

The State of South Carolina
In the Court of Appeals

Appeal from Aiken County
Court of Common Pleas
The Honorable Doyet A. Early, III Circuit Court Judge
The Honorable Clifton Newman, Circuit Court Judge

Civil Action No.: 2011-CP-02-00868

Paige Weeks Johnson, as Personal Representative
of the Estate of Christie Lane Valenzuela,

versus

Respondent,

Sam English Grading, Inc.,

Appellant.

Record On Appeal
Volume II of IV (p. 449 -884)

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SC Court of Appeals

**Paige Weeks Johnson, as Personal Representative
of the Estate of Christie Lane Valenzuela versus Sam English Grading, Inc.,**

INDEX TO RECORD ON APPEAL

VOLUME I OF IV (pp. 1- 448)

I.	ORDERS/JUDGMENTS	<u>PAGE</u>
	Notice of Appeal, filed October 31, 2012	1
	Order Denying Defendant's Post-Trial Motions, dated September 27, 2010	5
	Verdict Form, filed September 4, 2012.....	7
II.	PLEADINGS	
	Summons and Complaint, filed April 19, 2011	9
	Answer of Defendant Same English Grading, filed September 15, 2011	17
	Defendants Motion for Summary Judgment, dated August 7, 2012	24
III	TRANSCRIPTS	
	Transcript from Motion for Summary Judgment and Motions in Limine Hearing held on August 21, 2012.....	29
	Trial Transcript pages 2-1067.....	131
	Ann C. Johnson,	
	Direct Examination by Mrs. McPherson.....	338
	Cross Examination by Ms. Payne.....	345
	Laura Boozer,	
	Direct Examination by Mrs. McPherson.....	352
	Cross Examination by Ms. Payne.....	361
	Virginia Gunter,	
	Direct Examination by Mrs. McPherson.....	365
	Jeffery D. Lewis,	
	Direct Examination by Mr. Detrick.....	377

Cross Examination by Mr. Cox.....418

Redirect Examination by Mr. Detrick.....434

VOLUME II OF IV (pp. 449-884)

Michael Valenzuela,

Direct Examination by Mr. Detrick.....449

Cross Examination by Mr. Cox.....483

James A. McLaurin, Jr.,

Direct Examination by Mr. Detrick.....512

Cross Examination by Ms. Payne.....546

Redirect Examination by Mr. Detrick.....556

Eric Pruitt,

Direct Examination by Mr. Detrick.....557

Cross Examination by Mr. Cox.....565

Clifford Merritt Video Deposition Of.....577

Kelly B. Kennett,

Direct Examination by Mr. Detrick.....593

Cross Examination by Mr. Cox.....662

Mathew B. Coffin,

Direct Examination by Mr. Detrick.....720

Cross Examination by Ms. Payne.....744

Redirect Examination by Mr. Detrick.....750

Renee Mack,

Direct Examination by Mrs. McPherson.....752

Christopher W. English,

Direct Examination by Mr. Detrick.....774

Cross Examination by Mr. Cox.....	800
Redirect Examination by Mr. Detrick.....	824
Amanda Washington,	
Direct Examination by Mrs. McPherson.....	828
Sam English,	
Direct Examination by Mr. Detrick.....	835
Cross Examination by Mr. Cox.....	841
Redirect Examination by Mr. Detrick.....	850
Michael Valenzuela, Jr.,	
Direct Examination by Mrs. McPherson.....	852
Plaintiff rests	865
Motions.....	866

VOLUME III OF IV (pp.885- 1260)

Joe Dawes,	
Direct Examination by Mr. Cox.....	885
Cross Examination by Mr. Detrick.....	899
Redirect Examination by Mr. Cox.....	901
Joseph G. W. Smith,	
Direct Examination by Mr. Cox.....	903
Cross Examination by Mr. Detrick.....	947
Redirect Examination by Mr. Cox.....	985
Terby Thomas,	
Direct Examination by Mr. Cox.....	1001
Cross Examination by Mrs. McPherson.....	1009
Redirect Examination by Mr. Cox.....	1011

Dana Hall,

Direct Examination by Mr. Cox.....1012

Cross Examination by Mrs. McPherson.....1016

Johnny Tindel,

Direct Examination by Mr. Cox.....1019

Cross Examination by Mr. Detrick.....1027

Christopher W. English,

Direct Examination by Ms. Payne.....1030

Cross Examination by Mr. Detrick.....1036

Deposition of Clifford Merritt.....1198

VOLUME IV OF IV (pp.1261- 1420)

IV EXHIBITS

Plaintiff's Exhibit #2 Encroachment Permit.....1262

Plaintiff's Exhibit #3 Contract (with Addendum) 1266

Plaintiff's Exhibit #4 Purchase Order 1309

Plaintiff's Exhibit #12 Photograph of Accident 1315

Plaintiff's Exhibit #15 Photograph of pan scraper 1316

Plaintiff's Exhibit #16 Photograph of pan scraper 1317

Plaintiff's Exhibit #17 Photograph of pan scraper 1318

Plaintiff's Exhibit #18 Photograph of pan scraper 1319

Plaintiff's Exhibit #23 Photograph of pan scraper 1320

Plaintiff's Exhibit #30 Photograph of Redd's Branch Road from curve.....1321

Plaintiff's Exhibit #39 Photograph of Redd's Branch Road approaching

intersection	1322
Plaintiff's Exhibit #85 Photograph of Motorcycle	1323
Defendant's Exhibit #5 South Carolina Driver's License Manual	1324
Defendant's Exhibit #17 Photograph of Placement of the Vehicle at time of Accident	1346
Defendant's Exhibit #20 Rider's Handbook	1347
Court's Exhibit #4 Jury Note.....	1381
Court's Exhibit #5 Jury Note.....	1382
Court's Exhibit #6 Jury Note.....	1383
Court's Exhibit #7 Jury Note.....	1384
Memorandum in Support of Defendant's Post-Trial Motions, dated September 14, 2010	1385

IV. CERTIFICATE OF COUNSEL.....1420

1 testified as follows:

2 THE WITNESS: My name is Michael Valenzuela.

3 DIRECT EXAMINATION

4 BY MR. DETRICK:

5 Q Mr. Valenzuela, where are you presently living?

6 A 3234 Old Camp Long Road.

7 Q As far as Aiken County -- Aiken, South Carolina --
8 how long have you been in this area?

9 A Since '84.

10 Q Eighty-four?

11 A Yes, sir.

12 Q And all during your marriage did you and Christie
13 live in Aiken County?

14 A For the most part, yes.

15 Q And tell us now as far as your employment, where are
16 you employed?

17 A I work for the school system of Aiken County.

18 Q What is your job?

19 A I'm a plumber.

20 Q And how long have you had that job?

21 A Eight years now.

22 Q Eight years?

23 A Yes, sir.

24 Q And tell us now when you and Christie got married.

25 Tell us about your marriage; when you got married.

1 A It was kind of like a fairy tale. It started and it
2 ended all within six months.

3 Q Sir?

4 A Twenty years went by like six months. It was like a
5 fairy tale. She floated in my life. She floated out of
6 my life.

7 Q And during that marriage did y'all have any children?

8 A Yes, sir; my son Mikey.

9 Q Is Mikey right back here?

10 A Yes, sir.

11 Q And where did you and Christie and Mikey live?

12 A All together on 3234 Old Camp Long Road.

13 Q Just so the jury can kind of be familiar with
14 Christie as a person, okay -- and, Your Honor, without
15 objection, we would offer into evidence Exhibits 115
16 through 119.

17 THE COURT: Any objection?

18 MR. COX: No objection, Your Honor.

19 (Whereupon, Plaintiff's Exhibit Nos 115 - 119 were
20 admitted into evidence.)

21 Q Is that Christie?

22 A Yes, sir.

23 Q Is that the love of your life?

24 A Yes.

25 Q Did she have a pretty smile?

- 1 A Yes, sir.
- 2 Q These photographs here, what are they of?
- 3 A That's her little goldfish pond in our backyard and
- 4 the one on top I couldn't get her to stop to take the
- 5 picture because her flowers are so pretty -- Would you
- 6 stop for one second and sit down, and she did and that's
- 7 -- I took both of those pictures. It might have been the
- 8 same weekend.
- 9 Q Who did these flowers? Who planted them?
- 10 A That was Christie's flowers. She can make anything
- 11 grow. Her and Mike worked together. We all did that as a
- 12 family. We didn't have a lot of money; so we decided to
- 13 work together and see what we could achieve.
- 14 Q And what about down here? What is in the background?
- 15 A That's some pipe for a pond for a motor for the
- 16 goldfish pond, I believe.
- 17 Q Who did that?
- 18 A I did.
- 19 Q This photograph now and I am referring to -- the
- 20 first two were 115 and 116, Madam Court Reporter.
- 21 What is that?
- 22 A That's my wedding day.
- 23 Q This one right here?
- 24 A Yes, sir.
- 25 Q Tell us about that day.

1 A That was a good day. That was a very good day. It
2 was just a very, very good day. The smile we had right
3 there is the same smile we had August 7 of '09. The same
4 smile. The other one -- the bottom picture is one I got
5 on my mirror in the bathroom still today. I keep it up.
6 And the one on the right I can't remember where we was at,
7 but Mikey was there, also. I don't recall where that
8 picture is. It was at church or somewhere, but Mikey and
9 her was best friends.

10 I kind of -- I wouldn't say I was jealous, but I
11 would stand back and watch them a lot because they was
12 just -- love to pick and play and scare each other and I
13 just -- I would be amazed. I was just amazed how they
14 would get along.

15 Q Did you enjoy that?

16 A Oh, yeah.

17 Q Was that very much a part of all of y'all's lives?

18 A Yeah.

19 Q And we refer to Exhibit 116. Tell the jury what that
20 is.

21 A That's our backyard -- a little sign Christie made us
22 for the backyard for anybody approaching they would know
23 that was the Valenzuela's house and we went and had a
24 picture made, I believe at church, out there -- a little
25 photograph for the people coming there and we took some

1 pictures and I think that's Mikey's school picture on the
2 right.

3 Q Okay. You know, some people say that looking at you
4 and looking at her and looking at Mikey that you were sort
5 of married above yourself as far as -- Huh?

6 A Yes, sir.

7 Q Nice looking family.

8 A Thank you.

9 Q Tell us, if you would, a little bit about Christie's
10 background and jobs and what she did, the employment kind
11 of stuff, okay?

12 A Okay. She was one helluva worker. There is no job
13 she wouldn't take on and there was nobody she wouldn't
14 help. She wanted to know two things about you: What you
15 needed and what you wanted. The next time she seen you
16 she had both. That's the type of person she was.

17 Q Was she that way, not just for you and Mikey, but for
18 others?

19 A For everybody. She had 500 kids at school, knowed
20 every one of them by name and they all stopped by her
21 office in the morning on the way to the classroom to get
22 whatever, candy or just to speak to her. She always made
23 sure everybody felt important.

24 Q And where did she -- You said the school.

25 A Yes.

1 Q Where did she work?

2 A Well she started in the back door at a lunch room
3 lady and worked her way right to the front door as a
4 bookkeeper; so she was one helluva woman.

5 Q When she died what was her job -- where at?

6 A She was the bookkeeper at JD Lever Elementary School.

7 Q How long had she been there?

8 A I don't exactly now, the few years. She had been
9 promoted two or three different times and had came back to
10 Lever because they offered her that position. She
11 actually went to the district office head over food
12 economy and worked her way back that way so she could be
13 closer to her son and me and the kids. She loved the
14 elementary-school kids.

15 Q I know you and Mikey was, obviously, a very important
16 part of her life. What about her school, the job? What
17 about the kids at JD Lever?

18 A That was her life. That's what she lived for is her
19 son, me, and them kids.

20 Q Tell us about what she would do at the school to help
21 the kids.

22 A Anything possible that she could do to help them, she
23 would do it no matter what. She'd find out if a kid was
24 missing something. If it was just a hug, she would give
25 it to them and she would just wanted to make sure that

1 everybody felt important. So I would have to deal with
2 grown men coming up to her and grabbing her up off her
3 feet, you know. They done grewed up and, you know, I
4 would look over and my wife would be off the ground. Some
5 grown man would have her. He would remember her and just
6 have a lot of respect for her and after the accident the
7 UPS man came by one day and he said I want to tell you
8 something. He said your wife was the greatest person in
9 the world.

10 He said it was a Friday running late. I seen her.
11 The school was locked up. She was going across the
12 parking lot, the keys in her hand. So he just hit the
13 gas. He just said, well, I'll just catch her Monday
14 morning. It was Friday evening. She said, Where are you
15 going? I'll open up the school. It is not a problem.
16 We'll unload the UPS truck. He said, Ma'am, I understand
17 you got your weekend planned and stuff, you know. Let me
18 let you go. She said, No, you're already here. Let's get
19 it done.

20 He stopped by and give his condolences and I heard
21 that repeatedly over and over. She didn't only touch me
22 and Mikey's lives, but she touched everybody she came in
23 contact with.

24 Q Was she involved in any of the projects at the
25 school?

1 A Oh, anything and everything she could, yeah. She
2 didn't get paid for a lot of it. She volunteered.
3 Anything.

4 Q How about you as a husband? Did she drag you into
5 these things?

6 A Yeah. I got dragged into some of it, but
7 willingly [sic] because I wanted to be with her and my
8 son. So, yeah, we worked as a team.

9 Q Did you working too, for, the children?

10 A Yeah. We worked weekends. We would do flower
11 gardens. We pulled weeds. We paint things. We'd do
12 stuff custodians maybe wouldn't. She wanted to do and she
13 would get the okay and we'd go up there on our own time
14 and do it.

15 Q Tell us now generally this is the family: You, Mikey
16 and Christie; correct?

17 A Yes, sir.

18 Q That was your life, Mikey's life?

19 A That was it.

20 Q Now as that family, tell the jury how that family
21 kind of operated. You know, different families operate
22 differently. Other people got certain things they do.

23 A We would come home on Friday and we would take our
24 cellphones and throw them in the drawer and shut them.
25 Monday morning we'd take them back out. Sunday night

1 charge them up, turn them on Monday morning because our
2 family was home. That's how we operated.

3 Q What would you do together like on those weekends?

4 A Work. We were constantly trying to make our house
5 nicer and our yard and fence and swimming pool. You name
6 it. She loved flowers and gardening and that's basically
7 what we would do.

8 Q You tell me she could actually build a swimming pool?

9 A No, no, but she could build basically anything out of
10 wood.

11 Q Anything out of wood?

12 A She was a carpenter, yes. Yes, her daddy taught her.
13 Yes, sir.

14 Q Did you have anything to do with carpenter part?

15 A She did teach me some of it, yeah. I was the cut
16 man. She trusted me with that. She did all the
17 measuring, though.

18 Q What about -- okay. Enjoyments during these
19 weekends, these times together -- give us an idea what
20 y'all and Mikey enjoyed together with Christie, your wife.

21 A We loved to go to the beach.

22 Q Sir?

23 A We loved to go to beach. My father was from there.
24 We would go all the time. We just loved the beach. I
25 would go to the mountains. We'd go up there and hang out,

1 flea markets, Goodwills. Anything like that, we loved to
2 do. As long as we was together it really didn't matter,
3 you know. It is just whatever we could come up with, you
4 know. If we all agreed with it, we would do it, but most
5 of the time it would be a flea market or the beach or we
6 always planning something because we stayed busy a lot of
7 times. We wanted to reward ourselves with some type of
8 vacation.

