.

10 THE COURT: Okay. Is there any way to narrow some of
11 that?

12 MR. BYRD: Well, not at this point, Your Honor. And
13 part of the reason we want to get these into evidence is
14 because we're going to use them with other witnesses and we
15 might want to use them in closing. So I don't -- I don't
16 expect the jury to go through and read a technical manual
17 on -- on rollover testing I, but I do want to show them
18 that this rollover testing was conducted and when it was
19 conducted. So --

20 THE COURT: Well, this is what I'll do --

21 MR. BYRD: -- I'm happy to read in --

22 THE COURT: If y'all agree, I'm going to reserve ruling
23 on some of those till I look at them, and dependent on how
24 much you use them and -- but, like, I told you about the
25 last case I tried, the John Bernecker trial, and they got

1 in two big manuals, I guess that AMC had produced. They
2 were reading the whole manual. I mean, they thought that
3 was their job. They were taking -- because they were going
4 through and -- so that's my only fear that they'll -- that
5 they'll think they're responsible for reading all that that
6 you put into evidence. So we can wait till trial and see
7 what pages you use, and then maybe there's a manual there
8 that -- you know, ten pages are significant and you just
9 want to put the beginning and the end and those, or we can
10 talk to the jury about it, but my job is to make sure what
11 goes out to them is not confusing and misleading, so I will
12 -- I'll reserve ruling on some of those until the end of
13 the trial, and we'll see what pages are relevant and they
14 need to have.

15 MR. BYRD: Well --

16 THE COURT: I mean, if there's -- if there is a section
17 on there about tires, that's irrelevant to any issue in
18 this case thus far and they don't need that back there.

19 MR. BYRD: Well, I don't believe there's going to be a
20 section about tires, but the relevance, from our
21 perspective, is that these studies were conducted and that
22 they were conducted with the participation or the knowledge
23 of PACCAR, and that's why we want to be able to use them.
24 You know, the jury, I think, has the prerogative to review
25 and the right to review the evidence, if they want to.

1 What I've heard from the plaintiffs is that they don't
2 really have a basis for objecting, and I don't want to play
3 the part of trying to piecemeal something and then be
4 accused in closing of not giving them all the evidence. So
5 we can -- we can talk about that later, if you like. I
6 understand your position. My -- our position would be that
7 we're entitled to put these documents into evidence.

8 THE COURT: Well, give me one of them. Hand me one of
9 those thick ones and let me look at it.

10 MR. BYRD: Which one would you like?

11 THE COURT: All right. That one or the next one. Let
12 me look at it.

13 MR. BYRD: So this is the SAE -- this is Exhibit C42.
14 This is the SAE heavy-truck crashworthiness report for
15 Phase 2. You will recall that there were three phases.

16 THE COURT: I do.

17 (Hands document to the Court.)

18 MR. CONLEY: Your Honor, when you're ready, I have
19 something to add.

20 THE COURT: Well, a lot of it is just attachment, which
21 I don't know if you'll refer to those or the experts will.
22 It looks like the vast majority of this big exhibit is
23 attachments with charts.

24 Like, for example, I'm going to give you an example,
25 like D, which is that many documents, are those charts.

1 Now, if your expert talks about those charts, that's all it
2 is, charts.

3 MR. BYRD: Uh-huh.

4 THE COURT: And if he talks about those charts and
5 they're relevant to his testimony, then okay. But to send
6 that back and they're trying to figure out why that was
7 sent back is unnecessary. That's the kind of things I want
8 to keep from going back with them.

9 MR. BYRD: Well, here's the --

10 THE COURT: But I won't know till you put up your
11 evidence.

12 MR. BYRD: Right. I feel like we can address this at a
13 later time.

14 THE COURT: We can.

15 MR. BYRD: But my point would be, Your Honor, is Larry
16 Bean -- Mr. Meyer's is on the stand, he's testified -- he's
17 testified about the SAE and how the heavy-truck
18 crashworthiness task force looked at rollovers. Larry
19 Bean, who you've not heard from yet, the guy who -- I guess
20 we're going to get the honor of playing his deposition.

21 THE COURT: But I read his deposition twice.

22 MR. BYRD: Right. And he testified that he was
23 involved in the SAE heavy-truck crashworthiness task force
24 all through this process. That PACCAR funded the SAE
25 heavy-truck crashworthiness task force, so this is relevant

1 because what they're -- you know, their case is essentially
2 that we should have warned PACCAR about rollovers and about
3 occupant kinematics, and to the extent PACCAR is engaging
4 in these sorts of studies about rollovers on this level,
5 that is absolutely relevant. And I want to be able to tell
6 the jury, "Hey, listen, these are -- here's the studies
7 that they were doing. And you're telling -- they've made
8 the point that CVG isn't involved in these studies. So
9 this certainly is relevant. And, of course, I'm not going
10 to say -- try and interpret this chart, but what the jury
11 will be able to understand is that PACCAR's nobody's fool
12 when it comes to rollovers, it's nobody's fool when it
13 comes to the technology available that they could put in
14 their trucks, so all of this is relevant for our case.

15 THE COURT: Okay. Well, I hear your -- your point in
16 that, and I don't want to eliminate anything that might
17 support your defense, but I'm just saying that if your --
18 if those charts aren't mentioned by your expert, and the --
19 and there be testimony about it, why those charts are there
20 or what those charts show, and they're not relevant,
21 there's no need to send them out. A big, thick stack of
22 charts that is never mentioned or talked to.

23 I'm not talking about the written part of it, but,
24 really, I'm at disadvantage because I don't know what your
25 experts are going to say, so you can go ahead and tender

1 them, I'm just -- this is what I'll do. I'm going to admit
2 them into evidence subject to redactions, and we'll look at
3 them before they go out to the jury, we'll know what your
4 experts have said, and anything in there that's not
5 relevant to the testimony, I'll ask you to remove.

6 MR. CONLEY: Thank you, Your Honor.

7 THE COURT: Did you have anything else?

8 MR. CONLEY: I think you kind of just -- I mean, I was
9 going to say the other unusual part of this is we haven't
10 heard their -- their witness. Some of those may become
11 relevant in their entirety when the witness talks about
12 them.

13 THE COURT: Well, they may if the expert refers to
14 these charts and explains what they mean and they have
15 relevance, then they come in.

16 MR. CONLEY: You know, we heard your -- we heard it
17 loud and clear -- and have heard it, all along, your
18 statement about trying to reach agreements. Which we've
19 tried to do, and we continue to try to do, and that's why
20 -- we went through that stuff. None of it hurts us. So we
21 don't -- I mean, at the end of the day our only concern is
22 you're giving the jury a bunch of stuff that they may pore
23 through that you've already said. So we're -- we are -- we
24 don't think it needs to be decided now and we understand
25 your ruling and I think we're ready -- we're good to go.

1 THE COURT: I'll let you go ahead and tender them.
2 They have not objected to them. But I'm -- and I'll go
3 ahead and admit them into evidence, subject to any
4 necessary redactions because they're not relevant and could
5 confuse or mislead the jury.

6 MR. BYRD: Okay. And I made my -- I don't want to
7 repeat my position.

8 THE COURT: Yeah, I got you. So name them all and I'll
9 just list them and --

10 MR. BYRD: Do you want me to just read the exhibit
11 number or do you want me to read the document into --

12 THE COURT: You don't have to read the document. You
13 can just read the exhibit number.

14 MR. BYRD: Okay. It's C107.

15 THE COURT: C107.

16 MR. BYRD: C131.

17 THE COURT: C131. Y'all have already gone over these?
18 If you haven't --

19 MR. CONLEY: No, no. I'm just making sure.

20 THE COURT: Okay. C131.

21 MR. BYRD: C128.

22 THE COURT: C128.

23 MR. BYRD: C172.

24 THE COURT: C172.

25 MR. BYRD: C122.

1 THE COURT: C122.
2 MR. BYRD: C124.
3 THE COURT: C124.
4 MR. BYRD: C39.
5 THE COURT: C39.
6 MR. BYRD: C41.
7 THE COURT: C41.
8 THE WITNESS: C40.
9 THE COURT: C40.
10 MR. BYRD: C42.
11 THE COURT: C42.
12 MR. BYRD: C13.
13 THE COURT: C13.
14 MR. BYRD: C70.
15 THE COURT: C70.
16 MR. BYRD: C69.
17 THE COURT: C69.
18 MR. BYRD: C72.
19 THE COURT: C72.
20 MR. BYRD: C74.
21 THE COURT: C74.
22 MR. BYRD: C12.
23 THE COURT: C12.
24 MR. BYRD: C77.
25 THE COURT: C77.

1 MR. BYRD: C68.

2 THE COURT: C68.

3 MR. BYRD: C80.

4 THE COURT: C80.

5 MR. BYRD: And C79.

6 THE COURT: C79. These exhibits are admitted into
7 evidence without objection subject to deletions and
8 redactions as discussed by the Court.

9 (Defendant's Exhibit Numbers C107, C131, C128, C172, C122,
10 C124, C39, C41, C40, C42, C13, C70, C69, C72, C74, C12, C77, C68,
11 C80, and C79 were admitted.)

12 MR. BYRD: Did I say -- did you get C242?

13 THE COURT: No.

14 MR. BYRD: Okay. C242. That's one I think I handed up
15 and I may not have read that off.

16 THE COURT: Okay, C242 is included. Okay.

17 MR. BYRD: Your Honor, we showed -- I also don't know
18 what to do -- also don't know what to do about this. We
19 showed a couple of videos. I don't know if the jury is
20 going to have an opportunity to watch video, if it does me
21 any good to enter them into evidence or --

22 MR. CONLEY: We didn't tender them because Your Honor
23 has never allowed us to put videos in before.

24 MR. BYRD: All right.

25 MR. CONLEY: Am I correct in that view of the

1 situation?

2 THE COURT: That's correct.

3 I'm going to seal these exhibits up and mark them.

4 MR. POPPER: Would you like these separated by
5 plaintiff and what CVG's entered, or just try to have it by
6 what's all come in and more by category? Does that make
7 sense?

8 THE COURT: Y'all can decide.

9 MR. BYRD: Your Honor, I need to put this on the
10 record. There was -- Mr. Ralston had a number off.
11 There's no C242. It was C42. SO we have not tendered
12 Exhibit C242.

13 THE COURT: Okay. So I'll delete that.

14 I mean, like, if they admitted records from Shepherd
15 and y'all did, both of y'all did, it would just be easier
16 if we just put all the Shepherd records together. Is that
17 all right?

18 MR. SAGER: We agree. And I think we've tried to do
19 that. I don't know that we've admitted any that are the
20 same. Davis, do you know of any?

21 We tried to do that, Your Honor.

22 THE COURT: Okay. Yeah, I just want to seal them,
23 label them, put them in a box, and they'll know they're not
24 opened, and so if one is missing, it is -- just leave those
25 there for the moment and we'll see if -- do y'all need any

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more clips? Bring me some big clips. Maybe some rubber bands.

THE COURT REPORTER: Is this off the record?

THE COURT: Yes. Off the record. Can we go off the record?

MR. SAGER: Yes, Your Honor.

THE COURT: All right. We're off the record.

MR. SAGER: We will do directed verdicts when we return?

THE COURT: Is that okay?

MR. CONLEY: Yes.

THE COURT: Okay. Off the record.)

(Recessed at 10:51 a.m.)

EXHIBIT C

Robert J. Alumbaugh
CLERK OF STATE COURT

**IN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA**

JOSHUA KYLE HILL,	)	Civil Action File
	)	No. 17-C-07188-1
Plaintiff,)	
)	
v.)	
)	
COMMERCIAL VEHICLE GROUP, INC.,)	
CVG NATIONAL SEATING COMPANY,)	
LLC, (f/k/a National Seating Company)	
)	
Defendants.)	
)	
)	

**DEFENDANTS COMMERCIAL VEHICLE GROUP, INC. AND
CVG NATIONAL SEATING COMPANY, LLC'S EMERGENCY MOTION
TO STAY OR SUSPEND TRIAL AND FOR A MISTRIAL**

COME NOW Defendants COMMERCIAL VEHICLE GROUP, INC. and CVG NATIONAL SEATING COMPANY, LLC ("CVG") (collectively, "Defendants"), by and through their undersigned counsel, submits this Emergency Motion to Stay or Suspend Trial and For a Mistrial, respectfully showing the Court as follows:

INTRODUCTION

Defendants respectfully move the Court, in light of the unprecedented public health emergency in this state and the nation, enter an order granting a mistrial or to stay or suspend the trial in this case. Yesterday, the Governor declared a state-wide Public Health State of Emergency due to the public health threat posed by COVID-19 (Exhibit A hereto). Further, Chief Justice Melton issued the Order Declaring Statewide Judicial Emergency (Exhibit B hereto), which applies to all judicial proceedings in the State and directs courts to perform only essential functions in order to address the emergency caused by transmission of Coronavirus/COVID-19. *Id.* at 1. That Order mandates the suspension of the trial in this case,

which necessarily requires a mistrial. But even if the Order did not mandate suspension of the trial, permitting the trial to continue would be inconsistent with the very purpose of the Emergency Declarations of the Chief Justice and the Governor. It would place members of the jury, court staff, and lawyers and their families, some of whom are in at high risk under CDC guidelines, in jeopardy. Moreover, Defendants' case will be prejudiced as one of Defendants' witnesses has declined to come to Georgia to testify due to the risk to his elderly father. Accordingly, the Court should enter an order to stay or suspend the trial in this case and to grant a mistrial.

ARGUMENT

I. The Clear Terms of the Order Declaring Statewide Judicial Emergency As Well As the Purpose of the Emergency Declarations of the President, Governor and Chief Justice Mandate Suspension of the Trial.

A. The Clear Terms of the Order Require Immediate Suspension

Yesterday, the Chief Justice issued the Order Declaring Statewide Judicial Emergency. (Ex. B) (the "Order"). This followed the Governor's March 14, 2020 declaration of a Public Health Emergency, which pursuant to O.C.G.A. §38-3-60(2) itself establishes a judicial emergency, (Ex. A), and President Trump's declaration of a National Emergency on March 13, 2020. (Exhibit C hereto.) Each of these emergency declarations recognized the serious public health threat posed by the COVID-19 virus. Indeed, the Chief Justice specifically acknowledged the risk of transmission of the virus "throughout the State and potential infection of those who work in or are required to appear in our courts." (Ex. A at 1.)

To address this public health emergency, the Order directs that courts should address where feasible "essential functions, and in particular courts should give priority to matters necessary to protect health, safety and liberty of individuals." *Id.* The Order does permit "trials

in any criminal case for which a jury has been empaneled and the trial commenced” to continue to conclusion, but no such provision is made for civil trials. *Id.* at 2. The Order applies to all judicial proceedings and is in effect through April 13, 2020.

The plain meaning of the Order is that civil trials should be suspended immediately throughout the state. This establishes a uniform state-wide rule consistent with the orders entered on March 13, 2020 by the Chief Judges of the Cherokee, Cobb, DeKalb, Fulton, and Henry Counties who declared a judicial emergency because of COVID-19 and ordered that no jury trials be held for at least the next two weeks. Orders attached as Exhibits D, E, F, G and H, respectively. Now, throughout the state, no civil trials are to be conducted for the next 30 days.

Indeed, in his communication to the Court yesterday (March 14), counsel for Plaintiff Noah Abrams agreed that the Order required suspension of the trial. In his email to Mr. Abercrombie, Mr. Abrams stated that Mr. Conley had asked him to advise the Court that “by the clear terms of the Order, the trial would simply be suspended until April 14, 2020, at which time the trial would resume with the same panel.” (Ex. I hereto.) While the effect of such a suspension on the legal necessity of a mistrial can be debated, it is clear that the Order requires the trial to be suspended.

Plaintiff has now changed position and apparently argues that continuing the civil trial in this case is an “essential function” of the judiciary in Gwinnett County. Plainly it is not. As Plaintiff represented to the Court, it is apparently the only civil matter set for trial in Gwinnett County next week. (Mr. Abrahms’ email to Mr. Abecrombie, Mar. 15, 2020, Exhibit J hereto.) Indeed, according to published reports, even the ongoing murder trial of Terrence Lee in front of Judge Randy Rich has been suspended through April 6.

<https://www.ajc.com/news/local/gwinnett-county-cancel-jury-trials-through-least-march/DuO91s3PBdmT9K0R2fa4KK/f>.

As the Court is aware, this is not a criminal case or a matter “necessary to protect health, safety and liberty of individuals.” It is a product liability case regarding an allegedly defective seat. While the injuries to the Plaintiff were undeniably very serious, including permanent paralysis, Plaintiff has settled with at least three parties, and accordingly he has resources to attend to his immediate needs. He will have a full day in court when his case is tried after the emergency. It is not an essential function to continue with this civil trial in the face of a public health emergency.

B. Suspension of the Trial is Necessary to Implement The Purposes of the Order

Even if the Order were not crystal clear that this trial should be suspended, suspension is necessary to effectuate the public health and safety purposes of the Order. There is at least a week, and possibly more, remaining before the trial concludes. At any one time, there are between 30 and 50 people in the courtroom. This is precisely the type of extended gathering of people in close proximity that the Order and Emergency Declarations were intended to avoid.

Specifically, continuation of this trial over the next week to ten days poses serious health risks to jurors, the plaintiff, witnesses (some of whom are traveling from out of state), court personnel, the Court and the lawyers and their staffs, as well as the families of each of them. In particular, there are high risk individuals in the households of two of the lawyers for Defendant. As stated in the Affidavit of David A. Dial, managing partner of Weinberg Wheeler Hudgins Gunn & Dial, LLC, this risk is gravely concerning in light of the plain meaning of the Order and the Emergency Declarations. Exhibit K hereto.¹ For example, as discussed in the Affidavit of Christopher T. Byrd (Exhibit L hereto), Mr. Byrd has a 9 years old son who is immuno-

¹ A notarized copy of the Dial Affidavit will be substituted.

compromised. He has chronic condition which requires him to take immune suppressant medication on a weekly basis, under the direction and supervision of his pediatric gastroenterologist. That condition places Mr. Byrd's son in the high risk category with respect to the Coronavirus disease COVID-19 under the CDC guidelines. Mr. Byrd has another son in voluntary isolation after exposure to a symptomatic parent of a friend. Potential exposure to Mr. Byrd affects not only him but his at risk children as well.

Further, as stated in the Affidavit of Gary J. Toman (Exhibit M hereto), another counsel for Defendants at trial, Mr. Toman's wife is 62 years old and has a history of lung-related illnesses. She is under the treatment of a pulmonary specialist and suffers from asthma and repeated episodes of chronic bronchitis, affecting her lung function. She also has a history of rheumatic fever and related heart murmur, and the years of antibiotic treatment she took for those conditions have weakened her immune system. She is also at high risk under the CDC guidelines. Indeed, when consulted today (March 15), one of Mr. Toman's physicians advised him not to attend sessions of trial this week. The prospect of continuation of the trial makes it necessary for Mr. Toman to disregard the advice of his physician to fulfill his professional responsibilities to his clients.

Further, the presentation of Defendants' case will be adversely affected by going forward with the trial, as witness Kevan Granat, Defendants' accident reconstructionist expert, has notified counsel that he will not travel from Houston to Atlanta to testify in this matter, as was previously scheduled. (Ex. L). Mr. Granat is, understandably, concerned that travelling in contradiction of the advice and directives of various State and National authorities and health officials may expose him to the COVID-19 virus. Since Mr. Granat has an elderly father whom

he is in frequent contact with, he is not willing to risk exposing himself and, in turn, his elderly parent to this illness.

In addition, another one of Defendants' experts is Dr. Chimba Mkandawire. (Ex. N). Dr. Mkandawire has had cough and mild respiratory distress off and on for the past three weeks. He has not been tested and it would not be possible to get test results before he is to testify. Accordingly, his personal risk and the risk to other from his testifying is unknown.

In short, the quickly-changing dynamics of governmental response to the COVID-19 emergency, the growing risks to persons involved in this case and their families, and the progress of the pandemic all weigh heavily in favor of avoiding unnecessary risks. It will be possible for Mr. Hill to get a full and fair trial when the emergency is over, and plainly the purposes of the Order and Governor Kemp's Declaration would be best served by suspending the trial.

III. A Mistrial is Proper.

It is long-established in this State that jurors must make their verdict "dispassionately, seriously, earnestly, and with minds free from all bias" and therefore separation of the jury should be limited. *Louis Stix & Co. v. S. Pump & Co.*, 37 Ga. 332, 334, (1867). While some separation, with appropriate instruction, may be appropriate, extended separation runs a great risk of having outside influences affect the jury's deliberations. Respectfully, Defendants submit that separation of the jury for a month or more creates too high a risk of affecting the jury's deliberations and prejudicing the parties. Accordingly, a mistrial is necessary.

CONCLUSION

For the foregoing reasons, the Court should enter an order suspending or staying the trial in this matter and grant a mistrial.

This 15th day of March, 2020.

Respectfully submitted,

WEINBERG WHEELER HUDGINS GUNN
& DIAL, LLC

/s/ Christopher T. Byrd

Frederick N. Sager, Jr.,
Georgia Bar No.: 622070

Christopher T. Byrd
Georgia Bar No.: 100854

Gary J. Toman
Georgia Bar No. 714651

Benjamin P. Ralston
Georgia Bar No.: 918489

*Attorneys for Commercial Vehicle Group, Inc.,
and CVG National Seating Company, LLC
(f/k/a National Seating Company)*

344 Peachtree Road, NE
Suite 2400
Atlanta, Georgia 30326
Tel: (404) 876-2700
Fax: (404) 875-9433

CERTIFICATE OF SERVICE

This is to certify that I have this day served opposing counsel with a copy of the foregoing by filing the same in the Court's electronic filing system (Odyssey efileGA) which automatically sends a service copy via email notification to all counsel of record.

This 15th day of March, 2020.

Respectfully submitted,

WEINBERG WHEELER HUDGINS GUNN
& DIAL, LLC

/s/ Christopher T. Byrd

Frederick N. Sager, Jr.,
Georgia Bar No.: 622070

Christopher T. Byrd
Georgia Bar No.: 100854

Benjamin P. Ralston
Georgia Bar No.: 918489

*Attorneys for Commercial Vehicle Group, Inc.,
and CVG National Seating Company, LLC
(f/k/a National Seating Company)*

EXHIBIT A



THE STATE OF GEORGIA

EXECUTIVE ORDER

BY THE GOVERNOR:

DECLARATION OF PUBLIC HEALTH STATE OF EMERGENCY

- WHEREAS:** In late 2019, a new and significant outbreak of respiratory disease caused by a novel coronavirus emerged in Wuhan, China; and
- WHEREAS:** The respiratory disease caused by the novel coronavirus, known as "COVID-19," is an infectious virus that can spread from person-to-person and can result in serious illness or death; and
- WHEREAS:** On March 13, 2020, President Donald Trump declared the outbreak of COVID-19 a national emergency; and
- WHEREAS:** The Centers for Disease Control and Prevention has identified the potential public health threat posed by COVID-19 both globally and in the United States, and has advised that the person-to-person spread of COVID-19 will continue to occur globally, including within the United States; and
- WHEREAS:** The Centers for Disease Control and Prevention has noted that COVID-19 is proliferating via "community spread," meaning people have contracted the virus in areas of Georgia as a result of direct or indirect contact with infected persons, including some who are not sure how or where they became infected; and
- WHEREAS:** Laboratory testing has confirmed more than sixty cases of COVID-19 in Georgia; and
-
- WHEREAS:** In consultation with the Commissioner of Public Health, the Georgia Coronavirus Task Force, and other state health and emergency preparedness officials, I have determined a public health emergency exists, and that it is necessary and appropriate to take action to protect the health, safety, and welfare of Georgia's residents and visitors to ensure COVID-19 remains controlled throughout this State, as provided by Code Section 38-3-51; and
- WHEREAS:** The uninterrupted supply of medical goods and other emergency related materials, supplies, goods, and services during this

emergency is an essential need of the public and any perceived or actual shortage threatens public welfare; and

WHEREAS: The Federal Motor Carrier Safety Regulations, 49 C.F.R. §§ 390 *et seq.*, prescribes limits on the hours of service for operators of commercial vehicles, and federal law, 23 U.S.C. § 127, sets forth certain weight limitations for vehicles on interstate highways; and

WHEREAS: 49 C.F.R. § 390.23 allows the Governor of a state to suspend these rules and regulations for commercial vehicles responding to an emergency for up to thirty (30) days, if the Governor determines an emergency condition exists.

NOW, THEREFORE, PURSUANT TO CODE SECTION 38-3-51, AND THE AUTHORITY VESTED IN ME AS GOVERNOR OF THE STATE OF GEORGIA, IT IS HEREBY

ORDERED: That a Public Health State of Emergency exists in the State of Georgia due to the public health emergency from the spread of COVID-19.

IT IS FURTHER

ORDERED: That all resources of the State of Georgia shall be made available to assist in activities designed to address this emergency, control the spread of COVID-19, and aid recovery efforts.

IT IS FURTHER

ORDERED: That the Georgia Emergency Management and Homeland Security Agency shall activate the Georgia Emergency Operations Plan (GEOP) in response to this emergency.

IT IS FURTHER

ORDERED: That the Georgia Department of Public Health, as the state agency responsible for emergency management services under *GEOP Emergency Support Function (ESF) 8 - Public Health and Medical Services*, shall coordinate with the Center for Disease Control and Prevention for release of the Strategic National Stockpile as necessary and appropriate in response to this Public Health State of Emergency.

IT IS FURTHER

ORDERED: That the Georgia Emergency Management and Homeland Security Agency is designated as the lead agency for responding to this public health emergency and shall coordinate all emergency response activities and other matters pertaining to this Public Health State of Emergency.

IT IS FURTHER

ORDERED: That acting pursuant to the Governor's authorization, the Georgia Department of Public Health shall coordinate with the Georgia Emergency Management and Homeland Security Agency to take any action necessary to protect the public's health, including, without limitation:

- (1) Planning and executing public health emergency assessments, mitigation, preparedness response, and recovery for the state;
- (2) Coordinating public health emergency responses between state and local authorities;
- (3) Establishing protocols to control the spread of COVID-19;
- (4) Coordinating recovery operations and mitigation initiatives;
- (5) Collaborating with appropriate federal government authorities, elected officials of other states, private organizations, or private sector companies;
- (6) Organizing public information activities regarding the state's public health emergency response operations, including educating the public on prevention of the spread of COVID-19 based on Centers for Disease Control and Prevention's guidelines and the best scientific evidence available;
- (7) Providing special identification for public health personnel involved in this Public Health State of Emergency;
- (8) For all persons meeting the Centers for Disease Control and Prevention's definition of a Person Under Investigation ("PUI"), implementing a program of active monitoring, which may include a risk assessment within twenty-four (24) hours of learning that the person meets the PUI criteria and twice-daily temperature checks for a period of at least fourteen (14) days or until the PUI tests negative for COVID-19; and
- (9) Implementing quarantine, isolation, and other necessary public health interventions consistent with Code Sections 31-12-4 and 38-3-51(i)(2) or as otherwise authorized by law.

IT IS FURTHER

ORDERED: That all state and local authorities as well as public and private hospitals, healthcare facilities, clinics, and medical personnel shall fully comply with orders by the Governor as authorized by Georgia law, in furtherance of this Order.

IT IS FURTHER

ORDERED: The Georgia Composite Medical Board is authorized to grant temporary licenses to physicians who apply for a temporary medical license and are currently licensed as a physician in good standing by equivalent boards in other states to assist with the needs of this public health emergency.

IT IS FURTHER

ORDERED: The Georgia Board of Nursing is authorized to grant temporary licenses to nurses who apply for a temporary license and are currently licensed in good standing as an Advanced Practice Registered Nurse, Licensed Practical Nurse, or Registered Professional Nurse by an equivalent board in another state to assist with the needs of this public health emergency.

IT IS FURTHER

ORDERED: That in accordance with 49 C.F.R. 390.23(a)(1)(i)(A), the federal rules and regulations limiting hours operators of commercial vehicles may drive are suspended to ensure that carrier crews are available as needed to provide emergency relief. This declared emergency justifies a suspension of Part 395 (driver's hours of service) of Title 49 of the Code of Federal Regulations. The suspension will remain in effect for thirty (30) days from the date of this Order or until the emergency condition ceases to exist, whichever is less.

IT IS FURTHER

ORDERED: That no motor carrier operating under the terms of this emergency declaration will require or allow an ill or fatigued driver to operate a motor vehicle. A driver who notifies a motor vehicle carrier that he or she needs immediate rest will be given at least ten (10) consecutive hours off-duty before being required to return to service.

IT IS FURTHER

ORDERED: That weight, height, and length for any such vehicle traveling through the State of Georgia for the purposes of providing disaster relief and/or preparation, which traverses roadways maintained by the State of Georgia, shall not exceed the following:

- (1) A maximum gross vehicle weight for vehicles equipped with five (5) weight bearing axles, with an outer bridge span of not less than fifty-one (51) feet, shall not exceed a gross vehicle weight of ninety-five (95) thousand pounds, a maximum width of ten (10) feet and an overall length of one hundred (100) feet. Continuous travel is authorized, with the proper escorts.
- (2) If the width of said vehicle exceeds eight (8) feet six (6) inches and is traveling after daylight, defined as thirty (30) minutes before sunset to thirty (30) minutes after sunrise, the transporter is required to have a vehicle front and a rear escort/amber light when traveling on a two lane roadway and a vehicle rear escort when traveling on a four lane highway.

Transporters are responsible for ensuring they have proper oversize signs, markings, flags, and escorts as defined in the Georgia Department of Transportation Rules and Regulations.

IT IS FURTHER

ORDERED: That commercial vehicles operating outside the normal weight, height, and length restrictions under the authority of this Executive Order shall be issued permits by the Georgia Department of Public Safety. Said vehicles shall be subject to any special conditions the Georgia Department of Public Safety may list on applicable permits. Nothing in this Executive Order shall be construed to allow any vehicle to exceed weight limits posted for bridges and like structures, nor shall anything in this Executive Order be construed to relieve compliance with restrictions other than those specified in this Executive Order or from any statute, rule, order or other legal requirement not specifically waived herein. Oversize permits may be issued by the Georgia Department of Public Safety, Motor Carrier Compliance Division, during normal business hours, Monday through Friday by calling 404-624-7700 or through the Georgia Permitting and Routing Optimization System online portal at <https://gapros.dot.ga.gov/>.

IT IS FURTHER

ORDERED: That during preparation, response, and recovery activities for this Public Health Emergency, price gouging of goods and services necessary to support Public Health would be detrimental to the social and economic welfare of the citizens of this State, and thus Code Section 10-1-393.4, prohibiting price gouging, remains in effect.

IT IS FURTHER

ORDERED: That pursuant to Code Section 38-3-51(a), the General Assembly shall convene for a special session, beginning on March 16, 2020, at 8:00 A.M. for the purpose of concurring with or terminating this Public Health State of Emergency.

IT IS FURTHER

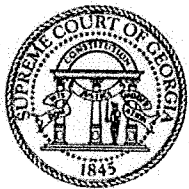
ORDERED: That the State of Emergency shall terminate on April 13, 2020, at 11:59 P.M., unless it is renewed by the Governor.

This 14th day of March 2020, at 10:15 A.M.

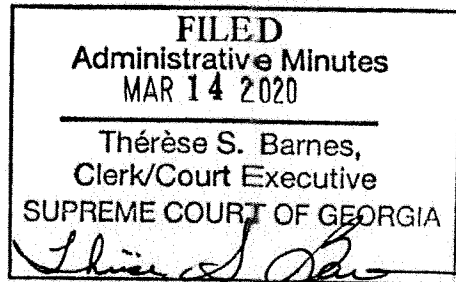


GOVERNOR

EXHIBIT B



SUPREME COURT OF GEORGIA



March 14, 2020

ORDER DECLARING STATEWIDE JUDICIAL EMERGENCY

WHEREAS, the Governor has determined that a Public Health State of Emergency exists in the State of Georgia due to the spread of the Coronavirus/COVID-19, and whereas that state of emergency constitutes a “judicial emergency” pursuant to OCGA § 38-3-60 et seq., see OCGA § 38-3-60 (2).

Now therefore, pursuant to OCGA § 38-3-61, the Honorable Harold D. Melton, Chief Justice of the Supreme Court of Georgia, DOES HEREBY ORDER AND DECLARE a Statewide Judicial Emergency in the State of Georgia. The nature of this emergency is the continued transmission of Coronavirus/COVID-19 throughout the State and the potential infection of those who work in or are required to appear in our courts.

Thus, in order to protect the health, safety, and liberty of all citizens in this State, the undersigned hereby declares a Statewide Judicial Emergency affecting all courts and clerk’s offices in the State as it relates to all judicial proceedings.

To the extent feasible, courts should remain open to address essential functions, and in particular courts should give priority to matters necessary to protect health, safety, and liberty of individuals. Essential functions are subject to interpretation; however, some matters that fall into the essential function category are: (1) where an immediate liberty or safety concern is present requiring the attention of the court as soon as the court is available; (2) criminal court search warrants, arrest warrants, initial appearances, and bond reviews; (3) domestic abuse temporary protective orders and restraining orders; (4) juvenile court delinquency detention hearings and emergency removal matters; and (5) mental health commitment hearings.

In addition, trials in any criminal case for which a jury has been empaneled and the trial has commenced as of the date of this order shall continue to conclusion, unless good cause exists to suspend the trial or declare a mistrial. The decision whether to suspend a criminal trial or declare a mistrial rests with the judge presiding over the case.

To the extent court proceedings are held, they should be done in a manner to limit the risk of exposure, such as by videoconferencing, where possible.

Pursuant to OCGA § 38-3-62, during the period of this Order, the undersigned hereby suspends, tolls, extends, and otherwise grants relief from any: (1) statute of limitation; (2) time within which to issue a warrant; (3) time within which to try a case for which a demand for speedy trial has been filed; (4) time within which to hold a commitment hearing; (5) deadline or other schedule regarding the detention of a juvenile; (6) time within which to return a bill of indictment or an accusation or to bring a matter before a grand jury; (7) time within which to file a writ of habeas corpus; (8) time within which discovery or any aspect thereof is to be completed; (9) time within which to serve a party; (10) time within which to appeal or to seek the right to appeal any order, ruling, or other determination; and (11) such other legal proceedings as determined to be necessary by the authorized judicial official.

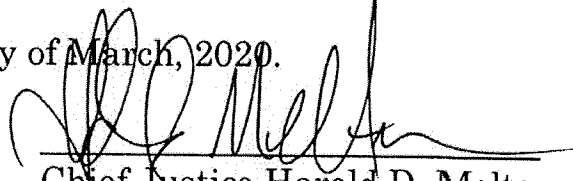
This Statewide Judicial Emergency shall terminate on April 13, 2020, at 11:59 p.m., unless otherwise extended.

Should the state of emergency extend beyond the period indicated above or should the nature of the emergency otherwise require modification, a determination of available alternative remedies for the conduct of court business will be made as necessary, and a corresponding order will be entered and distributed in accordance with Georgia law.

IT IS FURTHER ORDERED, pursuant to OCGA § 38-3-63, that notice and service of a copy of this Order shall immediately be sent to the judges and clerks of all courts in this State and to the clerk of the Georgia Court of Appeals, such service to be accomplished through means to assure expeditious receipt, which include electronic means; and

IT IS FURTHER ORDERED that notice shall also be sent to the media, the State Bar of Georgia, and the officials and entities listed below and shall constitute sufficient notice of the issuance of this Order to the affected parties, counsel for the affected parties, and the public.

IT IS SO ORDERED this 14th day of March, 2020.



Chief Justice Harold D. Melton
Supreme Court of Georgia

cc:

Governor Brian P. Kemp
Lt. Governor Geoff Duncan
Speaker David Ralston
State Bar of Georgia
Administrative Office of the Courts
Judicial Council of Georgia
Council of Superior Court Clerks of Georgia
Department of Juvenile Justice
Criminal Justice Coordinating Council
Council of Accountability Court Judges
Georgia Commission on Dispute Resolution
Institute of Continuing Judicial Education of Georgia
Georgia Council of Court Administrators
Chief Justice's Commission of Professionalism
Judicial Qualifications Commission
Association County Commissioners of Georgia
Georgia Municipal Association
Georgia Sheriffs' Association
Georgia Association of Chiefs of Police
Georgia Public Defender Council
Prosecuting Attorneys' Council of Georgia
Department of Corrections
Department of Community Supervision
Georgia Court Reporters Association
Board of Court Reporting
State Board of Pardons and Paroles

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

 . Clerk

EXHIBIT C



PROCLAMATIONS

Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak

Issued on: March 13, 2020



In December 2019, a novel (new) coronavirus known as SARS-CoV-2 (“the virus”) was first detected in Wuhan, Hubei Province, People’s Republic of China, causing outbreaks of the coronavirus disease COVID-19 that has now spread globally. The Secretary of Health and Human Services (HHS) declared a public health emergency on January 31, 2020, under section 319 of the Public Health Service Act (42 U.S.C. 247d), in response to COVID-19. I have taken sweeping action to control the spread of the virus in the United States, including by suspending entry of foreign nationals seeking entry who had been physically present within the prior 14 days in certain jurisdictions where COVID-19 outbreaks have occurred, including the People’s Republic of China, the Islamic Republic of Iran, and the Schengen Area of Europe. The Federal Government, along with State and local governments, has taken preventive and proactive measures to slow the spread of the virus and treat those affected, including by instituting Federal quarantines for individuals evacuated from foreign nations, issuing a declaration pursuant to section 319F-3 of the Public Health Service Act (42 U.S.C. 247d-6d), and releasing policies to accelerate the acquisition of personal protective equipment and streamline bringing new diagnostic capabilities to laboratories. On March 11, 2020, the World Health Organization announced that the COVID-19 outbreak can be characterized as a pandemic, as the rates of infection continue to rise in many locations around the world and across the United States.

The spread of COVID-19 within our Nation’s communities threatens to strain our Nation’s healthcare systems. As of March 12, 2020, 1,645 people from 47 States have been infected with the virus that

causes COVID-19. It is incumbent on hospitals and medical facilities throughout the country to assess their preparedness posture and be prepared to surge capacity and capability. Additional measures, however, are needed to successfully contain and combat the virus in the United States.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 *et seq.*) and consistent with section 1135 of the Social Security Act (SSA), as amended (42 U.S.C. 1320b-5), do hereby find and proclaim that the COVID-19 outbreak in the United States constitutes a national emergency, beginning March 1, 2020. Pursuant to this declaration, I direct as follows:

Section 1. Emergency Authority. The Secretary of HHS may exercise the authority under section 1135 of the SSA to temporarily waive or modify certain requirements of the Medicare, Medicaid, and State Children's Health Insurance programs and of the Health Insurance Portability and Accountability Act Privacy Rule throughout the duration of the public health emergency declared in response to the COVID-19 outbreak.

Sec. 2. Certification and Notice. In exercising this authority, the Secretary of HHS shall provide certification and advance written notice to the Congress as required by section 1135(d) of the SSA (42 U.S.C. 1320b-5(d)).

Sec. 3. General Provisions. (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of March, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.

DONALD J. TRUMP

EXHIBIT D

IN THE SUPERIOR COURT OF CHEROKEE COUNTY
BLUE RIDGE JUDICIAL CIRCUIT
STATE OF GEORGIA

IN RE: Declaration of Judicial Emergency

*
*
*
*
*

ORDER DECLARING JUDICIAL EMERGENCY

Due to the Coronavirus/COVID-19 pandemic, and the existence of individuals infected with the virus in and around Cherokee County, there exists a serious health emergency that substantially endangers or infringes upon the normal functioning of the judicial system as it relates to jury service, including grand jury service, and any non-essential matters, unless they can be conducted via video or teleconferencing. Therefore, pursuant to O.C.G.A. § 38-3-60(2)(D) and O.C.G.A. § 38-3-61, a judicial emergency is declared by this Order, and shall affect all courts and clerk's offices in the Blue Ridge Judicial Circuit.

Accordingly, it is the Order of the Court that **SUPERIOR COURT JURY TRIALS SCHEDULED THE WEEKS OF MARCH 23 AND MARCH 30, 2020, ARE HEREBY CANCELLED.** Furthermore, for a period of fourteen (14) days from the date of this Order, no civil or non-essential matters shall be heard by the courts unless they can be conducted via video or teleconferencing. Parties or attorneys in any non-essential matters should contact the chambers of the judge assigned to their case if they have any questions and/or need to ensure their compliance with this Order.

Pursuant to O.C.G.A. § 38-3-62, for a period of fourteen (14) days from the date of this

other legal proceedings as determined to be necessary, including calendars involving large numbers of litigants, lawyers, or other persons.

Should the state of emergency extend beyond the period indicated above, or should the nature of the emergency otherwise require modification by the Court, the Court will make a determination of available alternative remedies for the conduct of court business, as necessary, and a corresponding Order will be entered and distributed in accordance with Georgia law.

Pursuant to O.C.G.A. § 38-3-63, it is Ordered that the Sheriff of Cherokee County shall post this Order on his public notification site and in the Frank C. Mills, III Justice Center; that this Order shall immediately be served upon Chief Justice Harold D. Melton of the Supreme Court of Georgia, such service to be accomplished via email to Tee Barnes, the Clerk of the Supreme Court of Georgia, at barnest@gasupreme.us; that this Order shall immediately be served upon the judges and clerks of all courts sitting within the Blue Ridge Judicial Circuit and on the clerks of the Georgia Court of Appeals and the Georgia Supreme Court, such service to be accomplished through reasonable means to assure expeditious receipt; and this Order shall be published on the Court Administrator's website for notice to the affected parties, counsel for the affected parties, and the public.

IT IS SO ORDERED this 13th day of March, 2020 at 1:35 p.m.
a.m./p.m.

/s/ Ellen McElyea

Ellen McElyea, Chief Judge
Superior Court of Cherokee County
Blue Ridge Judicial Circuit

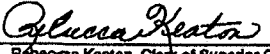
EXHIBIT E

**IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA**

MAR 13, 2020 04:32 PM

IN RE: Declaration of Judicial Emergency
Date: March 13, 2020

20-1-0005


Rebecca Keaton, Clerk of Superior Court
Cobb County, Georgia

ORDER DECLARING JUDICIAL EMERGENCY

WHEREAS, IT HAS BEEN DETERMINED that a Judicial Emergency exists in Cobb County, Georgia affecting all courts such that there is a serious health emergency pursuant to O.C.G.A. § 38-3-60(2)(D). See O.C.G.A. § 38-3-60(2)(D) (providing that “Judicial Emergency” means “[s]uch other serious emergency”).

WHEREAS, IT HAS BEEN DETERMINED that the Judicial Emergency substantially endangers or infringes upon the normal functioning of the judicial system as it relates to petit jury service, and any non-essential matters, unless they can be conducted via video or teleconferencing.

Therefore, pursuant to O.C.G.A. § 38-3-61, The Honorable Chief Judge Reuben Green of the Superior Court of Cobb County, Cobb Judicial Circuit, DOES HEREBY ORDER AND DECLARE the existence of a Judicial Emergency in the Cobb Judicial Circuit. The nature of this emergency is the continued transmission of Coronavirus/COVID-19 throughout Cobb County and the potential infection of those who are required to appear in our courts and interact with large groups due to jury service, including grand jury service, or other large, non-essential calendars.

Thus, the undersigned hereby makes this declaration of a judicial emergency affecting all courts and clerk’s offices in Cobb County as it relates to jury service, including grand jury service, and any non-essential matters, unless they can be conducted via video or teleconferencing.

Accordingly, IT IS THE ORDER of the Court that no petit jurors shall report and no jury trials shall be held for a period of thirty (30) days from the date of the entry of this Order. Furthermore, civil and other non-essential matters shall be limited by the courts during this 30-day time period. Parties or attorneys in any civil or non-essential matters should contact the chambers of the judge assigned to their case if they have any questions and/or need to ensure their compliance with this Order. The Superior Court is issuing a statement to provide guidance to litigants, attorneys, and members of the public.

Pursuant to O.C.G.A. § 38-3-62, during the period of this Order, the Court hereby suspends, tolls, extends, and otherwise grants relief from: (1) a statute of limitation; (2) the time within which to try a case for which a demand for speedy trial has been filed; (3) the time within which to hold a commitment hearing; (4) the time within which to return a bill of indictment or an accusation or to bring a matter before a grand jury; and/or (5) such other legal proceedings as determined to be necessary, including calendars involving large numbers of litigants, lawyers, or other persons.

Should the state of emergency extend beyond the period indicated above or should the nature of the emergency otherwise require modification by the Court, the Court will make a determination of available alternative remedies for the conduct of court business, as necessary, and a corresponding Order will be entered and distributed in accordance with Georgia law.

Pursuant to O.C.G.A. § 38-3-63:

IT IS ORDERED that the Sheriff of Cobb County shall post this Order on his public notification site and in the courthouses;

IT IS FURTHER ORDERED that the undersigned shall immediately notify and serve Chief Justice Harold D. Melton of the Supreme Court with a copy of this Order, such service to be accomplished via email to Tee Barnes, the Clerk of the Supreme Court of Georgia, at barnest@gasupreme.us;

IT IS FURTHER ORDERED that the undersigned shall immediately notify and serve a copy of the order on the judges and clerks of all courts sitting within the jurisdictions affected and on the clerks of the Georgia Court of Appeals and the Georgia Supreme Court, such service to be accomplished through reasonable means to assure expeditious receipt; and

IT IS FURTHER ORDERED that the undersigned shall give notice of the issuance of this Order by public notice and other reasonable means.

IT IS SO ORDERED this 13th day of March, 2020 at 3:45 p.m.

A handwritten signature in black ink, appearing to read 'R. Green', written over a horizontal line.

Reuben Green, Chief Judge
Cobb County Superior Court
Cobb Judicial Circuit

CERTIFICATE OF SERVICE

This is to certify that I have this day served all interested parties in the within and foregoing matter a copy of the Order by delivering a copy in open court, electronic mail, via PeachCourt, and/or depositing a copy in the Cobb County Mail System in properly addressed envelopes with adequate postage thereon addressed as follows:

The Honorable Carl W. Bowers
Chief Judge, Cobb County State Court
12 East Park Square
Marietta, GA 30090

The Honorable Angie Davis
Clerk, Cobb County State Court
12 East Park Square
Marietta, GA 30090

The Honorable Brendan F. Murphy
Chief Judge, Cobb County Magistrate Court
32 Waddell Street
Marietta, GA 30090

Ms. Anne Gordon
Clerk, Cobb County Magistrate Court
32 Waddell Street
Marietta, GA 30090

The Honorable Amber N. Patterson
Chief Judge, Cobb County Juvenile Court
32 Waddell Street
Marietta, GA 30090

Ms. Shonell Sfreddo
Clerk, Cobb County Juvenile Court
32 Waddell Street
Marietta, GA 30090

The Honorable Kelli L. Wolk
Chief Judge, Cobb County Probate Court
32 Waddell Street
Marietta, GA 30090

Ms. Jennifer Ritchey
Chief Clerk, Cobb County Probate Court
32 Waddell Street
Marietta, GA 30090


The Honorable Rebecca Keaton
Clerk, Cobb County Superior Court
70 Haynes Street
Marietta, GA 30090

Ms. Therese Tee Barnes
Clerk, Supreme Court of Georgia

Mr. Steve E. Castlen
Clerk, Georgia Court of Appeals

Chief Justice Harold D. Melton
and the Supreme Court of Georgia

This 13 day of March, 2020.



Traci L. Hatfield
Judicial Administrative Assistant to
Chief Judge Reuben M. Green
Superior Court, Cobb Judicial Circuit

CHIEF JUDGE REUBEN M. GREEN

SUPERIOR COURT OF COBB COUNTY

COBB JUDICIAL CIRCUIT



SUPERIOR COURT OF COBB COUNTY
70 HAYNES STREET
MARIETTA, GEORGIA 30060
(770) 528-1860

MEMORANDUM

TO: All litigants, attorneys and members of the public
FROM: Chief Judge Reuben M. Green, Superior Court, Cobb Judicial Circuit
DATE: March 13, 2020

The role of the judicial branch of government in any emergency is to uphold the rule of law and protect our community. There are essential functions in our justice system that effect the fundamental rights of our citizens that must and will continue. Accordingly, the Cobb Judicial Circuit will stay open. To ensure continued operations, the court schedules will be scaled back and modified to reduce the risk to staff, attorneys, parties and the public.

Large gatherings of people should be avoided. As long as there is a Judicial Emergency, the following will occur in Cobb Superior Court:

1. GENERAL CONCERNS

- a. No one should come to court if they are not feeling well. Please contact the assigned Judge's office to seek an excusal from appearance.
 - b. If you are appearing for a court appearance, please leave all non-essential people at home. Avoid bringing children or family members, especially the elderly, to court.
 - c. The court will remain open for the public, but they are encouraged to stay home. Only parties, attorneys and necessary witnesses should appear for hearings that are going forward.
2. **NOTICE TO THE SHERIFF'S DEPARTMENT:** Inmates will not be transported unless specifically requested by the Judge's chambers, District Attorney, or Defense Attorney.
 3. **JURY WEEKS** — Jury weeks for the rest of March and all of April are hereby cancelled. Jury weeks will resume in May unless further modified by Order of this Court or Judicial Emergency Declaration by the Chief Judge.
 4. **CIVIL & DOMESTIC CALENDARS** – Please contact your assigned Judge to determine whether these calendars will go forward. Judges that are cancelling these calendars are reaching out to litigants and lawyers on their own. Again, contact the Judge's office if you are not feeling well or have concerns about coming to court.
 5. **CRIMINAL CALENDARS** – Calendars that require personal appearance of witnesses, defendants and counsel are hereby modified as follows:
 - a. Arraignments – Arraignment calendars are not cancelled. However, attorneys may excuse their clients from personally appearing at an arraignment calendar. Attorneys are instructed to pre-try their cases and submit Waivers of Arraignment in advance of court where possible. Any case that needs to be brought in for a plea where the inmate is in custody, please contact the District Attorney assigned to the case and the Judge's chambers to have it scheduled. The inmates will not be transported to court unless they are specifically requested.