9 Q Now you mentioned some of her carpenter traits. What
10 about any other traits we'll talk about regarding
11 household working -- house, that kind of stuff, stuff
12 around the residence.

13 A That she could do?

14 Q Sir?

15 A That she could do?

16 Q Yes, sir, and did do.

17 A Oh, anything. She helped me pour concrete. She made
18 jewelry. She could -- Like I said, she could build
19 anything. She built a green house, helped do vinyl
20 siding, actually built a pool house. We had some help,
21 but we hired one guy per day. The carpenter paid him \$100
22 a day and we'd help. The concrete man the same way. I
23 did the plumbing and we actually built a pool house -- me
24 and her and that boy right there. Sure did.

25 Q Other than the job and, obviously, sounds like an

1 extremely active person --

2 A Yes, sir.

3 Q -- but other than her regular job, did she do outside
4 jobs?

5 A Oh, yeah. We both did. Mike did, too. We did extra
6 work. We did side work whenever it came available. She
7 loved to stay busy. She -- never ever seen her take a nap
8 in twenty years of marriage. I never seen her lay in bed;
9 never see her say she's having a bad day; never heard her
10 say anything bad about anybody, never. If she didn't have
11 anything good to say, she wouldn't say anything at all.
12 She was just a very special person.

13 Q Michael, tell us about what kind of a personality --
14 we all -- the character, you know what I'm talking about?
15 We look at the smile.

16 A Yeah.

17 Q Tell us about that.

18 A She was very playful. She loved to tell jokes. She
19 loved to make people smile. She would love to cook. I
20 mean, she enjoyed any kind of crafts. She enjoyed
21 interacting with people, but when it came to the weekend
22 it was her family.

23 We had nobody come over. She had no friends that
24 came and spent the night or grandmother come and stay the
25 night. We didn't have none of that. It was our family.

1 It was me, him, and her. We was tightknit like that.

2 Like I said, we put our cellphones in the drawer and we
3 shut them and that's just how we was. Our family was
4 home.

5 Q You mentioned, obviously, Mikey.

6 A Yes, sir.

7 Q How was she as a mother with Mikey?

8 A Probably the best mother I ever seen. You know, I
9 was so much in shock that I just stood in the outskirts
10 and watched because I was just so impressed about how they
11 got along. I knew she was doing such a good job with him
12 that I just stayed back and just watched, because, I mean,
13 I knew she just -- she loved the boy beyond -- I have
14 never seen a woman loved her son like she loved Mikey.

15 Mikey was just -- He was going to go to school and
16 just be, you know, everything you have ever wanted to be
17 and she was going to back him 100 percent.

18 Q What about Mikey to her?

19 A The same; his best friend. He could tell her
20 anything. He could, basically, talk to her about
21 anything. It was best friends. I never seen them argue.
22 You know, argue a little bit about the room being cleaned
23 up and stuff like that, but never no back-talking. I
24 ain't never heard no cussing or any of that. They loved
25 each other very, very much.

1 Q How -- What was Christie's date of birth? Do you
2 know?

3 A November 5, '73.

4 MR. DETRICK: I hand up, Mr. Cox, Exhibit 111. Do
5 you have any objection to that?

6 MR. COX: Let me see it. No objection.

7 Q I hand up -- is this a wage statement of what she was
8 earning at JD Lever?

9 A Yes, sir.

10 Q That's Exhibit 111; is that correct?

11 A Yes. Besides the side work, of course. We did a lot
12 of side work.

13 Q All right, sir.

14 We offer that into evidence, Your Honor.

15 THE COURT: Without objection. Thank you.

16 (Whereupon, Plaintiff's Exhibit No. 111 was admitted
17 into evidence.)

18 Q Mr. Valenzuela, I know August 7, 2009 is a day you
19 will never forget.

20 A No, sir.

21 Q Now let's start at the beginning of that day. Are
22 you all right?

23 A It was a beautiful day. She woke me up with a bag of
24 Hardees and she had a big smile on her face. It was our
25 day off. We worked 4/10's. She was actually happy that

1 day. Well, she was always happy and playful or anything.
2 She was rattling that bag. I'm like, What are you doing?
3 It was a bribe. I had to fix her lawnmower, but she
4 brought me breakfast.

5 She was like, Mike, can you take me to Lowes? Let's
6 get a belt for my lawnmower. I got it stuck, whatever,
7 popped off or whatever. I was impressed because she was
8 just so much in a playful mood that morning. There was no
9 way I could tell her no anyway, you know. It was our day
10 off. Of course, I had all day, you know. So she went in
11 there and talked to Mike and she went back in there two or
12 three times in his room giggling with him and playing.
13 She was beside herself that day, you know. It was just a
14 very good day.

15 Decided to take the motorcycle -- her idea. Decided
16 to take the back road is where we'll be safe. I go slow
17 with her. I don't go never fast with my wife. I take the
18 back roads. I watch for everybody and everything.

19 Q Before we get into that --

20 A Yeah.

21 Q -- you mentioned y'all decided to go on the
22 motorcycle?

23 A Right.

24 Q Whose idea was that?

25 A That was Christie's idea.

1 Q Tell us about, first off, you own a motorcycle?

2 A Yes, sir. I own a few motorcycles.

3 Q You own two?

4 A I have a few.

5 Q A few?

6 A I might have five. Christie had one.

7 Q Christie had one?

8 A Yes, sir.

9 Q You know, everybody's got their own kind of things
10 they enjoy.

11 A Right.

12 Q Right?

13 A Yes, sir.

14 Q And now how about as far as motorcycles in y'all's
15 life? Tell us about that.

16 A We enjoyed doing that. That was something that we
17 could do that wasn't expensive; that we would fill up the
18 tank and take off and enjoy our lives and have some down
19 time and see the scenery and really did enjoy that. It
20 was something me and her could do together and so most of
21 my bikes were single-seaters. I've had double-seaters.

22 She pops up with this double seater, real nice Harley
23 Davidson that she wanted me to go look at. She told me
24 the price. I said, There is no way. \$3,000. I am not
25 even going to go look at it. There is no way. That bike

1 is worth 12. She said, Mike, I am telling you I can get
2 this bike. So, she makes the people sign a piece of paper
3 saying it is just bad gas in the motorcycle. Sure enough,
4 there is nothing wrong. We take it to the shop. The man
5 goes through it --- 100 percent sure enough there is not
6 nothing majorly wrong with the motorcycle.

7 She actually got the bike for the great deal -- loved
8 this motorcycle. I loved the motorcycle. I was jealous
9 of it. She did good. She did real good. She was going
10 to ride it, but for a while she was -- she just wants to
11 ride on back for a few months. Then she is going to start
12 back driving. I was going to go back to driving my
13 motorcycle, but when she bought this one I liked it so
14 much I ended up driving it most of the time.

15 Q What kind of experience in your lifetime do you have
16 with motorcycles?

17 A Since I was a kid. I remember riding on the back of
18 a 20 Indian and holding my feet up and it was an automatic
19 and I was hooked. I might have been five years old. I
20 rode everything with a motor on it ever since. I loved
21 motorcycles. Motorcycles don't kill people. People kill
22 people. I learned that. I have been riding my whole
23 life, like I said. I have never been in a situation where
24 I ever have been in a danger like I was put in that day.

25 Q Did -- What kind of a license did you have?

1 A I ride with a beginner's permit strictly. I don't
2 make a lot of money. I figured two dollars I pay for my
3 permit. I ride on it. My buddy says, Mike, it takes two
4 seconds. You can borrow my bike. I paid my two dollars.
5 I'm legal to drive in South Carolina. I don't leave this
6 state. So why not? You know, to me it works great for
7 me. I've had it since I was probably 17 maybe. I have
8 been renewing it; so I never really seen no sense in
9 getting my motorcycle license. It didn't make no sense to
10 me to get one.

11 Q Does it make any difference to Christie?

12 A No, none at all. As a matter of fact, she had the
13 same thing, I believe.

14 Q All right. So you were going to take her to get a
15 belt?

16 A Yes, sir.

17 Q For the lawnmower?

18 A Yes, sir.

19 Q What was your plans for the day?

20 A Just to put that on and let her continue to cut
21 grass. She was going to cut some grass that day.

22 Q Now, you said you went that way as back roads?

23 A Yes, sir.

24 Q And you thought it was safe?

25 A Yes, sir.

1 Q Correct?

2 A Yes, sir.

3 Q Had you been down that road before -- Redds Branch
4 Road?

5 A Maybe 10 years prior to that.

6 Q Did you have any idea about the operations of Sam
7 English Grading was doing in that area?

8 A I wish I did. Lord, I wish I did. I wish somebody
9 would have warned me. We wouldn't be here today.

10 Q All right. As far as the motorcycle you were
11 operating, what kind was it?

12 A It was a 2001 Softtail Heritage Harley Davidson.

13 Q And when you cranked it up, did the headlights come
14 on?

15 A Yes, sir.

16 Q And tell us about a little bit about the operation,
17 braking and acceleration and such on that motorcycle?

18 A Okay. The clutch is on the left front. Your right
19 front handle bar, that's your brake. Your right foot,
20 that's your brake. The left foot is your gears. That was
21 a fairly nice motorcycle, operated very good, handled
22 good; never had any trouble out of it whatsoever. I never
23 even give it that much gas because it wasn't mine. It
24 wasn't my motorcycle. I drove it very easy.

25 Q Mr. Valenzuela, I want you to tell the jury --

1 A Yes, sir.

2 Q -- you are leaving your house that morning on that
3 beautiful day and Christie on the back. Tell us what
4 happened.

5 A Well, we left going up the road and I could feel her
6 wave. She'll turn. I can feel the wind. I can actually
7 feel it. When she turns sideways I can pull a little pull
8 on the bike. She'll wave this way. She'll wave that way.
9 I nicknamed her friendly. She loved to wave and loved to
10 see everybody. That's exactly what she was doing.

11 We went down Number 1 Highway and got on down the
12 road. We got to the back roads there of New Bridge and I
13 went down towards Redds Branch Road on the cut through and
14 come out at Fiberglass and take the back way and be off
15 the main road, be safe, beautiful day, 12 o'clock maybe,
16 eleven. It was just nice. It was just fall in the air.
17 It couldn't have got no better. It was just a beautiful,
18 beautiful ride. It was really nice that day.

19 Q Tell us about what happened.

20 A All right. So I'm coming up down Redds Branch Road
21 and my wife Christie taps me on the side; so I know I
22 sense something is wrong. So I look. I look in my rear
23 view mirror. I look up ahead. I look everywhere. I let
24 off my throttle. I'm looking. I am trying to figure out
25 is it a deer, is it a dog? Something is going on. There

1 is a bunch of pine trees and they are just staggered all
2 across. That's where the piece of machinery -- the pan --
3 was at.

4 All I seen was a dust tornado coming off the front
5 tire that was spinning and in my mind I was like, What in
6 the world -- what -- I just couldn't -- I couldn't
7 comprehend that he was not going to stop. I couldn't.
8 Why won't he look, you know? So I laid in my back brake.
9 I started skidding. We were coming -- we were going to
10 hit right in the intersection. I mean, just like if you
11 shot two bullets at each other. We're coming just like
12 that.

13 I'm looking at him, begging him, please acknowledge
14 me, man. Just hit the brakes please and I'll hold
15 upright, you know, but I couldn't. He kept coming; never
16 did see me. I threw the bike down. I slid it out hoping
17 we could stay behind it. The bike could crash into him.
18 We could survive it -- because there was no way in the
19 world we was going to miss him.

20 He never seen me. The only reason he applied his
21 brakes is because I done wrecked and he missed the wreck
22 coming down the road. He paralleled with the wreck and
23 continued the wreck and followed the wreck. It was within
24 5 or 10 feet within each other after the wreck. Still
25 about got it.

1 Q Okay. So when you actually saw him, what was he
2 doing?

3 A He was coming just -- When the guy said he run 40,
4 believe him. He said he was empty. He was empty; right?
5 That's full speed. I am going to say 30 at least. He was
6 moving.

7 Q That's what it felt like in your mind?

8 A In my mind at least 25 to 30 miles an hour because I
9 couldn't understand how he could even stop even if he
10 started to. Even if he started to jam on the brakes there
11 is no way. He was going to keep skidding. He never would
12 hit the brakes. He never would look up the road. I was
13 like I got to lay this bike down and that's what I did. I
14 skidded as long as I could to see if he would see me, you
15 know. I stayed upright, but right there at the last I
16 don't know how many feet it was he never would acknowledge
17 me; so I just threw the motorcycle at him, laid it down
18 hoping that we would stay behind it and we would survive
19 it. He would get caught up in the motorcycle himself.
20 That was my plan.

21 Q What speed were you going before you had to slam on
22 brakes?

23 A Probably 40, 45 because when she tapped me I let off
24 the gas then. I knew something was going on. I just
25 didn't know what. I didn't have no clue what was going

1 on. I didn't know if a bug flew in her eye or something,
2 but she alerted me something was definitely wrong. She
3 was scared. She couldn't talk, but when I seen it I
4 realized why. I couldn't talk.

5 Man, I'll tell you something. I have a nightmare
6 every night about this piece of machinery. I have a panic
7 attack, man. It wakes me up. I am in the same wreck
8 every night because this fellow over here decides he is
9 not going to stop at a stop sign. I no longer have a
10 wife. A damn stop sign, man. A stop sign. They're
11 everywhere. I stop at my mailbox, man. Every day.

12 Q Describe for the jury the type braking you did when
13 you saw that that pan was coming out in front of you.

14 A I just stayed on the back brake because what I was
15 hoping he was going to do is when we started to hit brakes
16 maybe he could get stopped that I could continue my path
17 is what I was hoping. I wasn't going to lay the bike
18 down. That was not my intention until I realized he is
19 not going to stop. That's when I had no other choice but
20 to just completely slide her out, to throw it straight at
21 him -- come off the bike, let the bike go and hopefully we
22 would be just fine.

23 Q As far as what you saw, you saw that operator coming
24 and when you first saw him about what distance was he from
25 the road?

1 A I'm going to say probably within 20 to 30 feet.

2 Q And he was still going that speed; correct?

3 A Or speeding up as he said himself, Paul, yes.

4 Q Is there any -- is there any way that he could have
5 stopped the speed he was going to where you saw him first
6 without entering the intersection by braking?

7 A No, sir. No, sir. No, sir. He didn't cut them
8 wheels, no, sir. The only thing that saved -- no, sir.
9 No, sir.

10 Q Now we do know afterwards that the pan did come to
11 the stop like this; correct?

12 A Yes, sir.

13 Q Right?

14 A Yes, sir.

15 Q Did you -- do you remember -- Let me ask you, this
16 period of time when you saw him at that speed that close
17 to the intersection, can you estimate how much time you
18 had to react?

19 A One to two seconds. It gave me no choice whatsoever.
20 None. Lord forbid, I wish it was a sign, a flagman or
21 anything, any kind of warning, or if he had acknowledged
22 me because once I hit my back brake and I was skidding if
23 he would have acknowledged me and started his skid then I
24 would have stayed upright. He never did even begin to
25 brake until I had done went down. Then he decided to miss

1 the whole accident. You see what I am saying? You're
2 coming down the road. That's why he was jackknifed. Once
3 he jackknives, he went along with us parallel.