4. **DEPENDENCY CASES**
 - a. Those hearings that are time-limited, such as PROBABLE CAUSE HEARINGS, ADJUDICATION HEARINGS AND DISPOSITIONAL HEARINGS FOR DEPENDENCY CASES will be heard on regularly scheduled calendars.
 - b. Any non-time limited cases such as PERMANENCY HEARINGS, T.P.R.'s and any REVIEW HEARINGS will be rescheduled for a date on or after April 13, 2020.
5. **DELINQUENCY CASES**
 - a. ARRAIGNMENT HEARINGS, ADJUDICATION HEARINGS AND DISPOSITIONAL HEARINGS, unless time limits have been waived, will be heard by the assigned Judge.
6. **ATTORNEY REQUESTS**
 - a. If any party requests that a matter be heard, a request must be sent to the Judicial Assistant for the assigned Judge.
 - i. Judge A. Patterson or Judge K. West – Contact Star Simmons at Gayle.simmons@cobbcounty.org (770) 528 – 2224
 - ii. Judge J. Hamby or Judge W. Grannis – Contact Donelle Keaton at Donelle.Keaton@cobbcounty.org (770) 528- 2428
7. **ACCOUNTABILTIY COURTS, PROGRAMS AND ON-SITE SERVICES**
 - a. All group programs that are scheduled to be conducted on-site at the Juvenile Court are suspended until April 13, 2020. If there are any questions regarding individual services, parties are to contact the Accountability Coordinator or Probation Supervisor.

Reuben M. Green
Chief Judge, Superior Court
Cobb Judicial Circuit

EXHIBIT F

IN THE SUPERIOR COURT OF DEKALB COUNTY
STONE MOUNTAIN JUDICIAL CIRCUIT
STATE OF GEORGIA

20AP1106

IN RE: Declaration of Judicial Emergency

Date: March 13, 2020

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ORDER DECLARING JUDICIAL EMERGENCY

WHEREAS, IT HAS BEEN DETERMINED that a Judicial Emergency exists in DeKalb County, Georgia affecting ALL COURTS, including courts located in cities and municipalities within DeKalb County, such that there is a serious health emergency pursuant to O.C.G.A. § 38-3-60(2)(D). See O.C.G.A. § 38-3-60(2)(D) (providing that “Judicial Emergency” means “[s]uch other serious emergency”).

WHEREAS, IT HAS BEEN DETERMINED that the Judicial Emergency substantially endangers or infringes upon the normal functioning of the judicial system as it relates to jury service, including grand jury service, and any non-essential matters, unless they can be conducted via video or teleconferencing.

Therefore, pursuant to O.C.G.A. § 38-3-61, The Honorable Chief Judge Asha F. Jackson of the Superior Court of DeKalb County, Stone Mountain Judicial Circuit DOES HEREBY ORDER AND DECLARE the existence of a Judicial Emergency in the Stone Mountain Judicial Circuit. The nature of this emergency is the continued transmission of Coronavirus/COVID-19 throughout DeKalb County and the potential infection of

those who are required to appear in our courts and interact with large groups due to jury service, including grand jury service, or other large, non-essential calendars.

Thus, the undersigned hereby makes this declaration of a judicial emergency affecting all courts and clerk's offices in DeKalb County as it relates to jury service, including grand jury service, and any non-essential matters, unless they can be conducted via video or teleconferencing.

Accordingly, **IT IS THE ORDER** of the Court that:

- **No jurors or grand jurors shall report and no jury trials shall be held for a period of thirty (30) days from the date of the entry of this Order; and**
- **Furthermore, no non-essential matters shall be heard by the courts during this thirty (30) day time period, unless they can be conducted via video or teleconferencing. Parties and/or attorneys in any non-essential matters should directly contact the chambers of the judge assigned to their case if they have any questions and/or need to ensure their compliance with this Order.**

Pursuant to O.C.G.A. § 38-3-62, during the period of this Order, the Court hereby suspends, tolls, extends, and otherwise grants relief from all deadlines, including, but not limited to: (1) a statute of limitation; (2) the time within which to try a case for which a demand for speedy trial has been filed; (3) the time within which to hold a commitment hearing; (4) the time within which to return a bill of indictment or an accusation or to bring a matter before a grand jury; and/or (5) such other legal

proceedings as determined to be necessary, including calendars involving large numbers of litigants, lawyers, or other persons.

Should the state of emergency extend beyond the period indicated above or should the nature of the emergency otherwise require modification by the Court, the Court will make a determination of available alternative remedies for the conduct of court business, as necessary, and a corresponding Order will be entered and distributed in accordance with Georgia law.

Pursuant to O.C.G.A. § 38-3-63:

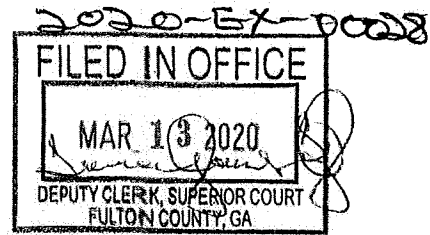
IT IS ORDERED that the Sheriff of DeKalb County shall post this Order on her public notification site and in the courthouses;

IT IS FURTHER ORDERED that the undersigned shall immediately notify and serve Chief Justice Harold D. Melton of the Supreme Court with a copy of this Order, such service to be accomplished through reasonable means to assure expeditious receipt;

IT IS FURTHER ORDERED that the undersigned shall immediately notify and serve a copy of the order on the judges and clerks of all courts sitting within the jurisdictions affected and on the clerks of the Georgia Court of Appeals and the Georgia Supreme Court, such service to be accomplished through reasonable means to assure expeditious receipt; and

EXHIBIT G

IN THE SUPERIOR COURT OF FULTON COUNTY
ATLANTA JUDICIAL CIRCUIT
STATE OF GEORGIA



IN RE: Declaration of Judicial Emergency

Date: March 12, 2020

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ORDER DECLARING JUDICIAL EMERGENCY

WHEREAS, IT HAS BEEN DETERMINED that a Judicial Emergency exists in Fulton County, Georgia affecting all courts such that there is a serious health emergency pursuant to O.C.G.A. § 38-3-60(2)(D). *See* O.C.G.A. § 38-3-60(2)(D) (providing that “Judicial Emergency” means “[s]uch other serious emergency”).

WHEREAS, IT HAS BEEN DETERMINED that the Judicial Emergency substantially endangers or infringes upon the normal functioning of the judicial system as it relates to jury service, including grand jury service, and any non-essential matters, unless they can be conducted via video or teleconferencing.

Therefore, pursuant to O.C.G.A. § 38-3-61, The Honorable Chief Judge Christopher S. Brasher of the Superior Court of Fulton County, Atlanta Judicial Circuit DOES HEREBY ORDER AND DECLARE the existence of a Judicial Emergency in the Atlanta Judicial Circuit. The nature of this emergency is the continued transmission of Coronavirus/COVID-19 throughout Fulton County and the potential infection of those who are required to appear in our courts and interact with large groups due to jury service, including grand jury service, or other large, non-essential calendars.

Thus, the undersigned hereby makes this declaration of a judicial emergency affecting all courts and clerk’s offices in Fulton County as it relates to jury service, including grand jury service, and any non-essential matters, unless they can be conducted via video or teleconferencing.

Accordingly, IT IS THE ORDER of the Court that no jurors or grand jurors shall report and no jury trials shall be held for a period of thirty (30) days from the date of the entry of this Order. Furthermore, no non-essential matters shall be heard by the courts during this 30-day time period, unless they can be conducted via video or teleconferencing. Parties or attorneys in any non-essential matters should contact the chambers of the judge assigned to their case if they have any questions and/or need to ensure their compliance with this Order.

Pursuant to O.C.G.A. § 38-3-62, during the period of this Order, the Court hereby suspends, tolls, extends, and otherwise grants relief from all deadlines, including, but not limited to: (1) a statute of limitation; (2) the time within which to try a case for which a demand for speedy trial has been filed; (3) the time within which to hold a commitment hearing; (4) the time within which to return a bill of indictment or an accusation or to bring a matter before a grand jury; and/or (5) such other legal proceedings as determined to be necessary, including calendars involving large numbers of litigants, lawyers, or other persons.

Should the state of emergency extend beyond the period indicated above or should the nature of the emergency otherwise require modification by the Court, the Court will make a determination of available alternative remedies for the conduct of court business, as necessary, and a corresponding Order will be entered and distributed in accordance with Georgia law.

Pursuant to O.C.G.A. § 38-3-63:

IT IS ORDERED that the Sheriff of Fulton County shall post this Order on his public notification site and in the courthouses;

IT IS FURTHER ORDERED that the undersigned shall immediately notify and serve Chief Justice Harold D. Melton of the Supreme Court with a copy of this Order, such service to be accomplished through reasonable means to assure expeditious receipt;

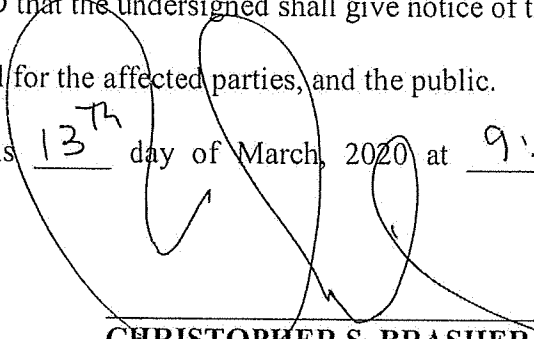
IT IS FURTHER ORDERED that the undersigned shall immediately notify and serve a copy of the order on the judges and clerks of all courts sitting within the jurisdictions affected

and on the clerks of the Georgia Court of Appeals and the Georgia Supreme Court, such service to be accomplished through reasonable means to assure expeditious receipt; and

IT IS FURTHER ORDERED that the undersigned shall give notice of the issuance of this Order to the affected parties, counsel for the affected parties, and the public.

IT IS SO ORDERED this 13th day of March, 2020 at 9:23

a.m./p.m.



CHRISTOPHER S. BRASHER, Chief Judge
Fulton County Superior Court
Atlanta Judicial Circuit

EXHIBIT H

IN THE SUPERIOR COURT OF HENRY COUNTY
FLINT JUDICIAL CIRCUIT
STATE OF GEORGIA

FILED IN OFFICE
HENRY COUNTY
SUPERIOR COURT

MAR 13 2020

Barbara A. Harrison
CLERK OF SUPERIOR COURT

IN RE: Declaration of Judicial Emergency

Date: March 13, 2020

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ORDER DECLARING JUDICIAL EMERGENCY

WHEREAS, IT HAS BEEN DETERMINED that a Judicial Emergency exists in Henry County, Georgia affecting all courts such that there is a serious health emergency pursuant to O.C.G.A. § 38-3-60(2)(D). See O.C.G.A. § 38-3-60(2)(D) (providing that “Judicial Emergency” means “[s]uch other serious emergency”).

WHEREAS, IT HAS BEEN DETERMINED that the Judicial Emergency substantially endangers or infringes upon the normal functioning of the judicial system as it relates to jury service, including grand jury service, and any non-essential matters, unless they can be conducted via video or teleconferencing.

Therefore, pursuant to O.C.G.A. § 38-3-61, The Honorable Chief Judge Brian J. Amero of the Superior Court of Henry County, Flint Judicial Circuit DOES HEREBY ORDER AND DECLARE the existence of a Judicial Emergency in the Flint Judicial Circuit. The nature of this emergency is the continued transmission of Coronavirus/COVID-19 throughout Henry County and the potential infection of those who are required to appear in our courts and interact with large groups due to jury service, including grand jury service, or other large, non-essential calendars.

Thus, the undersigned hereby makes this declaration of a judicial emergency affecting all courts and clerk’s offices in Henry County as it relates to jury service, including grand jury service, and any non-essential matters, unless they can be conducted via video or teleconferencing.

Accordingly, IT IS THE ORDER of the Court that no jurors or grand jurors shall report and no jury trials shall be held for a period beginning March 16, 2020 through March 30, 2020.

Furthermore, no civil or non-essential matters shall be heard by the courts during this time period, unless they can be conducted via video or teleconferencing. Parties or attorneys in any non-essential matters should contact the chambers of the judge assigned to their case if they have any questions and/or need to ensure their compliance with this Order.

Pursuant to O.C.G.A. § 38-3-62, during the period of this Order, the Court hereby suspends, tolls, extends, and otherwise grants relief from: (1) a statute of limitation; (2) the time within which to try a case for which a demand for speedy trial has been filed; (3) the time within which to hold a commitment hearing; (4) the time within which to return a bill of indictment or an accusation or to bring a matter before a grand jury; and/or (5) such other legal proceedings as determined to be necessary, including calendars involving large numbers of litigants, lawyers, or other persons. **This Order shall apply to all classes of Court within the Flint Judicial Circuit.**

Should the state of emergency extend beyond the period indicated above or should the nature of the emergency otherwise require modification by the Court, the Court will make a determination of available alternative remedies for the conduct of court business, as necessary, and a corresponding Order will be entered and distributed in accordance with Georgia law.

Pursuant to O.C.G.A. § 38-3-63:

IT IS ORDERED that the Sheriff of Henry County shall post this Order on his public notification site and in the courthouses;

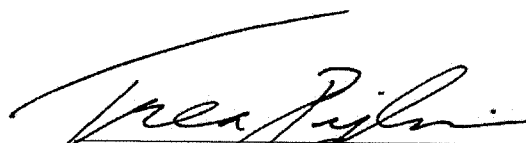
IT IS FURTHER ORDERED that the undersigned shall immediately notify and serve Chief Justice Harold D. Melton of the Supreme Court with a copy of this Order, such service to be accomplished via email to Tee Barnes, the Clerk of the Supreme Court of Georgia, at barnest@gasupreme.us;

IT IS FURTHER ORDERED that the undersigned shall immediately notify and serve a copy of the order on the judges and clerks of all courts sitting within the jurisdictions affected and

on the clerks of the Georgia Court of Appeals and the Georgia Supreme Court, such service to be accomplished through reasonable means to assure expeditious receipt; and

IT IS FURTHER ORDERED that the undersigned shall give notice of the issuance of this Order to the affected parties, counsel for the affected parties, and the public.

IT IS SO ORDERED this 13th day of March, 2020 at 1:30 p.m.



Brian J. Amero, Chief Judge
Henry County Superior Court
Flint Judicial Circuit

*with express
permission
of Brian
Amero.*
(TP)

EXHIBIT I

Toman, Gary J.

From: Noah Abrams <NAbrams@abramslawfirm.com>
Sent: Saturday, March 14, 2020 7:28 PM
To: Sager, Rick; David.Abercrombie@gwinnettcounty.com
Cc: Cale Conley; Davis Popper; Byrd, Chris; Toman, Gary J.; Ralston, Ben P.
Subject: RE: 17-C-7199S1 Hill v. CVG et al

This Message originated outside your organization.

Mr. Abercrombie,

Cale is out of town with his family, but asked me to advise the Court that Plaintiff does not agree with Mr. Sager's contention that mistrial is "mandated." Rather, by the clear terms of the Order, the trial would simply be suspended until April 14, 2020, at which time the trial would resume with the same panel.

A mistrial would substantially prejudice Mr. Hill, for the many reasons stated by the Court yesterday. To the extent that the Court is considering the grant of a mistrial, rather than the suspension of the current trial – the only thing "mandated" by the Chief Justice's Order - we would ask that the Court require a formal motion by the Defendants and allow time for a response from Mr. Hill. We are available at any time next week for a conference call with the Court and all counsel to discuss how trial may be continued with the same jury in a manner consistent with the Chief Justice's Order. Thank you.

Best regards,

Noah

Noah B. Abrams
Abrams & Abrams, P.A.
(919)755-9166
NAbrams@abramslawfirm.com

From: Sager, Rick <RSager@wwhgd.com>
Sent: Saturday, March 14, 2020 6:57 PM
To: David.Abercrombie@gwinnettcounty.com
Cc: Cale Conley <cale@conleygriggs.com>; Davis Popper <davis@conleygriggs.com>; Noah Abrams <NAbrams@abramslawfirm.com>; Byrd, Chris <CByrd@wwhgd.com>; Toman, Gary J. <GToman@wwhgd.com>; Ralston, Ben P. <BRalston@wwhgd.com>
Subject: 17-C-7199S1 Hill v. CVG et al

Mr. Abercrombie,

We have received the attached Order Declaring Statewide Judicial Emergency entered by Chief Justice Melton this afternoon. Under the terms of this order, a mistrial is mandated in this case. For the protection of the public in light of the COVID-19 emergency, this order applies to all judicial proceedings and permits courts to address only essential functions until April 13. The order provides that trials in criminal cases where the jury has already been empaneled may continue, but there is no exception for civil trials.

We request confirmation that a mistrial is mandated so that witnesses who are required to travel may avoid unnecessary travel. We have just learned that one witness, Kevin Garnett, has an immune-compromised parent and for that reason has decided that the health risks of traveling to Atlanta and coming to court are too great.

Further, even before issuance of the Chief Justice's Order, we were in the process of preparing a motion for mistrial due to the serious health risks to jurors, the plaintiff, witnesses, court personnel, the Court and the lawyers and their staffs, as well as the families of each of them, that would be caused by further conduct of this trial over the next week to ten days. In particular, there are immediate family members of lawyers for Defendant who are in the high risk category as defined by CDC guidelines, and we obviously would like the opportunity to abide by the directions of our National and State leaders. It is likely that numerous jurors are similarly situated. The essential purpose of the emergency declarations by the President, the Governor and now the Chief Justice, is to avoid placing those high risk persons in jeopardy.

Also attached is a proposed order.

Thank you for the Court's consideration.

Sincerely,

Rick Sager



Frederick N. Sager, Jr., Attorney

Weinberg Wheeler Hudgins Gunn & Dial

3344 Peachtree Road NE | Suite 2400 | Atlanta, GA 30326

D: 404.832.9509 | F: 404.875.9433 | C: 404.274.8658

www.wwhgd.com | vCard

The information contained in this message may contain privileged client confidential information. If you have received this message in error, please delete it and any copies immediately.

EXHIBIT J

Toman, Gary J.

From: Byrd, Chris
Sent: Sunday, March 15, 2020 11:32 AM
To: Noah Abrams; Sager, Rick; David.Abercrombie@gwinnettcountry.com
Cc: Cale Conley; Davis Popper; Toman, Gary J.; Ralston, Ben P.
Subject: RE: 17-C-7199S1 Hill v. CVG et al

Mr. Abercrombie/Judge Brantley:

On behalf of the defense and myself personally, I strongly object to Plaintiff's position and we are filing an emergency motion for mistrial with Your Honor today. I have an immune compromised son that I am trying my hardest to keep safe throughout this pandemic. In addition to that, I have another son who I am currently isolating in my basement, since we were told last night that he may have been exposed to COVID-19 through one of his friends that he carpools with (we were notified that her mother had a fever and that a coworker of hers reported to the hospital with shortness of breath and a high temperature, but, due to the lack of tests, he was unable to be tested). My partner, Gary Toman, has a wife with pre-existing lung issues that put her at greater risk. I have a witness who has refused to fly in this week, telling me that he is concerned he may inadvertently expose his elderly father upon his return. I have another witness who has been quarantined from his office, as he is symptomatic, and he was scheduled to appear live in Court this week.

Mr. Hill has received compensation from at least three of the settling defendants, and he has medical benefits. It is our understanding that he is living in a home that has been modified to fit his needs. Other than inconvenience, he will suffer no prejudice. The defense, on the other hand, is now unable to call an important witness, and, thus, will suffer tremendous prejudice by going forward.

The Georgia Supreme Court order is clear. Were this trial to go forward tomorrow, it would be in violation of that order and it would put the health of my family, as well as that of my partners, co-counsel, court staff and the jurors in jeopardy. I would ask for confirmation that we are not going forward tomorrow. Even Mr. Abrams noted in his earlier email that, at the very least, the order mandates suspension of the trial. I understand that these are significant measures, but significant measures are what is being called for from all of the National and State authorities who have commented on this issue, advising us all to do what we can to slow the spread of this virus and to help protect those among us who may be at greater risk should they contract this illness.

Thank you for your attention to this matter.



Christopher T. Byrd, Attorney
Weinberg Wheeler Hudgins Gunn & Dial
3344 Peachtree Road NE | Suite 2400 | Atlanta, GA 30326
D: 404.832.9546 | F: 404.875.9433
www.wwhgd.com | vCard

From: Noah Abrams [mailto:NAbrams@abramslawfirm.com]
Sent: Sunday, March 15, 2020 10:57 AM
To: Sager, Rick; David.Abercrombie@gwinnettcountry.com
Cc: Cale Conley; Davis Popper; Byrd, Chris; Toman, Gary J.; Ralston, Ben P.

Subject: RE: 17-C-7199S1 Hill v. CVG et al

Importance: High

This Message originated outside your organization.

Mr. Abercrombie,

Cale, Davis, and I have conferred at length and, after further reflection and review of Chief Justice Melton's Order and O.C.G.A. 38-3-60, *et seq.*, Plaintiff is of the position that continuing with the trial this week would be consistent with the Judicial State of Emergency that has been declared, and nothing in the Order or the referenced Statutes mandates recessing the trial – much less declaring a mistrial.

First, our understanding is that Hill v. CVG is currently the only civil matter set for trial in Gwinnett County next week, and the Courthouse is closed for all non-essential functions. Therefore, adequate space exists to “limit the risk of exposure” to the jurors, courtroom personnel, counsel, and parties. We have discussed with Mr. Hill, and his preference is to move forward with the trial, including his testimony tomorrow, and that he feels that he is adequately protected from exposure due to the measures already taken by the Court throughout the trial. Furthermore, Defendant has designated two accident reconstructionists, Mr. Granat and Mr. Kent. Mr. Kent is based in Marietta, Georgia, and is readily available to drive to Lawrenceville for trial. To the extent that Defendant requires Mr. Granat's testimony, we would be willing to have a member of our trial team travel to Houston for Mr. Granat's trial deposition at any time, including tomorrow or Tuesday. Or, in the alternative, if defense counsel and the Court would prefer, the deposition could be conducted live by video conference in order to minimize the risk of exposure to all involved.

Second, completion of the trial would serve an “essential function” of the judiciary, as Plaintiff has nearly completed his case, and the expense of re-trying the case would be extremely prejudicial to Mr. Hill, who needs a resolution of his claims in order to continue necessary treatment for his quadriplegia. Furthermore, Gwinnett County has already invested significant resources into the trial of this matter, and therefore, an essential function of the Court would be served by allowing this case to continue to verdict at this time, and not wasting the resources of Gwinnett County or the Court system.

Finally, and perhaps most importantly, declaring a mistrial would *severely* prejudice Mr. Hill, as his case has been nearly completed, Defendants have had an opportunity to view his entire case theory and all of his evidence, and have not had to present any evidence or testimony to the jury in their case in chief. Delaying the case or declaring a mistrial at this late stage, when adequate measures exist to limit exposure to the necessary courtroom personnel, jurors, counsel, and witnesses, would be an extremely unjust result.

We would therefore ask that the Court allow the trial to continue to completion this week. We would be happy to discuss with you and Her Honor at any time today or tomorrow, should the Court wish to hear argument on the matter.

Best regards,

Noah

Noah B. Abrams
Abrams & Abrams, P.A.
(919)755-9166
NAbrams@abramslawfirm.com

From: Noah Abrams

Sent: Saturday, March 14, 2020 7:28 PM

To: Sager, Rick <RSager@wwhgd.com>; David.Abercrombie@gwinnettcountry.com

Cc: Cale Conley <cale@conleygriggs.com>; Davis Popper <davis@conleygriggs.com>; Byrd, Chris <CByrd@wwhgd.com>;

Toman, Gary J. <GToman@wwhgd.com>; Ralston, Ben P. <BRalston@wwhgd.com>

Subject: RE: 17-C-7199S1 Hill v. CVG et al

Mr. Abercrombie,

Cale is out of town with his family, but asked me to advise the Court that Plaintiff does not agree with Mr. Sager's contention that mistrial is "mandated." Rather, by the clear terms of the Order, the trial would simply be suspended until April 14, 2020, at which time the trial would resume with the same panel.

A mistrial would substantially prejudice Mr. Hill, for the many reasons stated by the Court yesterday. To the extent that the Court is considering the grant of a mistrial, rather than the suspension of the current trial – the only thing "mandated" by the Chief Justice's Order - we would ask that the Court require a formal motion by the Defendants and allow time for a response from Mr. Hill. We are available at any time next week for a conference call with the Court and all counsel to discuss how trial may be continued with the same jury in a manner consistent with the Chief Justice's Order. Thank you.

Best regards,

Noah

Noah B. Abrams

Abrams & Abrams, P.A.

(919)755-9166

NAbrams@abramslawfirm.com

From: Sager, Rick <RSager@wwhgd.com>

Sent: Saturday, March 14, 2020 6:57 PM

To: David.Abercrombie@gwinnettcountry.com

Cc: Cale Conley <cale@conleygriggs.com>; Davis Popper <davis@conleygriggs.com>; Noah Abrams

<NAbrams@abramslawfirm.com>; Byrd, Chris <CByrd@wwhgd.com>; Toman, Gary J. <GToman@wwhgd.com>; Ralston, Ben P. <BRalston@wwhgd.com>

Subject: 17-C-7199S1 Hill v. CVG et al

Mr. Abercrombie,

We have received the attached Order Declaring Statewide Judicial Emergency entered by Chief Justice Melton this afternoon. Under the terms of this order, a mistrial is mandated in this case. For the protection of the public in light of the COVID-19 emergency, this order applies to all judicial proceedings and permits courts to address only essential functions until April 13. The order provides that trials in criminal cases where the jury has already been empaneled may continue, but there is no exception for civil trials.

We request confirmation that a mistrial is mandated so that witnesses who are required to travel may avoid unnecessary travel. We have just learned that one witness, Kevin Garnett, has an immune-compromised parent and for that reason has decided that the health risks of traveling to Atlanta and coming to court are too great.

Further, even before issuance of the Chief Justice's Order, we were in the process of preparing a motion for mistrial due to the serious health risks to jurors, the plaintiff, witnesses, court personnel, the Court and the lawyers and their staffs, as well as the families of each of them, that would be caused by further conduct of this trial over the next week to ten days. In particular, there are immediate family members of lawyers for Defendant who are in the high risk category as

defined by CDC guidelines, and we obviously would like the opportunity to abide by the directions of our National and State leaders. It is likely that numerous jurors are similarly situated. The essential purpose of the emergency declarations by the President, the Governor and now the Chief Justice, is to avoid placing those high risk persons in jeopardy.

Also attached is a proposed order.

Thank you for the Court's consideration.

Sincerely,

Rick Sager



Frederick N. Sager, Jr., Attorney

Weinberg Wheeler Hudgins Gunn & Dial

3344 Peachtree Road NE | Suite 2400 | Atlanta, GA 30326

D: 404.832.9509 | F: 404.875.9433 | C: 404.274.8658

www.wwhgd.com | vCard

The information contained in this message may contain privileged client confidential information. If you have received this message in error, please delete it and any copies immediately.

EXHIBIT K

**IN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA**

JOSHUA KYLE HILL,	)	Civil Action File
	)	No. 17-C-07188-1
Plaintiff,)	
)	
v.)	
)	
COMMERCIAL VEHICLE GROUP, INC.,)	
CVG NATIONAL SEATING COMPANY,)	
LLC, (f/k/a National Seating Company,)	
)	
Defendants.)	
)	
)	
)	

AFFIDAVIT OF DAVID A. DIAL

COMES NOW Affiant, DAVID A. DIAL, who after being duly sworn, deposes and says:

1.

My name is David A. Dial. I am the managing partner at Weinberg Wheeler Hudgins Gunn & Dial, LLC. I am competent to give this affidavit based on my personal knowledge.

2.

In my role as managing partner, I am responsible for the provision of quality legal services by our partners and other professionals and the working environment for all of our staff. In that capacity, I seek to ensure that we provide services of the highest caliber to our clients. I also place utmost importance on the health, safety and well-being of all the people who work at our firm and their families.

3.


I have reviewed the Order Declaring Statewide Judicial Emergency issued by Chief Justice Melton as well as the Declaration of Public State of Emergency issued by Governor Kemp yesterday. In my opinion, the Chief Justice's Order provides clear direction that civil

trials should be discontinued and that the courts should only address essential matters, such as those involving protection of health, safety and liberty of individuals. I am gravely concerned that going forward with the trial in the above-referenced case for the next week to ten days not only violates the Chief Justice's Order but also puts at risk the health and safety of our lawyers, the jurors, plaintiff and his counsel, the court and court staff and the general public.

4.

I strongly urge the Court not to put our firm in the position of endangering our lawyers and staff and their families to fulfill our professional responsibilities to our clients in light of the serious public health crisis recognized by the President, the Governor and the Chief Justice and when the stated purpose of the Emergency Declarations and the Chief Justice's Order is that the focus of the courts during this time of emergency is to do those functions necessary to protect public health and safety.

FURTHER AFFIANT SAYETH NOT.



DAVID A. DIAL

Sworn to and subscribed before me
this ____ day of March, 2020.

Notary Public

My commission expires:

EXHIBIT L

**IN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA**

JOSHUA KYLE HILL,	)	Civil Action File
	)	No. 17-C-07188-1
Plaintiff,)	
)	
v.)	
)	
COMMERCIAL VEHICLE GROUP, INC.,)	
CVG NATIONAL SEATING COMPANY,)	
LLC, (f/k/a National Seating Company,)	
)	
Defendants.)	
)	
)	

AFFIDAVIT OF CHRISTOPHER T. BYRD

COMES NOW Affiant, CHRISTOPHER T. BYRD, who after being duly sworn, deposes and says:

1.

My name is Christopher T. Byrd. I am a resident of Georgia and a member of the State Bar of Georgia. I am competent to give this affidavit based on my personal knowledge.

2.

I am a partner at Weinberg Wheeler Hudgins Gunn & Dial, LLC and a member of the trial team for the Hill v. Commercial Vehicle Group, Inc. et al. case, In that capacity, I must attend court each day of the trial of that case.

3.

My son, who is 9 years old, is immuno-compromised. He has chronic condition which requires him to take immune suppressant medication on a weekly basis, under the direction and supervision of his pediatric gastroenterologist.

4.

In light of my son's health issues and medication, I understand that under the CDC guidelines, my son is in the high risk category with respect to the Coronavirus disease COVID-19.

5.

The closing of my son's school and the opportunity for social isolation during this declared public health emergency provides the opportunity to provide protection to my son against the COVID-19 virus despite his suppressed immune system.

6.

I am very concerned about the risk my participation in the trial in this case may pose to my son, particularly since the situation is grave enough that the Governor has declared a Public Health State of Emergency and the Chief Judges of the Superior Courts of every other Atlanta area County have cancelled all jury trials for at least the next two weeks. Additionally, the Supreme Court of Georgia issued an Order Declaring Statewide Judicial Emergency, which I read to require suspension of this trial and/or mistrial, due to the current pandemic. I also believe that the serious health risks to jurors, the plaintiff, witnesses (some of whom are traveling from out of state), court personnel, the court and the lawyers and their staffs, as well as the families of each of them, justifies postponement of the trial.

7.

In addition, I have been notified by Defendants' accident reconstructionist expert, Kevan Granat, that he will not travel from Houston to Atlanta to testify in this matter, as was previously scheduled. Mr. Granat is, understandably, concerned that travelling in contradiction of the advice and directives of various State and National authorities and health officials may expose him to the COVID-19 virus. Since Mr. Granat has an elderly father whom he is in frequent

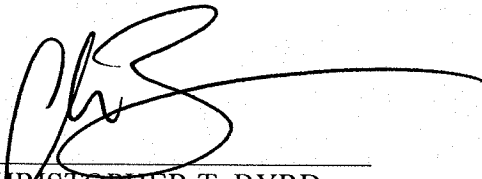
contact with, he is not willing to risk exposing himself and, in turn, his elderly parent to this illness.

8.

Continuing with this trial without Mr. Granat present to testify before the jury is prejudicial and unfair to the Defendants.

FURTHER AFFIANT SAYETH NOT.

This 15th day of March, 2020.


CHRISTOPHER T. BYRD

Sworn to and subscribed before me
this 15th day of March, 2020.



Notary Public

My commission expires:

4/19/2020

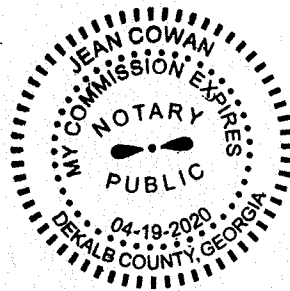


EXHIBIT M

**IN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA**

JOSHUA KYLE HILL,	)	Civil Action File
	)	No. 17-C-07188-1
Plaintiff,)	
)	
v.)	
)	
COMMERCIAL VEHICLE GROUP, INC.,)	
CVG NATIONAL SEATING COMPANY,)	
LLC, (f/k/a National Seating Company,)	
)	
Defendants.)	
)	
)	

AFFIDAVIT OF GARY J. TOMAN

COMES NOW Affiant, GARY J. TOMAN, who after being duly sworn, deposes and says:

1.

My name is Gary J. Toman. I am competent to give this affidavit based on my personal knowledge. I am a partner at Weinberg Wheeler Hudgins Gunn & Dial, LLC. I am a member of the trial team for the above-styled case and in that capacity and attend court each day of the trial.

2.

Today I consulted with one of my personal physicians about the health risks to me and to my family, from attending trial all this week despite the declare Public Health Emergency. He advised me that in his medical opinion I should not attend further sessions of trial.

3.

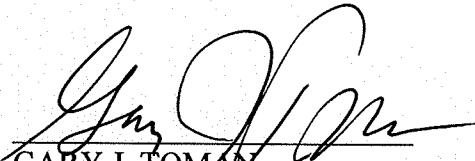
My wife is 62 years old. She has a history of lung-related illnesses and is under the treatment of a pulmonary specialist. She has asthma and has had a number of episodes of chronic bronchitis, which have affected her lung function. She also has a history of rheumatic

fever and related heart murmur, and the years of antibiotic treatment she took for those conditions have weakened her immune system.

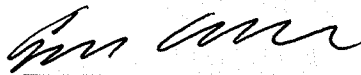
5.

In light of my wife's age and health issues, I understand that under the CDC guidelines, she is in the high risk category with respect to the Coronavirus disease COVID-19. She and I are very concerned that continuation of the Hill trial despite the declaration of a National Emergency by the President, the declaration of a Public Health State of Emergency by the Governor, and the declaration by Chief Justice Melton of the Order Declaring Statewide Judicial Emergency, places my wife at a much greater risk of contracting COVID-19 and poses a serious health risk not only to our family but to the community as well.

FURTHER AFFIANT SAYETH NOT.


GARY J. TOMAN

Sworn to and subscribed before me
this 15th day of March, 2020.



Notary Public

My commission expires:

April 17, 2020

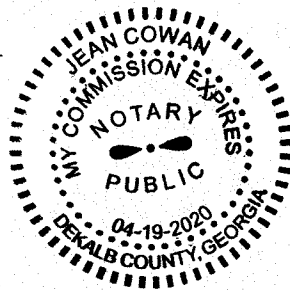


EXHIBIT N

**IN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA**

JOSHUA KYLE HILL,	)	Civil Action File
	)	No. 17-C-07188-1
Plaintiff,)	
)	
v.)	
)	
COMMERCIAL VEHICLE GROUP, INC.,)	
CVG NATIONAL SEATING COMPANY,)	
LLC, (f/k/a National Seating Company,)	
)	
Defendants.)	
)	
)	

AFFIDAVIT OF CHIMBA MKANDAWIRE

COMES NOW Affiant, CHIMBA MKANDAWIRE, who after being duly sworn, deposes and says:

1.

My name is Chimba Mkandawire. I am a resident of Georgia and am competent to give this affidavit based on my personal knowledge.

2.

I have been identified as an expert witness to testify on behalf of the Defendants in this case on the issues of biomechanics and occupant kinematics as it relates to the accident and Mr. Hill's injuries.

3.

I have been suffering from a cough and mild respiratory distress off and on for the past three weeks.

4.

Because of my symptoms, I stayed home from working at my workplace office.

5.

I have seen my Primary Care Physician two times over the course of the last three weeks. I was tested for Streptococcus Type A on March 6 which ultimately came back negative. I have had an elevated temperature (99.4) on one occasion during this time on March 7. My PCP has expressed the opinion that I may have Streptococcus Type C but this is unconfirmed as I have not been tested for that. My PCP has not expressed an opinion that I have Coronavirus although I have not been tested.

6.

I have been prescribed antibiotics off and on during the course of my symptoms which I am to continue taking through early next week though I am continuing to suffer from the symptoms.

7.

I advised CVG counsel, Rick Sager, of this issue in an email on the night of March 12.

8.

I was scheduled to meet with Mr. Sager in person at his office this week-end in preparation for my trial testimony today but Mr. Sager asked that we cancel that meeting due to concerns about my symptoms. Mr. Sager also asked that I make arrangements to take a Coronavirus test.

9.

If necessary, I can attempt to be tested for Coronavirus. My understanding is that the results of all testing are being performed at a Georgia State Lab and confirmed by the CDC, and they are only processing 50 tests per day. Thus, even if I am able to be tested over the next several

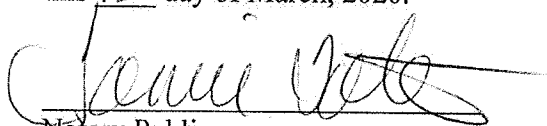
days, it is unknown when the test results will be available. My preference is to not take the test as it would significantly increase my exposure to the Coronavirus in an emergency room setting, where I can become a vector for transmission.

FURTHER AFFIANT SAYETH NOT.

This 15th day of March, 2020.


CHIMBA MKANDA WIRE

Sworn to and subscribed before me
this 15th day of March, 2020.


Notary Public

My commission expires:

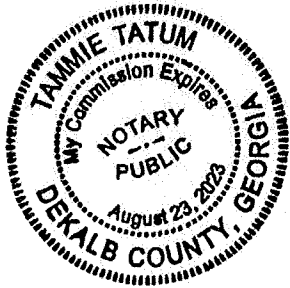


EXHIBIT D

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(9:24 a.m.)

THE COURT: We have all our jurors here. I will hear the motion, which I really not have had a chance to read it, at the end of the day. We've got all jurors here, so we are going forward.

Plaintiff, you ready?

MR. CONLEY: Yes, Your Honor.

THE COURT: Defense ready?

MR. SAGER: No, we're not ready, Your Honor.

THE COURT: You need to be ready. Okay. I'll hear your motion at the end of the day. You did not file it until before midnight. This Court has not had the chance to look at it. I've got 13 citizens that showed up for this trial. We're going forward with it. You can be heard at the end of the day when I've had a chance to look at it.

MR. SAGER: The point of the motion was to not go forward, and we sent three different emails to the Court within 24 hours to give a heads up about this. When we did not hear, we filed a motion as soon as we could. This is a matter of public health and safety for all of us --

THE COURT: Mr. Sager, you have heard this Court, the instructions of this Court. We've got 13 citizens that showed up in my courtroom, and we are going forward with the trial today. I will hear your motion at the end of

1 the day.

2 MR. SAGER: We do have a current motion for a
3 mistrial we'd like to make now. I understand the Court's
4 ruling. I don't know what else to say, but if the Court
5 has not read our motion --

6 THE COURT: Mr. Sager, I am not delaying the trial.
7 I had 13 citizens that showed up today. We are going
8 forward today. I will hear your motion. If I have time
9 at lunch to read it and be heard on it, you may, but right
10 now I am going to ask you to sit down, and we're bringing
11 in the jury and we're going forward with the evidence.

12 MR. BYRD: Your Honor, I would like to state on the
13 record, the motion is based on the Georgia Supreme Court
14 order that came out --

15 THE COURT: Mr. Byrd, I am aware of that order. It
16 is within my discretion. That is my interpretation and
17 reading of that order. I'm not -- you're not going to
18 just keep on and we end up having a hearing. I'm bringing
19 the jury in. Please sit down.

20 MR. BYRD: I just want to state for the record we are
21 going forward at your direction under duress. I think
22 you're putting the health of my family at risk --

23 THE COURT: See, you're arguing the motion. Please
24 sit down, Mr. Byrd.

25 MR. BYRD: I just wanted to state for the record.

1 MR. SAGER: His affidavit is in there that he talks
2 about how --

3 THE COURT: I know. I will read it, Mr. Sager, and I
4 will consider it.

5 All right. Let's bring in the jury.

6 MR. SAGER: And I'll add I don't think there's any
7 opposition to suspending the trial from our opponent.

8 THE COURT: Is that true, Mr. Conley?

9 MR. CONLEY: Your Honor, our feeling is we're going
10 to do what the Court directs, first and foremost.
11 Secondly, though, our concern is we're going to lose this
12 jury that we have picked, spent exhaustive time picking
13 and shown them our entire case. Defense has seen our
14 entire case. We are not opposed to suspending and coming
15 back with this jury, but we will do what Your Honor
16 directs, and they're here.

17 THE COURT: If you are not opposed to suspending it
18 and bringing them back -- I don't know if I can get them
19 back, now.

20 MR. CONLEY: We want this jury to decide this case.

21 THE COURT: Okay. So, bottom line, do you oppose
22 their motion -- I will not mistry it -- to stay this
23 trial?

24 MR. CONLEY: Would Your Honor deem it appropriate to
25 ask the jury if they are willing to come back when the

1 Court is able, when things are more calm and -- hopefully
2 in society?

3 THE BAILIFF: May I bring your jurors in?

4 THE COURT: Give me just one minute.

5 I mean, I will ask them if they will come back if you
6 would like for me to, but what if they say no?

7 MR. CONLEY: Then our position would be to go
8 forward. I mean, our position is that we want this jury
9 to decide this case.

10 MR. SAGER: And I'm not putting words in Mr. Conley's
11 mouth, but he is not opposed to a stay or suspension, and
12 that the plaintiff's position that this jury hears the
13 case.

14 MR. CONLEY: That is, and I want to be clear, I'm not
15 trying to -- my position is we want this jury to try this
16 case because of the investment that we have put into it,
17 that the Court has put into it, that they have put into
18 it, and that any other scenario prejudices us because we
19 have to restart the bell, and they've heard our case, and
20 there's no way that can be unrung, and that is why --
21 these are strange times, Judge, as we all know, but that
22 is what I believe is my duty in the best interest of my
23 client, that I've sworn to uphold, and my duty to the
24 Court, and that is our position.

25 THE COURT: So you would like for me to ask this jury

1 if we suspend the trial, stay the trial until April 14, we
2 are going to ask them to come back?

3 MR. CONLEY: Yes.

4 THE COURT: Does anybody have a particular hardship
5 that would prevent them from coming back?

6 MR. CONLEY: Yes.

7 THE COURT: Okay. I will bring in the jury and ask
8 them, and then I'll excuse them. Depending on what they
9 say, we'll decide. We put in special precautions, the
10 county has. This entire courtroom has been sanitized, the
11 jury deliberation room, the courthouse, so -- for this
12 trial and a murder trial that's going on. All right.

13 You want to bring in the jury?

14 (The jury entered the courtroom.)

15 All right. Please be seated.

16 I am so very happy to see each and every one of you
17 today. It means a great deal to the Court that you came
18 back. I know we all are concerned about the coronavirus.
19 I can tell you that the county has implemented special
20 sanitizing procedures. This entire courtroom was
21 sanitized, the jury deliberation room, jury assembly, and
22 that will be done every night. But I know you still
23 probably have some concerns.

24 The option the Court has is it could stay the trial,
25 which means I don't declare a mistrial. We don't have to

1 retry it, but we just take up at a different day. You
2 would all come back again and we start where we left off,
3 and that would be --

4 What's the day?

5 MR. SAGER: April the 14th, the date.

6 THE COURT: April 14th? Okay.

7 MR. SAGER: I'm sorry, Your Honor. It's April 15.

8 MR. CONLEY: I thought it was the 13th.

9 MR. SAGER: It would be the 14.

10 THE COURT: On April 14th. We could probably start
11 it on the 13th that week, so you would come in that week.

12 You know, between now and then, you'd have to -- you
13 couldn't talk to anybody. You can't watch any news
14 coverage. That cone of silence. I've got to rely on you
15 to be, you know, keep all that to yourself until you
16 return. And your employer would still be under the
17 subpoena and the notice, and your employer would have to
18 let you return.

19 But if that would be a hardship for anybody to come
20 back that week, I think we could start on Monday the 13th,
21 but I can give you further directions because I would want
22 to finish up in a week. If we start on Tuesday, you'd
23 have to come back to next week. So I need you to think
24 about it and let me know.

25 If you need a few minutes to talk among yourself, you

1 can; or if there are some of you that would have
2 particular hardship, I need to be aware of that. Do y'all
3 want to step outside and talk among yourself?

4 THE JURY: We want to stay. I think we would rather
5 muddle through. Yeah, continue.

6 THE COURT: Continue the trial? Okay. I got nods
7 from everybody?

8 THE JURY: Yes.

9 THE COURT: Okay. We will continue.

10 Mr. Conley?

11 MR. CONLEY: We have a couple of videotaped
12 depositions and witnesses outside.

13 Begin by calling Leonard Wray, or Lynn Wray, by
14 videotaped deposition. The paramedic, Your Honor.

15 THE COURT: Paramedic. Now, ladies and gentlemen,
16 remember you are to treat this witness' testimony just the
17 same as if they were here in front of you.

18 (The videotaped deposition of Leonard William Wray
19 was published.)

20 MR. CONLEY: I'm sorry, Your Honor. One second. We
21 are trying to confirm.

22 May we approach, Your Honor?

23 (An off-record discussion was held.)

24 THE COURT: Take a quick break.

25 (The jury exited the courtroom.)

1 (A break was taken at 9:59 a.m.)

2 MR. CONLEY: Can I state for the record, since we
3 were in sidebar, what happened is the video is played, the
4 parties were provided with the final as-edited transcript.
5 Mr. Ralston noted there was a question and answer that
6 still had a reference to -- it was not the witness saying
7 it was him reporting what Josh said of the incident but it
8 did mention load shift.

9 Once it was identified, just for the record, it was
10 cut by both parties before you had stated your totally
11 clear statement on the scope of that, and had we known
12 then when we were editing it what Your Honor's ultimate
13 ruling would be, we would've probably gotten that out
14 before. We're sorry we did not get it out before, but it
15 is out now, and that is what we were doing. Thank you,
16 Judge.

17 (The jury entered the courtroom.)

18 THE COURT: Please be seated. You may continue.

19 MR. CONLEY: Thank you, Your Honor.

20 (Videotaped deposition of L. Wray resumed.)

21 Thank you, Your Honor. That concludes Mr. Wray's
22 deposition. Our next witness also -- we're covering the
23 medical providers this morning. So our next one will be
24 by video deposition also. It's Dr. John Lin at the
25 Shepherd Center. That's L-I-N.

1 THE COURT: Treating physician of Mr. Hill?

2 MR. CONLEY: That is correct, Your Honor.

3 I am told we are going to call them -- we're going to
4 reverse order. We have two doctors we're calling,
5 Dr. Shaw and Doctor Lin. We are going to play Dr. Shaw
6 next. Apparently, there's some editing issue with
7 Dr. Lin, so we're going with Shaw next.

8 THE COURT: Also a treating physician?

9 MR. CONLEY: She -- Eva, E-V-A -- yes. In North
10 Carolina; primary care doctor.

11 THE COURT: Primary care doctor. All right.

12 MR. CONLEY: I think as edited they're going to hear
13 Mr. Ralston first and then Mr. Popper, just so the jury
14 knows that was the order it was taken, and we're going to
15 leave it that way to keep us full.

16 THE COURT: Okay.

17 (The videotaped deposition of Dr. Eva Shaw was
18 published.)

19 MR. CONLEY: That concludes Dr. Shaw, Your Honor.

20 THE COURT: Are you going to have them sit through
21 another video?

22 MR. CONLEY: Yes, I guess I am, Judge. I'm sorry to
23 be the one administering this, but as you know, these
24 doctors are very difficult to get here, and I'm sorry we
25 need to present it this way.

1 THE COURT: How long is the video?

2 MR. CONLEY: The next one is one hour.

3 THE COURT: Stand up, stretch, take a break? Break?

4 (The jury exited the courtroom.)

5 Court will be in recess for ten minutes.

6 (A break was taken at 11:20 a.m.)

7 MR. SAGER: Your Honor, I'm not trying to talk about
8 what we talked about earlier this morning, necessarily.
9 It tangentially affects one of our witnesses. I'm just
10 asking you when can we hear that motion?

11 THE COURT: Yeah. Well, if y'all want to try to hear
12 it during lunch.

13 Mr. Conley, you prepared to argue it during lunch?

14 MR. CONLEY: We can . . .

15 Your Honor, just so you know, the plan is that this
16 video, presuming we're going to have a lunch break,
17 Mr. Poindexter, our economist, will be next live. Josh
18 and our last -- prior to last witness is one of his
19 friends named Jason. He's pure damages witness. They're
20 en route now; we're tracking that. I'll keep the Court
21 apprised.

22 We did not have him come down yesterday afternoon
23 just because of the uncertainty, and he was having a
24 particularly bad day yesterday. But he is en route as we
25 speak, and we'll keep the Court apprised. But we're not

1 aware of any problems; just wanted the Court to know our
2 plan.

3 And then after Jason, I believe -- the only other
4 thing we might later -- there's a 20-minute deposition of
5 Josh's dad we may play, but we'll make that decision prior
6 to lunch. And that's it from us. We will rest at that
7 point.

8 MR. SAGER: Your Honor, while we're waiting for one
9 of the witnesses, Mr. Poindexter, who is their economist,
10 I saw a gentleman sitting in the back of the room, and I
11 did not know who that was, was wondering who it was.
12 Mr. Ralston pointed out to me that that was Mr. Poindexter
13 who sitting in here during the testimony we just heard.
14 We had all invoked the rule of sequestration. I'm not
15 sure what we do about that, but he was sitting back there,
16 been for about --

17 MR. RALSTON: For Dr. Shaw's testimony.

18 MR. SAGER: All of Shaw's testimony.

19 MR. ABRAMS: Your Honor, I had emailed him this
20 morning, explained the rule of sequestration to him. It's
21 different than North Carolina, and that may have been his
22 issue. I'll show you the email that I got.

23 I was just as surprised if not more surprised than
24 defense counsel that he was sitting back there just a
25 moment ago. I mean, I can guarantee you there's no -- we

1 told him not to come in, emailed him and told him not to
2 come in. He told us he didn't see the email, but I was
3 very particular about it that he not do it. But my
4 apologies that happened.

5 MR. CONLEY: I will say as the economist, his numbers
6 don't rely on Dr. Shaw or change -- his numbers are what
7 they are; they're going to be what they were regardless of
8 that or anything, really.