4 Q You've heard mention of a fellow driving a Waste
5 Management vehicle; correct?

6 A Yes, sir.

7 Q I think it is a Mr. Pruitt who is in this courtroom
8 here. You probably don't know him, but that's him.

9 A Okay.

10 Q Did you see that Waste Management truck?

11 A Man, all I seen was yellow and it was to my right and
12 that's what I focused on was that -- it is still to today
13 the only way I can explain it is like a scary movie where
14 the thing jumps out on you. That was it. No, I didn't
15 see the truck. All I seen was this yellow thing. That's
16 all I seen.

17 Q Mr. Tindel -- a large man in the back there --

18 A Yes, sir.

19 Q -- he was supposedly sitting on a tractor on the left
20 -- on your left?

21 THE COURT: You can sit down now.

22 Q Did you ever see him?

23 A If he was the man throwing up on the side of the
24 road, yes.

25 AUDIENCE MEMBER: Say what now?

1 THE WITNESS: Are you the man---

2 MR. DETRICK: Whoa. He can't---

3 THE COURT: Hold on. Just answer the question.

4 Q Did you see him?

5 A I remember a big fellow. He was throwing up.

6 Q Did you actually see the tractor as you were
7 approaching the intersection?

8 A I never ever seen a tractor.

9 Q Now -- all right. Let's back up a little bit. When
10 -- all right. You laid it down. What happened to you and
11 Christie?

12 A See, I do not know -- When I laid the motorcycle
13 down, it happened so fast. I went down like this. I
14 never did see Christie at all. I was on my back.
15 Everything had stopped and I could hear that piece of
16 machinery running and it was still running and I realized
17 then get to your feet and check on her fast and that's
18 what I did. I jumped up and I went straight for her to
19 check on her and that's what I did.

20 Q Tell us about what you did.

21 A Exactly what I did?

22 Q Yes, sir.

23 A I did CPR until I no longer my arms would work. I
24 begged for somebody on the scene to please do her chest,
25 do her mouth. I begged. I pleaded. Nobody helped.

1 Q Mr. Valenzuela -- Mr. -- Michael, if you -- you've
2 heard testimony. You certainly didn't know before this
3 day that Sam English Grading Company agreed to put some
4 warning signs up there.

5 A Yes, sir.

6 Q Did you know -- do you know what we're talking about
7 with warning signs?

8 A Yes, sir.

9 Q Huh?

10 A Yes, sir.

11 Q As you approached that day did you see a sign -- any
12 kind of a warning sign --

13 A No, sir.

14 Q -- that would warn you that Sam English Grading
15 Company was crossing that intersection with intending to
16 not stop at the stop sign?

17 A No, sir.

18 Q Any of them out there?

19 A No signs. Nothing. I had no warning at all, man,
20 they was doing this.

21 Q If you had seen something -- let's say one of the
22 signs was supposed to be a thousand feet away according to
23 this contract Mr. English entered into with Owens Corning
24 which said they required signs for safety. If you had
25 seen that thousand feet away equipment crossing the road

1 or work ahead or whatever, what would you have done?

2 A I would have slowed down. The orange hat thing -- we
3 wore that to let everybody know we're in the woods. That
4 orange hat is for a reason. If I would have seen that I
5 would have knowed somebody was there. There was no
6 orange. There was no signs. There was no warning. There
7 was no care for our lives at all after this was over.

8 Q Did you see a sign that said flagman ahead?

9 A No, sir. There was no signs at all. None. Now I
10 did see some afterwards.

11 Q Let's don't go into that.

12 MR. COX: Objection, Your Honor, to that.

13 THE COURT: Disregard anything afterwards, ladies and
14 gentlemen.

15 Q Just answer the question. As far as you heard Mr. --
16 you were in the courtroom when Mr. Lewis testified;
17 correct?

18 A Yes, sir.

19 Q And did you see anyone out there in the road with a
20 flag --

21 A No, sir.

22 Q -- flagging and trying to stop you?

23 A No, sir. There was nobody nowhere. All I seen was
24 that yellow piece of equipment coming from my right.

25 Q Was there any flagmen at all?

1 A No, sir.

2 Q If you had seen a flagman, what would you have done?

3 A I would have stopped. I would have slowed down. I
4 would have done preventative measures where this wouldn't
5 have happened. They gave me no warning whatsoever or
6 anybody else for that matter. It ain't just me.

7 Q Mr. Valenzuela, on that day August 7, 2009 what could
8 Sam English Grading Company have done to prevent your wife
9 dying?

10 A Two things: Stopped at the stop sign or put the
11 flagman in the road. If he flagged the traffic to stop,
12 y'all can run that stop sign all y'all want and y'all
13 bought another piece of equipment and put it on the other
14 side of the road---

15 THE COURT: All right. Address---

16 Q Just to me, not him. How about if they had
17 approached that stop sign -- you've approached a stop
18 sign; correct?

19 A Yes.

20 Q How do you approach a stop sign?

21 A I stop before I get to it.

22 Q Do you approach it in a slow, safe manner?

23 A Yes, sir.

24 Q Did you stop at the stop sign?

25 A You're supposed to stop a little bit before.

1 Q A little bit before? Have you ever seen anybody stop
2 on top of the stop sign as Mr. Lewis did?

3 A No, sir. I have never seen that before.

4 Q All right. Mr. -- Michael, what happened now? Did
5 the ambulance come?

6 A Yes, sir.

7 Q And did they take Christie away?

8 A Yes, sir.

9 Q And did you go in same ambulance or did you go in a
10 different---

11 A No, they put me on a board.

12 MR. COX: Objection.

13 THE COURT: What is the objection?

14 MR. COX: Your Honor, can we approach?

15 THE COURT: He is just saying where he went into an
16 ambulance. Don't go into your injuries. This is not your
17 case. It is your wife's case.

18 THE WITNESS: They just put me on a board. They put
19 me on a board. The truck you're talking about, Paul,
20 that's where they put me. They put me up against that
21 damn truck---

22 THE COURT: Let's watch your language, please.

23 THE WITNESS: I'm sorry. That's what scared me. I
24 was tied to that board and the vibration of that big waste
25 truck, the thumping the same way that piece of machinery

1 was, I was scared he was going to back over me. It was
2 right at his tires. They was trying to keep me out of the
3 sun. I understand they was trying to help me, but, man, I
4 was scared because I was strapped -- couldn't move. I
5 asked them to slide me away from that big piece of
6 machinery, please.

7 Q All right. Michael, they took Christie away and you
8 were also in the hospital; correct?

9 A Yes, sir.

10 Q Were you able to see your wife before she died?

11 A No, sir.

12 Q What do you think about that?

13 A I don't like it. She would have helped anybody
14 there. She would have helped anybody there. Anyone. She
15 didn't care. She wasn't prejudiced. Money didn't matter.
16 She would have helped anybody there.

17 Q She died in the hospital?

18 A Yes, sir.

19 Q And you were also -- Were you in surgery when she
20 died or do you know?

21 A I believe I was headed for surgery. I'm not for
22 sure. They wouldn't tell me, Paul.

23 Q After you -- How did you learn of her death?

24 A A little ol' lady come in there and held my hand, a
25 nurse, very sweet little ol' lady -- I believe the same

1 one told my son. She held my hand for about five seconds.
2 I did appreciate that. That's more sympathy than I've
3 had.

4 Q Did you -- When did you have the funeral?

5 A It was maybe a week later.

6 Q I know it is a part of life to talk about funerals,
7 to go to funerals. Can you tell us about her funeral?

8 A Yeah. It was the most amazing thing I ever seen.
9 There was 750 people. Every one of them had a story to
10 tell me about Christie, about what she did for them, about
11 how she might have helped one of their kids or maybe she
12 helped one of them or helped one of the family members or
13 every one of them whispered in my ear just something
14 little that Christie did for them is the reason they
15 wanted to come there, you know, and give their respects.

16 Q Did that help you in your grieving process?

17 A Yes, sir, because I was busted up pretty good. I
18 still am and I had to shake every one of them hands. It
19 was 750 hands, Paul. I did it. I did it very proudly.

20 MR. DETRICK: Do you object to Exhibits 113, the
21 funeral bill; 112, medicals; and 114, certificate of
22 appointment?

23 MR. COX: No objection.

24 Q Is this the funeral bill, 113?

25 A Yes, sir.

1 MR. DETRICK: We offer that into evidence, Your
2 Honor.

3 THE COURT: Without objection.

4 Q Exhibit 112 are these the medical expenses Christie
5 occurred during her death?

6 A Yes, sir.

7 MR. DETRICK: We offer that into evidence as 112,
8 Your Honor.

9 And you have gotten -- I hand up Exhibit 114 which
10 appointed Paige Weeks Johnson as the personal
11 representative of her estate?

12 A Yes, sir.

13 Q Is she helping you and Mikey through this?

14 A Yes, sir. She is.

15 MR. DETRICK: We offer that into evidence, Your
16 Honor.

17 THE COURT: All of those without objection.

18 (Whereupon, Plaintiff's Exhibit Nos. 112 - 114 were
19 admitted into evidence.)

20 Q Michael, how has it been?

21 A It's been tough; the biggest thing I ever went
22 through in my life. Watching my son has been harder.
23 He's just a kid.

24 Q How did Mikey go forward? How has it affected him?
25 How has he changed?

1 A Mike was the most popular kid in school and the
2 teacher told him his mama dying was no reason for him not
3 to get his grades done; so he got up and walked out of
4 school. She said it was no excuse. No sympathy
5 whatsoever for my son.

6 What was he like before? Is that what you asked me,
7 Paul? He was great. Everybody loved him and Mike just --
8 most popular kid I have ever seen in my life, to be honest
9 with you. He just soared at everything he ever did just
10 like his mom. I mean, if he was going to do it, he was
11 going to go all out: Football, sports, whatever. He
12 stuck it out.

13 He was very in control of his life; never seen him
14 sad, cry, upset, or anything like that. He was always
15 happy. He was a kid, you know -- video games and, you
16 know, ice cream and then this happened, you know, and it's
17 been hard. It's been very, very hard.

18 Q How has he changed?

19 A He is having health problems. I mean, he's
20 emotionally a wreck. He don't know where to go for
21 guidance. He has me, but she was the nurturer, you know.
22 She nurtured both of us. She was like my mom, too. I
23 mean, that's just the way it was, but it's affected Mike
24 to the point where I don't know if he can be social again
25 because if somebody calls him a name or says something

1 about his mom, you know, he don't know how to react to it.

2 I am just getting to where I can handle it. It's
3 been three years of people picking and playing and, you
4 know, tell us about your wreck, Mike. You know, I don't
5 want to talk about that. You know, Mike hasn't got there
6 yet. He is still working.

7 I'll be 44 years old and it is hard on me and I can
8 imagine how it is on him, but I'm working with him the
9 best I can. I am showing him all the support and love I
10 possibly can. I just hope he is going to be all right.

11 Q Michael, has anyone from Chris English Grading
12 Company come to you and expressed any sorrow?

13 A No, sir.

14 Q Expressed anything?

15 A No.

16 Q How do you -- you've heard in this courtroom where
17 you're being blamed by Chris English for the death of your
18 wife.

19 A Yes, sir.

20 Q How do you feel about that?

21 A Yes, sir.

22 Q How do you feel about that?

23 A It makes me angry, but then, again, it shows me how
24 unjust this world can be.

25 MR. DETRICK: That's all the questions I have at this

1 time. Thank you.

2 THE COURT: Cross-examine? Anything?

3 MR. COX: Yes, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. COX:

6 Q Mr. Valenzuela, do you need a break?

7 A No.

8 THE COURT: No, he is fine.

9 Q I know this is a difficult situation, sir. Just to
10 go over -- This shouldn't take too long, Mr. Valenzuela.
11 Now, you would not -- I just want to be clear. You had
12 not traveled Redds Branch Road in about I believe you
13 said -- in your deposition said 15 years, but 10 years, 10
14 or 15 years, something like that?

15 A Yes, sir.

16 Q Is that right?

17 A Yes, sir.

18 Q Okay. Well, but you had traveled it before that
19 time? Was it a road you traveled frequently before?

20 A Maybe traveled it three times within 15 years.

21 Q Okay. Thank you, sir. What did you observe about --
22 since it's been a while, what did you observe about Redds
23 Branch Road when you were traveling it on this day as far
24 as the setting--

25 A On which day?

- 1 Q Excuse me?
- 2 A Which day?
- 3 Q On august 7, 2009.
- 4 A What did I notice about the road?
- 5 Q About the road before you got to -- before you got
- 6 around the turn to where the accident occurred.
- 7 A It was a beautiful day.
- 8 Q It was a clear, dry day. Did you notice -- You had
- 9 traveled a good distance on Redds Branch Road before you
- 10 got to this area, had you not?
- 11 A It's not that far, no, sir.
- 12 Q Okay. But a couple of miles, two or three miles?
- 13 A Maybe so.
- 14 Q Okay. And would you agree with me there is a lot of
- 15 driveways, a lot of houses, churches? That's the type of
- 16 road that this is?
- 17 A It's more rural. It is more rural. It's not like a
- 18 subdivision or nothing.
- 19 Q Exactly. But there is a spattering of houses and
- 20 driveways?
- 21 A And lots of land in between them.
- 22 Q And lots of land in between them?
- 23 A Yes, sir.
- 24 Q And you observed that?
- 25 A Yeah.

1 Q What did you observe on approach to when you came out
2 of the turn? What did you -- First, let me ask you as you
3 come out of that turn coming to the area where this
4 accident happened that's a pretty good straightaway? How
5 would you describe that?

6 A I don't understand what you're getting at. Can you
7 rephrase the question?

8 Q Yes, sir.

9 A I don't understand.

10 Q Would you agree with me that when you come out of the
11 turn heading to the crossing where this accident happened
12 that it's a -- What is it, three quarters of a mile
13 straightaway to the stop sign?

14 A No, sir. I wouldn't agree with that.

15 Q How far would you say it is?

16 A I haven't measured it.

17 Q Okay.

18 A I had the wreck. No, I don't know how far it is.

19 Q Okay. Now when you come out of the turn it is a
20 straight shot and you can see the crossing as you come out
21 of the turn where this accident occurred. There is
22 nothing blocking the view of the crossing; isn't that
23 correct?

24 A Sir, I haven't been back down the road.

25 Q You have not been back down the road?

1 A I don't go down that road.

2 Q And so---

3 A I will never go back down the road.

4 Q So your memory of that stretch is not that good
5 because you've not been back?

6 A No. I mean, that day was a beautiful day --
7 beautiful, clear day; beautiful; couldn't have gotten any
8 better. Everything was perfect.

9 Q As you approached the crossing did you see a Waste
10 Management truck coming in your direction to your left?

11 A All I seen was that yellow thing blowing out on me.
12 I never seen the -- I kept my eyes focused on the right
13 side if he is going to see me.

14 Q Okay.

15 A I just was wanting him to at least acknowledge me and
16 start to brake. Please start to brake. I was just
17 begging him.

18 Q Were you not looking at the approaching traffic to
19 see the Waste Management truck?

20 A No, because he was going to hit us right dead in the
21 intersection. It was, like I said, 30 feet from the
22 intersection. There was going to be a wreck there.