9 THE COURT: Has his deposition already been taken?

10 MR. ABRAMS: Yes, Your Honor.

11 MR. SAGER: The rule applies to all witnesses whether
12 they're the economist or anyone else, and he got to hear
13 testimony from someone directly on point on the damages
14 issues in this case. Sat there and listened to it, and,
15 obviously, improper. I know plaintiff's counsel
16 understands that, recognizes that. I'm sure they didn't
17 intend for that to happen, but the fact is it did happen,
18 should have happened, and we're prejudiced by that.

19 THE COURT: Okay. So what's the remedy?

20 MR. SAGER: I guess, Your Honor, we would move to
21 exclude him from testifying.

22 MR. CONLEY: I think that's a bit Draconian. Again,
23 what he saw was not live testimony; it was a deposition.
24 I don't know right now, sitting here right now, whether he
25 reviewed Dr. Shaw's deposition before today or not. He

1 could have. Had he read her deposition before he came
2 here, he would have simply been watching what he already
3 read. And if he didn't review --

4 THE COURT: Well, let's find that out.

5 MR. CONLEY: Okay.

6 THE COURT: See if we provided it to him, see if it
7 was in his materials when he was deposed. If he's read
8 the testimony, then he already knows it.

9 MR. CONLEY: Well, and if I could just -- my second
10 part of that is if he hasn't read her testimony, he's
11 already finalized and formed his opinions in his report,
12 so if he didn't review, it's not relevant to his
13 testimony. I agree. He shouldn't have been in here --

14 THE COURT: He should not have been in here.

15 MR. CONLEY: I agree --

16 MR. ABRAMS: He absolutely should not have been in
17 here.

18 MR. CONLEY: I didn't know what he looked like. I'd
19 never seen the man before. And I'm, you know -- look, he
20 did, but the question is if they're prejudiced. And if
21 this were a causation expert who was watching the
22 testimony of the biomechanic, it'd be a whole different
23 story. But I do think what was being done, which was
24 playing a deposition taken before -- and what I said a
25 moment ago, either if he's read it, we don't have any

1 issue.

2 THE COURT: Well, let's find that out and that'll
3 make it really easy if he's already read it. If he's not
4 read it, then I'll ask Mr. Sager if he wants me to give
5 any instructions to the jury. But his opinions cannot
6 change. They have to be exactly as in his deposition. If
7 his opinions don't change, then he hasn't been -- the
8 defense won't be prejudiced if his opinions remain the
9 exact same. But he cannot give any new opinions.

10 MR. CONLEY: No. And just so it's clear, Judge, he
11 doesn't have any opinions about medical conditions or what
12 does Josh -- I don't want to diminish what Mr. Poindexter
13 does, but he takes the numbers that were already in the
14 life care plan that were testified to by Ms. Vargas and
15 converts them to present cash value. I mean, again, I
16 don't want to diminish what he's doing, but that's it.
17 He's done that. No matter what Shaw said, he's basing his
18 numbers on the life care plan, not on what Shaw said.
19 Just so -- I mean, that's the reality of the situation.

20 But I agree. I agree an instruction should probably
21 be given. And I apologize to the Court as head of our
22 team for that happening.

23 THE COURT: I got the jury standing outside. Let's
24 speed up that conversation.

25 MR. ABRAMS: Your Honor, Dr. Poindexter says that

1 he's reviewed it. We're confirming that that's accurate.
2 He's getting his stack together, deposition exhibits, to
3 make sure it's in there, but he said he's reviewed
4 everything that we provided. But I'm looking to make sure
5 that it's been sent to him right now.

6 THE COURT: Okay.

7 MR. ABRAMS: I'm very upset that this happened.

8 MR. CONLEY: We're going to play Lin anyway, so . . .

9 THE COURT: Yeah. So y'all can be -- all right. So
10 we don't have to address it for -- let's find out if he
11 was sent the deposition, if he said he read it. Then I'll
12 still give some instructions to the jury when he comes up
13 to testify. But okay.

14 You can bring the jury in now.

15 (The jury entered the courtroom.)

16 Please be seated. Ladies and gentlemen, we have one
17 more witness by video who's going to testify, Dr. Lin from
18 the spinal Shepherd Center --

19 MR. CONLEY: Shepherd Center.

20 THE COURT: -- treating physician of the plaintiff.
21 It'll last an hour. And as soon as that's over, I've got
22 y'all set up for lunch downstairs in the cafeteria. So we
23 appreciate your patience. All right.

24 (The videotaped deposition of Dr. John Lin was
25 published.)

1 (Video paused.)

2 MR. CONLEY: Give us one second.

3 This is the last answer.

4 MR. SAGER: For some reason, I think he was cut off
5 on the video. But if it's okay with the Court, I'll just
6 reread the question that was cut off, and then I'll read
7 the answer.

8 THE COURT: All right.

9 MR. SAGER: "QUESTION: You're not aware of any
10 diagnosis that Mr. Hill has cancer; correct?

11 "No. I have not diagnosed him with cancer nor do I
12 expect him to have cancer, although it's always concerning
13 when somebody's in pain that's undiagnosed."

14 THE COURT: All right. Thank you. Does that
15 conclude the deposition? All right. Very good.

16 Ladies and gentlemen, it is now about ten till 1:00,
17 so we're going to break for lunch, and I'll ask you to be
18 back here at 2:00 o'clock. That gives you an hour and ten
19 minutes. Okay? I hope you enjoy your lunch.

20 (The jury exited the courtroom.)

21 They're coming back at 2:00, so let's go ahead and
22 take lunch, and then we'll come back and I'll hear your
23 arguments; give me time to finish reading. Let's say
24 1:35. That'll give you 25 minutes; 10 minutes each to
25 argue, and 5 minutes for me to reach a decision.

1 MR. SAGER: Your Honor, just a housekeeping measure,
2 I was wondering if I could move to introduce a couple of
3 exhibits from Dr. Lin's --

4 THE COURT: Later. I've got a 1:00 o'clock discovery
5 conference, but yeah, you can.

6 MR. SAGER: Thank you.

7 MR. CONLEY: We have some as well, Your Honor.

8 THE COURT: All right. We can do those later as long
9 as y'all agree; right?

10 MR. CONLEY: We're in agreement we can tender . . .

11 THE COURT: Court will be in recess till 1:35.

12 (A lunch break was taken at 12:53 p.m.)

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EXHIBIT E

1 THE COURT: Giving you each ten minutes to make your
2 arguments on defendants' emergency motion for a mistrial
3 or to stay the trial.

4 Mr. Sager, you may proceed.

5 MR. SAGER: Thank you, Your Honor. Not to -- it was
6 a motion to stay or suspend and/or for a mistrial, which
7 is --

8 THE COURT: Okay.

9 MR. SAGER: So I'm not sure if Your Honor has had an
10 opportunity to read it or not at this point.

11 THE COURT: I have.

12 MR. SAGER: I apologize for filing it late last
13 night, and Your Honor made reference to that earlier. But
14 just to kind of go back over what happened over the
15 weekend, we received the Supreme Court Justice Melton's
16 order late Saturday afternoon because -- I think probably
17 about the same time everybody else did -- it was kind of
18 blasted to the state bar.

19 And we put together an email. I did -- we did -- and
20 I sent it to Mr. Abercrombie with the proposed order
21 explaining why we believe that under the clear -- clear
22 terms of that order, this trial would be suspended until
23 April 14, I believe. Yeah, it is April 14 of this year
24 based on all the reasons set forth in that, which I'll
25 talk about in a few minutes.

1 To which Mr. Abrams responded with an email which
2 Your Honor has seen. It's in our -- it's an exhibit
3 indicating -- I won't read it in its entirety -- what they
4 took issue with was any reference to -- that mistrial was
5 mandated; indicated the trial would simply be suspended
6 until April 14, and mentioned possibility of having a
7 telephone hearing this week to discuss what we would do
8 under the circumstances, and we would argue potentially
9 whether there was a mistrial.

10 And then, of course, the next morning plaintiff's
11 counsel sent a different email to which Mr. Byrd responded
12 with an email. I think Your Honor has that. And then we
13 were just waiting and waiting, hoping for some direction.

14 And then I sent an email late Sunday. And then when
15 we didn't get any response to that, that's when we put
16 together the motion as fast as we could and got it on
17 file. So that's why it was filed last night. We were
18 hoping not to have to file it.

19 But, obviously, this whole situation, Your Honor, the
20 coronavirus, none of us in this room are experts about it.
21 The jury is not. None of us in this room. Nobody -- none
22 of us are. And the world has changed incredibly in the
23 last month, in the last two weeks, three weeks, week.
24 During the course of this trial on a day-by-day,
25 hour-by-hour basis, this has changed, and it's gotten

1 dire.

2 And I'm not suggesting any of us have it or we're
3 going to die, but that's why we're having these
4 proclamations from the President of the United States on
5 Friday declaring a national emergency. That was Friday.

6 Later that same day, Gwinnett County shut down this
7 court system. Your Honor, referenced you had spoken with
8 the Chief Judge and made an exception for this trial.
9 That was when Mr. Toman came up, opening up his computer.
10 We thought that that meant this trial was being shut down.
11 That was Friday.

12 Saturday, Governor Kemp declared a public health
13 state of emergency in the state of Georgia.

14 Today, the United States Supreme Court suspended oral
15 argument for a month, the nation's highest court.

16 And on Saturday afternoon, Justice Melton issued the
17 order that, we believe, mandates that this trial not go
18 forward. And that's why we wanted it heard this morning
19 when we're all here. That was the essence of the timing.
20 That's why we're anxious to have it heard.

21 Declaring a judicial emergency related to the
22 coronavirus pandemic in order to protect the health,
23 safety, and liberty of all citizens in the state of
24 Georgia. Made reference there, I'm sure Your Honor is
25 well aware: To the extent feasible, courts should remain

1 open to address essential functions. And in particular,
2 courts should give priority to matters necessary to
3 protect health, safety, and liberty of individuals. It
4 goes on to talk about some of those exceptions. I'm sure
5 Your Honor has seen that.

6 None of those, we believe, relate to conducting a
7 civil jury trial. It's not an instance where an immediate
8 liberty or safety concern is present relating to a
9 criminal search warrant, domestic abuse, juvenile court
10 delinquency hearing, or a mental health commitment
11 hearing.

12 Page 2 of the order declaring a state judicial
13 emergency in the state of Georgia Saturday afternoon,
14 Justice Melton indicated that any criminal case for which
15 a jury has been impaneled and the trial has commenced as
16 of the date of this order shall continue to conclusion
17 unless good cause exists to suspend the trial or declare a
18 mistrial, clearly making no mention of a civil trial that
19 has started.

20 We believe that with the admission of reference to a
21 civil trial which has started, there's no discretion for
22 continuing a civil trial that has already started, in view
23 of everything that's happening in the world, in view of
24 all of the available information that we have. That's why
25 we wanted this heard first this morning. None of us want

1 to be here, and I think I'm speaking for everybody, for
2 this reason. None of us.

3 We've heard that plaintiff's counsel does not oppose
4 a suspension. They simply want to keep the jury. We
5 oppose that, but that's a separate issue. And I know Your
6 Honor would be inclined to keep the jury. I understand
7 that.

8 THE COURT: Well, I don't know if I'm available on
9 April 14, so --

10 MR. SAGER: Well, and I --

11 THE COURT: I already have a calendar.

12 MR. SAGER: Understood. And this throws everybody's
13 calendar out the window. It does. And I -- who knows
14 whether we're going to be able to come back April 14. We
15 don't know. But we think this -- my understanding -- and
16 I'm no doctor, obviously. I have stayed in a Holiday Inn
17 Express for the last week -- but is that hotter weather,
18 hopefully this thing will dissipate. And by that time the
19 experts will have come up with a way to combat this and
20 we'll have learned a lot more. That time will buy us the
21 ability to fight this.

22 But what the -- our federal government, all of the
23 experts, our state government, our governor, our chief
24 justice, want us to do is not do what we're doing: Gather
25 here 35 to 40 people a day. I understand we don't have

1 people in the courthouse, that many, but this is what
2 we're not supposed to be doing. We're not supposed to be
3 doing this.

4 THE COURT: Well, that's your interpretation of that
5 order.

6 MR. SAGER: That's my interpretation of everything we
7 hear.

8 THE COURT: Right.

9 MR. SAGER: And it's not because somebody here might
10 have it. It's we don't -- or might be doing something
11 wrong. I'm sure we're all washing our hands and doing
12 everything we can, but nobody knows who has and who
13 doesn't. We're trying to prevent the spread here in the
14 state of Georgia, here in Gwinnett County, here among all
15 of us. And none of us want to expose ourselves, our
16 families, to it. None of us do.

17 And that's why we felt compelled, Your Honor, to put
18 what we did, enclose the affidavits. I mean, most law
19 firms are shutting down. Our firm, everybody's working
20 from home. I canvassed other firms over the weekend.
21 Everybody's trying to work from home and not come
22 together.

23 Now, I laud Your Honor and this court staff for
24 what -- and Gwinnett County for what you're trying to do
25 to have hand sanitizers and keep this as clean as we can,

1 but that's not going to -- but we still could have
2 germs -- nobody knows what people have done over the
3 weekend, and we're not supposed to be doing this.

4 And that's why we have the Supreme Court order.
5 That's why we have all of the health recommendations not
6 to be doing what we're doing.

7 Mr. Toman is not here. He is at the moment appellate
8 counsel. I think Your Honor has probably read his
9 affidavit. He is in a category of people over 60 years
10 old. His doctors told him not to come to court. He's
11 still coming to court. His primary issue is with his
12 wife -- and Your Honor has read that -- who has
13 immunodeficiency issues or has some health-related issues
14 and should not be exposed to this. She would be in a
15 high-risk category.

16 THE COURT: Okay.

17 MR. SAGER: I'm sure there's people in this courtroom
18 in on this side that have similar issues.

19 THE COURT: You have one minute, Mr. Sager, left.

20 MR. SAGER: Yes. I'd like for Mr. Byrd to just speak
21 to his issue, and then I'd like to just talk about our --

22 THE COURT: Well, you've got one minute to finish.

23 MR. SAGER: Got it.

24 Chris, go ahead.

25 MR. BYRD: Yeah. Well, in my one minute I'd like to

1 perhaps put a more personal tone on this. I don't know
2 what your situation is. I don't know what their situation
3 is. I can tell you what my situation is. I've got a kid
4 who is immunocompromised. I don't like being here. I
5 don't like coming -- I don't like having to come out in
6 public. I've got an opportunity, because of everything
7 that's going on, to try and keep him safer. Not perfectly
8 safe; we know that doesn't exist. But to keep him safer.
9 His school is closed. Churches are closed. Everything is
10 shut down. So we've got that opportunity but for my
11 involvement in this trial which you're making me come to.
12 Mr. Toman is in the same boat. He's got a wife who is
13 particularly susceptible to this.

14 THE COURT: Yeah, but he's a little different. He's
15 an appellate. He is not participating at trial. He's
16 just an attorney here to see if there's an appellate
17 issue. So you can go forward with the trial without him.
18 You're the one I'm listening to.

19 Go ahead. You don't need to speak on his behalf.

20 MR. BYRD: Well, I've got my client here who is
21 also -- who is also in the category of somebody who's not
22 supposed to be out and about. I've got an expert witness
23 who was going to come in this week and refuses to travel
24 because he's got an elderly father that he has to take
25 care of, and he doesn't want to bring anything back to

1 him.

2 Your sanitation efforts, while should be applauded,
3 they're as good as the people that come into this
4 courtroom.

5 THE COURT: Well, it's --

6 MR. BYRD: They last as long as -- until we get here,
7 and then -- and then it's -- everybody brings in what
8 they've been doing all week.

9 And I can give you an example. I put an example, I
10 think, in that email. I don't know if it was the
11 affidavit. But, you know, you try and keep everyone safe,
12 and then you hear from somebody, "Oh, gosh, you know, you
13 were in carpool with me yesterday, and this coworker of
14 mine went to the hospital, and they've got a high fever,
15 and they've got respiratory problems, and they can't get
16 tested, so you might be exposed."

17 We've got an expert -- we've got another expert
18 witness who has had symptoms for weeks who is going to
19 come in here live to testify.

20 THE COURT: All right. Time is up. I'm keeping you
21 all on this ten minutes.

22 Mr. Conley, you've got ten minutes too.

23 I have read everything in your motion and all your
24 exhibits.

25 Mr. Conley, you didn't file anything, so --

1 MR. CONLEY: No, we didn't file anything between
2 whatever, 10:00 o'clock last night and now.

3 THE COURT: Let me -- hear what you say.

4 MR. CONLEY: Here is what I would say is: First of
5 all, start -- start where I think is the easier part,
6 which is the Supreme Court's order, there was an issue in
7 an email, and none of us have read it. They said
8 something to the Court, and we were afraid the Court was
9 going to grant a mistrial or something. And the first
10 thing and the most important thing I will say in my ten
11 minutes is as long as it don't involve a mistrial -- we
12 oppose a mistrial, period. There is no basis for what is
13 happening out there to cause a mistrial. Nothing has
14 happened in this courtroom that should lead to a mistrial,
15 and it would grievously prejudice and harm us and Josh
16 Hill. So that's point one.

17 Point two is there is nothing in the Supreme Court's
18 order from Saturday that, first of all, that says you've
19 got to mention -- you've got to grant a mistrial. To the
20 extent -- it even says in criminal trials, it would be a
21 matter of discretion. There's absolutely zero authority
22 in the Supreme Court order to grant a mistrial. So my
23 first point is supported by my second point.

24 Third point, there's nothing in the Supreme Court
25 order that says we can't do what we're doing. I can argue

1 we fit within an essential one. Josh is in a wheelchair.
2 If he doesn't get -- and I know they say what they want to
3 say about Josh having gotten other recoveries, but getting
4 this trial over for him is a mental health issue; it is a
5 physical health issue. He is going to be here today. We
6 want -- I guess I'm trying to go in just order, Judge.

7 THE COURT: Well, I'm going to -- I'm going to save
8 your time, but I'm going to -- this will make it easier
9 for everybody.

10 I did -- when I got the motion in this morning, I did
11 contact our -- the chief judge of our superior court and
12 the chief judge of our state court to ask their opinions
13 whether or not us continuing this case this week would be
14 in violation of, first of all, our own order, the one
15 authored by George Hutchinson as our Chief Superior Court
16 Judge, and Justice Melton's order. And they were both of
17 the opinion that it would not be in violation of Justice
18 Melton's order.

19 So in abundance of caution, at 1:00 o'clock I had a
20 conference with the executive director of the JQC to
21 explain to him what I was doing, the position I was
22 taking, and would that be in compliance with Justice
23 Melton's order. And Mr. Boring said, "Yes, you can go
24 forward with your trial. It does not violate Justice
25 Melton's order."

[Hill v. CVG; 3-16-20 p.m. daily copy]

1 So we don't need to argue about that.

2 MR. CONLEY: Okay.

3 THE COURT: And that's been be my position all along.
4 His order is being narrowly construed by defense counsel,
5 and I don't think that was the intent and purpose, and I
6 don't think -- that's, in fact, I think it's -- the list
7 in his order is not drawn up in exclusive terms.

8 And so this Court is making -- will make its decision
9 based on the circumstance -- all the circumstances of this
10 case are essential.

11 All right. You may finish up your argument.

12 MR. CONLEY: Thank you, Judge. And I didn't know
13 about all that, or I wouldn't have argued it as
14 vociferously as I did. We will move on.

15 I want to be honest with the Court. And I actually
16 went out to my truck at lunch, and I can't ever remember
17 anything harder than this, because you know even right now
18 where I wear my heart, and I believe in public health.
19 Okay. I have a sworn duty to my client, sworn duty of
20 candor to this Court.

21 I wish I was God. First of all, I'd get rid of this
22 virus --

23 THE COURT: Yeah.

24 MR. CONLEY: -- but let's assume even he can't
25 contain that or she can't contain that now.

1 What I think we ought to do is let us finish our case
2 today, and you -- we're all going to have to move our
3 schedules, everybody's schedule. And I don't mean to be
4 light with the Court's schedule, but we've all got to
5 enter a new realm of thinking about whatever we thought
6 our schedules were for the rest of 2020. And I'm going to
7 one day argue -- Lord knows I'm sorry for those people who
8 got trials set later than us, but we didn't ask for this
9 delay. And some stuff -- I'm going to ask for one point,
10 Judge.

11 Will you make some accommodation to your schedule
12 that we can continue this case if we don't finish it this
13 week?

14 THE COURT: Well, I don't think that these -- you're
15 going to get these people back. That's what I don't
16 think.

17 MR. CONLEY: Well, what I wonder -- and I don't -- I
18 don't know that. I don't know, Your Honor. I'm not going
19 to pretend to know. But I know this: That I had a case
20 in 2011 in North Carolina, oddly enough, where
21 circumstance arose with a hurricane, and we had a Friday,
22 and we had to excuse the jury for a week. There was a
23 combination, but the hurricane was the biggest part of it.

24 And we all worried about that. And the judge said,
25 "Look, I'm ordering that -- we can't get witnesses here

1 because of the hurricane" -- different from coronavirus,
2 but similar in a sense. And it was ours; it wasn't
3 theirs. But I believe in being all candor, that in that
4 situation the judge said, "Look, we can't get witnesses
5 here," because of hurricane whatever it was, Judy or
6 whatever it was, "and you've got to come back the next
7 Monday." And it was a longer trial, so it wasn't that
8 surprising.

9 I mean, I believe this jury, from seeing them in voir
10 dire, from hearing how they responded to just Your Honor
11 this morning, watching them, I believe if you order them
12 to come back on a date certain, they will. If they don't,
13 we can deal with it then.

14 But, you know, our preference has not changed from
15 what I said this morning. I want this jury to decide this
16 case because of the time, effort, and resources put into
17 it. But I will sleep tonight knowing I've been candid
18 with the Court that I, too, share concerns. I've got four
19 young kids at home, you know? And it is serious. And the
20 law doesn't require it. And I'm not -- again, like I said
21 earlier, it was perceived as horsetrading. It's not. And
22 whether it's April 14th or April 21st or May 1, or
23 whatever, I think we ought to finish today and order them
24 to come back.

25 THE COURT: I'm not going to order them to come back,

1 Mr. Conley. They said -- I gave them the choice to come
2 back on the 14th or continue. They decided to continue.
3 I'm not going to make them come back. If y'all want to
4 shut it down today, I will let you. I was prepared to go
5 forward. This jury is prepared to go forward. If you
6 lawyers have reason you don't want to, I will respect it.
7 But y'all need to decide. I'm not going to waste their
8 time this afternoon bringing them back in and hearing
9 evidence and then we're going to shut it down.

10 I think it's unfair to Mr. Hill, because you've put
11 up your evidence, they know your game plan, they know what
12 you're going to prove, what you have proved and what you
13 haven't proved. And I don't know how you can ever make
14 that playing field correct. They have nothing to lose.
15 Your client has everything to lose. So it's easy for them
16 to say let's -- they haven't put up any evidence. They
17 haven't spent money bringing in experts like your client
18 has. And because you've put up all your evidence, you've
19 spent all that money and the resources of the Court and
20 that I've taken up now five-and-a-half days of those
21 jurors, and given the fact that we have sanitized this
22 courtroom and the jury room and the deliberation room more
23 so than most any places you could go. If you stop and
24 pump gas, you have a greater chance probably of making
25 contact with the virus than you do in my courtroom. We've

1 done everything they can. But I am not asking them to
2 come back. So if you don't want to go forward, we will
3 not go forward. You will get on the next calendar. I
4 don't know when it will be. But I was prepared to go
5 forward if we need to.

6 So I will give y'all a few minutes to make your
7 decision, but whatever that decision is, no more downtime.
8 We're moving forward. If we're going to go forward with
9 this trial, I expect when you put up a video, it's right.
10 Don't take our time to make corrections. Know -- if
11 you've got any objections or any problems -- we've spent
12 so much time arguing in this case because y'all haven't
13 got along. And there's never been agreement on anything.
14 So we spent an enormous amount of time. We could have
15 already had this case -- Mr. Conley could have got his
16 case up by Friday had we not had so much -- y'all don't
17 get along. Y'all argue on everything. You don't agree on
18 much. And it's been that way the entire litigation, and I
19 am frustrated.

20 I'm just trying to make sure -- it's my job that
21 everybody in my courtroom gets a fair trial and gets
22 justice. Right? And it's equal for all people.

23 I don't think Mr. Hill, to declare a mistrial, is
24 going to get justice. But I will do whatever y'all say.
25 I don't want to jeopardize anybody. I don't want anybody

1 to be afraid of getting the coronavirus. And God forbid
2 if somebody does and I kept you here.

3 And I certainly understand the situation with
4 Mr. Byrd. I understand your concern about your child. I
5 used to work for your firm -- I guess everybody here knows
6 that -- for a long time. And the entire time I worked for
7 what was Long Weinberg Ansley & Wheeler, I was a single
8 mother of a little girl who spent her life in a wheelchair
9 with compromised immune. Do you think anybody gave me a
10 break on trials or deposition or out-of-town travel? I
11 did it anyway. I found a way to make it happen and --
12 because I had a client to represent.

13 I'm not diminishing your concern. There's -- how
14 many lawyers y'all got? Fifty? They're all good.
15 Mr. Ralston is good. He can step up in your place if
16 that's necessary.

17 I'm trying to do what's right and just. Me
18 personally, I'd like to leave tomorrow and go up to
19 Blairsville with my little two-year-old granddaughter up
20 in the mountains and have a big old time rather than
21 spend -- but I will do what is right. And I think what is
22 right is to go forward with this trial. But if y'all -- I
23 mean, I'm going to let y'all talk, because when I come
24 back in here, I want a decision, and we're going to
25 either -- I'm going to call the jury in and thank them and

1 excuse them, or we're going to go forward.

2 So we will take a five-minute break.

3 (A break was taken at 2:05 p.m.)

4 MR. CONLEY: Your Honor, plaintiff elects to move
5 forward.

6 THE COURT: You would like to go forward, Mr. Conley?

7 MR. CONLEY: Yes, Your Honor.

8 THE COURT: All right. Motion denied.

9 Call your next witness. Get the jury back in here.

10 MR. SAGER: I would like to put something on the
11 record, if I can, Your Honor, related to our discussion.

12 THE COURT: You can at the end of the day. We are
13 moving forward with this trial.

14 MR. SAGER: Okay.

15 THE COURT: It's not going to change my decision.
16 Your motion is denied.

17 MR. CONLEY: Your Honor, Mr. Hill is supposed to be
18 arriving probably during this witness. I may have to slip
19 out. Mr. Popper is putting him up. Is that okay?

20 THE COURT: That's fine.

21 MR. CONLEY: Okay. I just wanted you to know why I
22 may slip out.

23 THE COURT: Who's your next witness?

24 MR. CONLEY: J.C. Poindexter, our economist.

25 THE COURT: Okay. And what am I going to tell the

1 jury about Mr. Poindexter? Did he review that deposition?

2 MR. CONLEY: He did not.

3 THE COURT: He did not. Okay. So he doesn't rely
4 upon the medical, but he was in here and he wasn't
5 supposed to be in here, so --

6 MR. CONLEY: He reviewed her records. He had
7 reviewed Eva Shaw's medical records, but not her
8 deposition.

9 THE COURT: And so if -- what would you like for me
10 to say, Mr. Sager?

11 I don't know if the attorney's for him. Did y'all
12 tell him?

13 MR. ABRAMS: Yes. Yes.

14 MR. SAGER: Told him not to be here.

15 MR. ABRAMS: Yes.

16 MR. SAGER: That's what you're referring to; right?

17 THE COURT: Yes. Told him not to be here. And why
18 did he say he didn't follow your instruction?

19 MR. ABRAMS: He said he didn't check his email.

20 THE COURT: Okay. What would you like for me --

21 MR. SAGER: I haven't encountered this before, Your
22 Honor. I guess -- I mean, maybe helping them understand
23 there's a rule of sequestration that's supposed to prevent
24 witnesses from -- who are going to appear to give
25 testimony from sitting in and listening to other

1 testimony, this witness -- I don't know -- I'm not trying
2 to denigrate Mr. Poindexter, but it is what it is, and he
3 was instructed.

4 THE COURT: Do you want me to admonish him in front
5 of the jury? "Sir, did you not understand we had -- we
6 sequestered the witnesses?"

7 I mean, he's going to say he didn't know because of
8 the email.

9 MR. CONLEY: Your Honor, if I may?

10 THE COURT: All right.

11 MR. CONLEY: I would, as a suggestion, would say to
12 the jury when they came in, that there's a rule that was
13 invoked by plaintiff in the case that witnesses are not
14 supposed to come in the courtroom under the rule of
15 sequestration. Mr. Poindexter came into the courtroom.
16 That was not appropriate. It was not -- I mean, whatever
17 you want to say. Was not in compliance with that rule.
18 He should not have done that. And he is not allowed to
19 rely upon anything he heard while he was in the courtroom
20 in any way, shape, or form during his testimony. Period.

21 THE COURT: All right. Who was this expert? This
22 treating doctor?

23 MR. CONLEY: He's an economist, Your Honor.

24 THE COURT: No.

25 MR. POPPER: It was during the --

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1 MR. CONLEY: Oh. Shaw.

2 MR. POPPER: -- video deposition of Dr. Eva Shaw, who
3 is a treating --

4 THE COURT: Dr. Shaw?

5 MR. POPPER: Yes, Your Honor.

6 THE COURT: Yeah. She was the treating primary care
7 physician.

8 MR. POPPER: Correct, Your Honor.

9 THE COURT: So you need to instruct him, because I'm
10 going to tell the jury that he was instructed that he
11 cannot rely on or talk about in any way the opinions of
12 Dr. Eva Shaw. So he violated it, but what they're telling
13 me, he didn't rely on her opinions anyway. So no harm
14 done, I don't think, except he shouldn't have been
15 present.

16 Okay.

17 (The jury entered the courtroom.)

18 Welcome back, ladies and gentlemen. I need to talk
19 to you about this real quick.

20 Who's our next expert, Mr. Popper?

21 MR. POPPER: Dr. J.C. Poindexter.

22 THE COURT: Poindexter. Mr. Poindexter. All right.

23 Mr. Poindexter violated a rule of this Court, and
24 that is that the plaintiff's counsel had invoked the rule
25 that witnesses are sequestered; anybody that's going to

1 testify at trial is sequestered. They must stay outside.
2 They can't be present when a witness is testifying.

3 Plaintiff's counsel has advised me that they sent an
4 email to Dr. Poindexter, and -- but -- and he came in
5 during the testimony of Dr. Eva Shaw, and was present.
6 That was a violation of the rule. Dr. Poindexter says he
7 didn't read the email. But the bottom line is plaintiff's
8 counsel and this witness were responsible for abiding by
9 that rule.

10 I am going to allow Dr. Poindexter to testify, but
11 his testimony cannot be -- he cannot rely for any of his
12 opinions or any of his findings on Dr. Eva Shaw, on the
13 testimony she provided.

14 Now -- well, I will just leave it at that. So any
15 opinions he has cannot be -- he can't comment on Dr. Shaw.
16 He can't rely on what she found. It has to be completely
17 independent of that. And then you can explore what he
18 relies upon in front of -- with the jury.

19 MR. POPPER: Thank you, Your Honor.

20 THE COURT: All right. Dr. Poindexter.

21 MR. POPPER: Thank you.

22 Plaintiff calls Dr. J.C. Poindexter.

23 Whereupon,

24 **J. C. P O I N D E X T E R,**

25 after having been first duly sworn, testified as follows:

1 BY MR. POPPER:

2 THE COURT: And, Mr. Popper, you can certainly
3 explore with this witness what he relied upon in forming
4 that opinion before he showed up at trial.

5 MR. POPPER: Thanks, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. POPPER:

8 Q. Will you state your full name for the jury, please.

9 A. It's J. Carl Poindexter. Carl with a "C."

10 Q. All right. Dr. Poindexter, what is your current
11 occupation?

12 A. Well, I have for 50 years been an economist, or more.
13 I spent 42 of those years teaching economics and finance at
14 North Carolina State University, having gotten a PhD in
15 economics from the University of North Carolina at Chapel Hill.
16 I did that after working for a while as an engineer, because I
17 had an engineering degree from the University of Virginia. So
18 I've covered as much of the ACC as I could. No SEC, but --

19 Q. Fair enough. Well, hopefully no one will hold that
20 against you here in Georgia.

21 Did you have particular areas of expertise in your career
22 as a professor of economics?

23 A. Yeah. Three areas really: Macroeconomics; wrote
24 a -- you know, what, at the time, back in the 1980s, was a
25 pretty popular macroeconomics upper level textbook that was

1 used at nice places like NC State and Princeton and UCLA and a
2 lot of other places around the country.

3 Monitoring fiscal policy and finance, of course, I taught
4 a lot of corporate financial management classes. And then for
5 the last 35, 30 to 35 years while I was at the university, I
6 got involved in what's referred to as forensic economics, the
7 application of economics in just a legal setting for all kinds
8 of cases that involve economic analysis.

9 Q. And have you been qualified as an expert and
10 testified in other courts like this in the area of forensic
11 economics?

12 A. I have.

13 Q. And do you know roughly how many times you've done
14 that?

15 A. Around 200 times probably state courts and federal
16 courts.

17 Q. Okay. Thank you, Dr. Poindexter.

18 Is there a standard methodology you follow that's widely
19 recognized in the field of forensic economics?

20 A. Well, I use methodologies that are described and
21 discussed in various articles and refereed journals, journal
22 articles. If you write an article, it's not any good in our
23 profession unless it's refereed, unless it's -- the other
24 professors say, "Oh, yeah, it's a good article. Publish it."

25 So, you know, the methodologies that I use are fairly

1 commonplace in conversations and journals having to do with
2 application of economic principles to legal issues.

3 But I think more meaningfully, for me anyway, is it's the
4 methodology I see virtually all the other economists use when
5 I'm sometimes on the opposing side of a case. And for many
6 years there was a guy that I'd never met personally, but I
7 thought he was a great economist, at the University of South
8 Carolina. And I was first impressed with him because I
9 discovered he uses exactly the same methodology that I do.

10 Q. Fair enough. I take it -- have you utilized that
11 methodology in this case?

12 A. I have.

13 Q. And do you utilize that methodology whether you're
14 testifying for a plaintiff or on behalf of a defendant?

15 A. I use it in every case. Now, that helps to add that
16 I'm rarely testifying for a -- in a defense case. Even if I'm
17 employed by the defense, it's usually a hidden employment
18 that's not shared information and I don't testify.

19 Q. Okay.

20 MR. POPPER: And, Your Honor, plaintiff would tender
21 Dr. Poindexter as an expert in the field of forensic
22 economics.

23 MR. RALSTON: No objection, Your Honor.

24 THE COURT: Thank you. So tendered.

25 BY MR. POPPER:

1 Q. Dr. Poindexter, what materials did you review in this
2 case that is the basis for forming your opinions?

3 A. Well, in my mind there are three categories of loss
4 in this case, because the gentlemen we're talking about is very
5 egregiously injured. One is a loss of earning capacity. One
6 is a corresponding loss of the ability to do things for
7 yourself that keep a home going, keep your vehicles going, and
8 so on. And the third thing is a loss in the form of expenses,
9 costs of what we refer to as life care needs.

10 And so if I could, I would like to address those
11 individually instead of just a jumble of what did you look at
12 for the case.

13 Q. Absolutely. We may do that, Dr. Poindexter.

14 So did you review Maria Vargas's life care plan in this
15 case?

16 A. I did.

17 Q. Okay. And how did her life care plan factor into
18 what you were doing as a forensic economist in this case?

19 A. Her life care plan is the sole basis for my
20 information on what services Mr. Hill needs; the frequency in
21 which he will need those services; the duration; how many
22 years, whether it's the full life expectancy or some shorter
23 amount of time; and what current costs of all the things she
24 said he would need were at the time she did the plan, which I
25 think was the spring of last year. That's when I did my

1 analysis, in any event. And it was -- my evaluation of life
2 care cost was based directly on her recommendations of what the
3 life care needs are.

4 Q. Now, Dr. Poindexter, what do you mean when you say
5 you are evaluating the current costs of Ms. Vargas's life care
6 plan?

7 A. Well, I used what she provided as a current cost,
8 let's say the 2019 prices. But there are two adjustments that
9 economists have to make to come to court and say this is the
10 amount of damage that an award should cover. One is to take
11 account of the fact that medical care, doctor's care, physical
12 therapist's care, drugs that you have to buy, equipment that
13 you have to buy, wheelchairs, hospital beds, the works, all
14 that stuff goes up in cost over time. It doesn't just sit
15 still, but prices rise on it over time. So you've got to take
16 account of that.

17 The other thing you have to take account of is the fact
18 that if you've got \$100,000 in your hand today, you can put
19 that to work earning interest. And so 100,000 today will pay
20 for a bit more than 100,000 a year down the road, with compound
21 interest, even a bit more two years down the road.

22 And so it doesn't take a full 100,000 today to cover
23 \$100,000 cost two or three or four or five years in the future.
24 It takes what we refer to as the discounted value of that
25 100,000, the value that, if you had it today putting it to work

1 earning interest, would generate the 100,000 you need. And so
2 growth of costs, shrinkage for interest discounts, those are
3 the two things you have to apply to Ms. Vargas's costs
4 projected over the remaining life expectancy for Mr. Hill in
5 order to have a competent measure to come to court with of the
6 present value, we call it, of the monetary loss due to some
7 particular set of needs.

8 Q. Thank you, Dr. Poindexter.

9 MR. POPPER: Your Honor, may I approach the bench?

10 THE COURT: You may.

11 BY MR. POPPER:

12 Q. Dr. Poindexter, did you put together a summary of the
13 present values you determined for Mr. Hill's economic losses
14 sometime yesterday?

15 A. Yes, sir, I did.

16 Q. And is this that's been marked as PX 345 that
17 document?

18 A. It is.

19 Q. And would it be helpful for the jury for us to put it
20 up and kind of have you explain what you just said in terms of
21 the actual numbers you generated?

22 A. Absolutely.

23 Q. Can you pull that up?

24 A. As the old-fashioned Baptist minister said, I'm going
25 to go tell you what I found, and then I'm going to tell you how

1 I found it. Then we'll come back and see what I found. So
2 this allows us to do that.

3 Q. Okay. So the third line of this document states
4 "Value of Life Care Plan Costs."

5 A. Yes.

6 Q. Could you just briefly explain how you reached that
7 number based upon Ms. Vargas's life care plan?

8 A. Well, I don't know how brief it would -- will or
9 won't be, but Ms. Vargas, like all good life care planners,
10 knows how to package needs together so that they are subject to
11 the same kind of adjustment when they get in the hands of an
12 economist.

13 And so, for example, she would package together medical
14 care needs, and she would have those separate and distinct from
15 medications or equipment. Why is that important to me as an
16 economist? Because medical care needs historically have
17 escalated at the component of the consumer price index and for
18 the subcomponent referred to as medical cost services. And if
19 you track that over time in the modern era of the US economy,
20 which I have done, that's from the end of World War II pretty
21 much up to the present, you discover that the rate of increase
22 in cost of medical care services like doctor services, hospital
23 services, physical therapist services, occupational therapist
24 services, those costs have gone up at a pretty rapid rate,
25 between 5 and 6 percent per year on average since the end of

1 World War II.

2 And so when you line that up with what you can earn on
3 safe investments, which economists rely on U.S. treasury yields
4 as the return on safe investments, medical care service costs
5 have slightly outrun what you could earn during the same
6 holding periods that you're looking at -- have outgrown what
7 you can earn in the way of interest. And so there's some net
8 growth after the discount in the sums you have to set aside for
9 medical care services.

10 That's not the same with medications, which, in spite of
11 some acceleration in recent years of particularly prescription
12 drug costs historically have risen in cost a little less
13 rapidly than what you could earn percentagewise on U.S.
14 treasuries. And so those shrink when you discount them in
15 spite of taking into account the inflation that's impacted on
16 them.

17 Oh, and when you get to transportation, if somebody needs
18 a handicap-equipped van, the cost of new vehicles in this
19 country have made new vehicles, in relative terms, a real
20 bargain. The cost of those things have gone up much less
21 rapidly than what you could earn on U.S. treasuries
22 historically. And so they get an even bigger whack in terms of
23 discounting the present monetary value.

24 And so what I do is I take the life care plan, I look at
25 each of the categories of loss that are specified. One is

1 almost always going to be medical care services.

2 Q. Dr. Poindexter --

3 MR. POPPER: May I briefly approach, Your Honor?

4 THE COURT: Yes.

5 BY MR. POPPER:

6 Q. What's been marked as PX 208 is some tables from
7 Ms. Vargas's life care plan that we discussed with her on
8 Friday.

9 A. Okay.

10 Q. To the extent it will help, I just wanted to have
11 that in front of you as well.

12 A. Sure.

13 Q. And sorry to interrupt.

14 A. That's okay.

15 And so you've seen this already. I wasn't fully aware of
16 that. But as you saw, there are multiple categories of needs
17 here. And I would take those one at a time. I would set up
18 what we refer to as a spreadsheet that inputs each of the care
19 needs as they're described by Ms. Vargas, puts in the current
20 cost of those, runs the base cost for the life expectancy of
21 Mr. Hill. And then for the sum total each year of the
22 projection duration takes the current cost and adjusts it for
23 that combination of inflation on the one hand and interest
24 discount shrinkage on the other.

25 And so in my spreadsheets that correspond to these grid

1 entries of Ms. Vargas, you see on the far right-hand side a set
2 of adjustment factors that say, okay, for year one we're going
3 to adjust it this way, for year two we're going to adjust it
4 this way, and so on down. And so you get the yearly present
5 values of the cost that she says Mr. Hill will face, and I just
6 add them up.

7 Q. Okay. And is that set number highlighted on the
8 screen there the number that you reached as far as the present
9 value of the life care plan?

10 A. Yes, taking account of all the different categories
11 of needs. In all of these cases, the biggest category is
12 always attendant care. Huge.

13 Q. Okay. And we'll start back at the top now. As far
14 as Mr. Hill's loss of earning capacity, what did you do as far
15 as your forensic economic analysis to reach that number?

16 A. Okay. So someone gets hurt at age 30. What do we
17 want to know? Well, it's nice to know a little bit of
18 background. Has he been working regularly? If so, earning how
19 much? And so I want to see tax returns to document what the
20 earnings were.

21 I believe in 2013 Mr. Hill decided he wanted to be a big
22 truck driver, and he went to Millis Transfer and went to their
23 driving school, got his commercial driving license, and in 2013
24 started driving for them. And he was still driving for them on
25 December 28, 2016, when he got injured. Had won driver of the

1 year award. Intended to retire with them. That's based --
2 what I know based on materials that are in my file.

3 And so I want to know from 2013 forward at the least what
4 was he earning? And so I looked at the tax returns to answer
5 my question of what was he earning.

6 Q. And did you rely upon Ms. Vargas's vocational
7 assessment of Mr. Hill as part of reaching your determination
8 about his lost earning capacity?

9 A. I did. She says he's totally and permanently
10 disabled. That he needs 19 hours of care a day. That he's on
11 pain medication. And as an amateur would probably agree, you
12 know, you don't want him out driving on the highway that I'm
13 on. And so, yes, I relied on her opinion that he's totally and
14 permanently disabled.

15 Q. Okay. And so the highlighted number up there again,
16 as far as -- is that what you calculated to be the present
17 value of Mr. Hill's loss of future earning capacity?

18 A. Yeah. I tracked what he was earning. I took the
19 last year of earnings. I put it into my projection analysis.
20 Instead of the 12.9 percent a year increase he was getting in
21 the three -- four years that I had data for that I entered into
22 my analysis, I cut him way back to kind of in line with
23 everybody else, 3 percent a year.

24 Then I taxed it at 16 percent. Highest tax he ever paid
25 was in 2016, when he was a single guy, single person filing

1 taxes. That was 15 percent, 15-and-a-half. I rounded it up to
2 16 percent. Then I discounted it using interest yields that
3 were prevalent at the time, which I can tell you were much
4 higher than interest rates are today. So if I redid the
5 analysis today, the loss numbers would have a higher present
6 value because that's the way present value calculations work.
7 If you can't make as much on interest, you have to set aside
8 more today to cover what the future cash flows would have been.

9 And so I believe his wage -- projected wage earnings loss
10 came out at something like \$1.68 million. And I gave him
11 credit for benefits because the Millis Company offered group
12 healthcare, group dentist, group vision, better than most
13 companies in terms of benefits package. Most companies'
14 benefits packages are worth about 30 percent of your wages. I
15 round that down to 20 percent to make sure I'm on the side with
16 the angels, and that's what I do. Twenty percent of pretax
17 earnings is what I put in there for his benefits. If you put
18 that with the 1.68 million of lost wages, you get the
19 \$2,076,455 of overall lost earning capacity.

20 Q. Okay. Thank you, Dr. Poindexter.

21 Before we go to the middle category there, I just want to
22 clarify the life care plan costs are about future medical care;
23 is that correct?

24 A. Yes, sir, only from the time I was doing the analysis
25 forward. And that was the end of March last year.

1 Q. And did your analysis involve taking the medical
2 treatment or the bills for the past medical treatment and in
3 any way factoring that into your analysis?

4 A. No. It's only present value of projected future
5 loss. So whatever he's expended in the past, that's in
6 addition to this loss.

7 Q. Okay. Thank you.

8 And the middle category here, loss of household services,
9 could you explain what that section is and how you went about
10 calculating the number included therein?

11 A. Yeah. Most of us have to do chores to keep our
12 household operations humming along. For Mr. Hill there
13 certainly would've been some cooking; some cleaning; some
14 laundry, whether at home or at a laundromat; shopping for
15 household needs, groceries, clothing whatever; keeping his
16 vehicles maintained, whether he did it himself or took it to
17 somebody else; financial planning; bill paying; anything and
18 everything that it takes to operate a household.

19 Survey data from multiple surveys from the 1960s on
20 start way back at Cornell University -- of course, no longer
21 politically correct term -- home economics operations. There
22 were studies of what females do in the home and what males do
23 in the home, and how many hours a week they spend doing those
24 things. And, of course, as all of us know, we guys don't come
25 off looking too good. But the surveys say 10 to 15 hours a

1 week.

2 And so I did him at the lower end of the range as lost --
3 he's lost ten hours a week of capacity to perform all the tasks
4 that it takes to operate a household. I valued it, again, a
5 year ago, at a full replacement cost of \$15 an hour. So if you
6 just take ten hours per week and you multiply it by \$15 an
7 hour, that's \$150. And if you multiply that by the number of
8 weeks during the year he's working doing household chores, you
9 get a yearly value. I did that for 50 weeks, gave him two
10 weeks off for good behavior. And, let's see, 150 times 50
11 weeks would be \$7500 a year.

12 This calculation simply takes that \$7500 a year and
13 multiplies it by a number that's two or three years shorter
14 than his life expectancy. I don't remember right now the exact
15 number I used, but you can divide 300,000 by 7500 and you see
16 how many years I did it for.

17 Now, how can I do that? Well, I can do that because
18 replacement labor service costs go up in price over time, and
19 they go up in price at a rate that typically slightly exceeds
20 what you can earn on interest on treasuries. And so if this
21 year it cost me \$100, next year with inflation it's going to
22 cost me 102, but I can earn 2 percent interest. Well, I only
23 need to set aside \$100 again for next year, so I have this year
24 is 100, next year is 200. Oh, if the same principle applies
25 for year three, I just set aside 100 today, knowing it's going

1 to grow by 2 percent and 2 percent again, but then I'm going to
2 discount by 2 percent and 2 percent again, I just take this
3 year's number, the 7500, and multiply it by the number of
4 years. It's called the total offset methodology for
5 calculating present monetary value, or sometimes referred to as
6 the Alaskan Court Method because it's been statutory in Alaska
7 that you could do it that way.

8 If I did it in more detail, I actually spelled out here is
9 exactly the historical rate of service labor cost increases and
10 here are the exact treasury yields each year for each of those
11 historical years I'm looking at, I can get a little bit bigger
12 number than this, but it's not worth the effort and the cost to
13 the client of the spreadsheet calculations when the total
14 offset is perfectly applicable to this.

15 Now, what you need to understand is if the fact evidence
16 says to you that, oh, he was only going to be spending five
17 hours a week anyway, you can cut this number in half because
18 he's only lost five hours a week. But if the fact evidence is
19 that you -- he would have been spending 20 hours a week, you
20 know, maybe once you hear Mr. Hill testify, you would double
21 this number. It is just \$15 an hour for whatever number of
22 hours per week times 50 weeks per year, that kind of simple --
23 what's that? Eighth grade math? Seventh grade math? And then
24 you just multiply it by the number of years.

25 Q. Okay. Thank you, Dr. Poindexter.

1 I will represent to you I studied philosophy before I went
2 to law school, so much of this has been above my head, but I
3 think even I can understand how you got to the total evaluated
4 economic losses section at the bottom. But briefly will you
5 explain to the jury how you got to that opinion.

6 A. Yeah. I didn't want anyone to think that was -- I'm
7 telling anybody with certainty this is what he's lost, ten
8 hours, because I don't know. That's my index measure. It's
9 kind of like a yardstick, a ruler. Say here's what you get if
10 you're using a ruler to measure the distance across here. But
11 if the ten hours is not applicable, then you just proportion it
12 to whatever the evidence says he has lost.

13 Q. Okay. And so based upon all we've discussed, is the
14 bottom number there, is that what you reach as far as the
15 present value of all of Josh Hill's economic loss that you
16 evaluated?

17 A. It is, with the caveat that the middle entry there is
18 subject to some adjustment based on your perception of the
19 actual hours of services lost.

20 Q. Okay. And have your opinions today been expressed to
21 a reasonable degree of certainty in the field of forensic
22 economist -- economics based upon your background applied to
23 the evidence you reviewed in this case?

24 A. If I didn't believe they were conservatively correct,
25 I wouldn't testify to them.

1 Q. Okay. Well, thank you, Dr. Poindexter. At this
2 time, I have no further questions.

3 MR. POPPER: May I approach quickly, Your Honor?

4 THE COURT: You may.

5 MR. POPPER: Plaintiffs would also tender into
6 evidence PX 208 and PX 345 as the economic loss summary.

7 THE COURT: PX -- tell me the numbers again.

8 MR. POPPER: The first one, Your Honor, is PX 208,
9 and PX 345.

10 THE COURT: Mr. Sager? Or, I'm sorry, Mr. Ralston, I
11 think PX 208 was already tendered.

12 MR. RALSTON: Right.

13 THE COURT: And I reserved --

14 MR. RALSTON: And we did have a -- we did have a --

15 THE COURT: Yes. Yes.

16 MR. RALSTON: Yes. Yeah.

17 THE COURT: Okay. All right. PX345?

18 MR. POPPER: Yes, Your Honor.

19 THE COURT: Any objection?

20 MR. RALSTON: No objection.

21 THE COURT: All right. Plaintiff's Exhibit PX345 is
22 admitted into evidence without objection.

23 (Plaintiff's Exhibit No. 345 was admitted.)

24 You may proceed.

25 CROSS-EXAMINATION

1 BY MR. RALSTON:

2 Q. Good afternoon, Dr. Poindexter. I will be very
3 brief. And this time I mean it.

4 In determining what you were talking about the present
5 value, that's sometimes referred to as the present discounted
6 value. Is that correct?

7 A. Sometimes.

8 Q. And that's because, like you said, because of the
9 concept of the time value of money, you have to apply some
10 percentage in order to reduce the amount to pay for future
11 needs. Is that an amateur's correct paraphrasing?

12 A. Well, whatever level, it's perfectly fine, yes.

13 Q. And in doing that, you have to use a percentage in
14 order to reduce or discount the amount; correct?

15 A. Correct.

16 Q. And I don't think -- and if you did, I may have
17 missed it. In this case, did you use a percentage in reducing
18 or discounting the value?

19 A. Well, let me again separate the different analyses.
20 The first was of the lost earning capacity. And when I did
21 that analysis in the end of March last year, I assumed -- and I
22 think I said this explicitly when I was talking about that
23 category a few minutes ago. I assumed that Mr. Hill's wages
24 would no longer be jumping upward at the 12.9 percent per year
25 he enjoyed from 2013 to 2016, that I just put that down with

1 everybody else, 3 percent a year, which is about what we're
2 getting right now.

3 And when I discounted that, I discounted it at a rate that
4 was commensurate with what you could earn on 30-year treasuries
5 at that time, which was -- it was a little less than
6 3.15 percent. I rounded it up to 3.15 percent, because
7 rounding up means my numbers are smaller in the favor of
8 defendants in this case.

9 And then on the life care costs, I maintain a dataset that
10 I systematically update every two or three years that compiles
11 the rates of inflation on all of the items, all the categories
12 that I need to track for evaluating life care plans. That
13 includes rates of increase of the subcomponents of the CPI,
14 which are medical care services, medical care commodities,
15 overall CPI items, transportation items.

16 And in that database that I have, for each year that I
17 have the rate of price increase for each of those components of
18 the consumer price index, I have that year's U.S. Treasury
19 yields as well. And so what I do is net one off against the
20 other so my adjustment factors track the combination every
21 year.

22 And so when you look at one of my spreadsheets for
23 evaluating category in a life care plan, like here is the one
24 for attendant care that I did, over on the right-hand side here
25 there is a column entitled "Service Labor TV [ph] Factors."

1 And the first entry is 1; and the next one is 1.01; and the
2 next one is 1.0210. What that says to me is, oh, you know that
3 service labor wages have increased at a rate of about 5 percent
4 per year over the entire sweep of our history from the end of
5 World War II to the present. That is, the modern era of the
6 U.S. economy. So obviously with wages growing 5 percent a
7 year, and the adjustment factors 1.01, interest yields that you
8 discounted with each year must've been about 4 percent per
9 year, because when you take the 1.05 as 1 plus the growth
10 factor, and you divide it by 1.04, 1 plus the interest rate,
11 you get that 1.01 adjustment factor that I used.

12 And so I'm using a discount rate that historically has
13 averaged about 4 percent per year in all my life care cost
14 evaluations.

15 Q. So -- and I appreciate the answer. But it was a yes
16 to my question that you did use a percentage in reducing or
17 discounting to determine the present cash value?

18 A. Historically it's a percentage. Year by year it's a
19 different percentage depending on what the data tells you.

20 Q. And for lost earnings, I think you just testified
21 that the percentage you used was 3.15 percent. Is that
22 correct?

23 A. Correct.

24 Q. And then for the life care plan it was about
25 4 percent; is that correct?

1 A. It's averaged about 4 percent. That is that life
2 care costs, when you compare them to what the historical
3 interest rates were, have given us factors, adjustment factors
4 that I incorporate into my analysis.

5 Now, if I was doing exactly the parallel thing that I did
6 with the vocational assessment with life care costs, I might
7 take current rates of increase of medical care service costs,
8 which are fairly low right now; they're 3 to 4 percent. And I
9 say, okay, I'm going to -- in the numerator of my adjustment
10 factor put that 3-and-a-half percent. So the numerator is
11 going to be 1.035, 1 plus the 3-and-a-half percent growth. And
12 then the denominator is going to be today's 30-year U.S.
13 Treasury yield. 1.56 percent when I looked yesterday is what
14 the current 30-year treasury yield is.

15 And so my denominator is going to be 1 plus the
16 1.5 percent. It's going to be 1.015. I could get a huge net
17 escalator factor. So I would blow the life care cost numbers
18 up. I'd probably double them if I did that. And I'm not going
19 to do it.

20 But it's a perfectly legitimate thing for me to do with
21 the earning capacity, to say, you know, if I'm assuming a
22 conservative rate of wage growth, and that's got to be an
23 assumption. I don't have a 40-year track or a 70-year track of
24 Mr. Hill's earnings. I only have three years. I'm going to
25 have to select an assumed value. Then I want the best measure

1 of the interest rate that's going to be applicable to that
2 going forward that I can get, and that's what you get from
3 the -- what we refer to as the yield curve that the U.S.
4 Treasury publishes that shows you what the yields are on U.S.
5 treasuries for different maturity dates, everything from 90
6 days up to 30 years. I use the 30-year, because under the
7 expectations theory of interest rates that we economists teach
8 to our graduate students, the market is very efficient. And
9 what that 30-year rate is is the informed participants in the
10 market's best opinion of what the average rate's going to be on
11 any set of securities that gets us to 30 years. A one-year
12 treasury plus 29 subsequent one-year treasuries, a five-year
13 treasury plus five additional five-year treasuries, any
14 combination, that's the way the market works. So it's the best
15 predictor we have of the interest rate going forward.

16 Q. And no need for a symposium in your response. Just
17 yes or no. If you were to use a different percentage, a higher
18 percentage, say, instead of 3.15 you were to use 4.15, that
19 would necessarily -- that would make the number that you put up
20 on the exhibit be smaller; is that correct?

21 A. Correct. It would make the number smaller. But if I
22 put in today's interest rate, the 1.56 percent, it would make
23 it bigger. As a matter of fact, interestingly, last night I said
24 let me just play with this on my computer once I got to the
25 hotel at about 11:00 o'clock. Let me back off from 3 percent

1 growth, back that down to 2-and-a-half percent. But put in
2 today's interest rate and round it up to 1.6 percent. What do
3 you get? Instead of the 2.076, I got 2.21 million. So bigger
4 number.

5 Q. And --

6 A. And that's with the actual data, not with this
7 hypothetical, suppose you put 4.15 percent.

8 Q. Dr. Poindexter, you're aware, aren't you, under
9 Georgia law that the instruction is for 5 percent to be used;
10 correct?

11 A. I am not aware that judges adhere to that in cases
12 where actual reality is applicable. I know that every state
13 has a legal rate of interest. And I think it's either 6 or
14 8 percent in North Carolina. I testify in 20 North Carolina
15 cases a year, and nobody uses that rate.

16 Q. So you would at least agree with me, though, that
17 you're aware that there is a legal interest rate to be used for
18 the math that you've done here in this case; correct?

19 A. I would agree that there is a legal rate.

20 Q. And here I will posit to you that it is 5 percent.
21 Were you aware of that before you came in here today?

22 A. I didn't bother looking.

23 Q. But if that 5 percent rate had been applied to the
24 numbers you used in this case, yes or no, that would lower the
25 numbers you put in the exhibit shown to the jurors today;

1 correct?

2 A. Yes. If you don't change anything else, if you don't
3 change the rate of progression. But, of course, the rate of
4 progression is also subject to adjustment if you're going to
5 play that game.

6 Q. And moving to some of the other stuff you testified
7 about, you told Mr. Popper and the jury here today that when
8 you were determining loss of household services, you were
9 looking at survey results. Is that -- did I hear that
10 correctly?

11 A. Correct.

12 Q. And so you were looking at survey results from
13 individuals not named Josh Hill; correct?

14 A. That's for people injured. No, that's not for
15 Mr. Hill. I don't know details about Mr. Hill's level of
16 service, and that's the reason I gave the symposium on here is
17 the simple arithmetic. You can do it.

18 Q. Right. So you never spoke to Josh and asked him
19 questions about how many hours per week he actually spent
20 before this accident on household chores?

21 A. That's correct.

22 Q. You were just looking at numbers from a generic
23 survey; right?

24 A. For the survey evidence, yes. But I wouldn't even
25 characterize my ten hours as predicated tightly on survey

1 evidence. I think of it more as just a yardstick. Here's --
2 here's a simple way you do this calculation. And for a handy
3 number of hours, here is what the result would be. Now, you,
4 with fact evidence, can proportion it as needed. So if it's
5 five hours a week, it's half that value. If it's 20 hours a
6 week, it's twice that value, and so on.

7 Q. So not only -- you're also -- you are not a doctor or
8 a nurse; correct?

9 A. I'm a doc --

10 Q. Well, a medical doctor.

11 A. I'm a doctor of philosophy. My buddy I went to
12 graduate school always told the tale when we were out on
13 weekends playing, that, "My grandma says, 'Arnold, all these
14 years in school, you could have been a real doctor.'"

15 Q. But you are not a medical doctor?

16 A. I am not a medical doctor. Not a real doctor.

17 Q. Right. So when you look at the medical expenses and
18 things in a life care plan, you are not validating through any
19 medical judgment that those are, in fact, the needs that Josh
20 will need in the future?

21 A. No. I have the simple job. I just crunch the
22 numbers based on what the medical experts say the right numbers
23 are.

24 Q. Just a numbers cruncher; right?

25 A. Yeah.

1 Q. And the same goes for the loss of earning capacity.
2 You're not sitting here as Dr. Poindexter telling the jury that
3 you've validated that it is true, in fact, that Josh is unable
4 to work. Is that correct?

5 A. Correct.

6 Q. You're basing that on the work of Ms. Vargas;
7 correct?

8 A. Correct.

9 Q. I think that's all I have for you, Dr. Poindexter.
10 Thank you.

11 REDIRECT EXAMINATION

12 BY MR. POPPER:

13 Q. Dr. Poindexter, I just have one follow-up question.
14 In terms of Mr. Hill's needs, do your numbers conservatively
15 reflect the present dollar value in the real world that
16 Mr. Hill would need to compensate him for his economic damages?

17 A. They do.

18 Q. Okay. Thank you for your time. Thank you for your
19 testimony. No further questions.

20 THE COURT: Yes. Thank you, sir. You may step down.

21 MR. ABRAMS: I believe Mr. Conley is outside with
22 Mr. Hill. He would be our next witness.

23 THE COURT: All right. Y'all want to bring him on
24 in?

25 MR. CONLEY: I don't know if Mr. Popper announced, we

1 are calling Josh Hill.

2 THE COURT: He did, in fact.

3 Mr. Hill, you can -- the Court's okay if you wear
4 your hat.

5 MR. HILL: Thank you.

6 Whereupon,

7 **J O S H U A K Y L E H I L L,**

8 after having been first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. CONLEY:

11 Q. Will you please state your name for the ladies and
12 gentlemen of the jury.

13 A. Joshua Kyle Hill.

14 Q. And will you tell the jury where you grew up.

15 A. Archdale, North Carolina.

16 Q. Where did you go to school?

17 A. Trinity High School.

18 Q. And then tell us just a little bit about your family.

19 A. Mom and dad, Sharon and Chuck Hill. I have a sister,
20 younger sister, 20 -- turned 25 this year. Then I have an
21 older stepbrother who will be 45, or actually just turned 45 in
22 February.

23 Q. And what is your date of birth?

24 A. August 20th, and I will be 35.

25 Q. You were born in 1985?

1 A. Yeah.

2 Q. All right. So in August you will be 35?

3 A. Yes, sir.

4 Q. All right. You talked to us about your siblings and
5 your parents. Do you have a child?

6 A. I do. I have a 12-year-old who just turned 12 in
7 February 14th. His name is Joshua Jake Hill.

8 Q. And let's talk to the jury a little bit about -- I
9 want to kind of go in time order, Josh, and let's try to go
10 back in time before December 28th. But before I do that, let
11 me ask: Physically, do you have good days and bad days?

12 A. Yeah, good days, bad days. I can recall a good day
13 was last Thursday, and I've had two bad days. And today is a
14 bad day.

15 Q. And when you say "a bad day," what do you mean?

16 A. Just pain. I got really bad lower back pain. So
17 that's why I move around a lot. So you'll see me stretch.

18 Q. If -- if someone were to touch your lower back, would
19 you feel them touching it?

20 A. No. I don't have feeling from collarbone --
21 collarbone down, and very sporadic on my arms.

22 Q. But in your brain, you can feel pain from your lower
23 back?

24 A. Yeah. It's nerve pain.

25 THE COURT: Mr. Conley, I just want to make sure he's

1 comfortable. He looks --

2 MR. CONLEY: Well, I have the same concern, Judge.

3 THE COURT: You can -- yeah. You can -- listen, you
4 ain't got to --

5 THE WITNESS: The more I lean --

6 THE COURT: She doesn't have to see your voice -- she
7 can hear you.

8 THE WITNESS: No. I like -- I like to lean back
9 because it stretches my back out.

10 THE COURT: Well, I was worried about your back
11 looking at you.

12 THE WITNESS: No. This is comfortable.

13 THE COURT: I've got a back --

14 THE WITNESS: Because I've actually got my shoulders
15 resting on the back, so it's basically just like a
16 backrest.

17 THE COURT: Okay. You are free to move around this
18 court. Turn around towards them. Just don't put your
19 back to them.

20 THE WITNESS: All right.

21 THE COURT: Because most important is they see you.
22 Okay?

23 THE WITNESS: I'm good. Thank you.

24 BY MR. CONLEY:

25 Q. And other than -- other than you want to look

1 styling, can you tell them why you like to wear a hat.

2 A. I -- since you're a quad, even paraplegics, you can't
3 regulate your body temperature, so I stay cold nonstop. Like
4 my thermostat in my house is 81 degrees. And if I take it off,
5 I'll get cold, and then it will take even longer to warm me up.

6 Q. Sorry. We were talking before I kind of detoured us
7 about Jake, your son, and I want to -- before we talk about the
8 incident or kind of what you've been through, I want the jury
9 to have a little bit of understanding -- tell us before, you
10 know, leading into December 2015 where you're living, and what
11 are you doing, and tell us a little bit about your life.

12 A. I lived with a roommate, Jason. Met him back right
13 out of high school. We rode street bikes together. And then
14 we basically got in a cheaper hobby, which I thought would be
15 cheaper, but bicycles. And loved -- I was just -- I loved
16 bicycles and dirt bikes. That was my whole life is just riding
17 bikes.

18 Q. Like mountain biking? On the road? Both?

19 A. Mountain biking. Road cycling. Yeah. Right before
20 the accident, I loved to ride on the road bikes, so -- but,
21 yeah.

22 Q. How about you and Jake? Did he -- did he live with
23 you full-time at that point before the wreck?

24 A. Before the wreck, it was usually every other weekend
25 or every weekend, just depending on how often he wanted to come

1 over. Usually I'd pick him up Friday as soon as he gets out of
2 school, and then I would take him home Sunday, usually around
3 lunch or so.

4 Q. And the rest of the time was he living with his
5 mother?

6 A. Yeah. The rest of the time he lives with his mom.

7 Q. Okay. And tell us the things -- the kinds of things
8 before the incident that you like to do with Jake.

9 A. Everything. It's too hard. We just done everything.
10 We rode bikes. If he wanted to go anywhere, I would take him.

11 MR. CONLEY: Your Honor, may we take a break, please?

12 THE WITNESS: It's hard.

13 THE COURT: Mr. Conley.

14 MR. CONLEY: Josh, are you able to continue or do you
15 want to take a break? Would a break be helpful?

16 A. We just -- I loved to ride bikes with my son. We
17 would do everything he wanted. And it was just so much easier
18 than now. I just -- I just can't do half the things that we
19 used to do. I mean, it's -- I still make the best I can with
20 him, and I know he knows I try, and he can tell. He's old
21 enough to know. He knows I try. We just done everything. It
22 was so easy. I could just get off work and just get in my car
23 and go pick him up. Let's go out to eat, and we'd -- so easy
24 just to do simple stuff, just to take him out to eat. Now,
25 it's -- now, it's let's go to Subway, and it's in and out, in

1 and out with this wheelchair. It's so freaking hard.

2 But just keep asking some questions.

3 Q. I was going to say, let me -- let's go back some
4 time. Let's hear you talk about -- let's talk about just some
5 things. Were you -- did you have a job --

6 A. I did.

7 Q. -- at the time leading up to the work -- or the
8 incident? I'm sorry.

9 A. Millis.

10 Q. Millis? Driving?

11 A. Loved driving. That was another hobby. That's still
12 the best hobby I've got. I loved to drive.

13 Q. Let's -- let me go back and let's say we know you
14 graduated from Trinity High School. And when did you start
15 driving trucks?

16 A. I started right after high school. My dad owns a
17 trucking company. And the day I graduated, I started working
18 for him. He owns a furniture trucking company, so we would
19 haul furniture.

20 Q. All right.

21 A. Worked for him for -- up until 2008, the year my son
22 was born, back when the economy had a tumble -- took a tumble.
23 And I ended up getting a job out at the airport at a place
24 called Carolina Express delivering airfreight and worked there
25 up until 2010, 2011, I think. And went right next to their

1 competitor called Today Express. Worked there for a few years.
2 Then I just decided I was ready to make a lot more money, so I
3 went and got my CDLs, and got a job at Millis.

4 Q. Where did you actually do your truck school or your
5 training school?

6 A. I went to Millis. They offered a job where you go to
7 their school, and it was free schooling. And they just kind of
8 deducted it out of your paycheck if you sign a year contract.

9 Q. And where did you physically do that? Was that here
10 in Georgia?

11 A. Cartersville.

12 Q. And once you started running for Millis, was that in
13 2013? Is that right?

14 A. It was.

15 Q. Okay. I said "running." That's slang. You started
16 driving for Millis in '13?

17 A. End of April, I think.

18 Q. Okay. And then over the course -- the jury, we all
19 know your incident happened December 28, 2015, so you were
20 there about two and half years before the incident; is that
21 right?

22 A. Yes.

23 Q. Okay. And did you get to the point leading up to in
24 the months or however long before the incident where you had
25 sort of what I call a regular route or a normal route?

1 A. Yes. I would say -- I want to say it was almost
2 about a year, year and a half I had a regular route where I
3 went up towards Roanoke, Virginia, and then back down 220.
4 Most of the time they shipped me to Charlotte, North Carolina.

5 Q. Okay. And I didn't ask this: Where in North
6 Carolina do you live or were you living at the time? Is it
7 near -- just give us an idea.

8 A. High Point is the city, but Greensboro, right in the
9 center of the triad.

10 Q. All right. And, Josh, if you do need a break, we can
11 take one. Okay?

12 A. I'm good. I'm good.

13 Q. Your Honor will allow it.

14 Okay. So your dedicated route, were you on your dedicated
15 or normal route when the incident happened?

16 A. I was.

17 Q. Okay. Let's talk a little bit about the day or two
18 beforehand. Did anything unusual in your life in the day or
19 two before the incident?

20 A. Nothing out of the ordinary. I done a typical
21 weekend. Rode my bike. I had my son up until Sunday. I done
22 a bike ride that morning, took him home, and went to bed,
23 that's at 4:00 or 5:00 p.m., and woke up that night. I only
24 parked five -- not even ten minutes from the house I was living
25 in.

1 Q. Okay. And so you -- were you used to -- as of
2 December 28, '15, were you used to driving during the course of
3 the early morning hours, the midnight to --

4 A. Yes. I've been doing it all the way from the time
5 they gave me the dedicated position, I was -- I loved working
6 third shift because it gave me a lot of time to train for my
7 cycling, racing I was doing.

8 Q. Okay. When you went, where would you go to pick up
9 your load? Like that, the night of the incident, where did you
10 go to pick up your load?

11 A. It's called Georgia-Pacific in Big Island, Virginia,
12 which is right outside Roanoke, Virginia.

13 Q. Okay. And when you would get there, would you -- you
14 would pick up the load, it would already be ready for you?

15 A. Ninety percent of the time they are preloaded
16 trailers. The other 10 percent, they'd load a trailer for you.

17 Q. Okay. On this particular night, was it preloaded?

18 A. This particular night was preloaded.

19 Q. Okay. So you pick it up from GP and you'd go on your
20 normal route?

21 A. Yes.

22 Q. Okay. Were you feeling okay?

23 A. Feeling great like I have every other night that I've
24 drove.

25 Q. Did you drink any alcohol, done any kind of illicit

1 drugs, anything at all?

2 A. Nope.

3 Q. Okay. When you got your truck, did you put on your
4 seat belt?

5 A. Yes.

6 Q. Did you put it across your waist, across your chest?

7 A. Yes.

8 Q. Okay. Did you -- as you're going down your route,
9 were you speeding?

10 A. No.

11 Q. Okay. Were you -- were you feeling tired?

12 A. Nope.

13 Q. Okay. I want you to get the opportunity to tell the
14 jury, as you're riding down the route that night, tell them
15 what you remember happening, in your own words.

16 A. As I'm going down the road, I started to go into this
17 turn, right-hand turn I've took many times before. At this
18 particular time, as I'm going right into the beginning of the
19 turn, I hear a loud boom. At that time, the truck shifted, I
20 tried to catch it, and it really didn't do anything. It goes
21 over on its side.

22 The next thing I know, I'm waking -- not really waking up,
23 but I'm coming to, and I'm thinking I was pinned underneath the
24 dash. I tried to crawl out. I couldn't really move. It felt
25 like forever. Finally a guy came. And I asked him if he could

1 get the thing off of my lap, the steering wheel or dash,
2 whatever it was.

3 He said, "Sir, you have nothing holding you down."

4 And that's the time I realized that I was more than likely
5 paralyzed.

6 It felt like forever again when the ambulances and all
7 them finally came. And that's -- the next thing I know, I'm
8 getting taken out of the truck into an ambulance, and they're
9 asking me if I can feel this and feel that. Don't move your
10 neck. And, yep, the rest is history.

11 Q. Other than the -- what's sort of the last thing you
12 remember before sort of coming to when the man is talking to
13 you while you're in the cab and you think the dash is on you?

14 A. Last thing I remember is just hitting the side of the
15 road. Then after that, was just there. I mean, I was awake
16 the whole time, but other than that, the last thing I remember
17 is smacking the road, and you remember the sound. And then you
18 just -- just happened so quick.

19 Q. I was going to ask you, did you -- did you try to
20 keep it upright?

21 A. I did try to keep the truck upright. It's instinct
22 when you hear the boom and you feel the truck shift to try to
23 turn the opposite way to bring it back down, but it just didn't
24 work.

25 Q. Do you remember going -- excuse me. Where did you

1 go -- the ambulance has took you. Where did they take you
2 first?

3 A. Carilion Hospital, I think is how they pronounce it.

4 Q. Was that in Roanoke?

5 A. It was in Roanoke.

6 Last thing I remember is I was wanting to call Jake, and
7 never remembered if they called him for me. But I know they
8 called my mom and my dad and said, "Y'all need to get up here
9 as quick as you can."

10 And I remember being wheeled back. And then I woke up and
11 found out that I was really paralyzed. That's when it --

12 Q. And then at any point since that night, have you had
13 any feeling from roughly your collarbone down?

14 A. Uh-uh. It's the same as it was from day one.

15 Q. I do want to -- do you remember having -- well, you
16 may not remember. Do you recall having surgery at Roanoke?

17 A. I don't -- I mean, I know I had the surgery, but I
18 don't really -- you know, I just wake up and they said, "We've
19 repaired your neck, Or surgery on your neck."

20 Q. Okay. Let's pull up -- we've got -- it's not really
21 a PowerPoint. It's more just pictures, but --

22 All right. Let's go. I just -- we got to talking, Josh.
23 I forgot I had all these pictures. And I don't want to -- I
24 don't want to choke you up again, I promise, but I do want them
25 to see.

1 Can we go to the first slide just so -- I think I showed
2 this in opening. That's Jake and you before enjoying when you
3 were out on the bike; right?

4 A. Yeah.

5 Q. Okay. Let's go forward. And I -- do you remember
6 having to wear the collar in Roanoke?

7 A. Yeah. I had to wearing it for 12 weeks, I think it
8 was.

9 Q. All right. Let's go to the next one. And then tell
10 us about that.

11 A. That's me and my mom. I'm not sure if that's the
12 hospital still or Shepherd Center. But it looks like I'm still
13 on an oxygen -- a ventilator possibly tube. I'm not sure what
14 that tube would be.

15 Q. Do you remember being on a ventilator for a period of
16 time?

17 A. Yeah. I was actually on and off the ventilator.
18 When I was at Shepherd Center, I got put on one twice.

19 Q. I hate to do this, but can you explain to the jury
20 what that's like to be on a ventilator?

21 A. It sucks. You can't talk. It sucks. What sucks the
22 most is your trach, which is the hole -- it's like that --
23 little trach hole, so -- so it keeps fluid out of your lungs so
24 you don't get pneumonia. That was probably the worst 12 weeks
25 of the most pain. So they'd take a tube and stick it your

1 throat and then it sucks all the stuff out. But you feel it
2 every -- it's about every 30 minutes to an hour, they would
3 stick it down, and it feels like someone is suffocating you.
4 You can't breathe for about 30 to 45 seconds while they drain
5 it. And that sucks.

6 Q. Let me -- let me -- I'm going to make you take your
7 hat off for just a second if you don't mind, if you can do
8 that. And I do want to ask just this question. And I'm sorry
9 to ask a fellow man about this --

10 A. It's all right.

11 Q. -- but before the incident, were you already starting
12 to bald in the front?

13 A. Yeah. I went bald at 17, 18. It runs in the family.

14 Q. Okay. So -- and I think the jury can see, if I can
15 approach, you still have scars on your head right there?

16 A. Yeah. You can still see the scars from the staples.
17 I think I got 70 staples put in my head.

18 Q. Okay. And that area was bald before the wreck;
19 right?

20 A. Yeah. It was bald already.

21 Q. Okay. You can put -- I think with the judge's
22 permission, you can get your hat back on.

23 THE COURT: Yes.

24 BY MR. CONLEY:

25 Q. I won't make you do that again.

1 All right. And is this -- this is still Roanoke; right?

2 A. I think it is.

3 Q. All right. Did you leave Roanoke and come down here?

4 A. I did.

5 Q. And where did you go for your next treatment?

6 A. Shepherd Center in Atlanta. I went there for almost
7 seven months. Actually six months, I guess.

8 Q. Okay. You did the inpatient, then the outpatient?

9 A. Yeah. Inpatient and then outpatient.

10 Q. Okay. And tell us, if you can -- we're not going to
11 go day by day, of course. But for instance we see you here in
12 equipment. Tell us what's going on there.

13 A. So this is a Hoyer lift. Before I really learned how
14 to do a bunch of stuff, basically this net goes underneath you,
15 and this machine will pick you up out of bed and set you into a
16 wheelchair.

17 Q. Gotcha. And then let's go forward. And talk
18 about -- tell the jury a little bit about the experience at
19 Shepherd. I mean, what were you doing? What were they doing?
20 How would you describe it if you were just going to tell
21 somebody about that first -- the inpatient part of it, the
22 first part?

23 A. Hardest day of my life was probably my second week at
24 Shepherd Center, they put me on these weights. And before the
25 accident, I could curl 45 pounds per arm. Here, in the

1 2.5-pound rubber band, and I could hardly move that, which is
2 crazy to think in 12 weeks I lost all that muscle. It's hard
3 to believe. I mean, it's really crazy to think about it.

4 Q. Did they tell you to do other activities too trying
5 to --

6 A. Yeah.

7 Q. And what were you doing -- did you -- did you try
8 these -- I mean, did you work hard at these things?

9 A. Yeah. I worked hard. I still work hard at it.
10 For -- I mean, you can't give up.

11 Q. Got it.

12 Let's go to the next one. And tell us --

13 A. Basketball, which is pretty hard. I don't have
14 triceps, so I can't hold your hands up in the air and shoot a
15 basketball, and my fingers don't work, so I can't really even
16 shoot a basketball.

17 Boxing -- I mean, they -- the place is a really phenomenal
18 place to go to.

19 Q. At Shepherd?

20 A. Oh, yeah.

21 Q. Yeah. You didn't -- you didn't get into any fights,
22 did you?

23 A. This dude did come and he tried to -- I mean, I
24 don't -- I'm not one for violence, but this dude was trying to
25 show us how to beat up people in a wheelchair. And the whole

1 time I'm talking my mom, like, "All you have to do is push him
2 over." But he has a stick, and he's, "If someone comes up to
3 me, I can hit him."

4 I'm like, "No, you can't."

5 Q. All right. Let's take a look at some other things
6 you were trying to do at Shepherd. Talk to us about what we're
7 seeing here.

8 A. Learning to roll over on my side, getting on my
9 stomach. They say sleeping on your stomach will open up your
10 chest and try to keep everything good as far as your chest,
11 lungs. Open up your lungs and stuff for breathing.

12 Q. And let me -- let me take one pause, Josh, and ask,
13 though, because the jury has seen you -- they've seen you wheel
14 in here. They've seen you come around. I mean, at this point
15 in time, are you able to sit in the chair yourself?

16 A. I was still in a power chair. I'm not sure what all
17 the pictures will be, but the first time I got into a manual
18 chair, I could push from here to just 20 foot, and I was
19 exhausted. And I honestly thought I would never get to here.
20 But you see people -- like I said, this place is just
21 phenomenal. You see people come over same condition as me and
22 they're in a manual chair. Like I got the mindset if they can
23 do it, then I can do it. And here I am.

24 Q. Gotcha. Are you able to roll over now? Can you --
25 through what they taught you, can you do that?

1 A. I have to have straps. So I've got to have a bed,
2 and I've got straps on each side. So as long as I have straps,
3 you know, I'm -- I can do it that way.

4 Q. Is it easy?

5 A. Yeah. I mean, sort of, yeah.

6 Q. You can't just roll over on your own, though?

7 A. No.

8 Q. You've got to have straps?

9 A. Yes. I mean, I ain't got muscles -- since no muscles
10 from the collarbone down. I mean, they're -- yeah, I mean, I
11 couldn't -- I would say I couldn't throw myself out of this
12 chair, but, you know, I can't -- yeah. I mean, I have no
13 muscles really to throw myself.

14 Q. Gotcha. Let's go to the next one, the Superman
15 shirt.

16 A. Yeah.

17 Q. Tell us -- tell us, do you remember what's going on
18 in these pictures at this time?

19 A. Learning to -- learning to dress myself. So since I
20 don't have no abs, which I still have it on, this is a -- they
21 call it a binder. I call it a girdle. But just wraps your
22 abs, and it kind of supports you so you don't fall forward.
23 You know, if I ain't got it on, just I fall forward really
24 easy. And then on the left side is a standing frame, and it
25 just helps you stand to get weight on your legs.

1 Q. So on the left side picture, just so the jury
2 understands, if we were looking at it as a video, that would be
3 -- enable to sort of rotate, I guess, counterclockwise up where
4 you're able to experience being vertical with your legs down?

5 A. It took some time from sitting in a chair and being
6 in a bed for a month or two, your blood pressure changes. And
7 when that -- you know, it took a good three or four months to
8 tolerate it. But, yeah, after a while it came back.

9 Q. Okay. And then how long -- you said you were at
10 Shepherd for about six months. Did you graduate?

11 A. I did.

12 Q. Okay. And had you come -- from where you were
13 arriving from Roanoke to when you left, did you go on -- did
14 you progress, in your mind?

15 A. I did, yeah. I mean, when I left, I was sitting in
16 this chair. Yeah. I mean, still wasn't done, but I had
17 progressed a lot, you know.

18 Q. Gotcha.

19 Now, I think the jury's -- did you just give up on -- did
20 you just say, "Man, well, that's -- I'm never going to be able
21 to bike again. I just gotta give that up." Did you just quit?

22 A. As soon as I got out, the first thing I wanted was a
23 hand cycle.

24 Q. All right. Let's go to the next one.

25 A. And there I -- left side, that was a Shepherd Center

1 hand cycle. And as soon as I got out, the first thing I wanted
2 was one, and I got it. So I was riding. I rode it as much as
3 I can. I mean, it's really hard to get in and out of, but I
4 make do.

5 Q. And can you show the jury -- I mean, when you say
6 "hand cycle," your hand's attached to the --

7 A. Yeah. My hands -- they make special gloves that
8 attach to my hands. And you just basically sit here and do
9 this. And it's -- all it uses is your bicep and your shoulder
10 and back muscle. So, yeah.

11 Q. All right. And when you got back -- well, when you
12 were at Shepherd, did you have care around the clock?

13 A. I did.

14 Q. Okay. When you got back to North Carolina, is that
15 where you went from Shepherd?

16 A. Yeah.

17 Q. Okay. When you got back home, did you have attendant
18 care?

19 A. Yes. 24 hours a day.

20 Q. Okay. Did you like having somebody there 24 hours a
21 day?

22 A. No. No. I needed it, but I don't like it. I mean,
23 everyone needs their personal space. And I've always been -- I
24 wouldn't -- I just like to be by myself. I think that's why I
25 always liked driving a truck. That is, I've always liked "me"

1 time. It's why I like cycling, because I could go out by
2 myself and just cycle.

3 Q. Gotcha.

4 Now, a couple questions. Do you -- how many hours of
5 attendant care do you have now?

6 A. They are 19 hours.

7 Q. Okay. And have you been at all times since the wreck
8 or since you got back from Shepherd been able to ride on your
9 bike?

10 A. Yeah. For the first two and a half, probably three
11 years, I just recently stopped because I'm dealing with this
12 back pain. But, I mean, probably haven't rode it in -- since
13 last summer.

14 Q. And why is that?

15 A. Just my back pain.

16 Q. That's something you'd like to be able to get back to
17 doing?

18 A. Yeah. I'll get back there.

19 Q. Okay. Let's go to the next one. And tell us -- is
20 that Jake?

21 A. Yeah.

22 Q. Looks like maybe y'all are at the skate park?

23 A. This is the type of stuff -- when we first got back,
24 Jason, my roommate, we went to the skate park. And he ended up
25 falling and busted his lip. And it sucked so bad because I

1 couldn't get down to the bottom of the jump because I was stuck
2 in my chair. This is the type of stuff that I can't do
3 anymore. But he busted his lip, and he laid there. And Jason
4 had to go. I wanted to get down there so freaking bad, and I
5 just couldn't get down there. But, like I say, make do. I
6 still go out there and try to show him how I used to do stuff
7 when I used to ride my bike. Do what I can.

8 Q. Was he okay?

9 A. Oh, he's okay.

10 Q. All right. Let's go to the next one, if we can.
11 Tell us --

12 A. So this is my dad, mother, and sister. That's my
13 standing frame. I try to get in it about twice a week.

14 Q. And a lot of folks may not know what a -- why do you
15 use a standing frame? What is it? Why do you need a standing
16 frame?

17 A. It keeps your muscles built in your legs. And
18 it's -- I mean, it's good to stand. You don't want to sit
19 24/7. It's great to be six-foot-one again.

20 Q. Let's flip forward one more. Is that you also?

21 A. And that's my brother. So he lives in the mountains,
22 West Jefferson, Boone, North Carolina. So he comes down once
23 every three or four months.

24 Q. Gotcha.

25 Go to the next one.

1 A. That's me trying to dress up. But -- and it's very
2 hard. This is my 99 percent attire is basketball shorts
3 because they are super easy to put on, and a hoodie to keep me
4 warm.

5 Blue jeans usually takes two people to get me dressed just
6 because I've got to roll back and forth. And, yeah, shirts, I
7 can about wear anything, but a hoodie is what I like best.

8 Q. Gotcha. Gotcha.

9 All right. Let's go forward. Tell us about these photos.

10 A. This is Jake. So I eat lunch with him -- well, now
11 he's in middle school. But when he was in elementary, I ate
12 lunch with him quite a bit. So he used to -- he will show me
13 off in a heartbeat to his friends. And, honestly, his friends
14 look at me no different. It's really great to go to his
15 school. He'll push me around.

16 Q. Here. Hold off. Let's go off the PowerPoint for
17 right now.

18 Josh, let me ask you, if I can. I'm going to try to ask a
19 question to hopefully make it a little bit better. Do you --
20 do you have a house now where you live with a caregiver?

21 A. I do. I got one last year.

22 Q. Okay. And still have a caregiver?

23 A. I do. They are still 19 hours a day.

24 Q. Okay. And I want to -- do you remember having a
25 video made to demonstrate some of the things that you deal with

1 in life?

2 A. Yeah.

3 Q. Okay. I think -- do you think it would be helpful
4 maybe to help the jury understand in video form some of the
5 things we've seen?

6 A. Yeah.

7 Q. Okay. If there is audio, let's turn it off. I can't
8 remember if we do or don't. I'm just going to have --

9 If you will take a look at this, and we'll go through it,
10 because -- while we're queuing it up, let me ask you this. And
11 I don't want to embarrass you or go off, but are you able to go
12 to the bathroom like a normal person?

13 A. I'm not. I lost all function. So to pee, I have a
14 catheter. Every four to six hours I will go to a catheter, and
15 basically pee in a bag. As far as pooping, I've trained my
16 body to use -- which I say I trained. Eighty-five percent of
17 the time, it goes -- every other morning, usually around 8:00
18 o'clock, 8:00 a.m. in the morning I will do a suppository, and
19 it kind of works clockwork.

20 But depending on if I eat something that upsets my
21 stomach, you know, it will just come out and just -- you know,
22 it's part of the life now.

23 Q. And how about any function in your --

24 A. Yeah. I mean, there's no function. I can't control
25 it.

1 Q. And I'm asking you just generally, do you have
2 control of any of your organs or muscles in the middle section
3 of your body?

4 A. Nope. Nope. Nope.

5 Q. Any activities that might be involved there, no more?

6 A. Nope.

7 Q. Let's take a look at the -- if we can start the day
8 in the life video.

9 Hold on. Close that down. Close that down.

10 Let's, first of all, do you remember who came up there?

11 A. Who came out?

12 Q. Did people come up to North Carolina to film this?

13 A. I mean, I don't know if they -- I mean, I remember
14 someone there. I'm not sure where he came from.

15 Q. I'm just trying to establish the basis for it. But
16 it's in your -- it's in North Carolina. You didn't come down
17 here to do all this?

18 A. Oh, no. This is my house.

19 Q. Okay. All right.

20 There's no way -- we're not doing it for -- they said it's
21 44 minutes long. We ain't doing that.

22 We'll do it the old-fashioned way. We will talk about it.

23 When you get up in the morning, I think that's one of the
24 ones I know is shown on there.

25 A. Can you show it and just fast forward it?

1 Q. Well, I don't know if we can. I don't know. We're
2 going to move to get through this.

3 When you get up in the morning, tell the jury about that.

4 A. Well, bowel at 8:00. So 6:00 o'clock a.m., I wake
5 up, do meds, and use the restroom, pee. I usually do an hour
6 nap until 7:00, 7:30. That's when a nurse comes in. She will
7 do a suppository. And they usually do my vitals and all that
8 stuff.

9 Suppository usually starts working -- well, after the
10 suppository, I'll go to a shower chair, so it's a wheelchair
11 with a hole in it. Get onto there. I have a caretaker
12 basically set up all my toiletry. I'll get on top of the
13 toilet with my chair. Suppository usually takes about 30
14 minutes to work, and then another 30 minutes to empty it out.

15 I will go into direct detail?

16 Q. No, no. You're good. You're plenty good. I was
17 going to stop you, but I didn't want to interrupt.

18 Now, are you able -- do you have any adaptations that
19 enable you, like, to put your toothbrush on or put a fork or a
20 spoon on? Explain kind of how that works.

21 A. Yeah. Forks and spoons, they make these special ones
22 that got little -- they are like rings like you'd slip on. So
23 I would just slide them onto my two fingers, and I would eat
24 like that.

25 Pens and toothbrushes, I interlock them in my fingers, and

1 I just kind of do that or write like this.

2 Q. I mean, do you kind of get them going, like, kind of
3 between there like that?

4 A. Yes. Sort of. I mean, I could show if you want me
5 to show.

6 Q. Yeah. Here.

7 A. What do you want me to do? You want me to write? Or
8 do you want me to just --

9 Q. If you can just use that. I just want to --

10 A. The soap may have made it really slippery.

11 THE COURT: Here's a pad.

12 THE WITNESS: We'll make it do.

13 So pen and toothbrush is about the same. I slide
14 them here, and like that, and then I'll just push down too
15 like this. And then for brushing, I would hold it like
16 this, and then do it like that.

17 Q. How long did it take you to learn just that that we
18 just saw?

19 A. A good six months at Shepherd. So at Shepherd, the
20 first three months I would go coming in these gloves here, and
21 I'd try to look as normal as possible, so I usually don't like
22 to wear these gloves. Today I was wanting to be a speed demon
23 and get here quick, so they grip the wheels a lot faster to
24 push. But usually in public, I never wear the gloves because
25 I -- to me, people look at you -- the more stuff you have on,

1 the more people look at you different. And that's why the
2 power chair, honestly, would probably save my shoulders in the
3 long run. But if you're in a power chair, people look at you
4 so much different. So I opt out for this manual chair.
5 Just -- just basically my -- my being, I guess. I don't know.
6 I just don't like to be looked at different.

7 Q. Well, and let me ask you about that, because the
8 jury's heard from various of your doctors talking about how
9 beat you've been, and that they've seen you here today. But
10 can -- can you tell us a little bit about -- your chance to
11 talk to them and tell them a little bit about sort of that
12 mental side, that psychological side for you.

13 A. To me, I never wanted to be looked at different. And
14 I definitely don't want to be looked at different now. And I
15 hate when people -- you just -- you want to be normal as
16 possible. When people talk to you, you don't want them to get
17 down and talk like they're talking to a two-year-old. You want
18 them to just stand up and look at me, and don't want people
19 coming up and patting you on the back. You just want to be
20 normal. And I try -- I mean, I try to look normal. I try to
21 act normal. I try everything just --

22 Q. Got it.

23 Do you miss working?

24 A. Yeah. It -- I don't know who's all retired, but it's
25 boring sitting at the house. I want to work. And, I mean,

1 I've had a few people ask if I'd like to work, but there's not
2 a lot you can do. I mean, I've had a few people want me to go
3 just to answer phones for them or get online. I mean, I'd like
4 to -- that was going to -- when I got out of Shepherd Center, I
5 was going to be like a bike trainer and try to train people.
6 But just sounds so easy. You think that could've worked. But
7 when you're actually in this body, it's so hard. Just picking
8 up my phone and dropping it on the floor, if I'm on a phone
9 call, the -- the phone slides out from underneath my fingers
10 and you drop it, I mean, just that right there. There goes
11 someone hanging up on you or anything.

12 The bowels. If I tried to get a job going out, I mean, I
13 can wear a diaper and hope nothing happens, but I could be at
14 work and I have an accident. Next thing you know, I'm sitting
15 in stool. And the same for pee. My body luckily is really
16 well-trained for urine, but if I pee on myself, you know, I've
17 got to tell my boss I've got to go home, because I definitely
18 can't change clothes there. And it's really hard. But as far
19 as working, it's boring. It's so boring to sit at the house.
20 I mean, same thing every day for the last four years is
21 just . . .

22 Q. And let me -- before the incident, back in
23 December 2015, I mean, around the house with Jason, did you do
24 the normal things of life?

25 A. The normal things. I mean, I -- like washing

1 clothes, I can't even put clothes in the washer and dryer. I
2 can't mow my own yard. I have to pay a buddy. Luckily he's a
3 good friend and mows it cheap. Working on my car, changing the
4 oil, rotating tires.

5 Just even stuff with Jake. He is 12 now, and he wants me
6 to buy a lawnmower. I am so scared to get a lawnmower. It's
7 like I want to -- I'd love to teach him to mow the yard, but I
8 feel like if I could actually walk and show him a lot more.
9 But, yeah, yardwork, just everything you think you can do.

10 Cleaning the house, I go -- I mean, I got the caretakers,
11 but I'm kind of picky. I mean, the baseboards are sort of
12 dirty. But it's stuff like that I can't even do. Just so much
13 as leaning down and cleaning a baseboard, because if I lean
14 down, I'm not going to be able to pick myself back up once I
15 clean that section. I miss all that.

16 Q. Those are all things you were able to do before?

17 A. They were all the things I was able to do.

18 Q. I do want to keep going a little bit through the day
19 with sort of -- I started -- you showed us sort of how you hold
20 a toothbrush and something like that, but what --

21 A. So my bowels, it's over -- usually, like I say, that
22 starts at 8:00. Usually after an hour to an hour-and-a-half,
23 I'm finally done with that. Then I roll into the shower. Ten
24 minutes in the shower. As soon as I get out, I will go back to
25 the bed. That's when I call the caretaker. I at least for

1 about the last two years, I can finally get my boxers up. I
2 made it a goal to where people never had to see me naked. They
3 still do very seldom if I have an accident, but I at least get
4 my underwear up now. And then once I get that up, I call them
5 back into the room and they'll come get my shorts up. They put
6 my binder on.

7 After that, I usually get in the chair. By the time all
8 that's done, you are rolling on 11:00 to 11:30. Depending on
9 if I have a doctor's appointment, we'll load up, go to a
10 doctor's appointment. If not, it's just a regular day.

11 With it being winter, I hate cold weather, so I sit inside
12 and just watch TV all day. If I have Jake or hobbies now, it
13 is remote-control cars. That's about the only thing I can
14 really do with my fingers, drive with my palm, remote control
15 cars. He is getting to the age now, video games and YouTube is
16 what he likes to do. But, I mean, even video games, I can't do
17 the controllers which we get a kick out of. He has a good
18 sense of humor, and I let him know I definitely have a good
19 sense of humor. So we'll play killing games, and I totally
20 cannot hit him worth a crap shooting a gun. But I see him, I'm
21 hitting all these buttons and my guy would be jumping,
22 crouching, all kinds of stuff. He gets a kick out of it, and I
23 make him laugh. That's all -- as long as I can make him laugh.

24 Q. If we can put up the last picture in the PowerPoint.

25 Let me ask you one thing before we do that. Hold on one

1 second.

2 We skipped over one thing: Lunch or dinner. Can you cook
3 for yourself?

4 A. I can do some microwavable stuff. The house I've
5 got, the microwave is right here, so I can do -- usually
6 steamer -- steam bags or something that's got a lid on it, I
7 can kind of get it and I could prop my elbow up, open the door
8 and I can kind of scoot it out and set it in my lap. Other
9 than that, that's about the only thing I can do.

10 Yeah. I do grapes and try to get a lot of stuff I can do
11 myself. But as far as anything fancy that's got to be cooked
12 on the stove or, I mean, can openers, any of that, I can't do.
13 So that's what I've got them caretakers 19 hours. They usually
14 do my lunch and dinner. If I need something, you know, they're
15 always there in the afternoons and mornings. They are there
16 till between 4:00 and 6:00 p.m. in the evenings, and then I get
17 my down time from 6:00 p.m. until around 10:00 p.m. at night.

18 Q. That's when you get your "me" time?

19 A. Yeah. That's my "me" time.

20 And then, of course, you know, throughout the night,
21 because they usually sit in the living room, and I'm always in
22 my bedroom, so --

23 Q. They're there if anything would happen?

24 A. Yeah. If anything would happen, I could just holler
25 for them.

1 Q. Are you able to drive a car now with some
2 accommodations?

3 A. I just got my license in August. And that's another
4 thing. A van would really be beneficial. I can't see myself
5 driving a van. I don't want to drive a van. I want to look
6 normal, so I did get a car. And I just -- I want to look
7 normal, feel normal, so I got a car. And I got the hand
8 controls put in. So I drive with -- basically my hands are
9 locked in. They make a steering wheel lock that holds this
10 hand, and this one is a little ball, and I can push down here,
11 and then I push for a brake. So it's really awesome looking
12 when you look at it.

13 Q. Does someone have to ride with, though?

14 A. Yes. Someone rides with me in a passenger seat.

15 Q. Okay. Are the holidays the same?

16 A. No. We make do. But you can't complain. There's
17 holidays. So definitely got to make the best of them. But
18 they are always at my house. All families that have steps, so
19 we're always -- got to be where I am. We do send the
20 caretakers home, though. They'll usually help me in the
21 mornings for Christmas, even Thanksgiving. They'll come in at
22 7:00 in the morning. They will help me get ready. And then we
23 usually send them home at 12:00. And that's when the family
24 will come over.

25 Q. One bit of housekeeping, Josh. You've been to the

1 doctor a lot?

2 A. I go usually every month, and it just depends on
3 which doctors. I've got a urologist. I've got the pain
4 doctor. I've got my family physician. So at least once a
5 month I am seeing a doctor.

6 Q. I am going to show you what's been marked as PX 447.
7 I think you've had an opportunity to review it before today,
8 but I will just show you. Does this appear to be a true and
9 accurate copy of the summary of your medical charges by a
10 provider related to the wreck since 12/28/2015?

11 A. Yeah.

12 Q. And is the total of that \$1,965,158.80?

13 A. Yep.

14 MR. CONLEY: I would move to tender PX 447 in lieu of
15 having to introduce all the bills.

16 MR. SAGER: No objection.

17 THE COURT: Plaintiff's Exhibit PX447 is admitted
18 into evidence without objection.

19 (Plaintiff's Exhibit No. 447 was admitted.).

20 BY MR. CONLEY:

21 Q. Do you still try to ride bikes with Jake?

22 A. I do the best I can. I mean, I haven't raced since
23 last summer, but I do everything I can with him. Even on that
24 thing, he still -- he still enjoys it. I mean, I can do this
25 little -- I can get it up on two wheels. Not as good as he

1 can, but I get up on two wheels and still show him. I mean, I
2 never want to give up in his eyes. I mean, I don't want him to
3 look at me and say, "My dad don't do anything." I want him to
4 know, no matter what, just never -- just never give up. And I
5 haven't. And I never will.