23 Q Yes, sir. I understand your testimony about the
24 scraper or the pan. I'm asking you about the Waste
25 Management truck that was approaching you on your left.

1 Did you not observe -- did you not look over to see the
2 Waste Management truck approaching on your left?

3 A All I seen was that yellow piece of machinery blowing
4 out of the right-hand side of the road coming out at such
5 a violent rate of speed he had all of my attention.

6 Q Okay. And that was occurring on the right-hand side
7 of the road; correct?

8 A Yes.

9 Q Okay. So you didn't observe anything in your lane of
10 travel or approaching you in the left-hand lane coming out
11 of that turn?

12 A All I seen was yellow coming out of the woods, okay,
13 at a high rate of speed that wasn't going to stop. I had
14 no reason to look to my left. This guy was fixing to kill
15 me and my wife. I had no other reason to look to the left
16 or the right, sir.

17 Q But as you came out of that turn there was a time
18 period as you approached the crossing where the yellow --
19 where you couldn't have seen the yellow equipment because
20 it was behind the trees; is that right?

21 A Exactly.

22 Q I'm asking what you observed before you saw---

23 A Pine trees, lots of pines, tons of pines. It looked
24 like they were raising them to harvest maybe. They
25 cleaned out in between them, but, yet, there were lots of

1 them.

2 Q Yes, sir. So you didn't observe anything in your
3 lane of travel or the left-hand lane approaching?

4 A All I seen---

5 THE COURT: Mr. Cox, he's answered that about five
6 times. Please move along.

7 MR. COX: Thank you, Your Honor.

8 Did you see a tractor -- a blue tractor on the
9 left-hand side of the road on the other side of the
10 crossing where the scraper---

11 THE WITNESS: No, sir.

12 Q No?

13 A No, sir.

14 Q Did you see the actual driveway that crossed Redds
15 Branch Road where the scraper was traveling --

16 A Yes.

17 Q -- as you came out of the turn?

18 A I am going back to the same question. All I seen was
19 yellow, okay?

20 Q Okay.

21 A That's all I seen, but now he wasn't going to stop.
22 That's all I know.

23 Q Now, and as you came out of the turn -- You remember
24 I took your deposition; correct?

25 A Right.

1 Q And as you came out of the turn approaching this
2 yellow machine coming from your right you were traveling
3 at a speed you testified of 40 to 45 miles per hour; is
4 that correct?

5 A Yes, sir.

6 Q And the speed limit on that -- on that stretch of
7 road was what?

8 A Forty-five.

9 Q Forty-five. Now, and as you're driving 40 to
10 45 miles per hour your -- you come out of the curve and
11 your wife taps you; is that correct?

12 A Yes, sir.

13 Q Okay. And I believe you testified at that point you
14 know something was wrong immediately, is that right, when
15 she's tapping you?

16 A I knew either a bug had bit her or something had flew
17 in her eye or we was having a flat tire. I knew something
18 was going on; so I let off the throttle and I scanned the
19 area and that's when I seen the yellow just coming full
20 speed wide open. The front tire had a tornado effect like
21 a dirt tornado that was coming off of it. You couldn't
22 even see the tire --

23 Q Yes, sir.

24 A -- for the dust that was spinning in the tornado
25 effect. That's how fast it was going.

1 Q So as she tapped you on the side you let off the
2 throttle and you -- then you hit your brake?

3 A Yes, sir.

4 Q What brakes did you hit?

5 A I hit my back brake. I started skidding.

6 Q Excuse me. I'm sorry. I think you may have
7 misunderstood my question. As she taps you you indicated
8 you knew something was wrong and you let off the throttle?

9 A Yes, sir.

10 Q And you started pulling the brakes?

11 A No, sir. I hit the back brake and I started skidding
12 because I was going to continue my travel. If he would
13 stop I had no reason -- if he didn't pull out in the road
14 on me I had no reason, all right, but he would acknowledge
15 me; so I was am skidding, skidding. The back tire is
16 smoking, okay, and I don't know why in the world he can't
17 see me. I'm like dude, dude, dude, dude, dude, and then
18 right at the last -- I don't know how many feet we're
19 apart I just let the bike go right at him. I tried to
20 come off behind it and not get tangled up in it and give
21 it to him.

22 Q Okay. I just want to be clear, sir. Your testimony
23 was that your wife tapped you on the side and then you
24 thought this may be a deer, this may be a dog, and you --
25 before you started your braking, before you saw the

1 scraper you let off the throttle and you let off -- you
2 pulled the front brake and you --

3 A No, sir.

4 Q -- tapped the rear brake?

5 A No, sir. I don't know where you got that from.

6 Q And you look in your mirrors. You look ahead and you
7 didn't see anything.

8 A I seen yellow. When she tapped me I seen yellow.

9 Okay?

10 Q But---

11 A The same time she tapped me I scanned everything.
12 There it come through the pines full speed and, like I
13 said, it was -- there was nothing for us to do. He left
14 us no choice whatsoever and I reacted the best way I could
15 is not hit it.

16 Q Sir, do you remember me taking your deposition?

17 A Yes.

18 Q I'll reference you -- I beg the court's indulgence,
19 Your Honor.

20 Sir, I took your deposition on December 7, 2010, a
21 few months after the accident, and I asked you, I said,
22 Tell me, sir, if you would what you---

23 MR. DETRICK: Excuse me. What page?

24 MR. COX: I'm on page 31 of the deposition.

25 THE COURT: Line, please.

1 MR. COX: Page 31, line 23.

2 THE COURT: All right. What was your question that
3 you asked at that time?

4 MR. COX: Line 21 is where I start my question, Your
5 Honor.

6 And Mr. Valenzuela. Would it help if I showed you a
7 copy?

8 THE COURT: Well, just read the question --

9 MR. COX: Okay.

10 THE COURT: -- and read his answer and ask him if
11 that's what he answered.

12 Q Sir, I asked you, Tell me, sir, if you would what you
13 recall happening leading up to and then the accident, and
14 your answer was, We was going about 40 to 45 miles an
15 hour, come around the curve, and there's an open shot all
16 the way to Fiberglass and we were riding and my wife taps
17 me. When she tapped me on the -- I immediately let off
18 the gas, started pulling the brake, front brake, back
19 brake, looked to my mirrors, look ahead. I didn't see
20 anything so I thought it was a dog or a deer. I just kept
21 scanning and looking. And then you said, And then about
22 that time the guy comes out like a blistering volcano.

23 Do you recall that testimony?

24 A I had one second, okay? One to two seconds. Maybe
25 so. I may have touched the front brake; yea.

1 THE COURT: No, the question is---

2 THE WITNESS: Is that the question?

3 THE COURT: Hold on. Hold on. The question is do
4 you recall saying that in your deposition?

5 THE WITNESS: Oh, do I recall saying it?

6 THE COURT: Yeah, what he just read.

7 THE WITNESS: No, sir, I don't.

8 THE COURT: That's fine.

9 THE WITNESS: I don't recall saying that, no.

10 Q Do you dispute saying that?

11 A I don't recall saying it, sir. It's been three
12 years.

13 Q I understand. Does that refresh your memory as to
14 your wife -- I am just trying to get the timing of this.
15 Your wife tapped you on the side and you let off the gas,
16 pulled the front brake and the back brake, looked in your
17 mirrors and looked ahead and didn't see anything at that
18 time? I realize it happened fast, but at that time you
19 hadn't seen anything after she's tapped---

20 A No. Time she tapped me -- that's why she tapped me.
21 It was already approaching us. It was already within our
22 vision. It was there. Like I said, she couldn't speak.
23 She just couldn't get the words out. She was just
24 terrified.

25 Q So while you thought it was a dog or deer and you

1 kept scanning and looking you were already seeing the
2 scraper?

3 A As I went to scan, okay -- after she tapped me as
4 soon as I did my scan there he is. That's how quick it
5 was.

6 Q Okay.

7 A So then my full attention was on him and what he was
8 going to do which he told you he was going to keep coming.

9 Q Now, and I believe you testified earlier you had one
10 to two seconds to react; is that right?

11 A I believe so, yes.

12 Q And that your decision was to throw the bike down?

13 A After he would not acknowledge me or my wife or stop
14 and I come to the slow as speed as I could get her down
15 to, yes, sir, I laid her down.

16 Q Now you were operating with the beginner's permit.
17 You were asked that question?

18 A Yes, sir.

19 Q And you indicated -- correct me if I am wrong -- that
20 a friend told you it only takes two seconds. What were
21 you referring to that he told you it only takes two
22 seconds?

23 A He likes to pick at me. I won't go do test. He has
24 one leg. He is like, Mike, there is nothing to it -- from
25 a motorcycle accident. I said, I know that. I enjoy my

1 privileges of being able to ride with a permit. It is two
2 dollars. I enjoy it. He is like, Mike, you can borrow my
3 bike -- two seconds. It is just cones. You got one
4 little hump and I said, I am not going to do it.

5 By my rights as a citizen I don't have to have it in
6 the State of South Carolina. I have been riding since I
7 was 17, 16 years old. I always go renew them. That's
8 what ride off of. It is a beginner's permit. I always
9 have.

10 Q And this was a new Harley or new to y'all -- it was
11 used, but new-to-y'all Harley Davidson?

12 A What do you mean by that?

13 Q What I mean is---

14 A What do you mean by that?

15 Q What I mean is you purchased it---

16 A I didn't purchase it.

17 Q Your wife -- the Harley was an older model, but she
18 had purchased it so to her and her possession---

19 A It is an older model to you, to me?

20 Q Was it---

21 THE COURT: All right. Hold on.

22 THE WITNESS: I don't understand the question.

23 THE COURT: Hold on. Hold on. Let him ask the
24 question whatever he wants to ask. As long as it's
25 relevant he can ask it.

1 THE WITNESS: Okay.

2 THE COURT: Don't argue with him. Just answer it.

3 THE WITNESS: I am not trying to argue.

4 THE COURT: I know you're not. Let's move along. He
5 is simply saying that y'all had just gotten it, I think is
6 what he's saying, recently.

7 MR. COX: She had just purchased it recently I
8 believe was the testimony?

9 THE COURT: When did she purchase it?

10 THE WITNESS: Six to eight months maybe before the
11 accident.

12 Q And what year was the motorcycle?

13 A It was an '01.

14 Q Okay. Now, and you indicated she just wanted to ride
15 on the back of it?

16 A For the time being.

17 Q Okay. And that was during this time period?

18 A Yeah. She was going to eventually drive again. She
19 always did ride, but she wanted to do some waving off the
20 back and socializing and not have to worry about all of
21 the responsibilities of controlling the motorcycle.

22 Q Okay. Did she have a lot of experience driving --
23 Had she driven motorcycles?

24 A Oh, yeah. Here and there, yeah. Me and her always
25 rode.

1 Q Now tell me what you did in your -- you applied your
2 -- when you saw the accident, you applied your back brake;
3 is that right? I mean when you saw the scraper you
4 applied your back brake?

5 A I let off the throttle as soon as she tapped me,
6 okay? I seen the yellow scraper coming out. I hit the
7 back break, okay, hoping he would see me. That back brake
8 was smoking and skidding. I was hoping that would, you
9 know -- he could see me and decide to stop. He didn't. I
10 don't know why. He was watching that other guy or
11 whoever. He was just straight looking straight across. I
12 don't know what had his attention. It wasn't me.

13 So, like two bullets hitting, I counted it down.
14 One, two, and I just laid her straight on. I slowed her
15 down as much as I could and I just laid it down.

16 Q Do you -- would you agree with me that you had slowed
17 down about five -- three to four to five miles per hour as
18 you testified in your deposition prior to seeing the
19 yellow scraper?

20 A I'm not an expert on that, sir.

21 Q But you would agree before you saw the scraper as
22 she's tapping you you let off the throttle?

23 A I let off the throttle. I don't know exactly how
24 slow that would have slowed it down.

25 Q Okay.

1 A Yes, I did let off the throttle.

2 Q And you first started pulling the brakes gently
3 before you saw the scraper?

4 A No, sir. I didn't pull the brake.

5 Q Okay. You don't know how much the motorcycle slowed
6 down as you let off the throttle before you saw the
7 scraper?

8 A No, sir.

9 Q But it would have slowed down to some extent?

10 A Yes, sir.

11 Q Now, did you -- What brakes -- Did you apply your
12 front brake? Rear brake? How did you brake?

13 MR. DETRICK: Your Honor, he has---

14 THE COURT: He has. He said he applied his rear
15 brake. Did you ever apply your front brakes?

16 THE WITNESS: No, sir.

17 Q So you just applied the rear brake?

18 A Yes, sir.

19 Q And then you laid -- made the decision to lay the
20 bike down?

21 A I'll tell you again. I skidded as long as I could.
22 If he would have acknowledged me and started to brake I
23 had no reason to go down, but once I seen he was coming on
24 and he never did tap his brakes at all. Once I got down
25 as slow as I could get right before we got to him I slid

1 it out from underneath us, yes.

2 Q And you had jammed on that brake and left a skid
3 mark; is that right?

4 A Yeah, but I stayed straight. It wasn't like I
5 skidded off the road or anything.

6 Q I understand. Do you recall speaking to the
7 investigating officers after the accident? Do you recall
8 being interviewed by anybody?

9 A No, sir. I was in the trauma unit.

10 Q Do you recall after you'd gotten out of the hospital?

11 A They didn't really want too much information from me
12 whatsoever.

13 Q Do you recall having your audio recording taken by
14 the MAIT Team days after the accident?

15 A I was still delirious from the wreck. I was numb
16 from losing my wife. I don't even remember even giving
17 it.

18 Q So do you recall telling the officer, the MAIT Team
19 Officer Coffin, that I know I contributed to this
20 collision?

21 A No, sir. I would never say that.

22 Q You would never say that?

23 A No, sir. No, sir. No, sir. But -- I don't know.

24 Q Did you -- When you got your beginner's permit did
25 you study to take that test?

1 A Yes, sir.

2 MR. COX: I beg the court's indulgence, Your Honor.

3 Did you study the South Carolina Driver's Manual?

4 THE WITNESS: Yes.

5 Q Do you under -- I refer to you -- Does this appear to
6 be---

7 MR. DETRICK: Your Honor---

8 MR. COX: Can I approach the witness, Your Honor?

9 MR. DETRICK: Your Honor, is that subject to your
10 ruling about the questions?

11 THE COURT: I assume he is going to ask about the
12 brakes.

13 MR. COX: Yes.

14 MR. DETRICK: Okay. Nevermind. I'm sorry.

15 Q Is this similar to the manual you studied to take to
16 get the beginner's permit?

17 A Yes.

18 Q And you got the beginner's permit?

19 A Yes.

20 Q I would refer you to page 133 and ask you to read
21 that short paragraph --

22 A Where at?

23 Q -- what the DMV -- what the DMV material indicates
24 with regard to braking.

25 A Yes, I read this before. This is braking. They want

1 you to use your front, your back brake, and your motor
2 under circumstances where it is valid. Okay? When
3 something is coming out on you like this, there is no way
4 in the world you're going to be able to pull that front
5 brake and back brake and gear down with your motor in one
6 second and still survive the wreck. Okay?

7 This is for -- this is for just normal stopping for
8 any stop sign, okay? Not when you have the right-of-way,
9 you're going 45 miles an hour and a piece of equipment
10 runs a stop sign.

11 Q But my question for you -- you studied that material.
12 Will you read that short paragraph with regards to braking
13 for the record, please, sir, on page 133?

14 A Yes, sir. 133?

15 Q Yes, sir.

16 A Use both brakes every time you slow down for a stop.
17 Using both brakes for even normal stops permit you to
18 develop proper habits and skills for using both brakes
19 properly in an emergency. Squeeze the front brake, press
20 down on the rear brake. Grabbing the front brake, jamming
21 down on the rear brake can cause brakes to lock resulting
22 in control problems.

23 Q Okay. And it says to use both brakes every time you
24 slow or stop and you didn't do that, did you?

25 A Excuse me?

1 Q On August 7, 2009 you didn't use both brakes to slow
2 or stop for this incident, did you?

3 A I had a wreck.

4 THE COURT: All right. Objection, asked and
5 answered?

6 MR. DETRICK: Yes, sir.

7 THE COURT: Sustained. Move to something else. He's
8 answered that. I think it's clear.

9 Q Now, and the manual indicates that grabbing on the
10 front brake or jamming down on the rear can cause the
11 brakes to lock resulting in control problems. Did you jam
12 down on the rear and have control problems in this
13 accident?

14 A No control problems at all. I stayed straight during
15 my skid. Like I said, if he would have stopped I would
16 have continued to went on about my business. I had no
17 problem this way. I was just skidding straight, but when
18 he would not stop I had no other choice.

19 Q And you jammed on the rear brake?

20 A The brake had been on.

21 Q Yes, you had jammed on the rear brake?

22 A I put the brake on right at the beginning because I
23 knew for sure I wasn't going to win. There was no way I
24 was going to win against that piece of equipment.

25 Q And are you aware that from the start of your skid

1 mark to the middle of the intersection was 168 feet?

2 A No. I wasn't aware of that.

3 Q You're not aware of the distance? I understand.

4 You've been driving a motorcycle for a long time?

5 A My whole life.

6 Q Have you had instances in the past where a vehicle
7 appeared to be coming out from the stop sign---

8 MR. DETRICK: Your Honor, that's not relevant to this
9 case. This case is about what happened August 7.

10 THE COURT: Sustained.

11 Q Do you in normal emergency situations jam on your
12 rear brake---

13 THE COURT: Sustained. We're talking about what
14 happened here.

15 Q Now it was a split second from the time you noticed
16 the scraper until you went for your brakes; is that right?

17 A It was immediately.

18 Q And you immediately jammed on your brakes?

19 A I had a wreck, yes, sir.

20 MR. COX: I beg the court's indulgence, Your Honor.

21 Your Honor, at this time I would move the South Carolina
22 DMV manual into evidence; Rule 902 self-authenticating as
23 well as he testified that that is what he studied.

24 THE COURT: Any objection?

25 MR. DETRICK: Yes, sir, we do object. We don't have

1 any problem putting that one page in.

2 THE COURT: We don't need to put the whole thing. We
3 can put that motorcycle section in.

4 MR. COX: Thank you, Your Honor.

5 THE COURT: When we take a break just make a copy of
6 that. That'll make it -- We'll do it at the break.

7 Anything else?

8 MR. COX: That's all the questions I have.

9 (Whereupon, Defendant's Exhibit No. 5 was marked for
10 identification and received into evidence.)

11 THE COURT: Mr. Detrick, anything to clean up?

12 MR. DETRICK: No, sir.

13 THE COURT: All right. Thank you.

14 Mr. Valenzuela, you may step down.

15 All right. We got your lunch back there. I don't
16 know what the weather is doing outside. If it is pretty
17 you certainly can take it outside and eat it. You can eat
18 it back there in the room. We're going to start back at
19 about 2:15. That's an hour and five minutes, an hour and
20 seven or eight minutes. So if you get through and you
21 want to walk around and stretch, that's permissible.

22 Leave your notes in your chair turned upside down.
23 Please do not discuss the case or start any deliberations.
24 I'll see you back at 2:15.

25 (Whereupon, the jury exited the courtroom at 1:09.)

1 THE COURT: All right. I've got some deposition
2 designations being objected to. The first one I have is
3 on the deposition of Mr. Clifford Merritt; is that
4 correct?

5 MR. DETRICK: Yes, sir.

6 THE COURT: And the objections handed up to me by the
7 defendant as to page 15 lines 19 through 21, that deals
8 with the contract subsequents to 8/7/09?

9 MR. COX: That's correct, Your Honor.

10 THE COURT: I know it's correct. I just read it.
11 Mr. Detrick, you agree with that -- that that is
12 not---

13 MR. DETRICK: Yes, sir, I do.

14 THE COURT: All right. We'll redact that out.

15 MR. DETRICK: Let me make sure I do that.

16 THE COURT: That's---

17 MR. DETRICK: Number one.

18 THE COURT: Number one is out. Two, that's page 29,
19 lines 3 through 22. That's bid documents. I'm sorry.
20 Page 29, lines 3 through 22. That's purchase orders and
21 why is that objectionable or why do you -- Mr. Cox or
22 ma'am? Whichever one.

23 MR. COX: Your Honor, it's got the -- the bid
24 documents would have the price totals for the job in them.

25 THE COURT: Well, are you just asking the question or

1 are you putting the exhibit in, Mr. Detrick?

2 MR. DETRICK: I am putting the exhibit in, Your
3 Honor.

4 THE COURT: Your objection is because it includes the
5 amount of the bid for the job?

6 MR. COX: That's correct, Your Honor.

7 THE COURT: Well, why would that not be relevant? I
8 assume that would cover cost of allegedly providing a safe
9 intersection; i.e., the flagman cost; you got to have
10 signs out, a flagman out and all that. I assume that
11 includes -- that would be inclusive of putting somebody
12 out there every day they're operating like Mr. Lewis said.
13 I will allow that.

14 Number three is page 45. I think that's subsequent
15 remedial measure. Forty-five, 10 through 15. We did not
16 conduct an investigation but I was at the site on
17 September 1, 2009 which would be subsequent to the wreck.
18 August was the wreck. This is September.

19 MR. DETRICK: That's fine, Your Honor.

20 THE COURT: All right. Three is out. Four and five
21 I think are the same objections. Page 47, one -- 44,
22 line 4 -- on September 1, 2009. That's the same thing.

23 MR. DETRICK: I didn't even know I put that in to be
24 honest with you.

25 THE COURT: All right. That's out. Page 47, line

1 22. That's a photo on the September 1.

2 MR. DETRICK: We agree.

3 THE COURT: Thank you. That's out. So one, three,
4 four, and five are out. Two is in.

5 Going to Mr. Chris English's deposition. It is right
6 at the bottom of there. You see it?

7 MR. DETRICK: Yes, sir.

8 THE COURT: Page 34, lines 17 through 21. That's the
9 amount of the contracts.

10 I assume that's the same objection you just stated to
11 me; is that correct, Mr. Cox?

12 MR. COX: That's correct, Your Honor.

13 THE COURT: I find that to be relevant. I will allow
14 that. Page 35, lines 2 through 6, is the same thing; same
15 objection. I'll allow. Pages 45 and 46. All right.

16 What is your objection as to that?

17 MR. COX: Your Honor, that references DOT -- a
18 question about DOT regulations which is not in evidence.

19 THE COURT: Mr. Detrick, why do you want that?

20 MR. DETRICK: I don't need that, Your Honor. What
21 part of that 45?

22 THE COURT: It says all of page 45 and all of page
23 46.

24 MR. DETRICK: I'd have to look and see, Your Honor.
25 As far as -- I think I asked him a question about whether

1 in the course of regulations---

2 THE COURT: Well, it says this: Question, you're
3 supposed to have advanced warnings of y'all's crossing this
4 public highway. I don't see anything -- and the reason
5 you're supposed to have a South Carolina Highway
6 Department Encroachment permit; is that correct? Yes,
7 sir. And you did have one? Answer: I did not have the
8 encroachment permit. Owens has that. Okay. What did
9 that mean? When you had that South Carolina Department
10 Encroachment Permit that you were supposed to provide by
11 the regulations of the DOT? Yes, sir. And you didn't do
12 that? I guess not.

13 You agree to take that out?

14 MR. DETRICK: No, sir. I didn't remember what it
15 said.

16 THE COURT: Why is that not relevant, Mr. Cox?

17 MR. COX: Because, Your Honor, it is referencing
18 regulations of the DOT and there is no regulations of the
19 DOT in evidence and---

20 THE COURT: Well, the regulations don't have to be in
21 evidence.

22 MR. COX: Well---

23 THE COURT: They can conceivably establish a duty
24 owed and it could establish the breach of that duty.

25 MR. COX: Your Honor...

1 THE COURT: I'm listening.

2 MR. COX: He is asking questions of law regarding DOT
3 regulations, Your Honor.

4 THE COURT: I will allow that. Page 48, lines 11
5 through 28. He asked Mr. English: The stop sign, you're
6 supposed to stop at them, aren't you? Yes, sir. Okay.
7 So you're violating the law when you don't do that? Well,
8 not necessarily in a sense, so forth and so on.

9 What is your objection to that?

10 MR. COX: Again, he is asking him a legal question,
11 Your Honor. And so I object on that basis about violating
12 the law.

13 THE COURT: Well, you can certainly ask a witness do
14 you understand that the law of South Carolina to stop at a
15 stop sign. Yes. Did you stop? No. By not stopping you
16 violated the law? Is that not relevant?

17 MR. COX: Well---

18 THE COURT: It is different than asking somebody what
19 laws were violated, I think.

20 MR. COX: Your Honor, there is an issue with -- there
21 is a question about the stop sign in this case -- whether
22 or not that is the law or not. He is not a lawyer and so
23 that needs to be our---

24 THE COURT: Do you have any law that says when you
25 have a stop sign you're not supposed to stop at them?

1 Tell me what law that is. I thought---

2 MR. COX: Your Honor -- Your Honor, the plaintiff has
3 the burden of proof in this case and --

4 THE COURT: That's correct.

5 MR. COX: -- that's a private stop sign.

6 THE COURT: Well---

7 MR. COX: That is a private, placed-by-Mr-English
8 stop sign. Your Honor---

9 THE COURT: I will give you over the lunch break to
10 show me something that says when you put a stop sign up
11 you don't have to stop at it.

12 Mr. Detrick, what is your position on that? Do you
13 want that or not?

14 MR. DETRICK: Yes, I do.

15 THE COURT: Are you sure you want that?

16 MR. DETRICK: I'm positive. The stop sign -- I can
17 tell you what the law is if you want to hear it.

18 THE COURT: I know what it is.

19 MR. DETRICK: All right. Thank you.

20 THE COURT: I know if I put a stop sign up out at my
21 farm, that's a private place, but you're supposed to stop
22 when you get to it.

23 MR. COX: Your Honor?

24 THE COURT: Yes, sir.

25 MR. COX: So I can be clear on the Court's

1 instructions, you want me to locate the law despite the
2 fact that they've got the burden.

3 THE COURT: No, sir. I don't want you to have to do
4 that. I'll allow it. Thank you.

5 Anything else? Any other objections to the
6 depositions? Hearing none, we'll stand adjourned until
7 2:15.

8 Mr. Detrick, would you have any opposition or you and
9 your team if I had a private moment with defense counsel?

10 MR. DETRICK: No, sir.

11 THE COURT: Let me see y'all, please.

12 (Whereupon, a lunch break was taken.)

13 THE COURT: Plaintiff ready?

14 MR. DETRICK: Yes, sir.

15 (Whereupon, the jury came into open court at
16 approximately 2:14.)

17 THE COURT: Well, Madam Forelady, how did you do
18 presiding over your first lunch? Did you do okay?

19 THE FOREPERSON: Pretty good.

20 THE COURT: I hope you enjoyed your lunch.

21 THE FOREPERSON: We did.

22 THE COURT: Please don't go to sleep on me. Boy, I
23 had a good lunch. My law clerk -- his wife is getting
24 ready to have a baby; so she fixed our lunch today. We
25 had chicken salad, grapes, and homemade apple tarts. What

1 do you call them? She made the dough and put apples in it
2 and baked it.

3 THE JUROR: And you didn't share with us?

4 THE COURT: My court reporter came in there and ate
5 six of them.

6 THE COURT REPORTER: I did not; not six.

7 THE COURT: Mr. Detrick?

8 MR. DETRICK: I call James A. McLaurin, Jr.

9 JAMES A. MCLAURIN, JR., after being duly sworn,
10 testified as follows:

11 THE CLERK: Take a seat in the witness box and state
12 your full name for the record.

13 THE WITNESS: I am James A. McLaurin, Jr.

14 DIRECT EXAMINATION

15 BY MR. DETRICK:

16 Q I believe now you are Magistrate Judge McLaurin?

17 A Yes, sir.

18 Q And that's in Edgefield?

19 A Yes, sir, Edgefield County.

20 Q Prior to your appointment as -- election or
21 appointment as magistrate, what did you do?

22 A I was a state trooper assigned to Aiken County.

23 Q How long had you been a state trooper?

24 A It was about 12 years. No, I'm sorry. At the time
25 of this wreck it was about 11 years.

1 Q And on August 7, 2009 were you dispatched to a wreck
2 that occurred on Redds Branch Road?

3 A Yes, sir.

4 Q And do you remember approximate times you received
5 the dispatch?

6 A You know, and I looked at it before I came up here.
7 It was around 11 o'clock.

8 Q Something like that?

9 A It was around 11 o'clock.

10 Q What did you do?

11 A The call originally came out and I was at the jail;
12 so there was another officer on the way at the same time.
13 When I left the jail they dispatched me to the wreck and I
14 left -- I left the jail on Wire Road and went around the
15 bypass to 302 and then to Redds Branch Road.

16 Q Will you tell us what you did upon arrival at the
17 scene?

18 A I drove up to the scene. They had the roadway
19 blocked from the 302 end. They had the roadway completely
20 blocked. I drove to where I could get around the cars and
21 saw that they had the road blocked on the other side as
22 well; so complete blockage. I checked with some of the
23 first responders. I believe that they were volunteer
24 firefighters that were there at the scene.

25 They informed me that the passenger on the motorcycle

1 had sustained some pretty severe injuries and they said
2 that it was likely life-threatening; so from that point I
3 treated the collision like a fatality and proceeded with
4 my investigation.

5 Q What is the difference -- You say you proceeded as a
6 fatality. What is the difference in the investigation of
7 fatality as compared to regular motor vehicle wreck?

8 A The -- at that time the MAIT Team was involved in
9 nearly all fatal collisions which that just meant that I
10 knew that there was a MAIT Team Associate, a MAIT Team
11 member who was going to come out after I completed my
12 investigation to do certain things -- to do what they do,
13 take measurements and do the -- do the type of
14 investigation that they're trained for.

15 So, knowing that, my job is to try to preserve as
16 much of the evidence as possible and that means marking
17 the scene, you know, with paint. You see the orange paint
18 sometimes on the road -- taking photographs to be able to
19 show the MAIT Team when they come out to look at it to be
20 able to show them this is what I saw when I arrived. This
21 is where -- you know, we call them units. Unit number one
22 and unit number two, this is where they were when I
23 arrived. This is how. Nobody moved them. If I know that
24 information I can tell them that.

25 Q And as far as the vehicles were involved it is your

1 understanding that they were not moved prior to your
2 arrival on the scene; is that correct?