6 Q. No further questions.

7 MR. CONLEY: Your Honor, let me go ahead -- I'm
8 sorry, Mr. Sager.

9 I am going to tender as Plaintiff's Exhibit 9A are
10 the -- is a compilation of all the photographs that the
11 jury saw in the presentation that we just did move to
12 admit -- I'm sorry. There is one other one. They are
13 broken down. I'm sorry, Your Honor. I'm not sure why we
14 broke them into two exhibits. But PX 9A is Roanoke
15 through Shepherd, with one of the bike photos; and PX 10
16 is photos with family and post incident except for the one
17 with Josh and Jake. They are all the same ones. They're
18 just in two exhibits, 9A and 10. I move to admit it.

19 THE COURT: All right. Mr. Sager, do you have any
20 objection?

21 MR. SAGER: No objection.

22 THE COURT: Okay. Plaintiff's Exhibit PX9A and PX10
23 are admitted into evidence without objection.

24 (Plaintiff's Exhibit No. 9A and 10 were
25 admitted.)

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1 THE COURT: Mr. Hill, would you like a break?

2 THE WITNESS: I'm good. We can keep going.

3 THE COURT: Are you sure?

4 THE WITNESS: Yeah.

5 THE COURT: Okay. How about my jury? Do y'all need
6 a break?

7 MR. CONLEY: We may need to approach.

8 (An off-record discussion was held.)

9 THE BAILIFF: Excuse me, Judge Brantley. We have a
10 couple jurors that need a break.

11 THE COURT: Perfect. I do too. We will take a
12 ten minute break.

13 (The jury exited the courtroom.)

14 We're going to have a motion.

15 (Plaintiff exited the courtroom.)

16 THE COURT: Mr. Sager?

17 MR. SAGER: Thank you, Your Honor.

18 As we were just talking about at the bench, I'll just
19 recount what I wrote down that Mr. Hill testified to
20 relating to the truck shifting. What I heard him when he
21 was talking about the accident, he said he heard a loud
22 bang, consistent with what he said in his deposition. He
23 said the truck shifted. Didn't say load shifted. The
24 truck shifted. Next thing I wrote down, he heard a boom,
25 and he felt a shift.

1 So as I expressed up at your bench up there, the
2 concern obviously is for the defendants is that what
3 happened? I mean, they hear testimony that says there was
4 a loud boom and a shift. Mr. Hill did not use the word
5 "load." He said "truck shift." So they think that the
6 truck shifted right when he heard a boom.

7 That is why, for the last several weeks, many, many
8 times we've argued, okay, we need to be able to at least
9 rule that out with their experts. That's why we were
10 arguing so hard to be able to question -- we don't want to
11 interject load shift, but that's what he testified to in
12 his deposition.

13 THE COURT: I think he left out the word "load";
14 right?

15 MR. CONLEY: Yeah.

16 THE COURT: Because in my order that is the exact
17 same thing he said before.

18 MR. CONLEY: I was so afraid he might say it and add
19 a word or say something different. I mean, we've read our
20 witnesses the riot act to not say "load shift" because of
21 our fear we don't want to violate your order. And now
22 when -- I didn't know exactly what he would -- I mean, I
23 told him, "Look, we're not talking about load shift.
24 You're allowed to describe to the Court your sensory
25 impressions."

1 The word "bang" carried over, which is what he said
2 on page 205 of his deposition when he was testifying.
3 There's nothing to do about that. He said in his
4 deposition, "I felt shift." In his deposition, he called
5 it a "load shift." You told us not to do it. I don't
6 know how else he can describe it other than he felt the
7 truck shifting.

8 I believe -- let me put it this way: I've tried as
9 hard as I've ever tried in my entire life to comply with
10 an order. And I talked to him. That's why I went out
11 during the prior witness's testimony. And I said, you
12 know, that Your Honor has been very clear, we're not going
13 there. I don't want you to get into any history of it,
14 anything about that, but she's going to let you tell you
15 what you experienced.

16 And if I violate your order, Your Honor, I will be --
17 I'm as sorry as I can be, but I don't think we opened the
18 door. I think we did exactly what you gave us a right to
19 do. And we've argued this seven or eight times. And
20 we've been over it. I mean, the record is replete with
21 discussion about this. And you ruled earlier the man's
22 allowed to tell his story. And I think that's all he did.
23 I don't think we got cute with it. We certainly didn't
24 try to get cute with it.

25 And I guess it was inevitable they were going to

1 claim we opened the door no matter what he said, but I
2 don't believe -- I don't know what I could have done
3 differently. If that opened the door, I apologize. But I
4 don't know what we could have done differently, and I gave
5 it every effort I had to comply, as did our witness.

6 MR. SAGER: And I have no doubt with Mr. Conley that
7 what he said, that he tried to comply with that. And I'm
8 not accusing him of doing that on purpose. But what we're
9 left with, he used the word "shift" two different times,
10 "truck shift," "I felt a shift when I heard a boom."

11 He did not use "load." I absolutely agree.

12 But the jury is left with -- in his deposition, he
13 said, "I knew what had happened."

14 I was going to do a proffer during his testimony at
15 some point when we had the jury out to kind of go through
16 this testimony we just heard because I was surprised he
17 said that, that "I heard a boom." I felt -- certainly "I
18 felt a shift." I was shocked to hear that. He did not
19 say "load."

20 But it leaves us in the position with this jury
21 thinking, what happened? A boom, and then the truck
22 shifted. And that's why we're hands tied behind our back
23 because we couldn't cover what the -- and I know, Your
24 Honor, we're all sick of going over this, but this is what
25 we were worried about, because I need to be able to

1 explore and point out there was nothing mechanical wrong
2 with this truck.

3 THE COURT: Well, let's clear this up, though. This
4 all came up when I started reading all these motions
5 for -- that -- I mean, all these depositions that were the
6 subject matter of your Daubert motions. Then followed by
7 all those videotaped depositions which y'all had numerous
8 objections to each other's -- to the testimony. Okay.

9 So all the depositions been taken, all the experts
10 have been named and given opinion. All that was said and
11 done. And having read all that, I discovered no expert
12 said that this truck tipped over because of a load shift.
13 All right. So that's how we got into the whole argument
14 about load shift.

15 There were a lot of opinions about causation and what
16 was wrong with this truck, but there was never any
17 criticism about that this truck flipped over because of a
18 load shift, which is why I told you we're not going down
19 that track. There's no evidence of that. If your
20 experts -- nobody said it was a load shift.

21 Now, he said it in his deposition. And what I
22 told -- what my order was, I would allow him to say if
23 that was his perception, the load shifted, I would allow
24 him to say that because it was his perception at the
25 moment. But just because he said he perceived the load to

1 shift didn't open up the door for a lot of conversation
2 about load shift; right? Do you remember it that way?

3 MR. CONLEY: That's what I understood your order to
4 be.

5 THE COURT: Okay. So it sounds like today he said
6 the same thing, but he left out the word "load." So where
7 are we at?

8 MR. SAGER: We're at -- I didn't hear, Your Honor,
9 when we had previously been given your order that he could
10 say the load shifted. He could give his perception of
11 what happened. And where we're at, from our perception --
12 and I'm sorry we're continuing to talk about this -- but
13 is the jury is left with the distinct -- when you say
14 there is a boom or a bang and the truck shifts, that
15 implies something went wrong, not driver error.

16 THE COURT: Let's do -- let's get him in here and let
17 you ask him without the jury being here, and let's see.
18 Because I think you're -- really I think you're making a
19 big to do out of nothing big. And maybe he can clear it
20 up and it won't confuse the jury, because what I'm finding
21 is his testimony is consistent with his deposition. He
22 simply left out the word "load," which I didn't require
23 him to do that.

24 MR. CONLEY: No. I was going to say I thought your
25 order allowed him to say "load shift," just not go beyond

1 that.

2 THE COURT: He could have said "load," yeah.

3 MR. CONLEY: But I think he -- honestly, Judge, I
4 think he interpreted my --

5 THE COURT: To me, he couldn't.

6 MR. CONLEY: I mean, you know, I am older than him,
7 and I'm the lawyer, and I'm wearing a suit, and I'm
8 telling him be careful. And I think he --

9 THE COURT: Overreacted.

10 MR. CONLEY: You know, I don't control the guy. We
11 didn't write a script about it. That was pretty obvious.

12 THE COURT: Yeah. So I think we went less than the
13 order allowed to do, but I'm fine, I mean, to bring him in
14 and they can --

15 MR. SAGER: Does Your Honor understand -- have I
16 communicated why this is a hard situation for us? That
17 he's described there's something -- I think the jury
18 probably think there's something mechanically wrong with
19 this truck.

20 THE COURT: And why is that? Why is that?

21 MR. SAGER: A boom and the truck shifted.

22 MR. CONLEY: Let's be very clear. He said "bang."
23 "Bang" is a description of a noise. That is something you
24 hear. That is a sensory impression. Hearing is one of
25 the five senses.

1 He said he felt a shift. Shift is a sense of
2 feeling. Feeling or touch is one of the five senses.

3 He also said he saw the roadway ahead of him. That
4 is a sense.

5 THE COURT: Let me see his deposition.

6 MR. CONLEY: All he did was talk about his sensory
7 impressions which is what you said the man could do. And
8 I think that's all he did, and I want --

9 THE COURT: But, I mean, if you want to call him in
10 here and see if there's something to that and then -- but
11 I really think there's been so much testimony here, the
12 jury is going to not take that one little statement when
13 no expert, highly qualified, highly trained, very
14 experienced, and we've got a bunch of them, come in here
15 and nobody talks about it. But I will let him come in
16 here and you explore that with him. And if you think that
17 then you need to explore that further in front of the
18 jury, then I might let you. But I really don't see where
19 you're going, but let's get him back in here.

20 MR. CONLEY: Yeah.

21 THE COURT: Because if he clears it up and there's
22 nothing there, then there was nothing to explore in front
23 of a jury.

24 MR. SAGER: I mean, I think I'm pretty clear what
25 he's going to say when he comes in. It will be what he

1 said in his deposition. It just highlights the
2 predicament we're in that we can't have rolled
3 something -- some sort of shift being due to a load shift.

4 THE COURT: Well, wait a minute. If you're pretty
5 sure he's going to say the same thing he said in his
6 deposition, then I've already told you, Mr. Sager, that
7 doesn't come in. We don't get to go anywhere with that.
8 Then why are we doing this?

9 MR. SAGER: Because I guess what I'm trying to say is
10 the words he used describing it as a truck shift or he
11 felt a shift, to me, Your Honor, opens the door and
12 leaves -- and would, if there were other experts that were
13 coming behind him, we should be able to ask them about it.
14 But they've come and gone.

15 THE COURT: That is -- you know what? How many times
16 have we had this discussion about load shift?

17 MR. CONLEY: Six, seven, eight.

18 THE COURT: At least.

19 MR. SAGER: I'd say about six, seven, or eight.

20 THE COURT: Yes. And I keep telling you the same
21 thing, and you keep bringing it back up, and my order
22 remains the same. And I really feel like it gets to the
23 point, Mr. Sager, when you're wasting the Court's time and
24 delaying the trial. But I am going to let you one more
25 time visit this.

1 Would you come up here, sir?

2 Okay. So his answer is, "Last thing I remember
3 sitting on the side of the road. After that was just
4 there. I mean, I was awake the whole time, but other than
5 the last thing I remember is smacking the road to remember
6 that sound. And then you just happened -- then it just
7 happened so quick."

8 "Did you try to keep it upright?"

9 "I did try to keep the truck upright."

10 This is dirty, so it's not -- it says "it did."

11 "I did try to keep the truck upright. It's instinct
12 when you hear the boom and you feel the truck shift, to
13 try to turn the opposite way to bring it back down. But
14 it just didn't work."

15 Okay. So you want to follow up to that, Mr. Sager?

16 MR. SAGER: Sure, Your Honor. Thank you.

17 BY MR. SAGER:

18 Q. Good afternoon, Mr. Hill.

19 A. Okay.

20 Q. Just a few questions. This is on the issue of how
21 the accident happened.

22 A. Yeah.

23 Q. And you described that a little earlier today. You
24 also described it in your deposition as well.

25 A. Yep.

1 Q. So I'm going to just kind of go through it, and you
2 answer my questions just as best as you can. Fair?

3 A. Okay.

4 Q. You were traveling southbound on Highway 122 at the
5 time of the accident; correct?

6 A. Yes.

7 Q. And as you were rounding this curve we've been
8 talking about, it's my understanding as soon as you got in the
9 turn you felt a jolt. Is that fair?

10 A. Yeah. Pretty much. I wouldn't say soon as I got in,
11 but I would say 50 yards, I mean, as soon as you -- you know,
12 at about the beginning.

13 Q. And I'm not trying to pin you down on the distance.
14 So that's fine.

15 And you described today you felt the -- you heard a noise.
16 What did you hear?

17 A. You just hear a boom. I mean, and my thing, it
18 sounded like a roll. And that's what I'm pretty sure it was.
19 You just heard -- you're going in. As soon as you go into the
20 turn, you hear a boom, and you feel the whole trailer, the
21 whole truck and all start to go up. So you try to -- instinct
22 is correct it. And you try to get it to sit down, but it did
23 not sit down. It just kept going. It's like instinct. If
24 your car gets sideways, you turn to the opposite direction to
25 try to get it back straight. It's just instinct when you hear

1 a boom and you feel that -- you just -- I felt it. I mean,
2 boom, and it took me over.

3 Q. All right. So when you heard that boom, Mr. Hill,
4 that's kind of when you felt the shift; is that fair?

5 A. Yes. Yes.

6 Q. And it felt like a shift to your left; correct?

7 A. Yes.

8 Q. To your driver's side?

9 A. Yes.

10 Q. Like a load shift; correct?

11 A. Yep.

12 Q. And you were carrying, at that time, large rolls of
13 paper; correct?

14 A. Yes.

15 Q. And I think at that -- after you felt it going left,
16 you heard that boom, you checked your rearview mirror, and you
17 saw actually the trailer was starting to tip over. Is that
18 fair?

19 A. I wouldn't say I looked in the mirror, because you
20 just know it's going down. I'm looking out the front of the
21 window, and I can tell the truck is going.

22 Q. Gotcha.

23 A. Yeah.

24 Q. Okay. And you had had that experience in the past;
25 correct?

1 THE COURT: We're not going into that.

2 MR. SAGER: Okay. I thought I was kind of like a
3 proffer, Your Honor.

4 THE COURT: No.

5 MR. SAGER: Okay. We'll need to make a proffer at
6 some point.

7 THE COURT: No, you don't. I've already ruled on
8 that, Mr. Sager. You are not going into that other stuff
9 about prior experiences and his perception. You can talk
10 about his perception that day.

11 BY MR. SAGER:

12 Q. All right. I think we've probably covered it. Let
13 me just think to myself, Mr. Hill. You were describing that.
14 Did you actually -- when you -- when you heard that noise, did
15 you feel something shift in your trailer?

16 A. Yeah. I mean, the truck moves, so, yeah, I felt it.

17 Q. Okay. And when you did that, I think you -- they
18 taught you -- I think you told us earlier they taught you at
19 Millis to kind of jerk it to the right, is that right, if it's
20 going to the left?

21 A. Yep. You would go back. I mean, it's not really
22 they would teach you. It's just instinct.

23 Q. Instinct.

24 A. It's like you're going over, and you just think jerk
25 it, maybe it will set it back down. Yeah.

1 Q. I understand. So I just want to be clear. The way
2 you jerked it is you jerked it left?

3 A. Yeah. You would go back -- you would go opposite, so
4 I would turn to the left to try to get it a little back down,
5 but --

6 Q. Okay. And that didn't work?

7 A. No. I mean, it was too far gone. I was already
8 over.

9 MR. SAGER: Let me just check with my cocounsel over
10 here.

11 BY MR. SAGER:

12 Q. Before this happened, I just want to make clear,
13 Mr. Hill. You were in your lane of travel, southbound lane of
14 level --

15 A. Yes.

16 Q. -- on Highway 121?

17 A. Yes.

18 Q. And is it your testimony that jolt and that shift
19 took you out of that southbound lane and into the northbound
20 Lane?

21 A. Yes. I mean, it took me into the northbound and then
22 off the road.

23 Q. Off the road, off the northbound side?

24 A. Yes.

25 Q. Okay. And if not for the jolt, you believe you would

1 have been okay and kept going in your southbound lane of
2 travel; correct?

3 A. Yes.

4 Q. Been no accident?

5 A. Yes.

6 Q. And you believe that the jolt that you've experienced
7 and what took you out of your lane of travel was due to a load
8 shift; correct?

9 A. Oh, yes.

10 Q. That was your perception at that time?

11 A. Yes, sir.

12 Q. And you believe that that happened because it was
13 improperly loaded?

14 A. I do.

15 Q. By Georgia-Pacific?

16 A. Yes.

17 THE COURT: All right. He's not going to testify to
18 that. He knows that. That's it. That's all we're
19 asking. You've asked enough about his sensory perception
20 of that day.

21 So they may ask you similar questions like that, but
22 he understands the rule.

23 MR. CONLEY: Your Honor, if we start getting close,
24 I'm going to have to -- I don't want to do it, but I'm
25 going to have to object. Here's what I've told him. I'll

1 tell him in front of you without waiving the
2 attorney-client privilege, I said do not use the word
3 "load shift" and to describe only your sensory impressions
4 that day, what you heard, felt, smelled, saw.

5 THE COURT: And I did not -- this is what my order
6 was, is that this man can get up and give his perception
7 of what happened that day. And if that means he wants to
8 say it felt like a load shift, he could, but that's it.
9 He doesn't go beyond that and talk about previous times
10 and previous load shifts and other experience and what
11 somebody told him about a load shift or anything else.
12 This is the only time you can talk about load shift.

13 MR. CONLEY: Did you hear that, Josh? You cannot
14 talk about what happened before, if you had one before, if
15 one of your buddies had one before, if you saw one on
16 YouTube before. Whatever happened before or since, we are
17 laser focused on your sensory perception --

18 MR. SAGER: Just his.

19 MR. CONLEY: -- of that day, and that's it.

20 THE WITNESS: Okay.

21 THE COURT: Yes. And I want him to be able to tell
22 his story what happened that day.

23 MR. CONLEY: Now it's on the record what I told him
24 in the hallway.

25 THE COURT: Okay. Now, the Court needs to take a

1 quick break. Does anybody else need to take a break?

2 MR. SAGER: Yes. Please.

3 MR. CONLEY: If I could use the restroom real quick.

4 MR. SAGER: And, Your Honor, we can do it when we
5 come back. I'll need to put something on the record, but
6 we can do it when we come back or I can do it now.

7 THE COURT: Well, let's very quickly do it now. I've
8 already got your -- I know all your objections to the load
9 shift evidence. Is it the same thing?

10 MR. SAGER: You've got it all. It's the same thing.
11 Just as a result of this, we believe that he has opened
12 the door, and would move for a mistrial as a result of
13 that. And I understand your --

14 THE COURT: I let you question him. You opened the
15 door. If the door has been opened, you opened it,
16 Mr. Sager.

17 MR. SAGER: With the jury out.

18 THE COURT: Oh, my gosh. The door has not been
19 opened. And I am cautioning you in your questions, do not
20 open the door.

21 MR. SAGER: I certainly don't plan to, Your Honor.

22 THE COURT: All right.

23 MR. SAGER: Thank you.

24 THE COURT: Take a break.

25 (A break was taken at 4:23 p.m.)

[Hill v. CVG; 3-16-20 p.m. daily copy]

1 MR. BYRD: Your Honor, may I? I wanted to bring this
2 up before you dismiss the jury for the day. So we've got
3 the expert that can't come -- refuses to come here. We're
4 trying to finagle a way that we could do some sort of
5 videoconference. But I don't trust technology. I was
6 wondering if maybe we could have the jury come in a little
7 late tomorrow so we have a chance -- because I think they
8 are going to rest and he may very well be our first
9 witness. So is there a way that we can have them come in,
10 allow us time to get set up and try everything out and
11 make sure it works?

12 THE COURT: We need to get our IT guy, Hyat, up here.

13 MR. BYRD: Yeah. We've got -- yeah. I guess people
14 are working behind the scenes to try to make this happen.
15 But I don't want to just do a dry run at 9:00 o'clock and
16 have everything fall to pieces. So I'm wondering if maybe
17 the jury can come in at 9:30 or something.

18 THE COURT: Sure.

19 (An off-record discussion was held.)

20 (The jury entered the courtroom.)

21 You may continue. Mr. Sager, do you have questions
22 for Mr. Hill.

23 MR. SAGER: I do, Your Honor. Thank you.

24 CROSS-EXAMINATION

25 BY MR. SAGER:

1 Q. Good afternoon, Mr. Hill.

2 A. Good afternoon.

3 Q. I do have a few questions. I wish I didn't have to
4 ask them, but I do have some, not that many.

5 A. Okay.

6 Q. And I want to just cover a few things at the start
7 and then we'll talk a little bit about your driving history and
8 then we'll kind of move into that day, that night, and then the
9 accident.

10 A. Yeah. Okay.

11 Q. I think you clarified and testified earlier you live
12 up in North Carolina kind of near Greensboro, High Point,
13 Thomasville?

14 A. Yeah. I live in Thomasville, ten minutes outside of
15 High Point.

16 Q. Okay. Do you know where Danville, Virginia, is?

17 A. Yeah.

18 Q. That is where I live, but I think that's near your
19 route.

20 A. Oh, yeah, it is. 2970.

21 Q. Yeah. That's right. That's where I grew up.

22 You don't -- you've never lived here in Gwinnett County;
23 correct?

24 A. No.

25 Q. All right. And you've never worked here in Gwinnett

1 County?

2 A. No.

3 Q. Never owned any property here in Gwinnett?

4 A. No.

5 Q. Okay. Fair enough.

6 So just a little bit about your driving experience. How
7 old were you when you got your driver's license?

8 A. Sixteen.

9 Q. Sixteen. Okay. So at the time of this accident,
10 you'd been driving about 15 years. Am I ballpark?

11 A. Yeah. Right at 15, so.

12 Q. Okay. And then I think you started kind of driving
13 professionally -- saying professionally. You started driving
14 trucks, not tractor-trailers, about in 2003; correct?

15 A. Yeah. 2003. Yep.

16 Q. And then from about then to 2013, you were driving
17 sort of 26-foot trucks?

18 A. Yeah, 26-foot box trucks.

19 Q. Tell us about what those are just so we understand
20 what those are.

21 A. It would be your average Penske rental truck or the
22 big, big U-Haul that you do for furniture moving. Yeah.

23 Q. Okay. So that was about ten years that you did that;
24 correct?

25 A. 2000 --

1 Q. Ballpark?

2 A. Yeah. Ten years.

3 Q. Okay. And you are not driving -- you're not hauling
4 a trailer behind you when you're doing that?

5 A. No.

6 Q. And didn't need a CDL, commercial driver's license?

7 A. No CDL.

8 Q. Okay. Incidentally, if you ever get uncomfortable or
9 need a break or --

10 A. I will be good.

11 Q. All right. Just let me know.

12 A. I'm a fighter.

13 Q. I know you are. So you started with Millis. I
14 believe it was in 2013; correct?

15 A. Yes. Around April.

16 Q. Around April 2013. That's right. Then fast forward
17 a little over two and a half years is when this accident
18 happened in December of 2015?

19 A. Yeah.

20 Q. Okay. All right. So is April 2013 when you went to
21 that driver's school that Millis offers?

22 A. Yeah. I think I started March -- it's been so long
23 ago. I'm going to say I started March 1st, but I actually
24 started driving the trucks around April is when I got a
25 trainer. I mean, you drive 15,000 miles maybe with a trainer.

1 I really can't --

2 Q. I think that's what you said earlier in your
3 deposition.

4 A. Yeah. I think that's what it was, 15,000 miles.

5 Q. Okay. And you did that?

6 A. I did.

7 Q. And you graduated from that school, and then they let
8 you, after you did the 15,000 miles, drive on your own?

9 A. Yeah. After the 15,000, you do out of state over the
10 road. I did it for, I think, six months. And it was -- I
11 still remember, August in Green Bay, Wisconsin, was about
12 six degrees. And I told dispatch I would give anything to get
13 local so I would be home every day. I did not like the cold
14 weather. And they gave me that dedicated position.

15 Q. And that was a dedicated position you were driving at
16 the time when this accident happened?

17 A. Yeah. It was. The big Island. They called it the
18 Georgia-Pacific dedicated to be exact.

19 Q. Yeah. We'll come to that here in just a minute. I'd
20 actually, despite growing up in Virginia, never heard of Big
21 Island.

22 A. Yeah. It's really small.

23 Q. Yeah. Maybe that's why.

24 Okay. So when you're at the driving school, Mr. Hill, I'm
25 sure that you went over -- they went over with you probably

1 quite a bit what the rules of the road are; correct?

2 A. Yes.

3 Q. The importance of obeying the traffic laws,
4 particularly when you're driving a tractor-trailer?

5 A. Yes.

6 Q. Importance of driving at or below the speed limit?

7 A. Yeah.

8 Q. Importance of not driving, particularly in the
9 trucking industry when you're fatigued; correct?

10 A. Yes.

11 Q. Not driving when you're distracted?

12 A. Yes.

13 Q. Y'all had a rule about use of cell phones; correct?

14 A. Yes.

15 Q. Tell us what that was.

16 A. No use of cell phones, no texting, none of that.

17 They don't deal with it.

18 Q. That's when you're driving; right?

19 A. Yes. Driving.

20 Q. And they -- you knew -- you probably already knew at
21 that point and you learned further the importance of
22 maintaining your lane of travel; correct?

23 A. Yes.

24 Q. Of not crossing solid yellow lines, either single or
25 double; correct?

1 A. Yes.

2 Q. Okay. And all of that is even more important when
3 you're driving a fully loaded tractor-trailer?

4 A. 80,000 pounds. I mean, yeah, you definitely want to
5 obey the laws with that.

6 Q. And 80,000 pounds -- and I'm going to, in a little
7 while, look at a bill of lading that you were driving with that
8 night. What was your average load when you were driving that
9 would get you up to 80,000 pounds?

10 A. For this was just cardboard paper. I mean, that's
11 usually about the heaviest thing you can always -- that stuff
12 adds up quick, paper products. So, yeah.

13 Q. Right. Big rolls?

14 A. Yeah. Big rolls. Even sometimes I would do bales of
15 recycled cardboard. And usually -- I mean, it's been so long.
16 I think the average load is 40,000 pounds. And then your truck
17 is another maybe -- I can't remember.

18 Q. You're fine. Yeah. That's ballpark.

19 A. Okay.

20 Q. You talked a little bit about this earlier, but your
21 average day, with this route that became your dedicated
22 route --

23 A. Yes.

24 Q. -- I think it was in about October before this
25 December accident that you started driving this particular

1 tractor or cab, correct, that you were in at the time of the
2 accident?

3 A. Yes.

4 Q. Several months? Or if it was longer, let me know.

5 A. I've driven that cab -- I mean, that particular
6 truck, I believe I got in October, but I've driven them 660s
7 ever since I started Georgia-Pacific -- the dedicated route.

8 Q. Okay. Gotcha.

9 A. It just depends which truck they put you in.

10 Q. Gotcha. So when you say the 660s, we've heard a
11 lot in this trial about Kenworth T660s.

12 A. Yes.

13 Q. That's what you're talking about?

14 A. T660, yes.

15 Q. So that's what you had been familiar with driving the
16 whole time while you were working for Millis?

17 A. Yes.

18 Q. Okay. Fair enough.

19 So you were essentially with that dedicated route working
20 what a lot of people call as the third shift kind of? I guess
21 you were working at night kind of?

22 A. Yeah, yeah.

23 Q. And just your typical day was you would start out
24 driving around midnight. We're going to talk about when you
25 started that night.

1 A. Yeah. I usually went in around midnight. Just
2 depends on what my day was. But, yeah, typical go in at
3 midnight, get to Big Island. God, it's been so long. I'm
4 guessing 2:30. I always liked to get the preloaded trailers so
5 you can get in and out. If you get the preloaded trailers, the
6 majority of the time they'd send me down to Charlotte, which
7 was three and a half or four hours. Try to get there. They
8 usually opened up at 7:00, so you'd always just try to get
9 there right when they opened. That way you're the first truck
10 in line.

11 In and out of Charlotte sometimes I could be home by
12 9:00 a.m., and that's why I liked it because you get off at
13 9:00 in the morning. You kind of got all morning and right
14 around the lunchtime, midafternoon to do stuff, and just do
15 whatever when you get -- yeah. I loved it.

16 Q. And so you would get off work, I guess, you would say
17 kind of midmorning. And then you would -- a lot of times you
18 would bike; right?

19 A. Bike. Yeah. I mean, I was training to basically
20 win, so I would get off and I'd ride two, three hours, and then
21 get done at 1:00 in the afternoon, grab something to eat, take
22 a shower, and just lay down, watch TV, stuff like that. But I
23 always tried to get in bed usually between 4:00 and 5:00. It
24 just depends.

25 Q. And then you would wake up about --

1 A. Yeah. I mean, my truck was literally five -- I mean,
2 it was maybe four miles from the house. So I would wake up, as
3 long as -- like get there around midnight, start all over.

4 Q. Start all over. And just so -- I know what you're
5 talking about when you said your truck was about four or
6 five miles from your house. But you had a little convenience
7 mart or gas station that let you park it there?

8 A. Yeah. It's a gas station. And they would let you
9 park your truck there. If the house was big enough, usually
10 since Millis don't have, like, a warehouse, something you'd go
11 to drive to, they just let you take your truck home. And I
12 cannot fit it at the house, so I'd park at the gas station down
13 the road. And I would just park there. And they've got a big
14 gravel lot you can leave your car in and hop in your truck and
15 take off.

16 Q. Okay. And Truck 8405, 8405, that was the truck you
17 were at that night of the accident; correct?

18 A. Yes.

19 Q. And you had been driving that truck -- you had driven
20 in that truck before; correct?

21 A. Yes.

22 Q. For some period of time?

23 A. Yes.

24 Q. Okay. Had you ever had any problems with Truck 8405?

25 A. No.

1 Q. Never had any issues whatsoever? No mechanical
2 issues?

3 A. No.

4 Q. Ever had any issues with the seat, the driver's seat
5 that you sat in?

6 A. No.

7 Q. Okay. Ever have any issues with the seat belt that
8 you used?

9 A. No.

10 Q. Okay. Any issues with the suspension or the
11 steering?

12 A. Nah. They kept their trucks -- to my knowledge, they
13 kept their trucks up, Millis did.

14 Q. Yeah. They had people whose job it was, mechanical
15 folks --

16 A. Yeah. I believe it was every 10,000 miles or two or
17 three months, you would take it in, and they'd just go over the
18 whole truck, oil change, all that stuff, you know.

19 Q. In your typical route, your dedicated route you told
20 us about, you were driving kind of up in Virginia and then
21 coming back down about 4-, 500 miles a day, thereabouts?

22 A. Yep. It was, yeah, right at 500. I tried to get --
23 if you get over 2000 miles a week, you get a bonus. So I
24 always liked that Charlotte run because it would get you
25 550 miles, right at, a day, so I would always get the bonus

1 every week. And it's always nice to have a bonus.

2 Q. Yeah, it is. So on that point -- strike that. Let
3 me move to something else.

4 With regard to your truck, 8405, I guess all the trucks,
5 those Kenworth or all the trucks, do they all have the Qualcomm
6 system in it?

7 A. Yes, they did. Everybody was on Qualcomm.

8 Q. Rather than me ask you questions about it, could you
9 explain to the jury what the Qualcomm system generally is?

10 A. Basically it's -- I would describe it as a laptop.
11 That's how I kind of look at it. I come in in the morning.
12 It's basically just got email through my dispatch, anyone
13 through the company. They'll send me my load information,
14 which will just say go to Georgia-Pacific, Big Island,
15 Virginia, pick up a load. All loads are pretty much the same
16 up there, cardboard rolls.

17 When I get there, I would send them an email saying I
18 picked up trailer so-and-so. In return, they would send me
19 information back and say, you know, trailer so-and-so will go
20 to the final destination, which would be Charlotte, Raleigh,
21 North Carolina, Winston-Salem. And then I would just go there,
22 and everything is handled through Qualcomm. My hours, kept
23 track of the hours I drove, the hours I worked and all that
24 stuff.

25 Q. So when you would get to your truck at night, before

1 you started on duty, is it fair to say you would turn that
2 Qualcomm on; correct?

3 A. Yes. As soon as you turn the ignition, Qualcomm
4 automatically turns on. And you do a thing called your
5 pretrip. You'll go ahead and clock in. You check your tires,
6 raise the hood, always check the oil, radiator, coolant.
7 Basically it's go over a truck. Always make sure all your
8 lights work, because the DMV will pop you quick if your lights
9 are out. Then you'll go ahead and clock in. As soon as you
10 start driving, it automatically does all that stuff for you.

11 Q. So it kind of records when you start working, when
12 you start driving?

13 A. Yeah. If you --

14 Q. When you stop driving?

15 A. Yeah. If you stop driving, it will automatically
16 stop driving on your Qualcomm.

17 Q. And then if you take a break, it kind of records when
18 you're taking a break; correct?

19 A. Yeah. If you -- when you stop driving, it will stop.
20 But if you want to take a break, you've got to actually
21 manually hit the break button or, you know, you click "break."

22 Q. Okay. Fair enough.

23 And you called it pretrip. Just for the jury, it's called
24 a pretrip inspection is what you described; correct?

25 A. It is, Pretrip inspection.

1 Q. Okay. On the night of this incident, you did your
2 pretrip inspection before you left there in Thomasville;
3 correct?

4 A. I did. I drove out of High Point. But, yes, I did
5 my pretrip.

6 Q. All right. And did not notice any issues
7 mechanically at all with your cab?

8 A. No, sir.

9 Q. And just physically in the cab, that Qualcomm, as
10 you're sitting here driving, is that to your right?

11 A. It is. It's to your right. It's basically right
12 where your radio would be. Yeah, right where the radio is.

13 Q. Within reach?

14 A. Yeah. It's pretty much in reach.

15 Q. Okay. Were you supposed to use that while you're
16 driving?

17 A. As you're driving, it turns off so you can't do
18 anything.

19 Q. Okay. And I want to just kind of cover with you what
20 you had with you that night, Mr. Hill. You obviously had the
21 Qualcomm sort of to your right. As I understand, you had
22 something people don't have much anymore, a Garmin; is that
23 right?

24 A. Yeah, a Garmin GPS.

25 Q. Yeah.

1 A. So it basically -- yeah, it's a GPS. Nowadays it's
2 in your radio. But I'm sure you guys know what a GPS is,
3 though.

4 Q. I'm sure they do.

5 A. Yeah.

6 Q. I'm sure they do.

7 A. But, yeah, I had it in my window up in the top
8 center.

9 Q. Okay. And you had your cell phone with you?

10 A. Cell phone, wallet, keys.

11 Q. Wallet, keys, all that stuff.

12 And we're going to get to that night here in just a
13 second. We've kind of already talked about it.

14 Do you remember at the time of the accident where your
15 cell phone was located?

16 A. I always kept my cell phone in the bottom cupholder.

17 Q. Bottom cupholder?

18 A. Yeah.

19 Q. By bottom, to your left bottom?

20 A. Just bottom center. That's actually where the
21 cupholders were. They don't put cupholders nears you. So
22 they're in the bottom center portion of the floorboard.

23 Q. Okay. All right. Let's kind of move up to just
24 before when this accident happened.

25 A. Okay.

1 Q. December --

2 A. 28th.

3 Q. -- 28th. And I don't need to talk with you about
4 every day before then. I think around the -- does it sound
5 right about the 22nd was the last day you went on your full
6 route?

7 A. Yeah, I believe so.

8 Q. That sounds right. Okay.

9 And then you sort of had some time off for Christmas
10 holidays?

11 A. Yeah. Christmas and I'm guessing New Year's.

12 Q. Right. And tell us what -- we sort of made reference
13 to it. But tell us what driver's logs are and why are they
14 important as it relates to being a truck driver?

15 A. Driver logs is just -- it keeps your hours. You're
16 not allowed -- it's been so long -- I don't think you're
17 allowed to drive over -- I know it's like 11 hours a day.
18 You're not allowed to work over 14. Not allowed to drive over
19 70 hours a week. And then you're supposed to take a break
20 every seven days, I believe it is, supposed to take a 48-hour
21 mandatory break.

22 Q. Okay. I would like to --

23 MR. CONLEY: Not at this point any objection. See
24 where we go with it.

25 MR. SAGER: Sure. Okay.

1 Your Honor, may I approach Mr. Hill?

2 THE COURT: You may.

3 BY MR. SAGER:

4 Q. I want to just show you these, if I can.

5 A. Okay.

6 Q. And just make sure these look like they are your
7 driver's logs from the 22nd through the 28th. You see your
8 name, Josh Hill, up there?

9 A. Yeah.

10 Q. December 22. Does that look like your driver's log
11 December 22?

12 A. Yeah.

13 Q. Okay. That looks like your full sort of route?

14 A. Yeah.

15 Q. Okay. So that was the 22nd.

16 And that's December 22. It looks like on that day you
17 took a short little, like an hour?

18 A. Yeah. It's so hard to really know. I either went to
19 Eden to do an oil change, or I may have went down to Asheboro.

20 Q. Okay.

21 A. Let's see. Does it say anything? Raleigh.

22 Q. It has Raleigh, High Point.

23 A. I may have even done a quick trip to Raleigh. I'm
24 not -- I can't really --

25 Q. Okay. No worries. And we'll just skip this one. Go

1 to the 24th.

2 Like when it ends there, it says 1729 -- or 729.

3 A. So that means I was off-duty for 17 hours.

4 Q. Okay.

5 A. Yeah. That means I wasn't in the truck for almost
6 two days.

7 Q. When did you begin that day, just for example?

8 A. Starting time. That would have been, I guess, 6:00
9 o'clock, 6:30 in the morning.

10 Q. Okay. All right. We'll come back to the one on day
11 of the accident if we need it. Thank you.

12 A. Okay.

13 Q. All right. So kind of from the 22nd to the 28th, we
14 talked a little bit about -- and you had some time off over the
15 Christmas holidays; correct?

16 A. Yes.

17 Q. And you told us about being a bike rider?

18 A. Yes.

19 Q. Right? Competitive bike riding. And tell us what
20 Strava is.

21 A. So Strava is how you do your rads. It tracks your
22 miles, your hours. And basically you can go back during the
23 week and look at your total hours, your total miles. It's
24 basically kind of like a FitBit now, lets you know all your
25 training activity.

1 Q. And did you use Strava back at that time?

2 A. Yeah. I used Strava. I actually still do. Really
3 useful.

4 Q. Okay. I'm going to show you what we marked as
5 Defendant's Exhibit C 353, and just ask you if -- look through
6 these and make sure you can identify these. And if you can't,
7 we'll see if we can maybe put them on the screen. Does that
8 look like your riding on December 22nd?

9 A. Yes.

10 Q. And we don't have to cover each of these.

11 A. Okay.

12 Q. That's December 24?

13 A. Yeah.

14 Q. Does that look correct?

15 A. Yeah.

16 Q. December 25?

17 A. Yes.

18 Q. Okay. It tells you the distance and the elevation
19 gain?

20 A. Yes.

21 Q. All right. And then we have December 26 and 27.

22 A. Yes.

23 Q. Does that look to be your Strava records from that
24 time?

25 A. Yes.

1 MR. SAGER: Your Honor, at this time, we would move
2 to introduce this exhibit into evidence so we can publish
3 it and we can walk through just one or two of these,
4 please.

5 THE COURT: C353.

6 MR. SAGER: Yes, Your Honor.

7 THE COURT: Is that correct?

8 MR. SAGER: 353B. A?

9 A. 353A.

10 MR. CONLEY: I'm not sure that going back to the 22nd
11 is relevant.

12 MR. SAGER: We'll start on the day before.

13 MR. CONLEY: I'm not sure why we're going back under
14 your prior --

15 THE WITNESS: Could I say something?

16 MR. CONLEY: Let's let it go.

17 THE WITNESS: I could actually --

18 MR. CONLEY: I may have an objection to the exhibit
19 is all I'm saying. We can go on.

20 THE WITNESS: I can bring in the 22nd and 27th to
21 show the difference, because there is some difference in
22 them.

23 BY MR. SAGER:

24 Q. You can if you want, but I'm just going to really ask
25 you, Mr. Hill, about really the 27th and 26th. Fair enough?

1 A. Okay.

2 Q. If we can pull up then, that would be the last page,
3 the fourth page of C 538. Okay. Just so you can -- if you
4 mind, Mr. Hill, just sort of -- on the bottom one, which looks
5 to be December 26, tell us --

6 A. Yes.

7 Q. Kind of explain what we see there, the date and what
8 it's telling us.

9 A. So December 26th at 10:49, I had manually uploaded
10 a ride, which means I would have rode before 10:49. 2 by 11
11 tempo intervals are basically just not really hard. This is
12 tempo. You're just going out there. Eleven means 11 minutes.
13 So I've done it twice. So you do a five-minute warm-up. And
14 for 11 minutes you just kind of -- it's basically like a jog,
15 you now. You're just going out there for an 11-minute decent
16 ride. Then you take a five, ten-minute break, and then you go
17 a second one. That's why -- it was only 18 miles an hour of
18 riding.

19 And then when I got home that morning, I went ahead and I
20 uploaded it. And then I guess the 27th will be next.

21 Q. It will. And just back to -- I think you said this a
22 minute ago, Mr. Hill, and I missed it. So at the 10:49 a.m.
23 means --

24 A. That's what time I uploaded it. So there's two types
25 of Stravas. These are uploaded through my Garmin GPS, so they

1 don't show the map. I just want to say if you wanted to show
2 the 22nd, then are Strava uploaded, so they show a GPS map.
3 And when you upload a GPS map, the time is different.

4 Q. Okay. So when you uploaded it, that's when you start
5 or you --

6 A. That's when I would have finished.

7 Q. That's when you finished.

8 A. Yeah.

9 Q. Okay. Fair enough.

10 All right. Let's look at the one on December 27. So
11 that's the day before this accident that was in the morning
12 hours of December 28th; correct?

13 A. Yes. So this day I woke up that morning. I had
14 Jake. It's so long ago, but from my recollection, I want to
15 say my roommate, which is Jason, the guy I lived with, he
16 watched our kids while I went out that morning and done my
17 62-mile ride. And then once I get in, I was probably done
18 around 2:00 o'clock. I went ahead and uploaded it. And then
19 once I uploaded it, I went ahead and took Jake home right after
20 this ride. And then I probably would have got him home around
21 3:00, 3:30, because he only lived about 20 minutes from us.
22 And that probably would have put me home probably around 4:00
23 that evening. So I'm pretty sure I got in bed between 4:00 and
24 5:00 that evening.

25 Q. Okay. Sixty-two miles. That's a lot, at least for

1 me.

2 A. Oh, it's a lot, but, I mean, it's -- when you're used
3 to riding 400 miles a week, 62 miles, I mean, you get -- I
4 mean, you train your body when you're doing that.

5 Q. Sure. And I think you had -- my understanding is you
6 had -- that route that day, that trip, was with a bunch of
7 other bikers?

8 A. Yeah. It would have been a bunch of -- probably it
9 depends -- I can't remember -- probably ten people. But you
10 really don't even have to work that hard because you're in a
11 draft. So in three hours, if I was up front for an hour,
12 that's two hours of riding behind someone.

13 So on a bike, if you ever watch, say, the Tour de France,
14 if you sit behind someone, as they're doing ten pedals, you've
15 only got to do three pedals. And it's just -- it's really
16 crazy on how drafting works on a bike. Because you wouldn't
17 think it does, but it's amazing how you can suck behind someone
18 and you just -- you hardly even do any work at all. That's
19 what I was always talking about you just sit in the draft and
20 save your energy. Then at the end of the race, you pop out,
21 and all that energy you saved, and that's how you break away
22 and win. So I mean --

23 Q. It sounds -- it sounds a lot harder than that, but --
24 what's the farthest you've ever ridden at one time?

25 A. 110. I would -- I've done probably four ride, I

1 guess, 100-plus miles.

2 Q. Gotcha.

3 A. But you do it in a group, and it's not that hard.

4 Q. Okay. All right. So got back from that ride. Took
5 your son home and then went to sleep and got up and started on
6 your route that night; correct?

7 A. Yes.

8 Q. It sounded like -- my understanding is you started
9 out at about 12:00 o'clock. We can look at your driver's logs
10 if we need to --

11 A. Okay.

12 Q. -- if that helps. But does it sound about right, you
13 left your house around a little before 12:00?

14 A. Yeah. I guess right around midnight is usually when
15 I always tried to take out.

16 Q. Okay. And maybe we'll look at your logs just to make
17 sure --

18 A. Okay.

19 Q. -- so we're a little more specific, if I can remember
20 where I put them.

21 Okay. Let's go back and look at what we've marked as
22 C353-B. And I'd just ask you if that -- do you recognize the
23 second to the last page -- I've attempted -- should be your
24 driver's log, or it should start on the 27th?

25 A. (Inaudible.)

1 Q. Yeah --

2 (Court reporter clarification.)

3 A. Yeah. I'm guessing around 23 . . .

4 Q. 02?

5 A. Okay. Yeah.

6 Q. You see that?

7 A. Yep. I see it now.

8 Q. And does this last one look like your driver's log
9 for 12/28? You see it right there.

10 A. Yes.

11 Q. Okay. All right. That's your name?

12 A. Yes.

13 Q. Okay.

14 MR. SAGER: Your Honor, can we put these up on the
15 board, the last two for 12/27, please?

16 Chris, if you'll put that up.

17 It's hard to see. If you can just move down at the
18 times, please, down where it has 23:02; go all the way
19 down, please. Yeah, that part.

20 BY MR. SAGER:

21 Q. Okay. And I don't want to get too complicated. All
22 I'm trying to figure out, Mr. Hill, by looking at this is
23 approximately what time you went on-duty, if you can?

24 A. 23:02, so that would be 11:02.

25 Q. But that's central time, so it's really 12:02?

1 A. So okay; 12:02.

2 Q. Okay. And then what time did you start driving?

3 A. I would have started driving around 23:07.

4 Q. Okay. So that's about 12:07. So it took you about
5 five minutes or so to do your pretrip inspection?

6 A. Yep.

7 Q. Okay. And then you drove for about, looks like about
8 30 -- you drove until -- from 12:02 until when? I'm horrible
9 at figuring out these logs.

10 A. That would have been 12:50.

11 Q. 12:50. And it looks like you had about a nine-minute
12 stop or so at 12:50?

13 A. Yep.

14 Q. And that was near Kernersville, North Carolina; is
15 that right?

16 A. Yeah, I'm trying to think. I probably would have
17 stopped at -- more than likely it would have been a gas station
18 to go ahead and get the drink and probably something to snack
19 on throughout the night.

20 Q. And I think your general -- what you generally would
21 do kind of when you're on your way to get your truck to start
22 your trip is you would go by the little store, you pick up
23 some -- what kind of coffee do you drink? I forgot.

24 A. I'm a cappuccino guy.

25 Q. Cappuccino. You get a cappuccino to start with;

1 right?

2 A. Yeah.

3 Q. When you got to Kernersville after that amount of
4 time, 39 minutes or so, do you remember whether you picked
5 something up to eat or drink or just going to the restroom? Or
6 do you know?

7 A. I mean, yeah, I would definitely got something to
8 drink and always something to snack on --

9 Q. Okay?

10 A. -- throughout the night so I wouldn't have to keep
11 stopping.

12 Q. All right. And then you drove how much longer before
13 you got to Big Island, which we've been talking about?

14 A. It would be on my next log, but it probably would've
15 took me an hour and a half maybe.

16 Q. Okay.

17 MR. SAGER: Chris, will you pull up the last page,
18 the next log on 12/28, same part we were just looking at.

19 MR. CONLEY: I do want to just make clear, I think he
20 said it, but my only objection is that we're on Eastern
21 time; those are central times. That's why --

22 MR. SAGER: These are central times. Thank you for
23 pointing that out. I need --

24 MR. CONLEY: I just want to make sure the jury's not
25 confused.

1 MR. SAGER: Yeah. Thank you.

2 BY MR. SAGER:

3 Q. Yeah. So we'll just make that clear, on this log
4 also for 12/28, these times are central time; correct, Mr.
5 Hill?

6 A. Yes.

7 Q. So for each one, we have to kind of add an hour.

8 A. Hour.

9 Q. Okay. All right. So from when you stopped at about
10 12:49 a.m. Eastern to when you got to Big Island, Virginia,
11 what time did you get to Big Island based on that 12/28 log?

12 A. At -- so 3:03. So yeah, it took me two hours.

13 Q. Okay. So you got there at 3:03.

14 A. A.m. in the morning.

15 Q. A.m.

16 A. Yeah.

17 Q. Okay. And then when do you leave Big Island?

18 A. At 3:28.

19 Q. 3:28 a.m.

20 A. Yes.

21 Q. All right. So and then for the -- gosh, that's about
22 25 minutes you're at Big Island. What's happening? What did
23 you do?

24 A. As soon as you get there, you go to the guard shack.
25 You go in. They -- because I'm in there every night, every

1 morning -- they say, "Got you a preloaded trailer if you'd like
2 it.

3 "Sure, I'll take it." In and out.

4 I have an empty trailer -- no. It's loaded. I have a
5 loaded trailer. He says, "Drop it in the yard anywhere.
6 Here's your information for your preloaded trailer."

7 He'll circle the trailer number, and I'll go drop my
8 loaded trailer, and then I'll circle the lot and look for my
9 next trailer down here ready to pick up.

10 Q. Okay. And you spend some time in the sleeper berth,
11 I think, when you're on this break. Is that evident on the log
12 up there?

13 A. Yeah. So to save time, basically -- basically, you
14 just save time. You'll do a sleeper berth, and then that's
15 what you type in as you're doing your -- swapping your trailer
16 and stuff. So that's basically as you're hooking up your
17 trailer, you can put "sleeper."

18 Q. All right. So is it your testimony you didn't
19 actually go back in the sleeper?

20 A. No. You just put "sleeper" on here --

21 Q. Okay.

22 A. -- on your time sheet.

23 Q. All right. So you were there for about 25 minutes.
24 And then when did you leave Big Island, Virginia, based on this
25 log?

1 A. Would have been two -- 3:28 a.m.

2 Q. All right. That's where it says 2:28; that means
3 3:28 a.m.?

4 A. Yes.

5 Q. All right. Help us understand. So from Big Island,
6 that's near Lynchburg, Virginia; right?

7 A. Yes, Lynchburg.

8 Q. Okay. So you're going from Lynchburg, Big Island,
9 you were going to where ultimately?

10 A. It's called Martinsville, Virginia, or -- Ridgeway is
11 what they consider it; Ridgeway, Virginia.

12 Q. Martinsville near Danville, right, just down the
13 road?

14 A. Yeah, down the road. Yeah.

15 Q. Okay. So that's where you were going at this time,
16 and this was the route you would generally take every time you
17 went on this trip?

18 A. Yes. This is the same route I took every time for
19 the last two -- ever how long I've been doing it.

20 Q. And Millis actually recommended another route?

21 A. They recommend another route, but it's 30 miles out
22 of the way, so you just waste time if you do it. You're going
23 to lose -- you're going to lose almost an hour driving going
24 the recommended route.

25 Q. And this route from Big Island to where this accident

1 happened was -- took you down south on Highway 122?

2 A. Yes.

3 Q. Correct? And that's a two-lane road that whole way;
4 right?

5 A. Yeah. Yeah, I think it is a two-lane highway.

6 Q. Okay. Yeah. And that's the typical time you would
7 always drive it, about this same time pretty much every right
8 every night; right?

9 A. Yes.

10 Q. Okay. All right. I'd like to show you what we've
11 marked as Defendants' Exhibit 291, Mr. Hill, and just ask if
12 you can look at that and see if that looks like your bill of
13 lading?

14 A. Yes, that was my BOL.

15 Q. Okay. BOL. I can leave that -- or we'll put it on
16 the screen.

17 MR. SAGER: If you can call up C291, please. And,
18 Chris, if we can focus on the upper-right corner so we can
19 kind of get the date and the time. You can just highlight
20 those. Thank you.

21 Q. And so that shows it's December 28, 2015, 3:07 a.m.
22 What does that 3:07 a.m. mean, Mr. Hill?

23 A. That's what time I would have signed the paperwork.

24 Q. Okay.

25 MR. SAGER: All right. Chris, if you can kind of

1 move over to the left and just show who the consignor and
2 consignee are; whatever that means. But just kind of
3 shows who you're driving for.

4 Q. What is the significance of Georgia-Pacific?

5 A. So yeah. You're picking up from GP Big Island, which
6 is Georgia-Pacific Big Island. And then you're taking it to
7 consignee is Georgia-Pacific in Ridgeway. So basically Big
8 Island gets recycled cardboard. They end up making these huge
9 rolls, and then the rolls go to their -- I guess it'd be their
10 sister company or whatnot -- and the rolls go there. And then
11 from there they ship them out to wherever. But, yeah, I take
12 rolls from Big Island to Ridgeway.

13 Q. To Ridgeway. Okay.

14 MR. SAGER: All right. And, Chris, if you move down
15 just a little bit to show the product description and the
16 weight.

17 Q. Mr. Hill, what does the product description mean?

18 A. Six -- six rolls -- yeah. It was always pulpboard or
19 whatnot. But the weight always varied between 39,000 to -- I
20 believe my max weight, I think I could haul 48 or 49; I'm not
21 exactly sure what I used to be able to haul. But, yeah, they
22 usually range from 39 to on up.

23 Q. Gotcha. Okay. So you were driving that night with
24 six rolls --

25 A. Yes.

[Hill v. CVG; 3-16-20 p.m. daily copy]

1 Q. -- of pulpboard, weighed approximately 43,403?

2 A. Yeah, 403 --

3 Q. I can't see very well. All right. Okay.

4 MR. SAGER: And then if you'll go down to the bottom,
5 Chris, just so we can see the date.

6 Q. And I think, Mr. Hill, that's probably your --

7 A. Signature.

8 Q. -- signature, hopefully?

9 A. Yes.

10 Q. Okay. Is that fair?

11 A. Yeah.

12 Q. All right. So that's what you were hauling that
13 night?

14 A. It is.

15 Q. That's where you were leaving from and that's where
16 you were going to Ridgeway, Virginia.

17 A. Yes.

18 Q. Okay. And I think you testified earlier that that
19 truck, when you picked it up in Big Island, was already
20 preloaded; correct?

21 A. Yes, it was.

22 Q. Okay. All right. And so you left at about
23 3:28 a.m.?

24 MR. SAGER: And I'm sorry, Chris. Would you mind
25 pulling up the last page of Mr. Hill's log on the 28th we

1 just had up just so we can get the time. Thank you.

2 Q. And how far is it typically, Mr. Hill, or how long
3 does it generally take you if you're going from Big Island to
4 Ridgeway?

5 A. I want to say it was an hour, maybe an hour and ten
6 minutes.

7 Q. Okay.

8 A. I'm not exactly sure.

9 Q. Yeah. All right. And that was on Highway 122?

10 A. Yep.

11 Q. Right. And did you take a break or make a stop at
12 any point --

13 A. I did.

14 Q. -- before the accident?

15 A. Which would have been 4:23. I stopped at a little
16 convenient store.

17 Q. All right. And that was for what looks like six
18 minutes?

19 A. Six minutes, yeah.

20 Q. So 3:23, we see there is central, so it was 4:23 to
21 4:29 -- correct? -- a.m.?

22 A. Yes.

23 Q. And what's your understanding of approximately what
24 time this accident took place?

25 A. So the accident would have took place at 3:29-ish,

1 3:33.

2 Q. Okay. So we see the 3:29, which is 4:29. That's
3 when you started driving again; correct? Then we see 3:33.

4 A. Yes.

5 Q. So what does -- does that mean that's approximately
6 when the accident took place?

7 A. Depending on when the computer would have went off,
8 more than likely, yeah.

9 Q. Okay. All right. I think that matches up with
10 approximately everything we know.

11 A. Yes.

12 Q. Okay. Thank you. All right. So let's talk about
13 where you stopped at between 3:23 and 3:29.

14 A. Okay.

15 Q. Where did you stop?

16 A. As far as the gas station, I can't really remember
17 what the name. I mean, it was just a little bitty mom-and-pop
18 place. I don't even think they have a name. So . . .

19 Q. No name?

20 A. Yeah.

21 Q. What -- was it near a town or . . .

22 A. I can't even remember what city it would be. Like I
23 say, it's not like a -- it's not a -- it was just a mom-and-pop
24 place.

25 Q. Mom-and-pop. But it looks like, based on this log,

1 it's 14 miles south, southeast of Roanoke --

2 A. Southeast of Roanoke, yeah.

3 Q. -- so we got that much. Okay. But it was open at
4 3:23?

5 A. Yeah. It's a 24-hour place.

6 Q. Okay. Is that somewhere you stop typically from time
7 to time?

8 A. Sometimes. Usually -- there wasn't many places. You
9 have this place and then you have a Sheetz; that's the only two
10 gas stations you have on the route back.

11 Q. Okay. Tell us what you purchased, if anything,
12 there.

13 A. More than likely I would have used the restroom, and
14 I know probably a drink or probably some more snacks and stuff.

15 Q. Okay. When you were driving, when you got back in,
16 this accident happened at approximately four minutes -- four
17 minutes or so later; correct?

18 A. Yes.

19 Q. Were you drinking at the time? Did you have your
20 drink open with you at the time you were driving?

21 A. I know it wasn't on me; it would have been in the
22 cupholder.

23 Q. Okay. And where was that cupholder in relation to --

24 A. It's the ones that are down at the bottom.

25 Q. Okay. To your right?

1 A. Yes.

2 Q. Okay. Kind of down on the -- towards the dashboard?

3 A. Yes.

4 Q. Okay. Kind of in the same area as the Qualcomm but
5 lower, lower.

6 A. Right. Yeah, it's lower than the Qualcomm.

7 Q. All right. And where did you put your food?

8 A. Usually, the food I would just throw in the passenger
9 seat or back in the sleeper.

10 Q. Okay. That's also to your right.

11 A. Yes. It would've been right.

12 Q. Okay. All right. Did you use your cell phone at
13 all, Mr. Hill, from the time you left there to when this
14 accident took place?

15 A. Nope, unless I would have sent -- the only person I
16 text at midnights or nights would have been Jason because he
17 also works third shift. So I may have sent him a text when I
18 was at the gas station talking about what time I may have been
19 off, if you want to ride bikes. You know, whenever I would
20 stop, I'd keep in touch. It was like -- and Millis is really
21 strict on texting. So . . .

22 Q. Okay. All right. Well, let's just make sure we
23 understand what the weather was like and all of that. That
24 night, let's say about 4:30 in the morning, tell us what the
25 weather was like that night, December.

1 A. I know it was clear. I want to say maybe 30 degrees,
2 December night --

3 Q. Okay. Roads were dry?

4 A. Yes.

5 Q. Okay. Not raining? Hadn't been raining?

6 A. It hadn't been raining . . .

7 Q. Okay. At that time do you remember putting your seat
8 belt on when you got back in the truck?

9 A. Yes.

10 Q. At the time of this accident you had your seat
11 belted; correct?

12 A. Yes.

13 Q. At that time -- we've heard some testimony about your
14 height and weight. How tall were you and what's your weight at
15 that time?

16 A. Six-foot, 170 pounds.

17 Q. All right. And did you wear eyeglasses or contacts?

18 A. I don't.

19 Q. Okay. All right. So when you're driving down from
20 where that mom-and-pop was --

21 A. Yeah.

22 Q. -- to the area -- well, let's back up. I'm sorry.

23 From Big Island down to that turn just where this accident
24 happened, before that turn, I assume there had been turns along
25 the way; correct?

1 A. Yes.

2 Q. Some sharper than the one you went around where the
3 accident happened; correct?

4 A. Yes.

5 Q. All right. And you had no trouble driving down to
6 that point; correct?

7 A. Nope.

8 Q. All right. And you had no mechanical problems with
9 that truck that night; correct?

10 A. No.

11 Q. Okay. You had no trouble steering it; correct?

12 A. No.

13 Q. No troubles with the seat belt?

14 A. No.

15 Q. Okay. You had no troubles with the seat; correct?

16 A. No.

17 Q. Okay. Is that -- just for the record, was that
18 correct? No troubles with the --

19 A. Oh, no troubles.

20 Q. Okay. Fair enough. Do you remember what the speed
21 limit was in that area?

22 A. It fluctuates. Some spots are 55, some are 45. And
23 that area, I mean, maybe 45 through that area. I can't really
24 remember.

25 Q. Okay.

1 A. It goes up and down through that whole highway.

2 Q. Do you remember what your speed was as you were
3 approaching that curve where the accident took place?

4 A. It definitely would have been the speed limit,
5 probably a little lower, because I was a heavy load for
6 43,000 pounds.

7 Q. That was a heavy load?

8 A. Yeah, that -- I mean, 39. Like I said, most of them
9 are 39, but anything over 40 is considered heavy. So . . .

10 Q. Okay. Let's talk with you about your seating
11 position at the time of this accident and how you generally --
12 well, let's talk about it at that time.

13 A. Okay.

14 Q. Did you know who made your seat? Probably not at
15 that time.

16 A. Yeah, I had no idea.

17 Q. Okay. And you understood it was an air-ride seat?

18 A. I did.

19 Q. And it would kind of go up and down as you drove;
20 correct?

21 A. Yes.

22 Q. And did you like that feature?

23 A. I loved it.

24 Q. Yeah. Good. In terms of kind of your -- the back
25 portion of the seat, do you remember how you would position it?

1 Was it all the way up? all the way back? about midway? Or what
2 do you recall?

3 A. So I'm pretty sure I drove mostly back, but it
4 wouldn't go back far because you had your sleeper behind you.
5 So even all the way back, you're still pretty much straight up.
6 It's not like a pickup truck; you can't take the seat all the
7 way back.

8 Q. So about as far back as it would go?

9 A. Yes.

10 Q. Okay. And I assume you're wearing a hat that night,
11 or were you?

12 A. Oh, yeah. Hat 90 percent of my --

13 Q. 90 percent. Okay. Do you sleep in a hat?

14 A. I kind of do.

15 Q. Do you? Okay. All right. And you know the -- I
16 forget what you call the thing -- when you move the seat up and
17 back?

18 A. Yes.

19 Q. The actual seat itself?

20 A. So -- good question. I want to say it's middle ways.
21 I don't remember.

22 Q. Middle ways?

23 A. Yeah. I guess that's about where I drove.

24 Q. All right. Okay. Did you ever mess with the seat?
25 I say "mess with." Do you know what seat belt -- what tethers

1 are on the seat? Did you ever try to adjust at all the
2 air-ride nature of the seat?

3 A. Yeah. I mean, I drove -- if you ain't got enough air
4 when you're going over bumps, of course, it's just going to
5 bottom out. And if you got too much air, defeat the purpose of
6 using the air-ride. So I drove where it basically don't bottom
7 out but it would still be plush enough where you can benefit
8 using the air-ride seat.

9 Q. Okay. When you're driving down Highway 122 just
10 before this happened, Mr. Hill, did you have the radio music
11 playing?

12 A. Yeah, more than likely. I always listen to music.

13 Q. Drive with one hand or two hands on the wheel?

14 A. Two.

15 Q. No cruise control engaged?

16 A. Oh, no.

17 Q. Your Qualcomm was to your right; correct?

18 A. Yeah, it would have been.

19 Q. Your drink was to your right; correct?

20 A. Yeah, drink.

21 Q. Your food was to the right; correct?

22 A. Either in the seat or in the back of the sleeper.

23 Q. And then, you know, at some point you found yourself
24 on the left side -- or, I guess, northbound side of Highway
25 122; correct?

1 A. After the boom that I initially heard that took the
2 truck to the left side.

3 Q. Okay. Let me ask you about that. You didn't have
4 any sort of issue with a tire to your knowledge?

5 A. No.

6 Q. Okay. No one that's -- you're not aware of anyone
7 saying you had any issue with a tire related to this accident;
8 correct?

9 A. Nah.

10 Q. And you're not aware of any mechanical issue with
11 your truck at the time of this accident; correct?

12 A. No.

13 Q. All right. You're not aware of anyone firing off a
14 gun or anything like that; right?

15 A. Nah.

16 Q. Okay. All right. Make sure I understand this.
17 There are no deer or no animal jumped out in front of you as
18 you're going around the curve; correct?

19 A. No.

20 Q. All right. And when you found yourself on the
21 northbound side of Highway 122, am I correct your initial
22 reaction, being on that side, was a short -- was a jerk of the
23 wheel to the left; correct?

24 A. After you go into the turn and you heard the boom,
25 the initial reaction is to try to turn a little to the left to

1 get the truck to set back down, but it was already started
2 tipping, so it was no -- no use in trying to get it to come
3 back.

4 Q. Okay. So your steering -- I just want to make sure
5 we're clear. Your steering input, you're in the -- you'd
6 crossed the yellow solid centerline for you --

7 A. Yeah --

8 Q. -- and the other -- you'd crossed two solid yellow
9 lines; correct?

10 A. I mean, I didn't drive across it. The truck had
11 started tipping across it.

12 Q. Okay. Started tipping on the road?

13 A. Yes.

14 Q. In your lane of travel?

15 A. As I was going around, yeah, it started tipping, and
16 that's what caused it to veer off into the other lane off into
17 the road, off the road.

18 Q. All right. So the truck actually started tipping
19 when you were in your southbound lane; is that correct?

20 A. As I was turning, yes.

21 Q. Okay. As you were turning -- as you were turning to
22 the right?

23 A. Yeah, I was --

24 Q. Going around the curve?

25 A. -- the curve goes to the right.

1 Q. Okay. And you're in that right-hand --

2 A. Turn.

3 Q. -- southbound lane, so you're kind of turning the
4 wheel right.

5 A. Yeah, turning right. And probably 50, 60 yards in,
6 it -- the boom, and that's what initially got the truck over.
7 I mean, as you're looking out, you just hear the boom. It
8 happened so quick. You hear a boom, you feel the truck start
9 to tip. You just -- instinct is to try to just set it back
10 down. It's just like if your car gets sideways, your instinct
11 is to turn, you know, try to slide and get it back straight.
12 It's the same as when that truck tips over. Your instinct is
13 to try to turn it to not make it tip.

14 Q. Okay.

15 A. It was just already tipped and, boom, on its side.

16 Q. Okay. And that -- do you think you hit the brake at
17 any point during that sequence?

18 A. It happened so quick, I have no -- I probably could
19 have to try to stop. I don't know.

20 Q. And do you know approximately how fast you were going
21 when this happened?

22 A. The speed limit or, like I said, maybe a little under
23 because you're hauling that heavy of a load.

24 Q. All right.

25 A. You definitely -- I mean, you don't want to be taking

1 turns at 60 miles an hour.

2 Q. But you're not sure what the speed limit was; right?

3 A. I want to say 45 in that area.

4 Q. All right. And just want to make clear, your initial
5 steer was steer to the left; correct?

6 A. The instinct is steer to the left to try to get it
7 not to tip over. Yes.

8 Q. And then did you steer back to the right?

9 A. Probably not, because by then, you're already tipped.
10 I mean, there's no use. By then, I'm just hanging on.

11 Q. Okay. All right. And you've kind of talked about --
12 Take your time, Mr. Hill.

13 A. Go ahead.

14 Q. I'll do the same.

15 Okay. And it tips over, and you kind of -- you're in your
16 seat, you're in your seat belt, and you're kind of hanging on
17 as it's sliding? Is that --

18 A. Yeah. I hear a big boom. The loudness of everything
19 just -- it's like a car wreck. You hear everything shattering.
20 Next thing I know I'm sitting there. I guess -- I still don't
21 know the exact position I ended up in. But I just know I was
22 sitting. I sat there, sat there. A guy came. I said, "If you
23 can help get this dash or steering wheel off my lap, I can
24 crawl out."

25 He said, "Sir, there's nothing. You're just sitting

1 there. There's nothing holding you."

2 Q. And you were -- at that time you were still in your
3 seat belt; right?

4 A. Yes.

5 Q. And still in your seat --

6 A. Yes.

7 Q. -- correct? Okay. And during the accident, Mr.
8 Hill, you don't recall any part of your body striking any part
9 of the inside of the vehicle compartment; correct?

10 A. It just happened so quick, I have no idea.

11 Q. Do you have a recollection as you sit here about that
12 happening, or it happened too quick?

13 A. I just remember the boom -- boom of whatever made the
14 truck shift and the loudness of everything happening. And, I
15 mean, like I said, it just happened so quick. And I'm sitting
16 there, you know.

17 Q. Do you have any recollection specifically of anything
18 you came in contact with once the truck rolled over?

19 A. No.

20 Q. Okay. And then do you recall once people got there
21 and all of that, and before they were able to take you out,
22 they had to get a -- do you remember hearing a chainsaw?

23 A. Yeah. It was -- they had all kinds of stuff out
24 there getting me out of the truck. I know they had to cut some
25 stuff out to make room to get me out of the truck.

1 Q. And when it came to rest, you thought you were kind
2 of wrapped up in sort of a fence line? Or . . .

3 A. I thought it was a fence. I still -- no one ever
4 told me if it was a fence, but I always felt like -- that's
5 what I think the scars came from. I think there was some type
6 of fence post wrapped around my head, and that's what was
7 cutting my head. I really don't know.

8 Q. Understood. But once they cut you -- cut the stuff
9 around the car, they were able, ultimately, to get you out
10 through the front windshield; correct?

11 A. Yes.

12 Q. Because that windshield had been broken out?

13 A. Yes.

14 Q. Okay. Let's see. Mr. Hill, you don't -- you're not
15 aware of anything that that seat you were riding in had to do
16 with causing this accident, are you?

17 A. The seat didn't cause the accident. Right.

18 Q. Okay. Same question. You're not aware of the seat
19 belt having anything to do with the cause of the accident?

20 A. Not the cause of it.

21 Q. All right. And just to -- we're going to move away
22 from that and kind of wrap up here --

23 A. Okay.

24 Q. -- Mr. Hill. Don't have any more questions.

25 A. All right.

1 Q. Now you live in -- I think you talked about the house
2 you lived in Thomasville, North Carolina.

3 A. Yes.

4 Q. And that house has been fully, I guess, handicap made
5 accessible; correct?

6 A. Yeah. It was actually already made for a guy in a
7 wheelchair. He passed way, and I lucked up and got it. It was
8 on the market right when I was looking.

9 Q. Right. Okay. And you talked about the attendant
10 care you have that's 19 hours a day.

11 A. Yes.

12 Q. And I think your mom does some of that; correct?

13 A. She does. She works nights. She does the third
14 shift nighttime.

15 Q. Right. Are you doing okay?

16 A. Yeah.

17 Q. All right. Not much -- not much farther. We're
18 almost there.

19 And she had kind of helped you after it happened, and then
20 ultimately a home care -- I think it's called Comfort Care?

21 A. Comfort, yes.

22 Q. Hired her to work and kind of from 11:00 at night to
23 7:00 in the morning; correct?

24 A. Yes.

25 Q. All right. And that's when you're -- generally,

1 that's when you're sleeping.

2 A. Yes.

3 Q. Okay. All right. And you've talked about -- I mean,
4 before this happened, were an active person who liked to be
5 doing stuff.

6 A. Oh, yes.

7 Q. And still have that in you?

8 A. Yep.

9 Q. Yeah. And you talked about wanting to work and,
10 certainly, I listen to your testimony, and certainly,
11 absolutely understand all the issues you encounter.

12 A. Yeah.

13 Q. If at some point down the road there was someone, a
14 professional, who was able to meet with you and try to, you
15 know, match your abilities up with a occupation of some sort,
16 would that be something you would be willing to consider?

17 A. I've always wanted to do -- be like an advocate for
18 people in a wheelchair. There's a few hospitals in the area
19 that don't offer good rehab like the Shepherd Center. And I've
20 always wanted to go into their rehab facilities and just be
21 like a mentor for people who have been recently paralyzed. I
22 would even volunteer my time just to help people out. I mean,
23 I've always -- there's a few people in wheelchairs in my area
24 that I've hung out with, you know. It's just my nature to help
25 them out because I know what it's like.

1 Q. Absolutely.

2 A. So that would be something I'd definitely always
3 consider.

4 Q. Shepherd Center is a great facility.

5 A. Oh, yeah. They need more. I mean, there ain't but
6 two. You've got Shepherd Center on the East Coast and then the
7 Christopher Reeves hospital out in Utah. That's the two best
8 places to ever go.

9 Q. Mr. Hill, if you'll give me just a -- well, there's
10 one question I saw I meant to ask when you were talking about
11 your injuries a couple --

12 A. Yeah.

13 Q. -- minutes ago. You had about 70 or so stitches,
14 staples on the scars on your head.

15 A. Yeah.

16 Q. On the lacerations. Okay.

17 In the area where the accident happened, were there any
18 streetlights that you recall, any lighting?

19 A. Not where I -- near Steep Street [ph] or right -- was
20 at that store I stopped at. After that place, it's just pure
21 country roads.

22 MR. SAGER: Give me one second, Mr. Hill, if you
23 don't mind.

24 THE WITNESS: Okay.

25 MR. SAGER: Mr. Hill, I really appreciate you

1 answering my questions. Thank you very much.

2 THE WITNESS: Okay.

3 MR. SAGER: Thank you. That's all.

4 MR. CONLEY: Just a couple redirect, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. CONLEY:

7 Q. Mr. Hill, are you a design engineer or a vehicle
8 engineer of any kind?

9 A. No.

10 Q. Did you have any knowledge of any kind of what the
11 seat, the air-ride seat you were sitting in would do in a
12 quarter roll?

13 A. No.

14 Q. Did you know anything about the design of air-ride
15 seats until you brought this case and heard us?

16 A. I knew nothing.

17 Q. Did you think you were in any danger in a quarter
18 roll that day or aware of any dangers --

19 A. No.

20 MR. SAGER: Your Honor, I'm just objecting to all
21 these questions.

22 THE COURT: Sustained.

23 MR. CONLEY: Okay.

24 BY MR. CONLEY:

25 Q. Were you aware of any danger that night that might be

1 posed by your seat in a quarter roll?

2 A. No.

3 Q. Now, were you trying to do your best to answer
4 Mr. Sager's question?

5 A. I did.

6 Q. And I don't think he or the Court or anybody wants
7 you to speculate, but I want to make sure I leave here clear
8 and the jury leaves here clear. Do you remember exactly where
9 your body went from the time that thing touched down on the
10 side until you were awakened by the man you wanted to get the
11 dash off your legs?

12 A. No.

13 Q. And when you talked about what you think might have
14 hit, is that based on personal knowledge at all?

15 A. It's just -- I mean --

16 MR. SAGER: Objection. Leading.

17 MR. CONLEY: Don't think I asked a leading question.

18 BY MR. CONLEY:

19 Q. Is that based on your personal knowledge, or just you
20 trying to answer the question?

21 A. Just trying to answer it. But, I mean, I don't know
22 what I hit. I have no idea.

23 Q. Let me leave you here. Is the period from when it
24 began and touched down until you heard the man talking a blank
25 slate in your mind?

1 A. Yes.

2 MR. SAGER: Objection. Leading.

3 THE COURT: Overruled.

4 BY MR. CONLEY:

5 Q. Is it a blank slate in your mind?

6 (Court reporter clarification.)

7 THE COURT: Overruled.

8 A. It is.

9 Q. All the questions about the logbooks on cross, were
10 you within your hours of service?

11 A. I was. I was well within them.

12 Q. And then the question about the Strava and that
13 62-mile bike ride.

14 A. Yeah.

15 Q. How would you feel after riding a bike 62 miles?

16 A. Me, I get off and do it again. I mean, I guess when
17 you train your body, 62 miles is nothing. I mean, if anyone --
18 I mean, you just train your body. I don't know. It's nothing
19 really at all.

20 Q. When you were able to regularly exercise like that
21 and ride when 18 miles was an easy day and 62 was fun --

22 A. To me -- or I wouldn't even say to me -- to us as
23 cyclists. I mean, when you get to that level, 18-miles-an-hour
24 ride, that is like walking from here to the restroom. I mean,
25 that's literally -- that's really nothing. 18 miles, that's a

1 warm-up in a park.

2 Q. All right. Did doing that, though, did getting out
3 on that bike and riding, whether it was an 18-mile warm-up or a
4 62-mile ride, did that give you energy?

5 A. Yeah, I think so. I mean . . .

6 Q. And can you ride your modified bike with the hand
7 pedals 62 miles anymore?

8 A. My longest ride -- it sounds funny but I was so
9 proud -- was 12 miles, and I got that two Octobers ago; it was
10 12 miles. But an easy ride -- or I wouldn't say easy -- my
11 average ride on the hand cycle is 6 miles, and that takes me
12 two hours. Two hours. Come to think about it, two hours to go
13 6 miles, when in two hours I used to go 40. It's crazy to
14 think about. I never really thought about it until you just
15 said that.

16 And I can push this chair -- I mean, it's a lot easier for
17 me to push this chair because I don't have to get in and out of
18 a bike. But, I mean, two years ago I could push this bad boy
19 15 miles. Took me hours, but I used to push this thing all
20 over the place.

21 I mean, yeah, yeah -- just love exercising.

22 MR. CONLEY: I don't think I have any more questions,
23 Your Honor. Thank you.

24 THE COURT: All right. Mr. Hill -- does Mr. Hill
25 want to go over there and sit next to y'all?

1 MR. CONLEY: That would be great.

2 THE WITNESS: Thank y'all.

3 (Mr. Hill exited the courtroom.)

4 MR. CONLEY: Your Honor, we have a very short final
5 witness.

6 THE COURT: It's got to be very short. Like we're
7 going to leave in about 20 minutes. So you're going to
8 have to put him up really quick.

9 MR. ABRAMS: Your Honor, we call Jason Duvall as a
10 friend of Josh's.

11 (An off-record discussion was held.)

12 THE COURT: Come on down, sir.

13 Whereupon,

14 **J A S O N D U V A L L,**

15 after having been first duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. ABRAMS:

18 Q. Can you please introduce yourself to the jury.

19 A. I'm Jason Duvall. I've been a friend of Josh's for a
20 little while, pretty good while.

21 Yeah, I mean, I'm just a normal guy. Work. I have a
22 wife, two kids. I don't know.

23 Q. Okay. And, I guess, how did you and Josh meet?

24 A. We met a long time ago. We met through some mutual
25 friends. I think we were at a little get-together, and we met,

1 and we just kind of hit it off. And ever since then, you know,
2 we've been really great friends.

3 Q. Okay. And the jury's met Josh during voir dire and
4 during openings and just had a chance to hear from Josh.
5 Obviously, they met him this week. They have not had the
6 opportunity of knowing him before December 28, 2015. So for
7 somebody you hadn't met Josh before his wreck and before his
8 injury, can you just describe Josh to -- Josh to them?

9 A. Josh, he's always had so much energy. That was the
10 biggest thing about him, his energy level, and just he
11 always -- I don't know. He just made things -- made you have a
12 good day when you were around him. You know, that's the
13 biggest thing.

14 He was outgoing, or is outgoing still. I'm kind of
15 talking like he's not here or with us anymore.

16 But, yeah, I mean, he was just -- I don't know. We hit it
17 off. We've never had -- we've never had an argument, and just,
18 you know. I don't know what else to say.

19 Q. Okay. What did y'all like to do together before his
20 injury?

21 A. I guess our main thing is we were racing bicycles at
22 the time. You know, we did, you know, all kinds of stuff.
23 Just normal things; going to the lake and doing a lot of stuff
24 with our kids. That was -- that was really nice. The kids
25 really got along. It was almost like a little family almost.

1 But yeah.

2 Q. What -- I guess, did you have a chance -- you had
3 mentioned kids. I guess, could you tell the jury how old
4 your -- you got two kids; is that right?

5 A. I have two. One's 11 --

6 Q. How old are they?

7 A. One's 11. I have a little baby now; he's eight
8 weeks.

9 Q. Okay. And the 11-year-old and Jake, were they
10 friends or are they friends?

11 A. Yeah, definitely.

12 Q. Okay. Can you talk a little bit to the jury about
13 Josh as a dad?

14 A. He's a really good dad. His son respected him. Feel
15 like they had a good little bond. Kind of like me. I feel
16 like the same way with my son, you know.

17 (Court reporter clarification.)

18 I'm sorry. I'm pretty nervous. I've never done anything
19 like this.

20 Yeah, I mean, I think he was a good dad. I mean, he
21 taught his -- he was teaching Jake. You know, he teaches Jake
22 right from wrong. Jake respected him. And, I mean, just a
23 normal dad, you know, always did a lot of stuff together.

24 Q. Obviously, we're all here because of the wreck --

25 A. Yeah.

1 Q. -- in December of 2015. How did you hear about it?

2 A. I think that I woke up and I saw it on Facebook. His
3 mom had posted something, and -- yeah, I heard about it through
4 that. And I gave her a call and she kind of gave me the
5 rundown of what's going on. And that was pretty much it.

6 Q. What did you do when you heard?

7 A. I was pretty emotional at the time.

8 Q. Did you go see Josh?

9 A. Yeah, we went and saw him that day; went and saw him.
10 Spent some time there and -- yeah.

11 Q. Throughout -- after Josh's injury, how was his
12 attitude again?

13 A. It's a big change. Yeah, it's a big change. He's
14 definitely -- I mean, he's just not the same, I guess. It's
15 been definitely on him more negative; I guess maybe some
16 depression or, you know, there's some negativity there. A lot
17 more than what, you know, something you didn't see before.
18 It's kind of very -- it's kind of, I don't know, just doesn't
19 have that energy like he used to have.

20 Q. I know it's not fun to talk about. How's his
21 relationship with Jake changed since?

22 A. I mean, he's just not able to do things physically
23 with he could for sure, mentally, and just being a father.
24 When I look at it, I kind of look at it like I just -- Jake's a
25 good kid, but I don't know. Like, I think it's hard, kind of

1 hard for Jake, I think, a little bit. But, I mean, I think he
2 deals with it well. But I feel like he's lost some of his
3 figure authority --

4 (Court reporter clarification.)

5 He's lost some of his authority. It feels -- I mean, I
6 guess not, but that just, you know, like, if he's in there
7 doing something wrong, and it's like, "Stop doing what you're
8 doing," it just doesn't carry the same weight like it used to,
9 it seems like. But, I mean, their relationship's still good,
10 and they do, you know, a lot of things together. Josh still
11 does a lot of things with him when he can.

12 Q. I guess, what do you miss about Josh?

13 A. Yeah. Yeah. Just I think I miss -- I just miss that
14 energy he brings. I mean, he was just somebody to just kind
15 of -- he had like -- I guess he kind of -- he kind of, you
16 know, he kind of light up a room a little bit. He had that
17 energy about him, and he just always -- he was very positive.
18 Yeah, I mean, it's just, I don't know. You just, you know,
19 we -- just our time we -- we just always were in good moods
20 together, you know, just spending our time together. Whatever
21 we did, it didn't matter; we just had a good time when things
22 were good. It's just the way it felt. Now it seems a lot
23 more -- it's more -- it's just different.

24 Q. And can you just tell the jury just kind of in your
25 own words what Josh has lost?

1 A. Can you repeat it?

2 Q. Yeah. Can you just tell these folks in your -- just
3 kind of use your words, or however you want to say it, but can
4 you describe just a little bit about what Josh has lost because
5 of what he's been going through?

6 A. Yeah. He's lost his physical, a lot of physical
7 ability. You know, that's a pretty big thing. Especially me
8 and him were very active, and when you're very active like
9 that, it's like in your -- it's just kind of in your bones to
10 be active; you know, it's just who you are. And he's lost that
11 physical side, a lot of physical capabilities. And he's
12 just -- yeah.

13 THE COURT: I can't hear him.

14 THE WITNESS: I'm sorry.

15 THE COURT: You have got to speak up, sir.

16 MR. ABRAMS: Speak up in the microphone.

17 THE WITNESS: I'm sorry.

18 MR. ABRAMS: Yeah. I know it's unnatural.

19 A. Yes. This is a -- I mean, yeah, he's just lost a lot
20 of his physical capabilities that he had. He's very, very
21 physically capable person. And then from the emotional side,
22 it just seems to be -- he's just kind of, you know, you know,
23 negative -- or not really negative, but he just -- he's just
24 different. He seems more on like the negative side of things
25 sometimes. Yeah. I mean he's lost a lot. I don't know. It

1 feels -- you know, just simple things like when you're with
2 your kid, you know, and just picking him up and stuff like
3 that. You know, it's just a lot has changed. It's made, you
4 know, a big difference in his life and even my life too.
5 So . . .

6 Q. I know it's not fun to talk about. Thank you so much
7 for coming and for your time and for sharing a few words about
8 Josh.

9 A. Yeah. Thank you. Sorry I didn't speak into the
10 microphone.

11 Q. You're good. I think they may have some questions
12 for you.

13 MR. RALSTON: No questions, Your Honor.

14 THE COURT: All right. Thank you, sir. You may step
15 down.

16 THE WITNESS: Thank you.

17 MR. CONLEY: Your Honor, subject to agreeing, the
18 corrections and lining up and doing everything with
19 exhibits and making sure everything is in, the plaintiff
20 rests.

21 THE COURT: All right.

22 Okay. So, ladies and gentlemen, that means that the
23 plaintiff as now put up all the evidence that they intend
24 to put up in this case in their case in chief. And so now
25 the defendants have the opportunity if they want to

1 present evidence, they may do so.

2 But we're not going to do that today. We're going to
3 go home for the day. I know y'all are tired. It's been a
4 long day. We need to start a little bit later tomorrow
5 because we've got some new maybe video equipment coming
6 in. We're having a little problems. We want to be able
7 to do a test run of it to make sure it's working before
8 you get here. So we should be ready to go at 9:30, so
9 maybe they get here at 9:20, something like that. Okay?
10 We'll be ready to go at 9:30.

11 Thank you so much for being here. I know it's been a
12 long -- last week and now a long day today. But we're
13 getting through this, and I appreciate it very much. Safe
14 travels to wherever you may go, and I look forward to
15 seeing you tomorrow.

16 (The jury was excused for the day, and the
17 proceedings were thereby concluded at 5:57 p.m.)
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EXHIBIT F

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(Untranscribed proceedings took place.)

THE COURT: Okay. Mr. Conley, are you ready to call your next witness?

MR. CONLEY: Yes. It's not a video. Mr. Abrams is going to put up Mike Sutton.

THE COURT: All right.

MR. CONLEY: Accident reconstructionist, Your Honor.

(The witness takes the witness stand at 4:07 p.m.)

THE BAILIFF: Raise your right hand for me, sir. In the matter before the Court today, do you swear to tell the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

THE BAILIFF: Have a seat, slide forward to the microphone, and state your name for the court reporter.

THE WITNESS: Michael Andrew Sutton.

- - -

MICHAEL ANDREW SUTTON,

being first duly sworn, was examined and testified as follows:

- - -

THE BAILIFF: Have a seat. Slide forward and

1 state your name for the court reporter.

2 THE WITNESS: Michael Andrew Sutton.

3 VOIR DIRE EXAMINATION

4 BY MR. ABRAMS:

5 Q. Mr. Sutton, could you please introduce
6 yourself to the jury.

7 A. My name is Mike Sutton, and I'm from Cary,
8 North Carolina.

9 Q. And who do you work with?

10 A. I work with a company called Accident
11 Research Specialists.

12 Q. And what's your role at Accident Research
13 Specialists?

14 A. Well, I'm a consulting engineer. So I'm a
15 mechanical engineer by education. I was also the
16 founder of that company. I'm an owner of that company
17 as well.

18 Q. And what's your role? Like, what do you do
19 at ARS?

20 A. So what the -- as the name of the company
21 implies, what we do is we investigate and analyze
22 accidents of all different kinds.

23 Q. Okay. Now, could you explain to the jury
24 what mechanical engineering is?

25 A. Well, mechanical engineering is -- it's a

1 broad discipline. When we say "discipline," area of
2 engineering. So mechanical engineers look at the
3 physical world. It's basically applied physics. So a
4 mechanical engineer may build a structure, like an
5 airplane wing; they might study how fluid flows over
6 the airplane wing like air; or a piping system. Those
7 types of things. So mechanical engineers deal with
8 certainly lots of issues with machinery, construction
9 of machinery, forces, design of machinery, those types
10 of things.

11 Q. Okay. And what -- can you explain to the
12 jury what vehicle dynamics is?

13 A. Well, vehicle dynamics is -- especially in
14 the context of, let's say, an automobile,
15 tractor-trailer, it is the -- the science and math that
16 goes into describing how a vehicle moves. So vehicle
17 dynamics could -- could incorporate how a suspension
18 works on a car. So what happens to the car when it
19 travels over a bump. What -- what a car does as it
20 goes around the curve; turn the steering wheel, tire
21 forces come about, the car steers. So all of these
22 things are very familiar to about anybody, about
23 vehicles accelerating, braking, steering, those type of
24 things, but what vehicle dynamics is, it's part of
25 mechanical engineering. What it does is it explains

1 why a car does what it does, when it does brake,
2 accelerate, and steer.

3 Q. Okay. And I think everybody is somewhat
4 familiar with the term, but what is "accident
5 reconstruction"?

6 A. So accident reconstruction is -- it's a
7 pretty broad area of -- of study. It's typically a
8 field of engineering study. But what accident
9 reconstruction is, it's basically to go back and what
10 we call "reconstruct an incident." But say -- say you
11 have an incident, it could be a motor vehicle accident,
12 it could be a plane crash, it could be a building
13 collapse, and what somebody in my position does, based
14 on my education, my experience, I've looked at a lot of
15 accidents. I can understand the language of the
16 physical evidence of an accident. So the physical
17 evidence is basically what's left behind, and
18 understand what that physical evidence tells me, and
19 then what I do is I'm able to draw conclusions or be
20 able to answer questions about, say, how did an
21 accident happen.

22 Q. Okay. And what was your kind of educational
23 and work background that led you to enter this field?

24 A. So I was at North Carolina State, and that
25 was back in the mid-eighties. I graduated in '88 with

1 a mechanical engineering degree, a bachelor of science.

2 And while I was a student at NC State, I started
3 working for Dr. Charles Manning, who was an
4 ex-materials engineering professor from NC State, and
5 he had a company in Raleigh, and it was called Accident
6 Reconstruction Analysis. And so I started working for
7 Dr. Manning when I was a sophomore, junior in college,
8 and so I've been in the field ever since. So since
9 about 1987, I've been in the field of accident
10 investigation and analysis.

11 Q. Okay. And so since '87, how many wrecks have
12 you reconstructed over the years?

13 A. Well, as far as motor vehicle accidents, well
14 over 2500. I've probably looked at, maybe, 4,000
15 accidents. I have been doing this 31 years.

16 Q. Okay. And do you have, like, a process or
17 methodology that you use when you are doing an accident
18 reconstruction to determine the movement of vehicles
19 involved in a wreck based upon the evidence?

20 A. Sure. As far as motor vehicle accidents,
21 because, again, they're different -- different things
22 that you do for different types of accidents. So say
23 motor vehicle accident, the methodology is pretty
24 straightforward, which is the first thing you do you go
25 collect facts, and that can come in all different forms

1 depending on, say, how long after a wreck you get
2 called. You know, sometimes we get called the day of,
3 we're there in an hour; sometimes we get called three
4 years later, so the information is different. And you
5 collect the facts and then what you do is that you look
6 at the facts or the physical evidence, and then you use
7 your experience and your background in math and
8 engineering to try to figure out what are those things
9 telling you. You know, how fast a vehicle was going or
10 what did it do.

11 And then once you find all the elements, you
12 put -- basically, put that together in something that
13 would be a reasonable explanation where I could tell
14 somebody how an accident happened, or be in a position
15 to answer questions about how something happened or how
16 something didn't happen.

17 Q. Is how you do this or the methodology you
18 use, kind of accepted in these fields of vehicle
19 dynamics and mechanical engineering, accident
20 reconstruction?

21 A. Yes.

22 Q. Okay. Have you been qualified and testified
23 before in court as an expert in accident
24 reconstruction, mechanical engineering, vehicle
25 dynamics?

1 A. Yes.

2 Q. About how many times?

3 A. It's probably about, maybe, 150 times now.

4 Q. Okay. Have you reconstructed cases before
5 this one that involved either rollers or tip overs of
6 vehicles and how that may affect the way in which an
7 event occurs?

8 A. Yes.

9 Q. Okay. And do you work only for one side or
10 the other, or how -- I guess, how much -- there are two
11 tables behind us, plaintiff and defendant. About how
12 much time is spent working for somebody at one of these
13 two tables?

14 A. Well, in civil cases like this one, it's
15 about half and half. So half for the plaintiff side
16 and half for the defense side. I do criminal work.
17 You know, so it might be for a prosecutor, it might be
18 for the defense attorney. And we also work directly
19 for companies.

20 Q. Okay. Did you ever work for my firm before
21 this one?

22 A. Yes. Yes, I have.

23 Q. Have you worked against me before?

24 A. Yes, I have.

25 Q. Okay. Have I deposed you before?

1 A. Yes.

2 Q. When you were on the opposite side of me?

3 A. Correct.

4 Q. Okay. Have you ever worked for the firm at
5 this table, Weinberg, Wheeler, Hudgins, Gunn and Dial,
6 before?

7 A. Yes.

8 Q. Okay. About how many times?

9 A. I'd say at least a dozen times.

10 Q. Okay. Whether you're working for me and my
11 firm, Mr. Conley and Mr. Popper, and their firm, or if
12 you're working for Wineberg, Wheeler, do you use the
13 same methodology?

14 A. Yes.

15 Q. Okay. Whether you're working for my firm or
16 for Weinberg, Wheeler, I guess, would you approach the
17 evidence the same way?

18 A. Yes.

19 Q. Okay. As -- do you have sufficient evidence
20 in this case to perform an accident reconstruction and
21 form opinions about what happened on the day of the
22 wreck, December 20th, 2015?

23 A. Yes, I do.

24 Q. All right. And how about the movement of the
25 truck and the trailer and the cab in the wreck that

1 resulted in Mr. Hill's paralysis?

2 A. Yes. That was my focus was to study how the
3 vehicle moved.

4 Q. Okay.

5 MR. ABRAMS: Your Honor, we'd tender
6 Mr. Sutton as an expert in the fields of accident
7 reconstruction, vehicle dynamics, and mechanical
8 engineering.

9 MR. BYRD: Considering we've used him 12
10 times, I would agree, as the attorney.

11 MS. ALABI: So noted.

12 DIRECT EXAMINATION

13 BY MR. ABRAMS:

14 Q. All right. We'll get into some detail in a
15 little bit, but can you give us kind of the 30,000-foot
16 overview of what your opinions are about the wreck and
17 how we got there?

18 A. Sure. And as far as an opinion, do you want
19 a little bit of specifics or just the general areas?

20 Q. I guess just kind of the general areas of
21 what -- what you're going -- I mean, first of all, are
22 you going to talk about anything with the performance
23 of any product within the cab, like the seat or the
24 seat belt or the occupant movement in the cab or the
25 cause of Josh's injury?

1 A. No.

2 Q. Okay. Specifically, in terms of how the -- I
3 guess in terms of how the wreck happened, what --
4 what -- kind of, can you give a view of kind of a
5 narrative of what you think occurred?

6 A. Sure.

7 Q. Or what -- what your opinions are regarding
8 how it occurred?

9 A. Yes. So, basically, my opinion is I have an
10 opinion about how the truck entered the curve. And
11 this is a two-lane road. The truck enters a right-hand
12 curve, and it tips over onto its left side and struck
13 the driver's side. I have opinions about how the truck
14 was steered into the curve; I have opinions about how
15 fast the truck was going when it began to tip over; how
16 fast the truck was going when it laid over on its side
17 in the front yard of the house that was right there
18 where the wreck happened; I have an opinion about how
19 the truck moved from that point to final rest. It slid
20 in the grass, it interacted with the driveway, it
21 interacted with what I call a brush line.

22 It went right past some trees; it went
23 through a small area of trees. Those types of things I
24 have opinions about because I was asked what's called
25 the "roll rate" of the tractor. So, I mean, you have

1 the tractor and trailer, how quickly the tractor flops
2 over on its side; the speed of the tractor as it does
3 that. So a lot of these are kind of what I call the
4 nuts and bolts of opinions or conclusions based on
5 understanding what happened to the truck based on the
6 evidence.

7 Q. Okay. And I know -- have you prepared a
8 PowerPoint slide today with some of the evidence in the
9 case -- based on the evidence in the case?

10 A. Yes.

11 Q. Okay. I'll first hand you the exhibit,
12 Plaintiff's Exhibit 3 today. Just some of the photos.
13 Would it be helpful for you if I just gave you the
14 clicker to go through?

15 A. Sure.

16 MR. ABRAMS: May I, please, Your Honor?

17 THE COURT: You may.

18 MR. ABRAMS: Do y'all have any objection --

19 MR. BYRD: To him using a clicker?

20 MR. ABRAMS: No, no. I tender Exhibit 3

21 and 8 for the --

22 MR. SAGER: These all -- these all come from
23 Fox Fire; is that correct?

24 THE BAILIFF: You've got a screen there
25 beside you.

1 MR. ABRAMS: I believe that the first three
2 came from the investigating officer, and then the
3 remainder were the Fox Fire photos, or some of
4 the Fox Fire photos.

5 THE COURT: How are they marked? We don't --
6 how are they marked?

7 MR. ABRAMS: It is PX3 and PX8.

8 THE COURT: 3 and 8?

9 MR. ABRAMS: Yes, Your Honor.

10 MR. BYRD: No objection, Your Honor.

11 THE COURT: Okay, Plaintiff's Exhibit Number
12 PX3 and PX8; is that correct?

13 MR. ABRAMS: Yes, Your Honor.

14 THE COURT: Are both admitted into evidence
15 without objection.

16 MR. ABRAMS: Okay.

17 **(Plaintiff's Exhibit Numbers 3 and 8 were**
18 **admitted.)**

19 MR. CONLEY: Can we approach real quick? I'm
20 sorry, hold on a second.

21 (Off-the-record bench discussion.)

22 THE BAILIFF: Judge, the jury is asking if
23 these spotlights can be turned off without
24 turning them all off.

25 THE COURT: I don't think so without but we

1 can -- the -- is it bothering --

2 MR. ABRAMS: That's pretty dark.

3 THE COURT: Can y'all see that? Well, let's
4 see. Okay. Here we go. Does that work?

5 Okay, if it doesn't, we can kind of move
6 y'all around some. But that works so far?

7 THE JURY: (Nod heads in the affirmative.)

8 THE COURT: Okay.

9 MR. CONLEY: With Judge Brantley's
10 permission? I don't want to interrupt my
11 colleague, but I'm allowed -- we've identified a
12 problem. Y'all are going to hear -- y'all might
13 hear, like, y'all just heard him say "Plaintiff's
14 Exhibit 3," and then you watched a deposition
15 that talked about Plaintiff's Exhibit 3. What
16 happens during the course of a case is, at a
17 deposition, you start at 1 and you go up. So you
18 might hear about -- a number of Exhibit 3s. What
19 I wanted to explain and you to understand, is up
20 here in the exhibit pile of the things that come
21 in, they will all have a unique trial exhibit
22 number. Okay?

23 And we will try to refer to that whenever
24 possible. For example, the real trial Exhibit 3
25 is the one that just got admitted; the real

1 number 8 is the one that got admitted. The ones
2 that you say in the video that were 3 or 8 will
3 have a different unique number. I think it's
4 like 488, 489. And when the attorneys do their
5 closing argument, we'll use the trial exhibit
6 numbers that you have. Okay? I think that will
7 help you understand.

8 THE COURT: Yeah.

9 MR. CONLEY: Thank you.

10 THE COURT: When we say "PX8," that's the
11 unique number. Okay? So sometimes you'll hear
12 him say, "Defendant's Exhibit 2, also it's called
13 PX483," pay attention to the PX number. Okay?
14 Because that is unique. Correct?

15 MR. CONLEY: That is correct. Or the DX
16 number.

17 THE COURT: Or the DX number.

18 MR. CONLEY: It applies to both sides.

19 THE COURT: Right.

20 MR. CONLEY: I didn't mean to -- both sides
21 will have a unique trial exhibit, PX whatever, DX
22 whatever. That means it's a trial exhibit.

23 And thank you, Your Honor.

24 THE COURT: Yes. Okay.

25 MR. ABRAMS: Thank you, Your Honor. Sorry

1 about that, guys.

2 THE COURT: What?

3 MR. SAGER: Our exhibit numbers start with a
4 C.

5 MR. BYRD: It's just "C."

6 THE COURT: CX?

7 MR. SAGER: C, just C.

8 THE COURT: That's fine. That's y'all's
9 unique number. Got it.

10 MR. ABRAMS: These are the other materials
11 that are in the PowerPoint. If y'all want to
12 look and let me know if there are any -- if y'all
13 object to any while you're looking through them.