3 A I believe that neither was moved from the time of the
4 crash until the time that I got there.

5 Q And you did take photographs?

6 A I did.

7 Q Is that correct? I believe those photographs
8 probably we could use those if you don't mind --

9 A Yes, sir.

10 Q -- in explaining your investigation on this
11 particular day.

12 A Yes, sir.

13 Q All right. If you'd start with Plaintiff's
14 Exhibit 7.

15 MS. MCPHERSON: Judge, can we dim the lights again?

16 MR. DETRICK: Here we go with the lights again.

17 THE COURT: Mr. Whittle, come cut the lights down a
18 little bit.

19 Does it make it better with the lights down?

20 THE JUROR: Yes, a whole lot better.

21 THE COURT: Just don't go to sleep. I'm cheating.
22 I've got coffee.

23 THE JUROR: All they got to do is cut really this
24 side here.

25 THE COURT: Mr. Whittle --

1 THE BAILIFF: Yes, sir?

2 THE COURT: -- my juror who works for the power
3 company says all you've got to do is cut this bank right
4 here.

5 Q We're looking -- What is your -- Just so the jury
6 will know how we're doing this, are you taking photographs
7 away from the actual scene and then marching forward? Is
8 that sort of what your plan was?

9 A Yes, sir. I'm coming -- I'm taking a picture here
10 from the direction that the motorcycle was traveling. You
11 can see the motorcycle on its side there. Of course, the
12 pan there. As the photographs progress I'll take a few
13 steps in and take more pictures so that you can see more
14 details of the road. You can see the start of the skid
15 marks and about to where the skid mark ends.

16 There is a line -- not entirely straight, but a line
17 from where the skid marks end to where the motorcycle
18 ended up where there's a number of gouge marks in the
19 road. You'll be able to see them more so in the pictures
20 as you get closer in indicating the path that the
21 motorcycle took.

22 Q So we're looking in the bath of the direction of the
23 motorcycle rode; correct?

24 A This is a way -- 302 is back on the other side of
25 where these trucks are blocking the road. Coming back in

1 the direction of the photographer is the curve going back
2 towards I believe it is New Bridge going down Redds Branch
3 Road.

4 Q And as far as the visibility that the motorcycle
5 would have is there anything affecting the visibility as
6 you approach on the right-hand side of the road?

7 A In this area you can see theres trees off to the side
8 that affect the visibility of the dirt road.

9 Q And point out where that -- where is that dirt road
10 which the scraper was coming out of?

11 A Right there is the -- where the edge of the roadway,
12 the edge of the Redds Branch. It is going through there
13 and the dirt -- although, part of this is paved, but it
14 turns to dirt all the way as it goes.

15 Q What is back on that side of the road where the
16 scraper was getting the dirt? What was back there? Did
17 you know?

18 A I don't know.

19 Q What about on the other side of the road?

20 A The other side of the road -- the intersection -- you
21 can kind of see it here because there is nobody parked
22 there. This is paved and it's paved going downhill
23 slightly and I am not sure what goes on on the other side
24 of the road going back this direction either.

25 Q Then if you could go to Exhibit 8, please. Now we're

1 getting closer?

2 A It is closer in. You can see the skid mark a little
3 more clearly and get an idea of where the motorcycle is.

4 Q And let's go to Number 9, please. What does this
5 show?

6 A You can start to see the gouge marks indicating that
7 the motorcycle is on its side or not on its tires. Any of
8 the metal or hard plastic parts of the motorcycle can
9 gouge the roadway. This part of the skid mark -- it's not
10 -- this isn't a yaw mark, but it is a curved skid mark and
11 you can see -- it's not striations, but it appears to be
12 striations at the edge. It is just indicating that the
13 tire is on its edge as the motorcycle -- you can tell
14 because the motorcycle is about to go on its side.

15 Q All right. And Number 10, please, Lynn.

16 A More gouge marks in the road. Now you can kind of
17 see what you're looking at as far as the motorcycle is
18 concerned. This is the front tire of the motorcycle and
19 it's candid at an angle because there is nobody holding
20 the handle bars and the back tire is there. There's --
21 You can't really see it, but there was small bits of
22 debris just from the motorcycle sliding over the pavement.

23 Q Go to 11, please.

24 A Again, that's just another closer picture. You can
25 see more skid marks and -- Pardon me; more gouge marks in

1 the road.

2 Q Go on to 12, please, ma'am.

3 A Okay. And, again, it looks like debris; a bigger
4 piece of debris. Once I would get close enough into the
5 different units I would walk around the vehicles so you're
6 gonna -- from this picture I think it goes to the angled
7 picture. There may be one more picture closer.

8 Q Go to the next one, Number 13.

9 A Okay. Yeah, and there's fluids coming out from the
10 motorcycle.

11 Q Number 14, please. Still the motorcycle --

12 A Motorcycle.

13 Q -- where it came to rest?

14 A Yes, sir.

15 Q Now---

16 A You can---

17 Q I'm sorry. Go ahead.

18 A You can kind of see that on the edge here and I think
19 there is a clearer picture of it coming up of a tire mark
20 and where -- the next picture you can see where it's wider
21 at one point and that's where the motorcycle is about to
22 flip over. It was -- evidently during the slide the
23 motorcycle, I believe, turned and then when it got to just
24 before where it ended up the back tire caught and caused
25 the motorcycle to flip over on to its left side.

1 Q Apparently I don't have that photograph, but I
2 understand --

3 A Okay.

4 Q -- that's what it says?

5 A These marks just indicate to me that the back tire
6 was sort of grabbing, was getting traction as it was going
7 sideways on the road, and it caused the motorcycle to then
8 flip over on to the other side like a trip.

9 Q And now let's go to 15, please.

10 A Okay. This is a picture of the pan from the left
11 side from the outside just showing where the pan ended up
12 against the stop sign. You can't see the edge of the road
13 in this picture, but it is just showing the position of
14 the pan.

15 Q Does it show the pan actually beyond the stop sign
16 where it swung around?

17 A The -- It would have to be because the middle of the
18 front of the pan is pushed up against it; so every bit
19 from there on would be past the stop sign.

20 Q And go then to the next one, please.

21 A That's a picture of the pan coming from the other
22 direction. You can tell where. You can tell where it is.
23 The cab is positioned on the left side of the pan and I
24 took this picture from the right side at an angle just to
25 position it to show where it ended up.

1 Q And then go please to number 17.

2 A A picture from the right side from --- more from
3 behind.

4 Q It seems -- that pan, did you -- had you seen
5 anything like that before -- that kind of scraper?

6 A Well, I mean, I've seen them. I have never dealt
7 with -- I have never had a collision involving one of
8 these type machines.

9 Q It appears to have a joint or articulate; is that
10 correct?

11 A Yes, sir. The front cab has the two wheels and then
12 there's a -- for lack of a better term, a joint where the
13 cab is attached to the back part. The cab can turn
14 independently of the back part. I don't think -- It's not
15 different, you know, conceptually from like a tractor
16 trailer pulling a trailer, but there is just two wheels on
17 the cab of this. I don't think it could run on its own,
18 but it has that same sort of joint.

19 Q What about number 18? This is the same -- another
20 photograph?

21 A This was on the opposite side of the road from the
22 last picture taken. You can see the back of the pan, the
23 back of the cab, and that's the sort of joint that I was
24 referring to that connects it to the both body of the
25 scraper or the pan.

1 Q Please go to 19.

2 A Well, okay.

3 Q Go ahead. I'm sorry.

4 A You can -- you can see in this picture a curved skid
5 mark leading up to and under the left front tire of the
6 cab. I don't think you can see anything else in this
7 picture, but you can see a little bit of the curved skid
8 mark.

9 Q And I believe in later photographs you took closer up
10 of these skid marks?

11 A Yes, sir. They were marked and photographed as we
12 went. I took most of the pictures to initially to put the
13 two the units in place to document where they were and
14 then as we progressed, you know, and we're marking the
15 scene, marking the skid marks and the position of the
16 units involved we'll go back and take photographs of
17 those, too, of the marks.

18 Q And on Exhibit 19 what does it describe?

19 A Okay. This is again from the back of the pan. I'm a
20 little bit closer in and you can see more clearly the
21 curved skid mark. You can see the tire marks left there
22 and a little bit over the dirt that was present. If it
23 won't lay down a skid because it's covered in dirt
24 sometimes you can see -- you can see where the dirt is
25 disturbed as part of the skid.

1 Q And what -- the skid mark that you're referring to
2 came from what part of the vehicle?

3 A The left tire -- the left front tire of the pan; the
4 cab tire.

5 Q I think you can see it a little bit. Did you
6 actually put some red to indicate that for the MAIT Team
7 when they came later? The paint?

8 A I didn't make the marks, but they were -- Another
9 trooper was assisting me and he marked these orange paint
10 marks along the outside edge of the skid mark. These
11 aren't -- I heard them referred to as yaw marks. They're
12 not yaw marks, but we would mark the outside edge of a yaw
13 mark to help determine a critical speed, but it's not --
14 it is a technical difference, but it's not technically a
15 yaw mark. It is a curved skid mark, but that still
16 indicates the path that the tire traveled even if it's not
17 in the middle of the skid which would be in a normal skid
18 mark.

19 Q Why are you making these markings?

20 A To allow for the MAIT Team -- when they come in they
21 often will use a surveying -- you're not supposed to say
22 surveying, but it is the equipment that you see surveyors
23 using. They'll use that to digitally map the scene of a
24 collision so they can put it into a computer, a
25 computer-assisted drawing program so you can draw it and

1 have an exact-to-scale drawing done.

2 When they have -- when we mark the scene this way it
3 allows them to place the skid marks exactly where they
4 were and in some cases they're able to use not just the
5 computer program, but to use their training in the math
6 and the physics that they deal with they can sometimes
7 come up with speeds and things like that.

8 Q And when we refer to the MAIT Team, M-A-I-T, what is
9 that?

10 A Multi-Disciplinary Accident Investigation Team. It's
11 a unit of the Highway Patrol that deals exclusively with
12 collision investigation and nearly always fatal
13 collisions. There are some collisions that aren't fatal
14 collisions that they will assist in if there's a request
15 or a need to.

16 Q And the next exhibit is Number 19; is that right?
17 Twenty.

18 A This is from the left side towards the rear of the
19 body of the pan. You can see the skid mark there. You
20 can see that there's some dirt. I don't know if you can
21 see it in this picture. I could see that there was some
22 dirt disturbed. You can see that the dirt as it sits on
23 the roadway will follow the tire. You can see there is a
24 line of dirt there and dirt sort of flowing into where the
25 path of the tire in this area. It just indicates that

1 this is isn't the only area of the tire sliding over the
2 road surface. It is the only part where there is a black
3 mark unless you get farther back, but you can see sort of
4 the outline of the path of that left cab tire.

5 Q All right.

6 A You can see farther back there is a little bit more
7 mark -- tire mark that I believe came from the left tire
8 of the cab unit.

9 Q And Exhibit 21, please.

10 A Okay. More pictures and you can see a little more
11 clearly what I was talking about -- the dirt that's piled
12 on the road or the dirt that's on the road sort of
13 following the tire. It is being pushed along the path
14 that the tire's taking.

15 Q Twenty-two, please.

16 A That's just closer in just showing that it goes
17 underneath the left tire. This is how we can -- we can
18 often tell if a car has been moved after the fact because
19 those skid marks wouldn't be going still up underneath the
20 tire if the tire had been moved, if the cab had been moved
21 somewhere else.

22 Q And the next one, please, 23. I believe that's
23 pretty much what we've already seen; is that correct?

24 A That's just from the outside of the cab at an angle
25 showing where it ended up in the road. You can see the

1 marking on the side of the tire. That was after we --
2 more of the scene had been marked and that tire is marked
3 there so they can position the pan.

4 Q I don't know whether we have a photograph or you took
5 a photograph of the sign itself and what it showed. What
6 is that sign there?

7 A It's a stop sign. There is no DOT sticker on the
8 back. If there was a DOT sticker on the back I would have
9 taken a picture of it. Not all stop signs -- Well, I
10 can't testify to what there is now, but at the time there
11 were still some stop signs in the state that didn't have
12 the proper DOT stickers, but they were few.

13 Q Did that stop sign that's right there with the pan or
14 scraper up against it, did it look like every other kind
15 of stop sign in the state of South Carolina that you've
16 seen?

17 A Yes.

18 Q Did it indicate that a person should stop at the stop
19 sign?

20 A It was a stop sign.

21 Q Okay. And the next one, please, Lynn. What does 24
22 show?

23 A That's from the back of the pan. I don't know that
24 it really shows a lot that hasn't been seen already. You
25 can see, though, that the front of the pan is there and

1 the stop sign pushed over at an angle. Like I said, some
2 of the pictures were taken mainly to just position the
3 different units.

4 Q Twenty-five, please.

5 A Okay. This shows a small amount of skid leading up
6 to the left rear tire, the body tire.

7 Q What is that? I'm sorry.

8 A A small amount of tire skid leading up to and under
9 the left cab -- not cab; the left tire from the body of
10 the pan.

11 Q Back?

12 A The backside.

13 Q Okay. All right. Next one, please. Now what are
14 you doing with these?

15 A In -- Just as routine photographs are taken in these
16 type collisions, we take pictures inside the cab or inside
17 the body of a vehicle. This picture I just -- I was
18 taking because I wanted to show that it was equipped with
19 a seatbelt because that's one of the questions that we
20 have to answer in our report.

21 Q This shows the inside of the scraper --

22 A Shows the inside.

23 Q -- where Mr. Lewis would have been operating the
24 scraper?

25 A Yes, sir.

1 Q It shows for turning the wheels -- what you use to
2 turn?

3 A Yes, sir.

4 Q Go ahead to the next one; 27, please.

5 A That's outside of the cab just showing his front
6 window. That was the purpose of that photograph.

7 Q All right. Twenty-eight, please. I hope I got these
8 in order. These were -- this 28 was taken at the scene;
9 correct?

10 A Yes, sir. This the from inside the cab looking --

11 Q Okay.

12 A -- down Redds Branch Road back towards 302. I'm
13 sitting in the seat that the driver -- I'm standing, but
14 I'm in the position that the driver of the pan would have
15 been after the crash.

16 Q What direction are we looking at? Is that opposite
17 direction?

18 A That would be westbound. We're looking back towards
19 302. I'm in -- if it wasn't holding the camera I could
20 have held the steering wheel.

21 Q Well, maybe we can -- which way direction was the
22 motorcycle driving -- operating in from where to where?

23 A Before turning?

24 Q Yeah. Before -- what 28 shows. Is that after the
25 intersection or before the intersection?

1 THE COURT: Which way was the motorcycle coming?

2 THE WITNESS: The motorcycle was coming from behind
3 where I'm looking.

4 Q That's what I was trying to get at.

5 A Okay.

6 Q I'm sorry.

7 A I'm sorry.

8 Q And then the next one --

9 A The next---

10 Q Twenty-nine. What is that?

11 A Okay. This was taken the next -- I want to say that
12 it was the next day. It would normally be the next day.
13 I don't remember that it was the next day, but that's
14 typically what we do. You can still -- I don't think you
15 maybe can't see it in this picture but in some of the
16 other pictures you can see that the marks are still there.
17 I went back to take pictures of the marks and to take
18 pictures of the roadway without any other vehicles there.

19 Q Okay and we're going to go through all of the
20 photographs at one time --

21 A Okay.

22 Q -- just since we got it going here. Why did you go
23 back to the scene to take additional photographs?

24 A I wanted to -- Well, I wanted to go back and look at
25 the scene, first of all, because of the nature of the

1 wreck. I had never investigated a collision where, you
2 know, there are two parties that are involved that didn't
3 collide with each other and, you know, there were
4 questions about, you know, what -- I'm a little scared to
5 -- I don't know if it'll be admissible.

6 THE COURT: Just tell us -- just describe what you
7 were seeing. How about that?

8 THE WITNESS: Okay. I wanted to come back and just
9 get pictures of the scene without the vehicles there to
10 see what I could see. I had thought about visibility and
11 I took some photographs of the wood line to see if you
12 could see the dirt road from the direction that the
13 motorcycle was traveling.

14 Q What are we looking at in that photograph Number 29?

15 A This picture is going -- I'm standing on Redds Branch
16 Road looking in -- this lane is the lane of travel of the
17 motorcycle. He had come around this curve and you can't
18 see -- you really can't see in this picture, but the -- I
19 don't know. Because of the shadow I don't know that
20 you're going to be able to see the skid mark, but I took
21 some more pictures that show -- okay. You can. You can
22 see sort of the tail end of the skid mark.

23 Q All right. Go to the next one Number 30, please.
24 What is this and why did you take it?

25 A This is from the -- this is the direction that the

1 motorcycle was traveling prior to where the pan would have
2 been crossing the road.

3 Q So you're looking in the direction that the
4 motorcycle Mr. Michael Valenzuela would have been driving?

5 A Yes, sir.

6 Q And you see the actual intersection from there?

7 A I can't see it in this picture.

8 Q Okay.

9 A There is a car --

10 Q Sure.

11 A -- in the road ahead of me, but I can't see it in
12 that picture. It's a little bit lighter there. I mean,
13 that -- that indicates -- that's the reason I think I
14 would be taking the picture, but I can't tell specifically
15 in that picture.

16 Q And exhibit 31, please. This, again, is taken the
17 next day; is that correct?

18 A Yes, sir.

19 Q What does this show?

20 A This is closer in. I'm sort of walking it in again
21 but without any of the other cars or anything else.

22 Q Now, that line over there, that's not -- what is
23 that?

24 A That's the shadow of the power line.

25 Q And 32, please.

1 A This is the skid mark. You can see it a little
2 better from this direction.

3 Q And---

4 A And the edge of the road, the dirt portion going
5 farther back that way.

6 Q And I think 33 got out of order somehow or another.
7 Go to 33. That was taken the actual day of the wreck?

8 A This was taken the day of the wreck. I am facing the
9 direction that Mr. Valenzuela would have been coming from
10 prior to him reacting to anything. I would've -- this --
11 I believe that this was the first picture that I took
12 because I took it from that direction and then would turn
13 around and follow the skid mark and follow the collision.

14 Q All right. Mr. McLaurin -- You can put out the
15 lights on back, I think.

16 What else -- You took the photographs. What else did
17 you do this day of the wreck when you were at the scene?

18 A At the scene?

19 Q Yes, sir.

20 A Like I said, I had been told by first responders that
21 there was a passenger.

22 MS. PAYNE: Objection, Your Honor.

23 THE COURT: What is your objection?

24 MS. PAYNE: Hearsay.

25 THE COURT: As a result of what they told you what

1 did you do?

2 THE WITNESS: I knew that I was---

3 THE COURT: Go ahead.

4 Q As a result of what they told you what did you do at
5 the scene?

6 A I contacted -- I called the supervisor for our area
7 to let him know. He informed me that he was going to
8 notify or make the call to the MAIT representative. I
9 knew then that I was going to have to go to MCG. I found
10 out that's where the driver and the passenger of the
11 motorcycle were transported.

12 I spoke with a couple of people and I can't remember
13 their names. I apologize. They're on the collision
14 report. I talked with the owner, a man who identified
15 himself as the owner of the pan.

16 Q That being Chris English?

17 A Yes, sir.

18 Q He is right over there?

19 A Yes, sir. And then once the -- I didn't wait for the
20 motorcycle to be towed because there was another officer
21 there who was going to wait for me; so I just -- I left
22 from there to go to MCG.

23 Q Let's go back down a little bit --

24 A Yes.

25 Q -- if you don't mind. First off, was there a Waste

1 Management truck there when you got there if you remember?

2 A I don't remember. I don't -- maybe there might be in
3 the---

4 Q In the photographs?

5 A They're probably in the photographs, but I don't
6 remember specifically a Waste Management truck, but there
7 were -- there was a fire truck blocking one lane and
8 another truck -- another large truck blocking the other
9 and it could have been the Waste Management truck.

10 Q In the course of your investigation did you talk with
11 someone who may have been operating the Waste Management
12 truck -- a Mr. Pruitt?

13 A I spoke with Mr. Pruitt. I don't know that I ever
14 knew that he was driving a Waste Management truck, but I
15 did speak to Mr. Pruitt at the scene and I still can't
16 remember the name of the other gentleman. Johnny?

17 Q Johnny Tindel?

18 A Johnny Tindel. I spoke with him as well at the
19 scene.

20 Q All right. What did Mr -- Mr. Tindel -- Let's first
21 -- Did you actually see a tractor with a brush on the
22 back?

23 A I don't remember seeing it.

24 Q All right. Mr. Tindel, was he the person that said
25 he was on that tractor?

1 MS. PAYNE: Objection, Your Honor.

2 Q What did Mr -- I'll rephrase. What did you find out
3 about Mr. Tindel as to what his participation, if any,
4 was?

5 A From talking to him I got the impression that he was
6 acting as a spotter for the pan and I didn't -- I didn't
7 know that there was an issue with the -- with a flagman --
8 that there may have been an issue with a flagman being
9 needed there or required; so I didn't ask.

10 Q Okay. Let's back it up. Mr. Tindel you said was a
11 spotter or indicated he may have been a spotter for the
12 scraper; correct?

13 A That's just -- that's the term that I use. I got the
14 feeling -- from talking to Mr. Tindel I believed that his
15 responsibility on this crew was to let the driver of the
16 pan know if it was clear for him to cross or not. That
17 was the impression that I got of what his duty was when I
18 spoke to him.

19 Q Did Mr. Tindel and his spotter for the scraper
20 indicate to you where he was standing or sitting when
21 doing that?

22 A I don't remember. He may -- he probably did, but I
23 don't remember the answer.

24 Q Okay. Did he indicate -- you said he was a spotter.
25 Was he a flagman?

1 A I never -- there was never any indication or never
2 any evidence that I noticed of any flagman and I don't
3 mean to quibble. In my mind when I was speaking with
4 Mr. Tindel I thought, well, if he's telling me that he was
5 -- and he didn't. I don't recall him saying that he was
6 the spotter. That's a term that I sort of use. Whatever
7 his job position was I felt like he was telling me that it
8 was his responsibility to either wave him on or to stop
9 the pan.

10 Q By waving him on was he talking about waving him on
11 without stopping at the stop sign?

12 A That was what I believe was the -- that was the
13 impression that I had.

14 Q Now, as a spotter and not a flagman was there any
15 evidence or anybody indicate that there was ever an actual
16 flag as we see -- you see them in the construction; right?

17 A Yes, sir.

18 Q Any indication that that was present at all?

19 A No.

20 Q There was none present; correct?

21 A Yes, sir. That's correct.

22 Q Okay. And was there ever any indication by anyone
23 out there that anyone who was doing anything to control
24 the traffic or the motoring public on Redds Branch Road at
25 the time of this wreck?

1 A No.

2 Q Okay. Now did you talk with the operator of the
3 actual scraper at the scene?

4 A Yes, sir.

5 Q Could you tell the jury what he told you that you
6 remember?

7 MS. PAYNE: Objection, Your Honor.

8 THE COURT: What is the objection?

9 MS. PAYNE: Hearsay.

10 THE COURT: He's just testified, ma'am.

11 MS. PAYNE: Thank you, Your Honor.

12 THE WITNESS: I don't remember his exact words. When
13 I was speaking with him the impression that I got from him
14 was that he was coming up to the intersection. He
15 realized that there was traffic coming and so he jerked
16 the wheel to the right because he was afraid that he was
17 going to enter the roadway.

18 Q Do you remember anything else he said? That's the
19 extent of your memory?

20 A Yes.

21 Q Okay. Did you talk with Mr. Michael Valenzuela?

22 A Yes, I did.

23 Q And where did you talk to him at?

24 A MCG, Medical College of Georgia emergency room.

25 Q He was admitted there for his injuries?

1 A Yes, sir.

2 Q And do you -- what did he tell you that you remember?

3 A That Mr. Valenzuela explained to me that he was
4 coming down Redds Branch Road and out of no where he saw
5 the pan. I don't remember how he described the vehicle,
6 but he said he saw them coming. He knew that they weren't
7 going to stop -- that's what he was telling me -- and that
8 he had to lay the bike down to try to avoid a collision
9 with the pan.

10 Q Now, did you talk with Mr. Chris English at the
11 scene?

12 A I did.

13 Q What did he tell you?

14 A Basically just the conversation at this point was
15 just to determine the ownership of the pan and he told me
16 that I could either put him or his mother as the owner of
17 the pan. I guess family business.

18 Q As you approached at any time during your
19 investigation did you see any kind of warning signs such
20 as flagman ahead, Equipment Crossing Road Ahead or
21 anything?

22 A No.

23 Q Was there none there?

24 A No, I didn't see any.

25 Q And did Mr. English volunteer to you or say anything

1 about any requirements that he had regarding having
2 advanced warning signs present?

3 A No.

4 Q It's not unusual to require these advanced warning
5 signs for this big equipment crossing the road situation?

6 MS. PAYNE: Objection, Your Honor.

7 THE COURT: Hold on. Your objection is what? State
8 your objection.

9 MS. PAYNE: Speculation.

10 THE COURT: Speculation?

11 MS. PAYNE: He's not -- he hasn't laid the proper
12 foundation that he can testify as to this matter.

13 MR. DETRICK: I'll lay some more if you want me to,
14 Your Honor.

15 You were with the Highway Patrol how many years
16 before?

17 THE WITNESS: Eleven years; around eleven years prior
18 to this collision.

19 Q And in that capacity did you observe advanced warning
20 signs that are to warn the public of construction
21 equipment such as that crossing the highway?

22 A Yes, sir, and I have worked a number of construction
23 zones.

24 THE COURT: I'll allow him to answer it.

25 Q And in working those construction zones in your

1 capacity describe to the jury what kind of advanced
2 warning signs you've seen that warn the public of such as
3 this equipment -- large equipment crossing the highway.

4 A Well, and it does vary, but I've seen typically a
5 sign giving you an indication of how far down the road
6 there's some either road work being done or sometimes a
7 hazard -- a low shoulder. When they're scraping the top
8 layer of the road to repave it sometimes they're not going
9 to do both at one time so there will be a ledge between
10 the lanes and they'll have a sign up to that effect, but
11 typically there's a warning sign, an advanced sign to give
12 you an idea that there is something coming up however many
13 feet and then closer in a sign, you know, telling you
14 either exactly what the hazard is or at least a closer
15 distance.

16 Q And is it your experience that whenever there are
17 flagmen ahead to control the traffic as this heavy
18 equipment is crossing our highways that they have a sign
19 telling them that there is a flagman ahead?

20 A Yes. In some construction zones there are no flagmen
21 depending on the type roadway, depending on the type of
22 work they're doing, but, yes, when there are flagmen
23 present there are typically signs to alert you of that
24 before you get there.

25 Q Are you familiar with these type signs that warn of

1 equipment crossing the highway or such as that and the
2 signs of flagmen ahead? Are you familiar with those
3 signs?

4 A Yes, I've seen them.

5 Q Are they normally -- just regular DOT-designated
6 signs; is that correct?

7 A Are you asking me if they're normal DOT---

8 Q Are they DOT designations?

9 A Yes, sir. Yes, sir.

10 MR. DETRICK: Your Honor, I would like to let him
11 show -- I've got some signs.

12 THE COURT: Just for demonstrative purposes?

13 MR. DETRICK: Yes, sir.

14 THE COURT: You may.

15 Q Are those the kind of signs you see?

16 A Yes, sir.

17 Q What is the purpose of those?

18 A Advanced warning to let people know what's in the
19 road ahead of them.

20 Q All right. And the next one behind that is what?

21 A That's a flagman ahead.

22 Q If you see a flagman -- if there is a flagman ahead
23 sign wouldn't you expect a flagman to be up ahead?

24 A I would.

25 Q What is the purpose now if you have a flag -- if you

1 have a flagman ahead sign and you have the flagman what is
2 the purpose of that flagman?

3 A To stop traffic if there is a hazard in the road or
4 to divert traffic if you're shutting down for one lane of
5 travel on a two-lane road. If you're shutting it down to
6 one lane so you can do work in the other you'd have a
7 flagman there to let people know where to go.

8 Q And if we have a large piece of equipment such as
9 this scraper crossing the highways is it usual to have a
10 flagman ahead in order to control the traffic on roads?

11 A I can't say what's usual, but I would expect that
12 there should be.

13 Q Now you spoke with Mr. English and did you ask him or
14 did he tell you anything about requirements of a flagman?

15 A No. I didn't ask him.

16 Q You didn't ask him?

17 A I didn't ask him.

18 Q He didn't tell you?

19 A No.

20 Q And did he tell you that he had a contract in that
21 area with Owens Corning to provide a flagman for the
22 public?

23 A No, sir.

24 Q Owens Corning owns that property. Did you know that?

25 A I didn't know that name, but we had always called it

1 Fiberglass.

2 Q Did you know that Mr. English operated under a
3 contract with Owens Corning required a flagman?

4 A No, I didn't know that.

5 Q Now, as far as -- Now, Your Honor, I'm referring to
6 Exhibit No. 2.

7 Could you look at this Exhibit No. 2 which is a part
8 of the contract of Mr. English and is this -- what's
9 referred to in there as far as advanced warning signs, is
10 that the same that you've described to the jury that we
11 have in this courtroom?

12 MS. PAYNE: Objection, Your Honor. He cannot testify
13 as to the private matter. That is expired in 1984 which
14 he has no knowledge about this contract or the
15 encroachment permit.

16 THE COURT: Thank you. Overruled.

17 THE WITNESS: Read it?

18 Q Is that the -- Have you read that portion of the
19 contract?

20 A Yes, sir.

21 Q All right. And it refers to advanced warning signs,
22 doesn't it?

23 A Yes, sir.

24 Q And it refers to where those advanced warning signs
25 should be, doesn't it?

1 A Yes, sir.

2 Q And the distances in that is I think a thousand feet
3 for some sort of sign regarding trucks entering the
4 highway or something; is that correct?

5 A Yes, sir.

6 Q Is that consistent with what normally does throughout
7 the state to warn the public that vehicles like this are
8 crossing the highway?

9 A Yes, sir.

10 Q Is that consistent with a thousand feet?

11 A Yes, sir.

12 Q That's about where they usually put them; right?

13 A Depending on the speed limit of the road, yes, sir.

14 Q And the sign back there that we just saw, is that
15 consistent with what is required -- what is in this
16 contract --

17 A Yes, sir.

18 Q -- is that consistent with what is normally required
19 as far as the Trucks Entering the Highway advanced warning
20 signs?