14 BY MR. ABRAMS:

15 Q. So, Mr. Sutton, what -- what all did you do
16 to investigate the wreck?

17 A. Okay. So a few things: Number one, there
18 was some written materials reviewed. The written
19 materials would be the police report, some police
20 notes, notes from the rescue crews, EMS, fire
21 department, things like that. Basically, the basic
22 reports that you get about the -- the accident. There
23 were four photographs taken by Virginia State Police.
24 We can look at those in a few minutes, but just of the
25 truck laying on its side. But just for -- however,

1 there were many pictures that were taken during the --
2 more or less, the rescue effort and then kind of
3 pulling the truck up. You know, once this truck rolls
4 over, you have this long, drawn-out process where the
5 wrecker company gets it up and gets it out of there to
6 a tow yard. And they took lots of pictures. So in
7 those pictures, it captured a lot of this stuff we're
8 talking about, physical evidence. Which, again, could
9 be marks through the grass or pieces of debris, and
10 things like that, or objects that may have been
11 contacted by the truck.

12 So my office, there's -- several of my
13 engineers worked on this case. So a couple of
14 engineers in my office went up to the accident site,
15 they measured the accident site, they also droned it.
16 So -- and one of the ways that we create an
17 environment. And when I say "environment," we
18 basically make a computer model of the accident site so
19 that we can take a look at things and analyze things.

20 I looked at the tractor. I traveled up to
21 Wisconsin, looked at the tractor itself which was in
22 two pieces when I saw it. Had the -- what we call the
23 chassis, which is basically the frame rails, the
24 engine, axles, tires, and then also the cab. So the
25 cab where the driver sits, it separated. So it was in

1 two parts but sitting, basically, side by side. My
2 offices had the trailer for a while, and an engineer in
3 my office looked at the trailer. I've read a bunch of
4 depositions of other people who have either -- have
5 some knowledge of this accident or they're also other
6 experts that have looked at this and have different
7 opinions about what happened in this accident.

8 I also did quite a bit of analysis of this
9 accident, which is, okay, so some of the things I told
10 you earlier, the numbers, it takes a while to get
11 there, so there's some math involved, some science, and
12 some understanding of what this physical evidence is
13 telling you. So those are the general areas that I --
14 I did in this case. And other cases similar to this
15 would follow the same pattern.

16 Q. Okay. And you talked about, like, a computer
17 model. What do you mean by this computer model that
18 you used?

19 A. I use a program or the company uses a program
20 called PC-Crash. And what PC-Crash is, is it's a way
21 to simulate motor vehicle accidents. And within
22 PC-Crash, there's a bunch of different calculation
23 methods. You may not use them all in a particular
24 accident, but you can look at the trajectory of a
25 vehicle. And that's basically vehicle dynamics. When

1 I say "trajectory," it's a model that will -- you
2 can -- you create vehicles and you create roadways, it
3 has suspensions, it has tires, it has weight, it has
4 size. You can drive it, you can accelerate it, you can
5 brake it, you can have it roll over. These are all
6 things that can be done within PC-Crash; there are
7 motorcycles, people, all these different things. And,
8 really, what it is is just physics driven. So PC-Crash
9 is just application of physics, and it's -- it's used
10 as a tool to model what happens in an accident to try
11 to answer questions.

12 Q. All right. Is there any difference between
13 the conclusions you get using PC-Crash versus using
14 these same calculations, either by hand or with a
15 calculator?

16 A. Well, it really depends on what you're after,
17 but certainly there are things that you calculate by
18 hand, kind of the elementary stuff. Even some speed
19 calculations, you can do by hand, and you'll get
20 basically the same result in PC-Crash, because they're
21 both using the laws of physics. Newton -- Newton's law
22 is a very basic engineering, very basic physics. So
23 you'll get the same answer there. PC-Crash allows you
24 to look a little bit deeper into an accident. For
25 instance, it would be difficult to do a hand

1 calculation to figure out exactly how somebody was
2 turning the steering wheel. That kind of stuff. So
3 PC-Crash helps you with that. It helps you with some
4 of the more complex questions instead of basic
5 questions, but some of this stuff here, I did both hand
6 calculation and PC-Crash, and it's -- as far -- it just
7 depends what questions you get asked.

8 Q. Okay. I guess -- and you can use the
9 materials that are up on the screen if you want. Can
10 you explain how in this case you determined how Josh's
11 truck and trailer moved before it came to rest?

12 A. Yes.

13 Q. Okay. How -- I guess, how did you do it or
14 how did it move?

15 A. Once you have a basic understanding of the
16 crash -- and that number is just my file number. Okay.
17 So the first four pictures in this PowerPoint are the
18 ones taken by the Virginia State Police. And the
19 photographs are in order from kind of furthest away
20 from the truck -- and just to orient you. Obviously,
21 the road here, it's a two-lane road, there's a
22 right-hand curve. And this is actually at the very end
23 of the right-hand curve. So Mr. Hill had made it about
24 three-quarters of the way into the curve before the tip
25 over began.

1 And what you see over here is -- that's the
2 back of the truck. You can see that -- that's called
3 conspicuity tape. If the truck's laying over on its
4 driver's side -- and, of course, you've got a bunch of
5 cars that had stopped, fire trucks, and that sort of
6 stuff, here. Here in the ditch, if you look over
7 here -- and I know it's a little bit dark to me, and
8 hopefully, it's not too dark for you. But there's a
9 driveway that goes up to a house that's back over here
10 to the left. But right there at the driveway, there
11 was a -- there's a little pretty shallow drainage ditch
12 along the road here. This is a grass yard. And
13 underneath that driveway is a concrete pipe, concrete
14 culvert, and around that pipe there was some pieces of
15 sheet metal, and that came off the trailer itself.

16 So -- and you'll see some more pictures of
17 the driver's side of the trailer, the left side of the
18 trailer. And you'll see towards the back of the
19 trailer, there's a big chunk of the side ripped out.
20 And that's what this is right here. But that gives you
21 an idea of where the driveway is. It's hard to see in
22 this picture, but right in here is where the top of the
23 trailer flops over on its side.

24 The tractor-trailer, you have two units. You
25 have the tractor which is pulling the trailer; the

1 trailer -- especially this one -- this one had paper
2 rolls in it, so it had these tall paper rolls. The
3 trailer is -- is more top heavy, has a higher center of
4 gravity, has more mass up high than the tractor does.
5 So what happens is, it rolls over first. And then what
6 it does is it pulls the tractor over with it. And so,
7 sure enough, the first thing you see is the top corner
8 of the trailer hitting the grass yard here. And that
9 would be the back corner.

10 But this truck is 69 feet long, total. So
11 it's pretty -- a pretty good distance. So when it --
12 when it tips over on its driver's side, it actually
13 tips over on top of the driveway. So, for instance,
14 one of the things you can figure out is, is that
15 there's a real clear mark where the trailer hit, and
16 then there's the sheet metal from the side at the
17 culvert, and, sure enough, you can go to the trailer
18 and measure from the corner to the missing sheet metal
19 and it's about the same distance as down here on the
20 ground.

21 Those are the kinds of things that you might
22 use to try to put everything together. This is a
23 little bit closer, and you can start to see some of the
24 things that I was describing. This -- this here, you
25 can see the dirt -- you've got green grass, then you've

1 got dirt that's exposed because the top of the trailer
2 scraped the dirt here.

3 The other things that I see in this picture,
4 there's -- there's a white scrape in here. And then
5 there's also, it looks like, a little bit of tire
6 marking in here. Usually, like I said before, this
7 trailer is going to tip over on its left side first.
8 The first thing to hit the ground is the trailer.
9 Usually, in a tractor-trailer rollover, you see these
10 kind of marks. And this from the trailer hitting the
11 ground, and I think that's -- this is what it is. If
12 you go to the trailer today, the bottom, just above the
13 tires is all scraped up, and I think it comes from
14 scraping on this asphalt here.

15 So this is clear indication to me of where
16 the rear of the trailer was when it flops over. So it
17 goes from here to there. As it comes to -- comes to a
18 stop. This is the driveway right here, and you can
19 see, again, there's some pieces of the trailer there.
20 You can't really see it here, but there's a concrete
21 pipe there.

22 Now, this is on the other side of the
23 driveway, and a little bit closer to the back of the
24 truck, there's a fence here. And you'll see the fence
25 a lot in some pictures coming up. There's a tree right

1 here, and you'll see that tree in a lot of pictures.
2 It was the biggest tree that's in this area here, in
3 the vicinity of the truck. That tree has some bark
4 that was scraped on it, and just the very top portion
5 of the trailer, in my opinion, just got to that tree.
6 There was another grouping of smaller trees in front of
7 that that the top of the trailer actually knocked down.
8 So in my opinion, that's really the main interaction of
9 the truck with anything on the shoulderwise scraping
10 some bark off the big tree, and then knocking a smaller
11 cluster of smaller trees down.

12 Like, there's this right here, that's a
13 mailbox post. That was back at the driveway. Here
14 we're standing on the other side of the driveway, or
15 the south side of the driveway. The truck was going
16 south at the time. Of course, it's on the opposite
17 side of the road, but that's the mailbox post. And
18 then you can see more dirt torn up here where the truck
19 slid down the shoulder, came to rest.

20 And they're pretty self-explanatory, but
21 that's a lot closer to the back of the truck.

22 All right. This is -- this is something that
23 my office prepared. This comes from our visit to the
24 site. And what this is, is -- whoops. This is,
25 basically, a drone, an aerial shot that was created

1 using a drone. And not only can we look at it like
2 from this bird's eye view and see some of the stuff
3 that I was just describing in the Virginia State Police
4 photographs, but, also, we use this to create a surface
5 to use in that PC-Crash program. In other words --
6 whoops. I'm not real good at this thing yet.

7 So the roadway is relatively flat, but over
8 here in the -- in the yard, there is -- there is
9 somewhat of a drainage ditch. So there's some
10 different elevations here. And what we can do with the
11 drone is we take a thousand pictures, and then the
12 software puts all these pictures together and creates a
13 three-dimensional map.

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Q. So when we're running PC-Crash, we're not running it on a flat table surface like this, we actually run it off -- run it on something that's got the ditch and it's got the roadway and the driveway and those types of things. What we also did here was we scanned in the truck. And when we say, "Scanned in the truck," we can take a laser scanner and put it beside the truck and the trailer. They were separated, but it creates this computer model, and it's three-dimensional. And you'll see that more later. Three-dimensional, so that is the actual truck, or the scan of the truck there, and it's at its resting position.

That's the fence line there. And you'll see that in the pictures. The fence line comes up

1 basically to the back of the trailer. There's a tree
2 in the middle part of the trailer, the big tree, which
3 is a good point of reference. And then there's the
4 driveway. And that blue mark there is that first
5 touchdown point. So using the photographs and the
6 measurements on the trailer, we were able to put in --
7 that's the first scar that you see in the -- in the --
8 in the house's yard here. So, again, the truck, the
9 rear of the truck touches down here and moves that
10 distance as it comes to a stop.

11 And by the way, that distance is about 133 to
12 136 feet, is the distance that it slid.

13 These are a few pictures. I've already hit
14 on these, so I might not spend that much time on it.
15 But now the sun is coming up and these were -- these
16 were pictures that were taken during the rescue effort.
17 Again, there were numerous pictures taken. I'm
18 standing north -- or the photographer is standing north
19 of the driveway; not me. But there's the driveway,
20 there's the back of the truck. Now, you can see the --
21 the gouge or the furrow in the -- in the yard a little
22 bit better. That's by the top of the trailer. There's
23 parts of the trailer at the culvert pipe. More parts
24 of the trailer. And then you begin to see this other
25 area of displaced dirt. And that's where the tractor,

1 the cab hit. Okay?

2 So remember this truck is 69 feet long. The
3 total distance it goes is 133 feet. When the back end
4 of the trailer is laying down here, the cab is on the
5 other side of the driveway. So if you can think about
6 that, the trailer is straddling the driveway when it
7 comes down. And so the tractor first touches down in
8 the grass yard here, and then it slides to the south.

9 So that's -- and, again, it's getting lighter
10 and lighter. You know, as the sun comes up, you can
11 see this a little bit better, but this is basically the
12 same evidence: Gouge, driveway, tractor impact on the
13 far side of the driveway.

14 There's the pieces of the trailer close to
15 the driveway. Okay, this is looking back the other
16 direction. And by this time, there's been a lot of
17 trucks coming in here and out, but there's a picture
18 taken back when it was dark that you can actually see
19 where the tractor came off the road. So the trailer
20 tilts over on -- across the driveway, but you can
21 actually see the marks from the tractor coming down
22 through here. More debris. That's what happened to
23 the yard, it's a grass yard. Movement of the trailer
24 displaces the yard. That there, again, is about the
25 same -- same view. Go ahead and skip that.

1 Here we go. This is a little bit better
2 picture here. This is on the far side of the driveway.
3 And, again, you can see where the top of the trailer.
4 You think about it, it's just a big box. So when you
5 drag that big box through this grass here, it just
6 creates that line.

7 This area in here is closer to where the cab
8 actually comes down. And you can see on the cab there
9 was dirt stuck in portions of the driver's side of the
10 cab where it -- it also touched the ground. It's a
11 little bit closer to the same area. The parts of the
12 trailer gouging in the yard where the truck is sliding
13 to its point of rest. And the same there.

14 BY MR. ABRAMS:

15 Q. Mr. Sutton, right there, I think the jury may
16 have seen this picture yesterday. I just wanted to
17 know, you know, what it is we're looking at and where
18 it's located.

19 A. This is on the south side of the driveway.
20 It looks like, to me, it's a mailbox post. And I'll
21 show you some pictures here in a few minutes from
22 Google Street View, how this all looked before the
23 truck got there. And I think there's a -- I think
24 there's a newspaper box and a -- and a mailbox just
25 right on this side of the driveway. So the south side

1 of the driveway, right at the corner. And, of course,
2 that's where the truck goes through, so you'll -- you
3 can see that the trailer basically would go over top of
4 this mailbox post; so . . .

5 Q. Okay. What -- what part of the truck would
6 have initially hit that post that we see on the ground?

7 A. That would have been -- in my opinion, that's
8 the trailer.

9 Q. Okay. Would that -- would that mailbox post
10 have any effect on the movement of the cab or would it
11 have impacted the cab itself in any way?

12 A. I don't think it hit the cab, but, again,
13 it's a -- it's a mailbox post, and you've got about a
14 75,000-pound truck. So objects like this are not going
15 to be of any consequence to a big truck like that. It
16 will -- yeah. As you can see, it will just move right
17 through those. And I -- and I have some other analysis
18 on that whole issue about, "Okay, what does this truck
19 hit and what does that -- what does it mean?"

20 Q. Okay.

21 A. Okay. This is the one -- it's kind of dark
22 in this picture, but right here there's -- there's a
23 little piece of debris here. The driveway is back up
24 here, and there's the debris around the driveway, but
25 on the other side of the driveway is where the tractor

1 went. And, for instance, you can see on the tractor
2 front wheel -- on a -- on a tractor-trailer, the front
3 wheels, the lug nuts actually stick out. And there was
4 asphalt stuck to those lug nuts, and -- so you know
5 that the tractor is going over at the edge of the road
6 because it's interacting with that asphalt.

7 So, for instance, if you found grass, it
8 would tell you that it rolled over in the grass. So
9 those are, again, kind of the techniques that you use
10 to try to figure out how to put everything together.

11 This is getting a little bit closer to the
12 point of rest. And there's the trailer. We'll look at
13 this tree here in a second. And then there's -- there
14 was a fence line here, and then along this fence line,
15 there was some brush and some saplings, and a little
16 cluster of -- not as big as this tree, but there were a
17 cluster of several trees right here. And I'll show you
18 what that looked like.

19 This is kind of looking at it from the other
20 side back when it's still dark, so not much has been
21 done to the scene yet. And you'll see there's a group
22 -- a small group of saplings here. And I'll show you
23 what that looked like, you know, a couple of months
24 before the accident happened. There is the -- there is
25 the bigger tree. You can see the fence line here. So

1 what you're seeing here is the top of the trailer,
2 right here. And here, it looks like they have -- what
3 they did to start moving the truck was they took an
4 excavator and peeled a part of the -- the roof of the
5 trailer back, and then pulled the paper rolls out. But
6 there are pictures that show that the front of the
7 trailer was damaged. And the front of the trailer is
8 damaged from top to bottom. And this is
9 eight-and-a-half-feet tall when it's sitting on its
10 side. So the width of a trailer, we're looking at the
11 top of the trailer like a bird would, but it's on its
12 side. Eight-and-a-half-feet tall, so this trailer had
13 to contact something that was pretty tall to rip the
14 top of that trailer back almost like a sardine can.

15 And the only thing that was there to do that,
16 based on the evidence here, was this cluster of small
17 trees here. Which you can't see because they got
18 knocked down by the top of the trailer.

19 This one is a little bit dark, but what I
20 wanted to point out here, there's a little group of
21 saplings here before you get to the fence. They're
22 still there, so the truck did not run over those. So
23 that helps you pick where the truck did and did not
24 travel. The fence is behind it. There, that's a
25 better picture. So when you look at pictures taken

1 before the day of the accident, you'll see this little
2 group of saplings, and there's a wooden fence there at
3 the corner, and then there's the bigger tree right
4 there. And, obviously, the trailer is on the
5 right-hand side.

6 Same view here. It's hard to see in this
7 picture to me, but looking at other pictures, the fence
8 is, like, a 90-degree angle here, and this fence is
9 still intact. The wooden part of the fence here at the
10 corner is still intact. So, again, it wasn't run over,
11 destroyed by the truck. I'll show you a picture here
12 in a second, but just a little bit of the bark of this
13 tree was removed, so that kind of helps you position
14 what -- where the truck went and where it didn't go.

15 It didn't go over on this side because it
16 would have taken all this stuff out. And this is a
17 little bit closer. There's the big tree, and then you
18 can see where they've started to peel the top back a
19 little bit. There's the windshield of the tractor
20 right there.

21 Yes. This is looking on the other side. So
22 this is a hole that they opened up to get the paper
23 rolls out. This is the front of the trailer. If you
24 look at the front of the trailer, that is pushed
25 backwards. So that's where I was talking about almost

1 peeled back like a sardine can. And in my opinion,
2 there's that little cluster of trees right here that's
3 missing now. And so that cluster of trees hit this and
4 pushed that back.

5 The next thing you can do is that if you look
6 at the trailer today, you can still see where they cut
7 this hole, and that lines up with this tree. So that
8 helps you -- the trooper didn't take any measurements,
9 but you can use a picture like this to determine
10 exactly where this truck was right here. And that's
11 because the tree lines up with the hole that they
12 opened up. And you can measure -- the tree still
13 stands today, so you can measure where that is today.

14 Okay. This is after they upright the
15 trailer, and just, again, here's the wooden fence,
16 there's some saplings there before you get to the
17 fence. There's the big tree. There's what's left of
18 the group of smaller trees. That's a -- that's a stump
19 right there, and there's the trailer.

20 And, again, there's some marks from the
21 trailer. One of the things I noticed here about these
22 marks is, the marks curve back towards the roadway a
23 little bit as you get towards where the truck came to
24 rest. And again -- well, my opinion is, is that's
25 caused by the top of the trailer interacting with this

1 -- this group of smaller trees here. So there is a
2 force there big enough to peel that -- that sheet metal
3 or the top of the trailer back, so that pushes the
4 truck a little bit further to the road.

5 Okay. So this is, like, the first picture
6 we've seen of the driver's side of the trailer. So you
7 can see lots of mud and dirt. The material missing
8 here, that sheet metal, that's the stuff that was
9 laying on the ground by the driveway. So top corner
10 hits the yard, this is laying over the top of the
11 driveway, and that gets ripped out. And what they did
12 here, they just took a crane and righted this thing
13 back up.

14 Okay. So we -- we looked at what it -- what
15 it looked like after the accident happened. This is --
16 these are some Google Street Views. And so this one is
17 looking -- this is Virginia 122, the road that it
18 happened on. This is looking back to the north. So
19 the truck would be coming at you. And here, there's
20 the mailbox, there's the driveway we've been talking
21 about. Telephone pole, there's the corner of the fence
22 and here's this brush line. Okay.

23 This one was taken, I believe, October of
24 2015. So this is basically two months before the wreck
25 happened. And this is looking this way. The truck

1 comes to rest right there. There's the fence. There's
2 that little area of saplings. Those didn't get knocked
3 down in the accident. There's -- there's a cluster of
4 the -- cluster of the smaller trees, and then there's
5 the big tree that's still standing. So we've seen all
6 of these in other pictures, so a cluster of trees, big
7 tree, some saplings there. You can kind of see how the
8 yard is configured. It's just a grass yard.

9 This is kind of looking straight into this
10 same area. There's a little cluster of saplings. The
11 truck would be going from left to right across this
12 picture, and then comes to rest over here. There's the
13 big tree, and the smaller trees at its base. These
14 smaller trees got knocked down by the top of the
15 trailer. And there is the wooden fence. You can see
16 it's just on the corner there, and then there's some
17 more fencing this way, but it's like wire.

18 Q. Just -- sorry. Did those -- did those Google
19 images, did they help you -- are they something that
20 you use in accident reconstruction? Did they help you
21 formulate your opinions?

22 A. Yes.

23 Q. Okay. Do they help you illustrate your
24 testimony?

25 A. Yes.

1 Q. All right.

2 MR. ABRAMS: Tender Exhibit 119, PX119.

3 MR. BYRD: I don't know what 19 is. It's
4 this one picture?

5 MR. ABRAMS: It's just a Google image of --
6 (Discussion off the record.)

7 MR. BYRD: No objection.

8 THE COURT: What is the number on that?

9 MR. ABRAMS: PX119?

10 THE COURT: PX119. Okay, PX119 is admitted
11 into evidence without objection.

12 (Plaintiff's Exhibit Number PX119 was admitted.)

13 BY MR. ABRAMS:

14 Q. And what are we looking at in this slide?

15 A. So I was asked a bunch of questions about
16 what did the tractor interact with, the tractor cab
17 interact with when it was on the ground. And when it
18 comes to rest, the cab is -- is buried in some foliage.
19 Right? Some saplings and little trees and bushes and
20 stuff. And you'll see pictures of that. This is
21 taken, obviously, in the wintertime. This is actually
22 2009. So this is six years before the accident, but
23 you can still see the same basic stuff. There's that
24 little grouping of saplings, then you get to the
25 fence -- by the way, the truck is going from left to

1 right again. There's the cluster of smaller trees,
2 there's the big tree, and this is -- this is what's
3 beyond the big tree, which, again, are much smaller
4 trees. So the truck does -- the cab of the truck does
5 basically end up in this area, or goes through these
6 trees here. So we'll talk a little bit more about
7 that, but that is what is interacting with the cab.

8 In my opinion, the cab interacts with the
9 ground itself, which, in my opinion, was the most
10 significant impact to the cab. And it does interact
11 with smaller saplings, bushes, foliage here. The
12 trailer interacts with these trees right here. Which
13 was a cluster of these smaller trees. There's the
14 bigger tree there. It's still standing, it just had a
15 little bit of bark scraped. So the top of the trailer
16 interacts and pushes these down, the cab of the
17 tractor, the tractor itself, interacts with these.
18 And there was more picture that kind of shows you.

19 Here. There's the -- there's a group of
20 trees that the trailer hit, the top of the trailer.
21 There is the big tree that's still standing, and then
22 there's the brush that's after this area. And there's
23 the fence there. So anyway, this was helpful to me
24 because you can see from the pictures I showed you at
25 the beginning, they cut all that stuff down when they

1 were getting the truck out. So this gives you an idea
2 of what existed before the truck got there.

3 And this is kind of -- this will illustrate
4 what I was talking about. This is a picture of the
5 rescue effort. There's the tractor, there's the front
6 bumper, the license plate, the wheels. So you can see
7 it's lying on its driver's side. And then here's all
8 that -- all that brush. You know, full of leaves now.
9 And then here is the tractor cab, which separated from
10 the chassis. And it's hard to tell from this picture,
11 we'll see it better here in a minute, but basically,
12 the cab was sitting so the windshield was facing the
13 ground. All right, so that's the front bumper, but the
14 cab is rotated sideways so that the windshield was more
15 or less pointing down here where I've got the pointer,
16 at the ground.

17 This is another rescue picture here. This is
18 the bottom of the tractor. You can see the engine and
19 the wheels here. And they're using a crane to pick up
20 the cab. And that's pretty close. It's pretty close
21 to how the cab was. You can see some trees there, but
22 that's the back of the cab, that's the floor of the
23 cab. So, again, it's -- that's the floor, that's the
24 back, so the windshield was pointing towards the
25 ground.

1 And another picture of that. They took a
2 strap, they strapped to the tractor cab, and they
3 picked it up. And so this is a picture of after they
4 pull it up out of the wreckage. This is the
5 passenger-side door, the right door of the cab; and
6 that's the firewall, so that would be behind the
7 engine. Here's the windshield and the window, so
8 that's, basically, the driver's area. And then it has
9 this air deflector, it has the company name on it. And
10 that air deflector is just a big fiberglass shell, and
11 I used that -- looking at the damage to that, or the
12 lack of damage to that, and the height of everything,
13 to understand exactly how it interacted with all these
14 trees that I've been talking about.

15 All right. This is a picture that I took of
16 the cab up in Wisconsin. And you can see part of the
17 roof is missing. And by the way, this roof is made out
18 of fiberglass. And then here's the air deflector. The
19 trailer would be even taller than this, but there's the
20 air deflector. It's got a little bit of damage but
21 it's still intact. You'll see a lot of pictures of
22 this cab, and this is what's missing. So this -- this
23 had been removed at some time after the wreck, and it's
24 more of like a flattop tractor. And then you can see,
25 there's the driver's door, passenger door.

1 Q. So am I correct that the -- or was the -- was
2 the air deflector survived, still attached while the
3 truck was still -- or during the actual crash sequence?

4 A. Yes.

5 Q. Okay.

6 A. Just one more view. There is other damage to
7 the tractor. This is passenger-side window frame
8 that's bent some. It's my opinion that that was caused
9 by contact with the ground after the cab comes off the
10 chassis. The area around the driver is intact. And
11 this gives you an idea about kind of the height of the
12 cab. There's the roof of the cab, and there's that air
13 deflector. Which, again, this is fiberglass structure.

14 This is the trailer, after the -- after the
15 accident, obviously. There's the area that was torn
16 out by the driveway culvert. A lot of scraping where
17 it slid down the yard. There's the front part of it
18 there that got peeled back when it interacted with
19 those trees. And, again, it had to interact with
20 something pretty tall because laying on its side,
21 that's eight-and-a-half-feet tall.

22 Q. What are we looking at here?

23 A. Okay. So now we're after, just getting a
24 sense of some of the things I looked at that were
25 collected by other people. This is some of the work

1 that my office did. So this is a scan. This is a scan
2 of the tractor attached to the trailer. So with the
3 cab back on the chassis. So I scanned the chassis, the
4 cab, and the trailer; in the computer, you can put this
5 all back together in three dimensions. There's --

6 Q. I'm sorry. Go ahead.

7 A. Here's the grille, and then there's some
8 heights here, but, for instance, the top of the trailer
9 is 13-feet tall. And -- and, so basically, what you
10 can look over here, there's -- again, there's some --
11 and I can't read these because of the angle I'm at, but
12 there's the air deflector. What's important -- and
13 you'll see the trailer itself is even higher than the
14 air deflector.

15 Q. If it would be easier for you take a look at
16 it, I can hand you what's been marked PX118, which is
17 actually --

18 THE BAILIFF: It's on the scene there too.

19 THE WITNESS: Oh, there you go.

20 BY MR. ABRAMS:

21 Q. Whichever is easier for you, man.

22 A. Okay. That's fine. So, let's see, so at the
23 very top, you have .1, which is the top of the trailer,
24 and there is the damaged portion. That's 13-feet above
25 the ground there. And then this point here, which is

1 the top of the air deflector, is -- that's 12 feet. So
2 that gives you an idea. So the top of the trailer was
3 another foot higher. And, again, the damaged portion
4 is up here.

5 And then there's the roof there. The top of
6 the windshield of the tractor, there's the windshield.
7 So the top of the windshield there is a little over
8 nine feet from the ground. So 9, 12, and then 13.

9 And then it's what it looks like from the
10 side. So you can see here again, top of the
11 windshield, top of the air deflector, top of the
12 trailer. You can see the damage where it got peeled
13 back on the trailer, and then also, using this one,
14 there's a -- there's a little mark there, but that's
15 where the -- if you look back at the pictures we were
16 looking at earlier, that's where the tree is. The big
17 tree that's still standing. It's adjacent to this area
18 here, so that allows us to know exactly how far this
19 truck moved.

20 Q. Okay. And then as for those two, these last
21 two slides, are those -- the scanning methodology that
22 you use, is that something that's accepted for accident
23 reconstructionists?

24 A. Yes.

25 Q. Okay. Again, did it help you illustrate your

1 testimony to the jury?

2 A. Yes.

3 MR. ABRAMS: I would tender 118 and 120, Your
4 Honor.

5 MR. SAGER: We may have an objection about
6 that. I don't mind him talking about it and
7 showing the jury, but we should take that up
8 afterwards.

9 THE COURT: 118 and 120? Okay, the Court
10 will reserve ruling on Plaintiff's Exhibit Number
11 RX118 -- no, PX118. Right?

12 MR. ABRAMS: Yes, that's correct.

13 THE COURT: And PX120.

14 BY MR. ABRAMS:

15 Q. Okay. So what are we looking at here?

16 A. So this is one of the pictures -- and I don't
17 know if the fellow that's got the laptop -- this fades
18 back and forth between one of those pictures I was
19 showing you a few minutes ago, and then my computer
20 model. Just to show you that what we did was we
21 created a model that was equivalent to the accident
22 site. There you go. So you see when it fades out,
23 that's just the computer model and then that's the
24 pictures. So what you see there is -- and you can do
25 this at a lot of different points in this analysis, but

1 all this shows is that in order to use that as -- use
2 the PC-Crash as a tool, we created a ground surface
3 that had a lot of the features that the actual accident
4 site did.

5 Q. Okay. Okay. What -- I guess we've been
6 talking a lot about how the truck interacted once it
7 started to tip over, but using the information that you
8 had, were you able to come to use your knowledge that
9 you've gleaned from, you know, 30-some-odd years of
10 doing this, to determine how the truck moved, or how
11 the -- how Josh's truck was driving prior to the
12 impact?

13 A. Yes.

14 Q. Okay. What did you do to determine that?

15 A. Well, two things, and they kind of work
16 together, but the two main things is to look what
17 happens in the beginning. And a lot of this is
18 starting at the end and working backwards, but it makes
19 more sense to explain it to you if I start at the
20 beginning, and let's go to the end. So a couple of
21 things you notice about this rollover: One, I
22 calculated the speed of the truck as it's in the curve
23 right before it tips over; and the speed of the truck
24 that I calculated is 51 to 52 miles an hour. And it's
25 a 55-mile-per-hour zone.

1 The other speed of interest is when the truck
2 tips over, lays in the grass. There's the driveway
3 again, there's the touchdown part. It touches down at
4 about 46 miles per hour. So it loses a little bit of
5 speed as he steers to the right. And when he steers to
6 the right, the truck tips over on its side.

7 Q. And then -- I'm sorry, go ahead.

8 A. And so the next phase is, is, okay, so why
9 did it tip over? So if you look at this curve -- and
10 this curve is to the right. It also has what's called
11 super elevation, so the curve is banked. It helps you
12 go through the curve. You can calculate the speed of
13 the truck it can travel through this curve without
14 tipping over. And this is something
15 tractor-trailers -- especially loaded tractor-trailers
16 like this. This truck weighed almost 75,000 pounds,
17 and all of that weight -- most of that weight, 50 -- I
18 think it's 58,000 pounds of that weight is -- is the
19 trailer, and those tall paper rolls which go all the
20 way up high in the trailer. And so it -- it has a
21 tendency, under certain circumstances, it wants to tip
22 over.

23 So it's not like a car. You know, a car is
24 -- is stable, and unless it goes off the road and you
25 hit something, it will flip. A tractor-trailer, a

1 loaded tractor-trailer, you can go around a curve or an
2 exit ramp on an interstate or something, and it can --
3 it can tip over.

4 So if you -- if you follow this curve here,
5 here in this tractor-trailer at 51, 52 miles and hour,
6 the truck won't roll over, under normal conditions.
7 There are things that can happen, but under normal
8 conditions, this -- this truck will not roll over. So
9 then what I started to look at is, is how do you have
10 to steer this truck to get it to roll over, number one.
11 Number two, I noticed something else too. It goes all
12 the way back to those Virginia State Police pictures I
13 showed you. There's no tire marks in the road, except
14 for those little scrape marks that are characteristic,
15 you see them all the time, when the trailer finally
16 lays over here. But normally what you would see is a
17 progression of tire marks where this truck is -- think
18 about it, this truck is on all wheels, then it's all on
19 driver's side wheels. So you shift all that
20 75,000 pounds all over to the driver's side wheels. So
21 what that does is it mashes the tires down into the
22 pavement. These tire marks. Well, you don't see that
23 here.

24 And the reason is, is because this truck
25 rolled over on this edge of the road, here. When I say

1 "this edge of the road," the truck is going southbound
2 so that would be the east edge of the road where it
3 ends up.

4 So in other words, in my opinion, the truck
5 as it enters the curve here, it finds itself on the
6 other side of the yellow line. So the truck is in the
7 oncoming lane when it -- when it rolls over. And
8 knowing that, I was able to look at what the steer was,
9 and so the steer that Mr. Hill put into the truck here,
10 was simply tighter than this curve. The radius of this
11 curve. So the truck ends up in this lane here, there's
12 a rightward steer, and then that causes the truck to
13 tip over. It's also my opinion, based on the analysis
14 that I did, that he did steer back to the left some
15 during the rollover process.

16 And for instance, if you -- if -- if you take
17 the PC-Crash, which, again, in my opinion, models
18 rollovers very well. If you just have a right steer,
19 the truck tips over but comes back into the roadway.
20 To keep the truck on the shoulder like it did, the
21 driver has to steer back to the left. In other words,
22 almost like to straighten the truck back out. So in my
23 opinion, the truck comes into the curve, crosses the
24 center line, tips over on this side of the road here,
25 the oncoming lane. And most likely, the driver is

1 trying to try to correct the steer at that point.

2 Q. Okay. And what we're looking at, that slide,
3 is that a -- I guess, were you able to use PC-Crash to
4 create an animation of how it happened?

5 A. Yes. Well, this is the output. So this is
6 the actual simulation. So the red and blue truck has
7 tires, suspension, has cargo in the back. You can turn
8 the steering wheel, the suspension moves, the tires
9 move, but it's obviously a depiction. And I -- I think
10 that's a video that you could play.

11 There you go. And we can let this roll a few
12 times. But all of which I described, you can see
13 actually happening now. There is the touchdown point,
14 there's the driveway, here's the fence. The trees are
15 in there.

16 Q. Now, in using PC-Crash, there's something
17 called "roll rate." What's "roll rate"?

18 A. Well, it's one of the directions of motion of
19 a vehicle. So roll is from side to side. All right.
20 So when you're talking about roll in this case, it's
21 just what it sounds like, it rolls onto its left side.
22 Or tips onto its left side, rolls onto its left side.
23 So the roll rate is how fast that happens. It's
24 usually expressed in degrees per second.

25 Q. Okay. Were you able to determine what the

1 roll rate was for Mr. Hill's cab at the time of the --
2 or during the rollover?

3 A. Yes.

4 Q. Okay. And what was that?

5 A. So, you know, when the -- when the roll first
6 begins, it starts at about ten degrees per second, so
7 it's leaning to the left. And then gets up to a peak
8 roll rate of 175 degrees per second. So --

9 Q. Okay.

10 A. -- you know, the average roll rate in there
11 is about 75 degrees per second. So that's, you know,
12 one quarter roll from wheels to left side.

13 Q. All right. And in terms of, like, what the
14 -- I know we talked a bit about what the trailer
15 contacted. So what -- what kind of items were you able
16 to determine to a reasonable degree of certainty that
17 contacted the cab?

18 A. Mostly the ground. If you look at the cab
19 itself, then that's what you see. You see evidence of
20 ground contact, you see evidence of dirt stuck in gaps
21 and crevices in the -- in the tractor. And that's what
22 we saw in the yard. There's some -- some damage to the
23 cab itself, that, you know, it's possible it could be
24 the smaller brush, the smaller saplings, those -- those
25 types of things. The only two large objects, really,

1 on the shoulder, are the big tree, and it was barely
2 touched because it was just some bark was scraped off
3 of it. And, again, that corresponds only to the top of
4 the trailer, not to the cab. And then you have that
5 cluster of smaller trees right there at the big tree.
6 And those were pushed down by the truck, but since
7 something had to damage the top of the trailer, it's
8 really the only thing. So that cluster of trees is
9 interacting with the top of the trailer, not the
10 tractor, because, again, I have an exhibit to show here
11 in a second, but the -- in my opinion, the tractor
12 can't be interacting with those objects because, again,
13 if it did, it would have tore that air deflector off.

14 Q. I guess we've been talking pretty generally
15 about the wreck and what you did. But you have reached
16 some conclusions and some opinions in this case; right?

17 A. Yes.

18 Q. Or have you reached some opinions is this
19 case.

20 Is one of those opinions about whether or not
21 Mr. Hill was compliant with the speed limit?

22 A. Yes.

23 Q. Okay. And was he?

24 A. Yes, he was.

25 Q. Okay. Is there any physical evidence, that

1 you're able to find, regarding whether Mr. Hill was
2 doing -- doing any particular action that was
3 inappropriate prior to the wreck?

4 A. No.

5 Q. Okay. Was there any physical evidence as to
6 any act that Josh himself performed or did with the
7 truck in either approaching or navigating the turn that
8 caused or contributed to the wreck?

9 A. Well, as I talked about in my deposition,
10 when asked questions about exactly what happened,
11 there's not enough evidence. So in my opinion, what
12 caused the rollover was the steer of the driver. But I
13 don't know why that steer happened the way that it did.
14 I don't know why he ended up on that side of the road.
15 But as far as the -- to me, the cause of the accident
16 was a steering -- steering maneuver, for some reason,
17 and I don't know what that reason is. But a steering
18 maneuver back to the right that caused the truck to
19 tip.

20 Q. Okay. Is there any physical evidence that
21 happened because Mr. Hill was fatigued?

22 A. No.

23 Q. Okay. Or is -- any evidence, physical
24 evidence that supports some kind of argument that
25 Mr. Hill somehow came to and -- before the cab tipped

1 over?

2 A. No.

3 Q. Okay. Or that he -- was there any evidence
4 that he otherwise wasn't paying attention prior to this
5 incident?

6 A. No.

7 Q. Okay. Were there any environmental factors
8 that were the cause of the crash?

9 A. Not that I could see.

10 Q. Okay. And in terms of where the actual
11 vehicle tipped over, have we gone through your opinions
12 on that?

13 A. Yes. The only thing I would add is, by the
14 way, you know, when the steer is put in and the trailer
15 starts to move, two things to think about. One, it
16 only takes about a second and a half from the time the
17 trailer starts to tip until the cab hits the ground.
18 It happens pretty fast. So it's only about a second
19 and a half. And then because the trailer, the big
20 heavy trailer is what's kind of dragging everything
21 over, it's not rigidly connected to the tractor, it can
22 bend. A lot of times the driver doesn't get good
23 feedback about a rollover getting ready to happen
24 because the driver is somewhat insulated from the
25 trailer, and the trailer is starting the rollover, and

1 it all happens in a second and a half. So this happens
2 really quick.

3 Q. Okay. And I guess what was the biggest
4 impact on the cab during this whole crash sequence?

5 A. In my opinion, on the cab, it was the initial
6 impact with the -- with the grass yard. So when the --
7 when the trailer comes over, just a fraction of a
8 second later, the cab hits the ground. It hits ground
9 second because it's kind of lagging. It's not the
10 first to go. But it happened real quick when -- so the
11 biggest impact to the cab, in my opinion, was when the
12 cab hits the yard here. It does slide and there are
13 definitely forces, the cab comes loose. And I think
14 the cab comes loose just due to that initial impact,
15 and then it comes loose completely somewhere over in
16 here when it starts to interact with that brush. And
17 there were forces on the cab both from the ground and
18 the brush in this area here.

19 Q. Yeah. How do those secondary forces compare
20 with the initial force of when he got -- when the truck
21 or the cab originally slapped down?

22 A. Very minor. And just to illustrate, one of
23 the reasons I was going by and showing you these
24 different trees and stuff. For example, there's
25 another engineer who analyzed this accident, and that

1 grouping of small trees here that got taken out by the
2 top of the trailer, he just estimated those were
3 eight-inch in diameter. I don't know, I didn't do
4 that, but eight-inch diameter trees, and that takes a
5 certain amount of energy to fracture; right. And so
6 just to give you an example, the influence of things
7 like small trees on a 75,000-pound truck. So this
8 truck weighs 75,000 pounds. Once it gets to the area
9 of that little cluster of trees, it's still going about
10 22 miles an hour, and so the energy it takes to knock
11 the -- that grouping of trees down by this truck would
12 result in a change in speed of about a less than a
13 tenth of a mile an hour to the truck.

14 So if it was going 22.1, when it knocked the
15 trees down, it would be going 22. So, you know, you
16 have a very massive vehicle interacting with trees, but
17 it doesn't take much to knock the trees down. So where
18 the -- the change in speed by taking out that cluster
19 of trees is, say, a tenth of a mile per hour, compared
20 to this impact back here, I mean, the truck is only
21 going over a quarter of a roll, so it's not
22 tremendously fast, but this is going to be around --
23 the speed of the truck or the cab falling into the yard
24 is about eight miles per hour. So it's going
25 eight miles an hour and then comes to a sudden stop;

1 right. So the change in speed there was eight miles an
2 hour, the change of speed by taking out the trees a
3 tenth of a mile an hour. So, obviously, big
4 difference, and that's why -- that's why it's my
5 opinion that by far the biggest impact was the initial
6 impact.

7 Q. And was -- we had talked about the brush that
8 it ended up in. Was this -- I guess how did the cab
9 end up coming to a stop?

10 A. So it -- the cab sits on the chassis, it has
11 four mounts -- and there's some other stuff, of course,
12 connecting it, wires and everything, but what happens
13 is, is the cab is still intact here, but what happens
14 is the -- the chassis still remains this direction but
15 the cab itself rotates 90 degrees. So the windshield
16 was facing south, and then it -- then it ended up
17 facing the ground.

18 Q. And there's some -- there's some engineers
19 that -- I guess did you review any of the
20 reconstructions by the two reconstructionists that have
21 been designated by the defendants?

22 A. Yes.

23 Q. Okay. I guess we don't know which is coming
24 so I guess we'll talk about both of them. I guess how
25 do their opinions compare with each other, first of

1 all?

2 A. They differ between the other two engineers.
3 And it depends on, you know, what areas you get into,
4 but let's say that there are three accident
5 reconstruction engineers, so there are two more people
6 like me that you might hear from. And there are some
7 differences but -- you know, there are normally some
8 differences, and sometimes the differences get bigger.
9 But, you know, I would be glad to give you the
10 highlights of the differences, but I don't know what
11 you're wanting me to get into.

12 Q. Okay. I guess just, first, there's a
13 gentleman by the name of Kevin Granat. Did you review
14 his deposition testimony and his opinions?

15 A. I did.

16 Q. I guess, how does his opinions differ from
17 yours?

18 A. They're somewhat similar. His speeds are a
19 little bit higher for the truck. His speeds are 52 to
20 61.

21 Q. Okay.

22 A. So I've got around 52, so my speed is at his
23 low end. Now, there's a reason for that. And by the
24 way, he didn't do PC-Crash, he did the hand
25 calculations, so kind of just basic numbers. You can

1 run hand calculations or you can do PC-Crash, or can
2 you do both. The main -- the main reason he came up
3 with 52 to 61 is his movement of the truck is much
4 longer than -- than it actually was where it's slowing
5 down. Okay.

6 I've reviewed his calculations and his
7 testimony. I don't know what his reasoning is, but
8 he's got a small difference in the slide distance, only
9 about eight or nine feet. So his truck goes about
10 eight or nine feet too far. But, again, you can find
11 out exactly where this truck is based on where the big
12 tree is. And the big tree is still there today, so
13 it's real easy to figure that out. The bigger
14 component was, is that he's got the total slowing of
15 the truck taking place over 191 feet, not the 133 feet,
16 plus a little bit, during the turnover. And that's
17 where the main difference. So in other words, for,
18 say, the first 50 feet of the turn over of the truck,
19 he's got the truck braking pretty substantially. And
20 in my opinion, there's no evidence of that. But the
21 end result of that is his speed is ten miles per hour
22 faster.

23 Some of the other -- some of the other
24 numbers that he gives, I think his roll rate -- I think
25 he gave a roll rate of around 150 degrees per second.

1 That's very similar to mine, but that was a hand
2 calculation, not PC-Crash. He -- the main kind of the
3 physical difference between Mr. Granat and myself is,
4 is that he has the top of the windshield of the tractor
5 hitting the big tree. Basically, he said that the top
6 of the windshield, the A-pillar on the passenger side,
7 is what took the bark off the big tree. And, in my
8 opinion, that's not physically possible.

9 Q. Can we talk about why that isn't physically
10 possible?

11 A. The truck doesn't fit there. And it goes --
12 it goes back -- and that's why I spent so much time
13 talking about the height of the cab and the wind
14 deflector and the trailer. If you put the A-pillar
15 where Mr. Granat says that the cab hits that big tree,
16 there's no way that that wind deflector survives,
17 because, again, that's not -- it would have been ripped
18 off the top of the truck. And, again, I have my
19 opinions about what actually did, the smaller cluster
20 of trees that hit the trailer; so . . .

21 Q. Is -- what is this here that we're looking
22 at?

23 THE BAILIFF: Judge, I have a juror that
24 needs a bathroom break.

25 MR. ABRAMS: Oh, sorry.

1 THE COURT: All right. We'll take a quick --
2 remember, one goes, everybody goes.

3 (Jury leaves the courtroom at 5:19 p.m.)

4 THE COURT: Okay. We'll take a five-minute
5 break. That is for you as well, sir, if you need
6 to step down.

7 THE WITNESS: Thank you.

8 (A recess was taken from 5:14 p.m. to 5:35 p.m.)

9 (Untranscribed proceedings took place.)

10 (Jury enters the courtroom at 5:37 p.m.)

11 THE COURT: All right. Please be seated.

12 You may continue.

13 BY MR. ABRAMS:

14 Q. Okay. Mr. Sutton, I'm going to try to speed
15 things up because we're getting late. I know everybody
16 would like to get finished up. What are we looking at
17 in here?

18 A. This is my PC-Crash run again, but with
19 Mr. Granat's drawing over the top of it. So he didn't
20 do PC-Crash, but he put a lot of trucks. That's what
21 you see there, a bunch of yellow trucks. That just
22 shows the path of the path, and what are shown there is
23 my PC-Crash path is very similar to what he determined.
24 I think his slide speed is 45 to 52; mine was 46. So
25 my speed is within his range. His speed is a little

1 bit higher, but, again, you can see his truck goes a
2 little bit too far. Not a big deal. But -- so there
3 are similarities between the two, other than the issue
4 with the -- the cab hitting the tree. The big tree.

5 Q. And also does it fit the physical evidence
6 for there to be 50 feet of, I guess, skidding prior to
7 the rollover?

8 A. No.

9 Q. Okay.

10 A. And so he was using 191 feet total for the
11 slowing of the truck, and that's tipping over and
12 everything. And the distance was shorter than that.
13 So, again, it wasn't discussed in his deposition, it's
14 in his calculations, I don't know exactly why he chose
15 that, but since there's no preimpact tire marking,
16 there's no evidence of braking of the truck before
17 impact, then that's the difference in the speed. Like
18 I said, his speed -- my speed is in his range; his
19 speed, again, is 52 to 61, and mine is 52, so it was
20 just a little bit higher.

21 Q. Okay. And just in the interest of time,
22 there's also another expert that the defendants have
23 hired, and potentially -- or the defendant has hired
24 and potentially may be testifying at trial. Joe Kent.

25 A. Yes.

1 Q. Is it physically possible for both Mr. Kent
2 and Mr. Granat to be right?

3 A. No. They have different numbers.

4 Q. Well --

5 A. Mr. Kent, his numbers are about the exact
6 same as mine, so Mr. Kent, his speed, his slide speed
7 is 46 to 53, mine is 46. His original traveling speed
8 is 47 to 55, and mine is 52. So my speed is right in
9 the middle of his speed. The only other number he came
10 up with is he said the roll rate was probably 100 to
11 150 feet a second. He didn't calculate it, but that
12 roll rate number, mine is 175, his is maybe 100 to 150,
13 which is basically the same thing as Mr. Granat.

14 Q. Okay. Just real quickly then we'll --
15 there's -- hand you what's marked as Plaintiff's
16 Exhibit 114.

17 MR. ABRAMS: These. I handed these to y'all
18 earlier.

19 MR. BYRD: (Reviews documents.)

20 BY MR. ABRAMS:

21 Q. Rather than try to go through the PowerPoint,
22 I know everybody is trying to get done, so I was just
23 going to hand you and ask what these are, then?

24 MR. BYRD: Okay. If you're not tendering
25 them, I don't have any objection to you showing

1 him.

2 BY MR. ABRAMS:

3 Q. This is marked Plaintiff's Exhibit 124. Do
4 these -- I guess what are these materials and do they
5 assist you in illustrating your testimony about the
6 tree?

7 A. These are some diagrams, pictures that my
8 office put together just to illustrate that opinion
9 about what would happen if the top of the windshield or
10 the top of the cab, the roof -- not the air deflector
11 but the roof -- is what scraped the tree bark off the
12 big tree, and I just -- just did that to illustrate
13 that. In my opinion, it can't happen that way. And
14 that's -- that's what this was supposed to show.

15 Q. Okay. I guess we're having technical
16 difficulties again. There we go. Perfect.

17 Are these the materials that are in -- in the
18 exhibit before you?

19 A. They are, but my little thingy is not
20 working.

21 THE COURT: You can step down if you want to.
22 Do you want to step down and point?

23 THE WITNESS: Yes.

24 THE COURT: Step down and you can point to it
25 since you're.

1 BY MR. ABRAMS:

2 Q. We can go through this quick. Go back, yeah.

3 A. One more. Yeah. Actually, it's going the
4 other way.

5 THE COURT: Go the other way.

6 THE WITNESS: Yeah. Go backwards in time,
7 like more towards the front of the show.

8 Okay, here we go. And go back one more, I
9 think. Yep, here we go. Okay. So this picture
10 was taken after the accident, way after the
11 accident when we got involved. There's -- you
12 can see a little bit of the barbed wire fence,
13 but there's the big tree, the one that is still
14 standing. You can see the scar. And that scar
15 is -- it's a little under five feet. Five feet
16 from the ground. And so if the tractor is laying
17 on its side -- that is five feet up there; right.
18 So if -- Mr. Granat was saying that this -- the
19 passenger side top of the roof was what scarred
20 the tree. Right. So that's -- you know, when
21 you look at it kind of this way, you kind of see
22 how that would work, because that distance is
23 five feet and the scar is, maybe, three feet to
24 five feet, so -- right. And I outlined in yellow
25 is the windshield frame, just so you could see

1 it. But as we move around and look at it from
2 the top, then you see what happens here. At this
3 point in time, this truck is moving 22 miles an
4 hour here, so that's over 30 feet a second. So
5 this truck is still moving 30 feet a second. So
6 in one second, it's going to move more than half
7 the length of that trailer; right.

8 So you can see, here's the big tree right
9 here, there's that air deflector up top, and
10 if -- to get the A-pillar over here to cause the
11 scratching instead of that scratching on the tree
12 caused by the top of the trailer, then that air
13 deflector has to pass through that big tree. And
14 it -- it's cracked a little bit, but certainly
15 not showing the damage that would make this
16 physically possible. So that's why I came to
17 that conclusion.

18 BY MR. ABRAMS:

19 Q. Would it be possible for the air deflector to
20 stay on the cab after it goes through a tree?

21 A. No.

22 Q. Okay. Did those -- what is the exhibit I
23 handed you? I'm sorry. Does 124 assist you in
24 illustrating your testimony?

25 A. Yes.

1 MR. ABRAMS: Your Honor, we tender
2 Plaintiff's Exhibit 124.

3 MR. BYRD: We may have an objection about
4 that.

5 MR. ABRAMS: Fair enough.

6 THE COURT: I'll reserve ruling on
7 Plaintiff's Exhibit Number 124.

8 BY MR. ABRAMS:

9 Q. Okay. I know we talked about it briefly, but
10 all your opinions, are they -- are they all regarding
11 the movement of the tractor-trailer and cab?

12 A. Correct. Yes.

13 Q. Okay. Do you have any opinions whatsoever
14 about how the seat performed?

15 A. No.

16 Q. Okay. Then there -- I'm sure this will kind
17 of shorten the cross-examination up. In your
18 deposition, there was a prior version of this analysis
19 that -- that had been included in your file. I guess
20 what were the differences in it and how did that come
21 about?

22 A. Yeah. So when I was deposed or asked
23 questions about this initially, we had done the
24 PC-Crash, and the trailer actually passed through where
25 there is a telephone pole. It just misses it in the

1 actual accident, and then in this PC-Crash. So Ryan in
2 my office, who did the PC-Crash, re-ran it. So there's
3 two PC-Crashes. This is the most recent one. We also
4 made the terrain more realistic. So there were a few
5 small changes but the numbers -- the number themselves
6 really didn't change. Maybe like a tenth of a mile an
7 hour. A little bit higher roll rate, but not big. So
8 it was basically the same numbers, it just didn't
9 include where we had to begin with the top of the
10 trailer touches the power pole, which it didn't do.
11 That power pole wasn't damaged.

12 Q. Okay. In terms of the -- the speed that Josh
13 was driving prior to the incident, did the -- did that
14 affect this change -- or, you know, did that affect
15 your opinions regarding speed at all in any real way,
16 whether or not it was above or below the speed limit?

17 A. No.

18 Q. Okay. And are you satisfied that the changes
19 that y'all made, once y'all got a chance to dive into
20 this data, accurately reflect the crash as it happened
21 in the real world?

22 A. Yes.

23 Q. Okay. You don't work for free, do you?

24 A. No.

25 Q. Okay. How much do you charge?

1 A. So the company charges 325 an hour for my
2 time.

3 Q. Okay. Is that the same for me as it would be
4 if Weinberg, Wheeler hired you first?

5 A. Yes.

6 Q. Okay. Real quickly. There were some
7 photographs from -- that were shown to the jury
8 yesterday, PX354 through -358. I represent to you they
9 were shown by defense counsel yesterday. All right. I
10 guess what are those and where do they come from?

11 A. These are pictures of the cab, and I think
12 these were taken pretty shortly after the wreck
13 happened by Mr. Hill's father, I believe.

14 Q. Okay. And was -- at the time that those
15 photographs were taken, where was -- where was the cab?
16 Like, where -- where was it? Was it still at the wreck
17 site?

18 A. Oh, no. No. This is in, like, a tow yard.

19 Q. Okay. And does this -- do these photographs
20 at all reflect what was in the cab immediately
21 following the wreck?

22 A. No.

23 Q. Okay. Would this -- would any accident
24 reconstructionist use these photographs to say what was
25 in or out of the cab at the time of the -- or during

1 the crash sequence?

2 A. No. Not by themselves, no.

3 Q. Okay. What is that that's in the -- what is
4 that that's in the -- I guess the occupant part of the
5 cab right there?

6 A. That's the roof.

7 Q. Okay.

8 A. And some other debris.

9 Q. Okay. Is it -- is the roof having come into
10 that part of the cab at all consistent with the
11 physical evidence?

12 A. No.

13 Q. Okay. Have you reached any opinions about
14 how the -- how the roof got in there as they -- between
15 the crash site and the junkyard?

16 A. Oh, I don't have an opinion, but it's -- it's
17 typical when you get a crashed vehicle in the junkyard,
18 to just pile everything in there to clean up the scene.

19 Q. Okay. This may have been -- I believe these
20 may have been -- these are some other materials that
21 are inside the PowerPoint. It's PX122 and -123. Some
22 photographs that are in your file.

23 A. Yes.

24 Q. Did you please -- did those photographs, I
25 guess, were those things that are relied on by accident

1 reconstructionists to form opinions?

2 A. Yes.

3 Q. Okay. Do they help you illustrate your
4 testimony today?

5 A. Yes.

6 MR. ABRAMS: All right, Your Honor, we would
7 tender PX121 through -123.

8 THE COURT: 121 through -- okay.

9 MR. BYRD: I'm happy to address that after he
10 gets off the stand, Your Honor. I don't know
11 what those are.

12 MR. ABRAMS: They're the ones I showed you at
13 the break, the scene photos.

14 MR. BYRD: I just don't know what's in that
15 package.

16 THE COURT: All right. I'll reserve ruling.

17 MR. ABRAMS: All right.

18 BY MR. ABRAMS:

19 Q. Anytime you gave a opinion or conclusion
20 today, did you do it to a reasonable degree of
21 certainty in the field of accident reconstruction,
22 mechanical engineering, and vehicle dynamics?

23 A. Yes.

24 Q. Okay. Thank you. Thank you very much for
25 your time.

1 A. You're welcome.

2 CROSS-EXAMINATION

3 BY MR. BYRD:

4 Q. Mr. Sutton, how are you?

5 A. I'm good. How are you?

6 Q. I'm doing okay. You were retained to analyze
7 I think you said the cause of this accident; is that
8 right?

9 A. Yes.

10 Q. Okay. Can we pull up -- this is
11 Exhibit C304. Do you have a pointer?

12 All right, there we go. So this is --
13 actually, I don't know, this may have been taken from
14 your model or someone else's, but this is an overhead
15 view of the route. You recognize this, correct?

16 A. Yes. That's my model.

17 Q. Okay. And this would obviously have been
18 taken sometime after the accident because we don't see
19 all the trees and fence? You know, we don't see the --
20 this has all been repaired, so you know this is
21 sometime later; right?

22 A. Yeah. That's -- that's my office's drawing,
23 drawn pictures of the site.

24 Q. Okay. And so I just wanted to use this to
25 kind of orient us. So what you determined was that

1 Mr. Hill is coming down this road, he kind of
2 straightens the curve, as some people call it, and then
3 right before he goes off he makes a sharp right-hand
4 turn, and that's what caused the roll? Is that what
5 you -- is that your opinion?

6 A. Yes.

7 Q. Okay. And so Mr. Hill's driving, I think he
8 would be heading southbound. Okay, so he'd be in the
9 southbound lane. Crosses the double yellow line; yes?

10 A. Yes.

11 Q. He goes into the northbound lane; yes?

12 A. Yes.

13 Q. And goes all the way across the northbound
14 lane, almost to the point of driving off the road, and
15 he makes a sharp right-hand turn? Fair enough?

16 A. He makes a right-hand turn, yes. The steer
17 was about 90 degrees on the steering wheel.

18 Q. You don't consider 90 degrees a sharp
19 right-hand turn?

20 A. Well, it depends on the circumstances.

21 Q. Under normal circumstances, would someone
22 make a 90-degree right-hand turn?

23 A. Well, again, it's -- there's really no units
24 to sharp, but, you know, that is more than just, say, a
25 normal lane change type of movement of the steering

1 wheel. But -- so 90 degrees on the steering wheel.

2 Q. When you say "90," you're talking 90 degrees
3 of the steering wheel. Are you talking -- I guess
4 you're not talking 90 degrees on the axle, you're
5 talking 90 degrees on the steering wheel?

6 A. On the steering wheel.

7 Q. So you're saying this is the turn he made?

8 A. Yes.

9 Q. Okay. And you found no evidence -- well, let
10 me back up a little bit. I think what you said was
11 that you couldn't find any evidence, any physical
12 evidence, to explain why Mr. Hill left his lane of
13 travel, crossed the double yellow line, crossed the
14 northbound lane of travel, and almost ran off the road;
15 right?

16 A. Correct. I don't know why he did that.

17 Q. Okay. And at your deposition, with no
18 physical evidence, your determination was that was a
19 result of driver inattention, wasn't it?

20 A. That or -- I mean, we would have to go back
21 to my deposition. I mean, driver inattention could be
22 one of the reasons, but I don't know why he did that.
23 There could be other reasons as well.

24 Q. Okay. But you found no physical evidence of
25 any other reason?

1 A. Correct.

2 Q. And at your deposition, you at least
3 testified in the absence of that physical evidence, an
4 explanation for that is going to be driver inattention,
5 fatigue, not paying attention? What happened?

6 A. Well, we talked about all the different
7 things that could possibly happen. And some we haven't
8 talked about, but some of the things that could happen
9 so that the driver finds himself on the other side of
10 the road. I'm sure that that -- he didn't want to find
11 himself on the other side of the road, or didn't want
12 to find himself turning over either, but, you know,
13 something happened to cause him to make that steer.

14 Q. I'm not suggesting that he wanted to drive
15 almost off the road. But in the absence of any
16 physical evidence, at least what you testified to
17 before was, the explanation was driver inattention?

18 A. Well, I think that's one -- I think that that
19 is one reason why that this accident happened the way
20 that I've described.

21 Q. And you found no evidence of any other
22 reason? You didn't find any truck malfunction; right?

23 A. Or a dead deer, or anything like that.

24 Q. Right. So you didn't find any -- you didn't
25 find any problems with the roadway?

1 A. Correct.

2 Q. You didn't find any problems with the
3 trailer?

4 A. No.

5 Q. You didn't find any problems with the -- with
6 wheels? You didn't find any other car, phantom vehicle
7 ran him off the road?

8 A. Correct.

9 Q. Correct?

10 A. And we -- again, you know, those are all
11 things that could happen, but there was no evidence of
12 it. You know, for instance, I have no evidence that
13 there was some other vehicle.

14 Q. Okay. I'm going to hand Mr. Sutton's
15 deposition?

16 THE COURT: Do you want me to unseal it for
17 you first?

18 MR. BYRD: I thought that was the process. I
19 can unseal it, if you like.

20 THE COURT: No, no. I do it. I stamp it and
21 then unseal it.

22 MR. BYRD: All right.

23 MR. SAGER: And, Your Honor, we may want to
24 approach.

25 THE COURT: Okay.

1 (Off-the-record bench discussion.)

2 THE COURT: Ladies and gentlemen, we have got
3 to take a five-minute break. I told you this is
4 a day we may need to stay late. I need about
5 five minutes.

6 (Jury leaves the courtroom at 6:00 p.m.)

7 THE COURT: Okay. All right. Let me get his
8 deposition. Y'all can be seated. Mr. Byrd wants
9 to ask this witness some questions about --
10 they're on what page?

11 MR. BYRD: It's 235, is what I was going to
12 -- where I was going to begin to -- to ask him
13 about his prior testimony. Are y'all looking?

14 MR. CONLEY: Yeah. He's pulling it up right
15 now. I'm sorry, Your Honor, I know what it says.

16 THE COURT: And I thought -- okay.

17 MR. BYRD: 235.

18 THE COURT: I thought I made it clear that we
19 were going to have no testimony about load shift.

20 MR. BYRD: You have, Your Honor, and that's
21 why I want to make sure, before I show him that,
22 that the witness is on the same page with -- with
23 me and that -- because here's what I understand
24 his testimony to have been. Was that, there's --
25 that the only way load shift could have happened

1 is if it happened -- in this accident, to affect
2 this accident is if it happened sometime prior to
3 this turn. And that would explain, possibly, why
4 Mr. Hill drifted into that lane of oncoming
5 traffic. Wait, this is not what I'm going to ask
6 him about.

7 But he said there's no evidence of that, so I
8 don't want to -- want to ask him that. And then
9 he said -- and then my question picks up there,
10 and I said --

11 THE COURT: Where does your question pick up?

12 MR. BYRD: 235.

13 THE COURT: Okay. So you're really talking
14 about -- you're not talking about what you just
15 said --

16 MR. BYRD: Well, I didn't want him to go
17 back. I didn't want him to backtrack to the
18 earlier questions, because what I -- what I'm
19 going to ask him is: What you told us was,
20 "There's no explanation for that initial drift
21 into that left-hand lane other than driver
22 error?" And that's when he says: "Yes." He
23 agrees with that statement. And that's what I
24 wanted to ask, but because leading up to that was
25 a discussion of load shift, I didn't want to get

1 into hot water.

2 MR. SAGER: And the only thing I was going to
3 suggest, Your Honor, is if while we're having
4 this, I don't know if you want to have the
5 witness outside so he's not listening to this
6 argument. That's what I was going to ask.

7 THE COURT: Okay. But we -- he needs to know
8 he can't talk about that.

9 MR. BYRD: I'm sure they told him.

10 MR. SAGER: That's fine, if that's -- just so
11 we're all clear.

12 MR. CONLEY: I want to say, first of all, for
13 the record -- as lead counsel -- Mr. Abraham has
14 spoken about, but I, as lead counsel, want to
15 verify, I personally read the riot act to
16 Mr. Sutton. If the words "load shift" come out
17 of his mouth, I think we'll have hell to pay.
18 Okay. So I want that said, first of all, that we
19 have done that. If there is any concern from the
20 core defense counsel, I hope I have resolved that
21 concern. Okay?

22 Here's my problem with what's going on,
23 though, is he's baiting him so bad to make him
24 say, "Is there anything else? Is there anything
25 else? Is there anything else?" And the guy

1 can't say, "There is a possible other
2 explanation, if there's no physical evidence of
3 it. But there's no physical evidence of a lot of
4 stuff. There's no physical evidence of the
5 braking that their guy is going to talk about.
6 So that's where I'm sitting over here, you know,
7 going, "Where -- where are we going here?" And
8 the guy's already said it was -- it was his
9 fault.

10 I mean, you and I -- remember, we had that
11 case before, where they wanted to talk about all
12 the stuff the driver did, when we admitted he
13 caused the crash. The man has already testified
14 on direct, he caused the crash. Why are we
15 debating all of this?

16 MR. ABRAMS: Like, Your Honor, he's trying to
17 impeach a witness by getting him to say his
18 testimony again that he had on direct. So, I
19 mean, he's got to have some kind of testimony
20 that conflicts with his prior deposition
21 testimony.

22 MR. BYRD: Your Honor, he did not say
23 Mr. Hill was at fault. What he said was --

24 MR. CONLEY: For him to --

25 MR. ABRAMS: Or --

1 MR. BYRD: Or cause. What he said was,
2 "There's all kinds of reasons why he could have
3 drifted into that -- that lane of oncoming
4 traffic." But he has no evidence of any other
5 reasons, and I'm trying to get him to --

6 THE COURT: No. That's what he said. I
7 wrote it down, "His right-hand turn caused the
8 accident.

9 MR. CONLEY: Yes. Right, unequivocally.

10 MR. BYRD: And there's no reason for him to
11 be in that lane other than driver inattention is
12 what he said in his deposition.

13 THE COURT: Well, have you brought that out?

14 MR. CONLEY: No. He hasn't said that. Where
15 does he say that?

16 MR. BYRD: Page 235.

17 THE COURT: But, listen, hold on. Hold up.
18 Now, if you're going to impeach him with his
19 deposition, you've got to do it right. First of
20 all, there's got to be a question out there that
21 you asked him and his answer is inconsistent.
22 But don't get up and just say, "Remember, you
23 told me this in your deposition? Remember, you
24 told me that?" And do all that. You ask a
25 question. If he gives you an inconsistent

1 answer, you then use it to impeach, give it to
2 him, let him refresh his memory, ask him again.
3 Might give you the answer you're looking for, but
4 you have got to go through that process in my
5 courtroom before you get to say, "Well, that's
6 not what you told me in your deposition, go to
7 page so and so."

8 MR. BYRD: Right. And the reason I started
9 this whole thing, because what I was going to
10 say: I asked you on 235, "There's no explanation
11 for him to be in that -- in that lane of oncoming
12 traffic other than driver error?" That's where I
13 was going to pick up, and I didn't want him to go
14 back and say, "Hey, above here, we're talking
15 about load shift." I didn't want that to happen.

16 THE COURT: Okay. I appreciate that,
17 Mr. Byrd. Thanks for trying to avoid that.

18 MR. BYRD: I really don't --

19 MR. CONLEY: I just -- I just want to be
20 clear that what his question and answer is on
21 235 -- well, he just represented to the Court
22 that in his deposition, Mr. Sutton said,
23 inattention was the only explanation. That's
24 what was just represented to this Court by
25 Mr. Byrd. But now listen to the question by

1 Mr. Byrd. "I mean, that's a nice way to say
2 we've got a truck driver that's crossing the
3 double yellow line into the lane of oncoming
4 traffic with no mechanical defects to explain it
5 other than either his inattention or falling
6 asleep or what have you."

7 And he said, "Right." And then he followed
8 up and said, "And that would be an explanation
9 for why he would be there too." You're not going
10 by what he's testified to. So Mr. Byrd's
11 question was not limited to inattention, it was
12 limited to "what have you," whatever that means,
13 which would presumably be anything on the globe.
14 The man said, "Right." Now, he wants to say that
15 he only said inattention. That is fundamentally
16 false. So trying to impeach a guy on him saying
17 inattention is the sole cause is not -- it's not
18 impeachment.

19 MR. BYRD: Your Honor, can I -- can I
20 voir-dire the witness, please?

21 THE COURT: Yeah. But I'd like to make a
22 comment. And, Mr. Conley, that is why in my
23 courtroom, I require, if you want to impeach
24 them, you show them what they testified to.
25 "Does that refresh your memory, sir?"

1 "Yes.

2 "Now, isn't it true on this day I asked you
3 that, and your answer was that?"

4 And if they want to change their testimony,
5 they can, but you -- you don't tell them what
6 they said in their deposition. You give them a
7 chance to look and see what they said, and then
8 see if they agree with you. So I have so many
9 lawyers that want to just get up at trial, they
10 get a witness up there, "Now, sir, I took your
11 deposition," they go through all that laying
12 foundation, they say, "Now, you told me this, and
13 you told me that, and you told me that," and
14 they're just reading the deposition. I know you
15 weren't going to do that, Mr. Byrd, but I just
16 had to make that comment.

17 All right. What do you want to voir-dire him
18 on?

19 VOIR DIRE EXAMINATION

20 BY MR. BYRD:

21 Q. Mr. Sutton, at your deposition, you offered
22 two explanations for the cause of this accident, and
23 one was load shift and one was driver error; is that
24 correct.

25 A. I'd have to go back through. Those are two

1 potential causes, but like I said before, there are --
2 there are other ones. We don't --

3 THE COURT: Yeah. And --

4 THE WITNESS: -- we don't have physical
5 evidence for them, but, I mean, just to give you
6 an example --

7 THE COURT: Well, wait a minute. We've got
8 to have the jury in here, so hold off. I've got
9 a problem with your question. You don't say "at
10 your deposition, you said so and so." Just ask
11 him the question: Sir, is it not your opinion
12 that there are two reasons? If you think that
13 differs from his deposition, you impeach him with
14 that.

15 MR. BYRD: But the --

16 THE COURT: It's misleading the witness when
17 you start. They know, "Oh, my God, I took that
18 under oath. It's been transcribed, he just
19 handed it to the judge, he said I said that, I
20 must have said that." No. That is misleading
21 the witness. Ask him your question; if he
22 doesn't give you an answer consistent with the
23 deposition, impeach him.

24 BY MR. BYRD:

25 Q. Mr. Sutton, do you believe that driver error

1 is a possible cause of this accident?

2 A. Yes. And, again, it depends on how -- how
3 you define driver's error, but, yes, driver error or
4 making the turn, like I said before, is a cause, but
5 there can be other causes.

6 THE COURT: All right. Hold on. Hold on.
7 We're not going to have a free "let's see what
8 he's going to say" session. We're going to get
9 the jury back in here.

10 MR. BYRD: Okay. I'm going to have to make a
11 proffer with him.

12 THE COURT: You can. You can make a proffer.

13 MR. CONLEY: I just want to put on the
14 record: He's already said that, what he just
15 testified to.

16 MR. BYRD: I haven't got to what I was going
17 to say.

18 THE COURT: Yeah. Let's let him
19 cross-examine. But do you want me to give him
20 his deposition?

21 MR. CONLEY: We would like you to, Your
22 Honor.

23 MR. BYRD: No.

24 THE COURT: While I wait, to see if you
25 need -- want to impeach him. And if you do, I'll

1 give it to him.

2 (Jury enters the courtroom at 6:11 p.m.)

3 THE COURT: Please be seated. Okay,

4 Mr. Byrd, you may continue.

5 BY MR. BYRD:

6 Q. Just picking up where you left off.

7 Mr. Sutton, you didn't find any problems with the road
8 visibility or -- the road design or visibility that led
9 to the cause of this accident; correct?

10 A. Correct.

11 Q. You didn't find any problems with the truck
12 that led to this accident; correct?

13 A. Correct.

14 Q. You didn't find any problems with the
15 maintenance or the trailer that led to this accident;
16 correct?

17 A. Correct.

18 Q. Okay. And I think -- is it your opinion,
19 sir, that if Mr. Hill had only stayed in that lane
20 traveling the speed that you say that he was traveling,
21 this accident never occurs?

22 A. That is correct. As long as he's just
23 steering to make the curve, that's correct.

24 Q. Now, I want to talk to you about rollovers in
25 general. Do you have any -- do you have any

1 understanding as to how often rollovers occur? And let
2 me back up. That's a terrible question.

3 Do you have any idea as -- as to the
4 percentage of heavy truck accidents that actually
5 involve rollovers?

6 A. I've seen the statistics. I can't quote them
7 off the top of my head but, I mean, rollovers are
8 fairly common, but they're not the most common type of
9 accident.

10 Q. If the -- would you have reason to doubt
11 6 percent as a figure? For all the heavy truck
12 accidents, 6 percent involve rollovers?

13 A. I think that probably sounds about right.

14 Q. And, you know, certainly they can be
15 dangerous. You've worked rollovers before.

16 A. Yes.

17 Q. Have you worked rollovers where the driver
18 walked away?

19 A. Yes.

20 Q. And the reason rollovers are dangerous -- and
21 that's why you would agree with me that truck drivers
22 know that and they should take care to avoid sharp
23 turns; correct?

24 A. Well, sure. I'm sure that any truck driver
25 doesn't want to end up rolling over.

1 Q. Okay. The -- you were asked a couple of
2 questions. Let me make sure that I -- I may have lost
3 my notes by now, but you were asked questions about
4 physical evidence. Did you find any physical evidence
5 of Mr. Hill falling asleep or physical evidence that he
6 came to or -- or -- I can't even read my own writing --
7 physical evidence that he wasn't paying attention. But
8 you wouldn't expect to find physical evidence of those
9 things, would you?

10 A. Correct. I mean, the only time that you
11 really get into that as an accident reconstructionist
12 is when there's a drive cam. You know, a camera on the
13 driver where you can see it, or, you know, a lot of
14 times I get asked to look at logs, and what -- when's
15 the last time the truck driver took a break. You know,
16 those types of things. Has the truck driver been on
17 the road 10 hours, you know. And so I didn't see any
18 of that in this case, so -- but, you know, other than
19 that, it's like, yeah, how do you find physical
20 evidence, something that you can hold that would
21 address those issues.

22 Q. Correct.

23 A. It would be -- it would be rare.

24 Q. In fact, if Mr. Hill in this circumstance, if
25 he had fallen asleep, then there would be -- you would

1 have no more physical evidence than you have sitting
2 here today; correct?

3 A. Well, you might see something different
4 happen, though, if he was asleep.

5 Q. There was -- there was a drive cam in this
6 truck; is that right?

7 A. That's my understanding.

8 Q. And your understanding is that it was lost in
9 the accident?

10 A. Yes.

11 Q. Okay. And that there's no footage to be
12 found, is my understanding as well. Is that your
13 understanding?

14 A. That's my understanding.

15 Q. I want to talk to you about the photographs,
16 and I want to start with the ones that you were -- you
17 were shown kind of towards the end of your deposition,
18 if I can keep my stuff straight.

19 Can you pull up C264. Do you see that on
20 your monitor, sir?

21 A. Yes.

22 Q. Okay. And if you'll kind of just -- Chris,
23 if you can just kind of scroll through them, I think
24 there's four of them here. Maybe -- maybe -- there you
25 go. All right.

1 Now, if you could go back -- I think that's
2 all of them. Is that all of them? Kind of orient.

3 These are the photos from -- my understanding
4 is these were taken by Mr. Hill's father?

5 A. That's my understanding, yes.

6 Q. And if you could go back to the second photo
7 in this series, Chris. There you go.

8 And had you seen these photos before today or
9 -- yeah, sure, before today?

10 A. Yes.

11 Q. Had you seen them before your deposition in
12 this case?

13 A. No.

14 Q. Okay. When was the first time you saw these?

15 A. I think yesterday.

16 Q. Okay. So -- and your testimony I think was
17 that all this stuff that's in here, or most of this
18 stuff that's in here, that wasn't in the truck when you
19 went around to inspect it up in, where was it,
20 Wisconsin?

21 A. Yes.

22 Q. Okay. And when did you do your inspection,
23 sir?

24 A. Mine was in, I think it was in 2017. I could
25 get that specific date if you want to.

1 Q. That's fine. But it was a long time after
2 the accident?

3 A. Yes.

4 Q. And do you understand that this picture was
5 taken within a day or two of the accident?

6 A. I would think so, because there's still a lot
7 of mud on the truck.

8 Q. Okay. And the stuff that's in here, you
9 don't know what happened to it?

10 A. Well, some of that was up in Wisconsin.

11 Q. Okay. But can you flip to the next -- the
12 next one in sequence.

13 You're not able -- you don't really -- from
14 looking at these pictures, we can't tell what's in the
15 cab and what's not in the cab; fair enough?

16 A. Not everything, but some of those items, like
17 the portion of the roof, was up in Wisconsin. I have
18 pictures of it. So I don't know what that brown
19 looking thing is. That might just be the headliner of
20 the truck.

21 Q. You have the headliner. And -- and that's
22 the portion of the roof you're talking about that was
23 there?

24 A. Yeah. And actually, I think -- I think I
25 took pictures of this thing right there too.

1 Q. Right.

2 A. It's looks like a -- some sort of a -- might
3 be like the windshield header.

4 Q. Sure.

5 A. And that was there. I would have to go back
6 and look at my pictures to see if that was there.

7 Q. And what -- what's sitting in the cab of this
8 truck, may be down on the floorboard or behind the
9 seat? We have no idea from these photos; right?

10 A. Yes.

11 Q. And you would assume, if there was anything
12 there, that it would have found its way to wherever the
13 rest of this material that you never got a chance to
14 look at, found its way to?

15 A. Correct.

16 Q. Okay. When you viewed the truck -- I think
17 we have a photo of that. I think it's Plaintiff's 122.
18 That's what it looked like? That's a picture you took;
19 right?

20 A. Yes.

21 Q. And there's that piece that you were talking
22 about?

23 A. Yes.

24 Q. But all that other stuff is gone?

25 A. Yes.

1 Q. And the cab was fairly empty when you saw it?
2 In other words, we could go through your pictures, you
3 took quite a few of them, but there's not a -- nothing
4 in the floorboards or nothing behind the seats, really,
5 to speak of?

6 A. Nothing big. I mean, there were small items
7 here and there, but -- and whatever I did pull out or
8 whatever that was already pulled out, I laid on the
9 ground and took pictures of it. I'm sure you've seen
10 that.

11 Q. Now, let's talk about the photos of the
12 accident sequence. If you could pull up C268, please.

13 And these are -- these are a set of photos --
14 and I'm going to move them all into evidence, but I
15 think you've seen them before. These are the Fox Fire
16 photos?

17 A. Yes.

18 Q. Those are the ones that the -- the
19 towing/salvage company that came and cleaned up and
20 towed everything away, they took a series of photos,
21 quite a few of them?

22 A. Yes.

23 Q. Okay. And that's -- those are the scene
24 photos. Other than the ones that Mr. Abrams showed you
25 from the state trooper, these are the ones where --

1 these are, really, the only ones that we have of the --
2 of the -- of the scene of the accident, at least with
3 the truck still there?

4 A. Yes. Except for the four from the Virginia
5 State Police, but they're taken back up the road.

6 Q. Sure. Sure. And, Chris, could you show
7 04771. Okay.

8 And this is -- just to kind of orient us,
9 this is -- any way you can rotate that
10 counterclockwise. There we go.

11 This is kind of the resting position of the
12 cab and the truck. Is that your understanding?

13 A. Yes.

14 Q. And so what we've got here, that's what you
15 talked about, the cab at some point in the procession
16 got busted off of the chassis and rotated, I guess, in
17 a counterclockwise position?

18 A. Yes.

19 Q. Yeah, counterclockwise position. So -- so
20 Mr. Hill would have been facing down towards the ground
21 and the cab basically pointing downwards like this;
22 yes?

23 A. Yes.

24 Q. Are you able to tell us when that occurred?
25 When the chassis became detached and began to rotate?

1 A. No.

2 Q. And you -- if you could go to the next one.

3 A. Other than -- let me just clarify that just a
4 second, if I may. I know the cab had to slide some on
5 the ground before it detaches and rotates. But exactly
6 where that happens, I would tend to agree, I think
7 Mr. Kent said it probably happened somewhere over there
8 near the brush and the trees, and I would concur. But
9 I don't know exactly where.

10 Q. Okay. And then if you'd go to 4788. It's
11 that one there.

12 So here we have got kind of a blowup. There
13 we see the cab. This is going to be the -- that would
14 be the driver's side door here?

15 A. Passenger.

16 Q. I'm sorry, passenger side. That's the
17 passenger side door. Here would be kind of the step
18 ladder, I guess to get into that if the cabin was
19 oriented properly. And we see these are kind of the
20 trees and -- and shrubs and all that stuff that he
21 would have gone through on his way to rest; yes?

22 A. Yes.

23 Q. Okay. And it's your -- and you -- it's your
24 testimony, sir, that -- that these trees and shrubs,
25 they interacted with that cab in some fashion; right?

1 A. Yes.

2 Q. And you don't know what protruded into that
3 cab and how far it protruded, but you know something
4 did; right?

5 A. Well, I don't know that they actually did. I
6 didn't see any evidence of any kind of damage to the
7 seats or the dash or the steering wheel, but I can't
8 say that some of these branches didn't go inside the
9 cab. There were openings in the cab. There's just no
10 evidence of it.

11 Q. Okay.

12 A. But the brush and the stuff that was there
13 could have entered the cab to some degree, I just don't
14 have evidence of it.

15 Q. Okay. And -- well, we know that things were
16 removed from the cab before you saw it; right?

17 A. Yes.

18 Q. Okay. So what you're saying is, "It could
19 have protruded, I don't know if it did, but it could
20 have, and if it did, I don't know how far?" Fair
21 enough?

22 A. Right. During the motion. The only other
23 thing I could go to is the witness testimony, which,
24 you know, the eyewitnesses who were there described
25 what was -- you know, how the cab was configured, what

1 was inside the cab.

2 Q. And I think we'll hear from some of those
3 eyewitnesses. But, you know -- and these guys took a
4 million pictures, but we don't have a -- we really
5 don't have a picture that shows that cab from a vantage
6 point where we can really see what was going on, before
7 they cut it all away to kind of -- to rescue Mr. Hill;
8 right?

9 A. That is correct, yes.

10 Q. All right. So at least we know that at its
11 point of rest, this thing was interacting with these
12 trees and brushes in a way where if you were to follow
13 this cab, there's going to be some -- there's some
14 interaction? It was actually resting in these trees
15 and shrubs, it wasn't resting on the ground; correct?

16 A. That is my understanding that it was actually
17 resting in the brush.

18 Q. Okay. And can I get the ELMO -- actually,
19 are you able to -- I'm sorry. Let me -- can I go off
20 script and call out some of these Bates numbers and you
21 pull those up or -- from the exhibit we were just in.

22 Can you look at 4987. There you go.

23 And so we see here that their -- the cleanup
24 crew is now kind of cleaning up the mess of trees and
25 shrubs, and -- and where exactly these trees and shrubs

1 are, no one can really tell us. But we know that it
2 interacted -- it either interacted with the cab and the
3 truck or it was cut away as part of the rescue effort;
4 right?

5 A. Yes.

6 Q. And we can see in this picture, and some
7 others, that some of these are obviously -- they
8 weren't cut away, they would have been sheared off by
9 the momentum of the cab and trailer; correct?

10 A. Yes.

11 Q. Okay. You also saw a -- when you were
12 examining this truck, you took a picture of -- and I'm
13 just going to show this to you, because I want to get
14 us out of here as quick as I can.

15 There's a hole punched in the top of the cab?

16 A. Yes.

17 Q. Do you remember that?

18 A. Yes.

19 Q. And you were able to see that that hole that
20 was punched, that sits over the top of the driver's
21 seat; correct?

22 A. Yes.

23 Q. And that hole goes all the way through? And
24 here's another picture.

25 A. Yes.

1 Q. You see there?

2 A. Yes.

3 Q. Okay. And so that hole is right above where
4 the driver would have been sitting. You were never
5 able to determine what punched through that header and
6 caused that hole?

7 A. That is correct.

8 Q. Correct?

9 A. Yes.

10 Q. We're in the home stretch here. I wanted to
11 make sure that I do establish one thing. You were able
12 to locate the windshield in the photographs from the --
13 from the towing company?

14 A. Yes.

15 Q. Okay. And can we -- can we go to
16 Exhibit 04916. Not exhibit -- this one. Well, the
17 same one, but picture 4916.

18 And this is from the same batch of towing
19 company photos. And right here, we see that tree that
20 you're talking --

21 A. There you go. Right there.

22 Q. Right there. And if we can go one more
23 photo, Chris. I'm sorry. 4919.

24 And is this the windshield here?

25 A. It looks like it.

1 Q. Okay. And then that's the -- that's the
2 stump of the tree that -- one of the trees that got
3 shorn off?

4 A. It is, yes.

5 Q. Okay. The -- the model that you plotted,
6 the -- I think you said it was PC-Crash; right?

7 A. Yes.

8 Q. That plots kind of a uniform level of
9 deceleration, is that -- do I understand that
10 correctly?

11 A. Well, it is interacting with the ground, but
12 if you looked at the -- if you look at the velocity
13 trace as it comes to rest, it kind of stairsteps.

14 Q. Okay.

15 A. As it interacts the -- when the model turns
16 over, the body actually interacts with the ground
17 surface, so instead of calculating tire forces it
18 calculates body panel to ground. And then -- so you
19 get kind of like a sawtooth or a bumpy -- the velocity
20 starts up there and goes down to zero.

21 Q. The -- let me make sure I hit all the photos
22 that I have up here. If I could show you exhibit --
23 this is Plaintiff's Exhibit 113. And if you could
24 rotate that for us.

25 I believe this is one that you took. Do you

1 remember taking this photo, sir?

2 A. Yes.

3 Q. Okay. And all the stuff that we saw in Josh
4 Hill's dad's photos, it's out of the cab at this point?
5 We don't see how it came down or where it was, or
6 really, what it was? Fair enough?

7 A. That is correct, yes.

8 Q. And the last one I want to make sure that I
9 cover with you is exhibit Plaintiff's 121. These are
10 -- there is a few of them here, but I think I want to
11 ask you about -- maybe if you go to the next one,
12 Chris. I think there's more than one. Here we go.

13 So these -- these are photos that I think you
14 took at the scene sometime -- sometime later,
15 obviously?

16 A. Yes.

17 Q. Okay. And so all the stuff that we see now
18 is gone? All the shrubs and trees that were -- that
19 were interacting with that truck and cab have obviously
20 been taken away?

21 A. Yes.

22 Q. And is that -- what is that?

23 A. You know, I have no idea.

24 Q. Okay.

25 A. I mean, it kind of looks like a buddah thing,

1 or a baby or something.

2 Q. Could that be a pile of -- I'll tell you,
3 I'll represent to you that it's been represented to me
4 that's a pile of rocks. It's a -- kind of an
5 outcropping of rock. Is that -- does that not comport
6 with your understanding?

7 A. I mean, I've heard -- I've heard people talk
8 about the rocky knob, but it's back this way. It's
9 like just a gravel in the yard, but I don't -- that's
10 where the -- that's where the stump would have been in
11 that cluster of trees. I don't know what that is.

12 Q. The -- you would agree with me that when you
13 were inspecting the truck, you didn't see any evidence
14 that the seat was broken or that it failed in the
15 accident --

16 A. Correct.

17 Q. -- correct?

18 Are you able to tell us, at the point when
19 that windshield came out of Mr. Hill's cab, was -- do
20 you believe he was inverted by then?

21 A. It's hard to say. Again, I can't answer
22 that, because, again, obviously, the cab becomes
23 detached. I just don't know exactly where.

24 Q. Okay. And if you could pull up, Chris, one
25 more time, Plaintiff 122. This is a -- this is the

1 A-pillar; correct?

2 A. Yes.

3 Q. And just for the jury's orientation, since
4 we're going to be using these terms a lot, the B-pillar
5 would be the back side of the door; right? This is
6 going to be your B-pillar back here?

7 A. Yes.

8 Q. Your A-pillars are these things up front?

9 A. Correct.

10 Q. So when Mr. Hill's cab detaches and begins to
11 rotate, the direction of all that shrubbery and trees
12 and fence post, they're coming across this way; yes?

13 A. Correct.

14 Q. And that's what, in your opinion, bent this
15 A-pillar?

16 A. Yes. That or the ground, or some combination
17 of them.

18 Q. Did you see any evidence in the photos that
19 Mr. Hill's father took that that A-pillar had any dirt
20 on it or any ground -- made ground contact?

21 A. I would have to look at them again. I
22 don't -- I didn't see those pictures until yesterday, I
23 think, so I would have to look.

24 Q. Can we put up C264 again. All right. Let's
25 blow that up, Chris, a little bit. Can we just go

1 right here, if you can.

2 So this is the driver's side; right?

3 A. Yes.

4 Q. And we see dirt there?

5 A. Yes.

6 Q. And that's to be expected because he would
7 have rolled over and -- and made contact with the dirt.
8 Can we go to the next photo, please. There we go. If
9 you could rotate -- you're trying to get all fancy on
10 me. There you go. If you can just rotate that.

11 Do you see any evidence of any dirt or ground
12 contact over here?

13 A. I don't see any in that picture.

14 Q. Okay. Does that appear to be foliage to you?
15 I don't know if I can make that out or not. Do you
16 know whether or not that's foliage there?

17 A. It looks green to me. It could be.

18 Q. As an accident reconstructionist, it would be
19 important to you to have this information when you're
20 rendering your opinions; right?

21 A. This picture?

22 Q. To look at -- no -- well, certainly the
23 picture. You would want to see the picture; correct?

24 A. Sure. Yeah.

25 Q. Okay. And -- and you might be able to learn

1 something from all these pieces and things that you
2 never got a chance to review; correct?

3 A. Yes. I mean, you -- you always want to see
4 the -- the most evidence.

5 Q. I don't have any further questions for you.
6 Thank you for your time, sir.

7 MR. ABRAMS: I'm going to be quick, I
8 promise. Just have to follow up on a couple of
9 things.

10 REDIRECT EXAMINATION

11 BY MR. ABRAMS:

12 Q. Some of those pictures that I guess was in
13 the pile that Mr. Byrd showed you taken from the yard,
14 I've got PX356 and -358. What's -- what's shown there?

15 A. There is the chassis.

16 Q. Okay. And can you use that to kind of show
17 the jury what part of, like -- I guess what part of the
18 cab came off and what part of the, I guess, front of
19 the vehicle stayed on the -- stayed on the chassis?

20 A. Yes. This is -- so this is the whole
21 tractor, except, of course, the cab. And there's
22 damage to the engine calving. This, again, is just
23 fiberglass structure. There's an angle there with a
24 bunch of mud in it, and that created one of the creases
25 in the yard. And you imagine this thing is over on its

1 side, and so the yard is -- the yard is right here as
2 it slides, and it tore this fender up right here. So
3 the same way you can look at the front of the cab that
4 we just looked at, and there's a bunch of this dirt
5 right there on the side of the cab. So the cab kind of
6 catches the dirt there and that probably has something
7 to do with it separating too.

8 Q. Okay. But when the truck was -- even after
9 the cab and chassis had become disengaged, was the
10 grille still on the front of the truck?

11 A. Oh, yes. Yes. This is obviously after the
12 wreck.

13 Q. Okay. As the truck is going through the
14 brush that has been talked about, which way would it
15 push the debris, towards or away from the cab?

16 A. Away from the cab. I mean, it -- the -- the
17 truck is obviously moving southbound, and so whatever
18 it encounters has to interact with all these different
19 structures, so it would be pushed away from the truck.

20 Q. Okay. Would the front of this chassis still
21 be contacting the brush before the cab would?

22 A. Yes. If there's brush in this area, of
23 course, which I think there was, then the brush also
24 hit the front of this truck.

25 Q. Okay. And that would have -- would that have

1 struck the front of the truck before it would have
2 interacted with the driver compartment?

3 A. Yes.

4 Q. Okay. Are all crashes catastrophic?

5 A. No.

6 Q. Okay. Is there a difference between a cause
7 of a crash and the cause of an injury?

8 A. Yes.

9 Q. Okay. Do you have any opinions on the causes
10 of Mr. Hill's injury?

11 A. No.

12 Q. Okay. And I guess what -- there was a
13 picture earlier about a stump. What part of the truck
14 would have shorn off the stump, as Mr. Byrd said?

15 A. Oh, the stump. The stump, I showed you
16 before, we don't have to go through it. The top of the
17 trailer, because I know something got the top of the
18 trailer, it's peeled back.

19 Q. Okay.

20 A. So the only thing that's as tall as the top
21 of the trailer is that cluster of trees that got
22 knocked down.

23 Q. Okay.

24 A. That's -- that's comparable to showing the
25 force that ripped the top of the trailer off. Like, a

1 little bit of bark missing from the big tree, in my
2 opinion, doesn't equate to that rip in the top of the
3 trailer. Obviously, it was that big cluster of smaller
4 trees in front of the big tree that did that.

5 Q. And did that -- did that stump have anything
6 to do with any kind of contact with the cab itself?

7 A. No. It just shows where those trees were.
8 And you can see it on the Google Earth pictures.

9 Q. Okay. And, finally, if Mr. Hill was asleep,
10 could he have steered?

11 A. No.

12 Q. Okay. Those are the questions I've got.
13 Thank you.

14 THE COURT: All right. You may step down
15 now, sir. Thank you.

16 THE WITNESS: Okay. Thank you.

17 THE COURT: Well -- okay.

18 THE WITNESS: Do you want me to stay?

19 THE COURT: Well, you might need to stay.

20 Thank you. But you know what, you get to go. We
21 got to stay but you get to go.

22 So, safe travels to wherever you may be
23 going. Please get some rest, take good care of
24 yourself, I want to see every single one of your
25 smiling faces in the morning. Okay?

1 THE BAILIFF: What time in the morning,
2 Judge?

3 THE COURT: Nine o'clock. 9:15. What time
4 do y'all want to do, 9:00, 9:15?

5 JURY PANELIST: Nine is good.

6 THE COURT: See you at nine.

7 (Jury leaves the courtroom at 6:30 p.m.)

8 THE COURT: You may be seated.

9 MR. BYRD: Your Honor, at this time we would
10 just like to make a proffer. We know that you
11 ruled out the issue of load shift.

12 THE COURT: Sure.

13 MR. BYRD: But just for evidence sake, we
14 want to make the proffer. I don't think this
15 will take very long.

16 EXAMINATION

17 BY MR. BYRD:

18 Q. Mr. Sutton, as part of your review, you
19 examined the issue of potential load shift; yes?

20 A. Yes.

21 Q. Okay. And you determined that the load
22 Mr. Hill was carrying, if it had been properly loaded,
23 right, as -- as Georgia-Pacific said that it loaded it,
24 that there was no way that load shift could have
25 occurred going around that corner at the speeds

1 Mr. Hill said he was going; right?

2 THE COURT: Can you repeat that question?

3 MR. CONLEY: It's a proffer.

4 MR. BYRD: Yeah. I'm just making proffer.

5 BY MR. BYRD:

6 Q. You made the determination that if the load
7 had been properly loaded, that there's no way that load
8 shift could have occurred on this road in this truck
9 and the speeds Mr. Hill was driving; yes?

10 A. That is correct, yes.

11 Q. Okay. And you found no evidence that the
12 load was improper; correct?

13 A. Correct. I think I told you at the
14 deposition, I didn't see any evidence of friction mats
15 inside the truck, but I didn't see any evidence that
16 they were missing. So assuming that the friction mats
17 were inside the truck and loaded per procedures, GP
18 procedures, then, no, this truck was not going fast
19 enough in that curve for it to have a load shift.

20 Q. Okay. And you did not inspect the truck for
21 friction mats -- I mean, you did not inspect the
22 trailer for friction mass, did you?

23 A. No.

24 Q. Okay. Have you read the deposition of
25 Mr. Kent?

1 A. Yes.

2 Q. Do you know that Mr. Kent inspected the
3 trailer for friction mats?

4 A. I do recall him talking about that. I just
5 don't remember what he said.

6 Q. Okay. Well, if Mr. Kent said that he pulled
7 the proper number of friction mats out of that trailer,
8 you would have no reason to dispute that, would you?

9 A. I would not.

10 Q. Okay. Now, you also -- your conclusion also
11 was that even if the load had been improper and Mr.
12 Hill took the curve at the speed you determined he was
13 going and just stayed in his lane, then we still don't
14 get a load shift? Do I understand that correct?

15 A. Correct.

16 Q. Okay. In fact, the only way -- the only way
17 load shift really factors into this is if a load shift
18 had occurred down the road somewhere, right, that that
19 might explain why Mr. Hill drifted from the right-hand
20 lane that he should have been in, into that left-hand
21 lane; correct?

22 A. Right. A prior load shift maybe in a sharper
23 curve can affect how it steers in this curve.

24 Q. Okay. But you also found no evidence of any
25 prior load shift? Do I have that right?

1 A. That is correct.

2 Q. And in fact, that prior load shift would have
3 been fairly substantial; correct?

4 A. It would -- yeah. It would have had to been
5 an event enough to cause some sort of movement in the
6 paper rolls.

7 Q. And Mr. Hill when he testified didn't he say
8 that he had never experienced any load shift prior to
9 this turn in his -- in his route that night, did he?

10 A. Correct.

11 Q. Okay. And you didn't go look at any of the
12 other curves before this one to determine if load shift
13 was even possible beyond where -- where this accident
14 occurred; is that safe to say?

15 A. Correct. I did not analyze other curves.

16 Q. Okay. Now, absent that load shift that you
17 found no evidence of, is there any other explanation in
18 your mind to explain why he goes from the right-hand
19 lane into the left-hand lane?

20 A. Well, I don't know why, but we were getting
21 there earlier. Let me just tell you my thought on
22 that, which is you have inattention, that could be the
23 reason. I think you mentioned straightened out the
24 curve. But that's not the only thing left over, which
25 is, you know, you can get into probabilities and

1 likelihoods, but, I mean, I've had vehicles in other
2 accidents I've investigated, leave the road for all
3 kinds of reasons and there's no evidence after the
4 fact. So I mean -- I mean, I'm not saying that it
5 happened, but I just had a case where a truck went off
6 the road and rolled because there was a bull standing
7 in the road. Right? So the truck driver had to go
8 around the bull and he rolled it over.

9 So the bull can walk off, there's no evidence
10 of a bull, but that's not inattention.

11 Q. You would expect Mr. Hill to have commented
12 about a bull in his path, would you not?

13 A. Well, you would think so.

14 Q. Okay.

15 A. But I'm just saying there are other reasons
16 that something like that could have happened.

17 Q. But the reason Mr. Hill gave at his
18 deposition was load shift; yes?

19 A. He thought he felt a load shift.

20 Q. And you found no evidence of that at all?

21 A. Correct.

22 MR. BYRD: That's my proffer, Your Honor.

23 MR. CONLEY: Is the witness excused, Your
24 Honor?

25 THE COURT: Yes. He is.

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MR. CONLEY: Thank you so much.

THE WITNESS: Thank you.

(Witness leaves the witness stand at 6:36 p.m.)

(Untranscribed proceedings continued.)

CERTIFICATE OF SERVICE

This is to certify that I have this day served opposing counsel with a copy of the foregoing by filing the same in the Court's electronic filing system (Odyssey efileGA) which automatically sends a service copy via email notification to all counsel of record.

This 25th day of March, 2020.

Respectfully submitted,

WEINBERG WHEELER HUDGINS GUNN
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