21 A Yes.

22 Q And as far as in that contract at Owens Corning it
23 said -- it required an actual flagman sign at 500 feet;
24 correct?

25 A Yes, sir.

1 Q And is that a normal distance that gives the public
2 adequate warning that a flagman is ahead?

3 A Five hundred feet at 45 miles an hour gives you ample
4 time to slow down.

5 Q Is that consistent with normally what you see in
6 construction zones --

7 A Yes, sir.

8 Q -- and equipment crossing highway such as this?

9 A Yes, sir.

10 Q And that's for the purpose of the safety of the
11 motoring public?

12 A Yes, sir.

13 MR. DETRICK: That's all I have. Thank you.

14 THE COURT: Cross.

15 MR. DETRICK: We would before -- Your Honor, I'd like
16 to offer into evidence those exhibits.

17 THE COURT: Which ones?

18 MR. DETRICK: Oh, gosh.

19 THE COURT: The photographs?

20 MR. DETRICK: The photographs.

21 THE COURT: Y'all have agreed on those, haven't you?

22 MS. PAYNE: Yes, sir; without objection.

23 THE COURT: Without objection.

24 (Whereupon, Plaintiff's Exhibit Nos. 7-18 & 26 -33
25 were admitted into evidence.)

1 MR. DETRICK: Your Honor, could I offer into evidence
2 the actual warning signs themselves and substitute it with
3 a photograph?

4 THE COURT: Any objection?

5 MS. PAYNE: Yes. We'd object as there was no warning
6 signs out that day; that this is a demonstrative sign.

7 THE COURT: Wait a minute. You're saying there were
8 no warning signs out that day?

9 MS. PAYNE: I mean the testimony has been, Your
10 Honor, there was no warning signs out that there.

11 THE COURT: There was testimony that there was.

12 MS. PAYNE: They are not the actual signs that were
13 used prior to the incident. They are not -- everybody --
14 it's common knowledge what a flagger and a truck warning
15 sign -- truck entering the highway---

16 THE COURT: Thank you, ma'am. I will allow it as
17 demonstrative evidence based on the testimony of this
18 witness and you may substitute the photos for the actual
19 flags.

20 MR. DETRICK: Thank you very much, Your Honor. That
21 would be Exhibits 36 and 37.

22 THE COURT: Thank you.

23 (Whereupon, Plaintiff's Exhibit Nos. 36 & 37 were
24 admitted into evidence.)

25 CROSS-EXAMINATION

1 BY MS. PAYNE:

2 Q Judge McLaurin, do you need anything to drink? Are
3 you okay?

4 A I'm fine. Thank you.

5 Q Okay. Tell the jury what is -- when you're
6 referencing a construction zone what are we typically
7 talking about?

8 A What I would normally deal with is road construction
9 either working a lane. It can be -- if there are light
10 issues that they may have to shut down a portion of the
11 roadway. Those are the construction issues that I would
12 normally deal with day to day.

13 Q Okay. And where typically do you see a flagman or a
14 flagger sign? Is that typically with respect to a lane
15 being shut down on a major highway?

16 A Lane being shut down, if there is work being done on
17 the shoulder that impedes traffic without entering the
18 actual lane, if you've got trucks pulling on and off in a
19 construction zone -- gravel trucks. I mean, there is a
20 number of reasons why they had flagmen out, but, yes.

21 Q When you're saying construction zone, who determines
22 what is a construction zone? Isn't that state-regulated?

23 A I don't know.

24 Q Isn't at least the South Carolina Department of
25 Transportation out there determining what a construction

1 zone is?

2 A I've worked in construction zones where it was all
3 private construction companies and there is typically a
4 DOT engineer who's assigned to work sites. You're usually
5 talking about large work sites. If it is an out-of-state
6 or if it's a private business doing the construction it is
7 usually the larger work site. It's not necessarily going
8 to be DOT workers, but there typically is an engineer
9 assigned.

10 Q And the DOT supervises and overseas the private
11 contractors?

12 A I don't know how much supervision they do of the
13 actual contractors. They're present --

14 Q I understand.

15 A -- and I am not privy to their meetings.

16 Q I understand. How many times have you seen a flagman
17 ahead sign for just crossing the road?

18 A I can't recall.

19 Q How many times have you seen Trucks Entering the
20 Highway for just someone crossing the road?

21 A I mean, I have seen that, yes.

22 Q Okay.

23 A I can't tell you how many times.

24 Q How many traffic tickets have you written for someone
25 running a stop sign on a private road?

1 MR. DETRICK: Your Honor, I object to that. It's not
2 relevant to this case. It is a matter of law for you to
3 decide whether that stop sign should have been run or
4 whether they are allowed to run it.

5 THE COURT: Well, she's asking how many citations
6 he's issued for people running a stop sign for a private
7 road. I'll allow it.

8 THE WITNESS: I hadn't.

9 Q Thank you. When you were conducting your
10 investigation of this accident you weren't concerned about
11 what happened the days or the weeks or the months before
12 this accident, were you?

13 A No.

14 Q You weren't concerned about the presence of a flagman
15 or of signs before this accident, were you?

16 A No.

17 Q You were solely concerned about what happened on
18 August 7, 2009?

19 A Yes.

20 Q You testified earlier that the South Carolina DOT --
21 the stop sign did not have a regulated sticker on it by
22 the SCDOT?

23 A Yes.

24 Q During your investigation did anyone tell you who had
25 put that sign up?

1 A The owner of the pan -- Mr. English -- told me that
2 that was a sign that he had put in place.

3 Q So he had put that sign up himself?

4 A Yes.

5 Q And you've looked at Defendant's Exhibit 1 where it
6 says that the contractor will provide a flagman or -- and
7 other road crossing safety measures. Would you consider a
8 stop sign other road crossing safety measures?

9 A Yes.

10 Q Isn't it true that the pan never entered this
11 roadway?

12 A I don't believe that it entered the roadway.

13 Q Isn't it true that it actually stopped 8.25 before it
14 entered the roadway?

15 THE COURT: 8.25?

16 MS. PAYNE: Feet. Sorry, Your Honor.

17 THE WITNESS: Perhaps. I'm not sure.

18 Q You didn't measure it?

19 A No, I don't believe that it entered the roadway. If
20 I may?

21 THE COURT: You may.

22 Q Sure.

23 A Where that skid mark -- the curved skid mark that was
24 made by the left tire, the length of the pan -- the length
25 of the cab -- I was concerned because it's long. It

1 sticks out a good distance in front of where the skid mark
2 was made; so I wasn't sure and I consulted with the MAIT
3 Team to help me sort of position the cab as it would have
4 been traveling over those skid marks and turning just to
5 rule out the thought that maybe the corner of the pan
6 caught the road or a part of the front of the pan came
7 into the road and I don't believe that any part of the cab
8 or any part of the pan entered the road.

9 Q Okay. In speaking about the skid marks -- and I'll
10 show you what's been marked as Plaintiff's 19 and 20.

11 A Yes, ma'am.

12 Q Are you familiar with the operation of a pan
13 generally -- not under the circumstances?

14 A No.

15 Q Do you know that the pan actually makes marks when it
16 turns just in a normal day?

17 A No.

18 Q So you -- you really don't have any knowledge about
19 why or how those skid marks got there?

20 THE COURT: Ma'am, he can't --

21 THE WITNESS: Well---

22 THE COURT: -- give opinions. He hadn't been
23 qualified as an expert. All he can do is tell us what he
24 saw when he got there.

25 MS. PAYNE: Okay. Thank you, Your Honor.

1 THE COURT: So he couldn't give you that opinion.

2 MS. PAYNE: Thank you, Your Honor. I'll move on.

3 When you come around the corner as Mr. Valenzuela did
4 the -- we've talked about the visibility. The crossing is
5 visible; is that correct?

6 THE WITNESS: Yes. I -- You couldn't see it so well
7 in the picture that I took, but when I was standing there
8 taking the picture I was taking it for the reason that it
9 showed where the crossing was. I mean, it's visible.
10 It's maybe not prominent, but it's visible.

11 Q And drivers on this Redds Branch Road have a duty to
12 keep a proper lookout, don't they?

13 A Yes.

14 Q They have a duty to---

15 MR. DETRICK: Your Honor, as far as the law is
16 concerned I think you're the judge of the law.

17 THE COURT: Well, he can testify that they have a
18 duty. Everybody has a duty to maintain a proper lookout.

19 MR. DETRICK: All right, sir. We'll concede that.

20 Q The drivers on the highway have a duty to operate and
21 maintain proper control of their vehicles. Isn't that
22 also true?

23 A Yes.

24 Q Isn't it true that the reason why you didn't ask
25 about a flagman and a highway construction sign is that

1 because it has -- that is a private contract between two
2 private parties that was not -- did not have anything to
3 do with your investigation?

4 A Well, no. I didn't not ask because it's a private
5 contract. I had no idea that there was a private
6 contract. I didn't ask about the flagman. Honestly, I
7 didn't think of it. When I spoke with Mr. Tindel and he
8 sort of -- and I don't want to use the word spotter like
9 he told me he was the spotter. That's the term that I
10 sort of used that he was spotting the road.

11 He was looking to see if there was traffic coming.
12 When I heard that, in my mind I just sort of assumed that
13 the way that they were doing it was the way that it was
14 supposed to be done and so I didn't ask and I should have.
15 I didn't ask any follow-up questions about flagmen or road
16 signs.

17 Q During your investigation didn't you take into
18 consideration the operation of the motorcycle by
19 Mr. Valenzuela?

20 A Yes.

21 Q And what were your conclusions with respect to---

22 MR. DETRICK: Your Honor, I object. You've ruled on
23 that.

24 THE COURT: Sustained.

25 Q Well, you would agree that you are not -- that you're

1 not an expert in motorcycle driving?

2 A I have never driven a motorcycle.

3 Q Okay. And it requires technical, specialized
4 knowledge?

5 A Yes. I would assume.

6 Q The ordinary person driving a vehicle would not know
7 how to operate a motorcycle. Would you agree with that?

8 A I agree.

9 Q Do you know what the South Carolina Department of
10 Motor Vehicles requires with respect to motorcycle
11 operation?

12 A Do you mean as far as license?

13 Q Licensing, how you're supposed to properly handle
14 your motorcycle, how you're supposed to brake.

15 A No. I mean, as far as braking, no. Drivers
16 license -- they're required to have a beginner's permit or
17 Class M for motorcycle driver's license.

18 Q What does Class M indicate?

19 A Motorcycle; that they have that endorsement on their
20 driver's license.

21 Q That they went through the driving test and passed?

22 A Yes.

23 Q At the end of your conclusion -- at the end of your
24 investigation isn't it true Mr. Valenzuela was very
25 unhappy with your conclusions?

1 MR. DETRICK: Your Honor---

2 THE COURT: Sustained.

3 Disregard that, ladies and gentlemen.

4 MS. PAYNE: I beg the court's indulgence. No further
5 questions, Your Honor.

6 Thank you, Judge.

7 THE COURT: Madam forelady, ladies and gentlemen of
8 the jury, our rules of evidence do not allow witnesses to
9 give opinions. That's why we are sort of hanging up here.
10 Unless you've been qualified by reason of education,
11 training, experience, et cetera, et cetera, in a field
12 that's normally outside of the scope of normal people like
13 us -- medicine, engineering, different things like that --
14 if you're qualified, then you can give opinions, but this
15 witness, like me he can testify to what he saw, observed,
16 but he can't give us opinions. That's where we were going
17 on that.

18 I am not trying to cut him off or her off. It is
19 just the rules don't allow opinion testimony unless you're
20 qualified as an expert. If we have a MAIT Team guy come
21 in, he'll be able to give opinions if he is qualified,
22 but that's just the law in South Carolina. Regular
23 highway troopers can tell us all what they see and
24 observed, but they can't give opinions. That's y'all's
25 duty. You'll make that finding of fact as to what is

1 going on.

2 Mr. Detrick, anything?

3 MR. DETRICK: Yes, sir, a little bit.

4 REDIRECT EXAMINATION

5 BY MR. DETRICK:

6 Q You said Mr. English told you he put that stop sign
7 up?

8 A Yes, sir.

9 Q And it was a regular stop sign?

10 A Yes, sir.

11 Q Did he happen to tell you that he had regularly told
12 his people, his employees, not to stop at that stop sign?

13 A No.

14 Q Did he tell you that he would not -- when he operated
15 that scraper that he would actually not stop at that stop
16 sign?

17 A No, sir.

18 Q Did he tell you that?

19 A No, sir.

20 Q And if you put a stop sign up -- let me know for
21 sure. Is there any exception to the rule as far as you're
22 concerned that you don't stop at a stop sign that you know
23 of?

24 A No.

25 Q That's all I have.

1 THE COURT: Thank you. May he be excused? Anybody
2 got any objection?

3 MS. PAYNE: Without objection, Your Honor.

4 THE COURT: All right. Be careful going back to the
5 big city of Edgefield. Tell Judge Keesley I said hello.

6 THE WITNESS: I will.

7 THE COURT: Are we okay?

8 Next witness.

9 MR. DETRICK: Eric Pruitt.

10 ERIC PRUITT, after being duly sworn, testified
11 as follows:

12 THE CLERK: Have a seat in the witness box. State
13 your full name for the court.

14 THE WITNESS: My name is Eric Pruitt.

15 DIRECT EXAMINATION

16 BY MR. DETRICK:

17 Q Mr. Pruitt, where do you work?

18 A I work Waste Management of Augusta.

19 Q What is your job with Waste Management?

20 A I'm a roll-off driver.

21 Q A what kind of driver?

22 A A roll-off.

23 Q What does a roll-off driver do?

24 A Usually I go through different business, you know,
25 picking up like the long bins and take them to the

1 landfill and dump them out.

2 Q Okay. So as a regular part of your business was to
3 go to the landfill at Owens Corning; is that correct?

4 A Yes, sir.

5 Q And tell us now in going to the landfill could you
6 describe the route you would normally take?

7 A Well, I would come out into the road, go to Redds
8 Branch and make a right and head down to the landfill and
9 turn into the landfill to go and dump.

10 Q Which way would you turn to go in the landfill?

11 A To the left.

12 Q Turn to the left. And that was a regular what you
13 did?

14 A Yes, sir.

15 Q Now did you ever have to actually cross Redds Branch
16 Road going across or did you always make your left-hand
17 turn?

18 A I always make a left-hand turn.

19 Q And you, of course, knew Mr. Jeffery Lewis, didn't
20 you?

21 A Yes, sir. I knew him through the job.

22 Q Y'all have been working -- you did the same thing --
23 both of you knew each other?

24 A Yes, sir.

25 Q Did you know Mr. Chris English?

1 A Yes, sir.

2 Q You're not exactly a volunteer into this courtroom
3 today, in other words?

4 A Yes, sir.

5 Q Correct?

6 A Yes, sir.

7 Q You're here because I made you come?

8 A Yes, sir.

9 Q Now, if you would as you -- would you tell the jury
10 when you're coming along and you're making your left-hand
11 turn into -- to go to the landfill, what is back in there
12 when you're going?

13 A Just basically woods and as you get up into the
14 landfill you got all of the heavy equipment outside.

15 Q What was your job to do in that landfill? What would
16 you do when you turned in and with your Waste Management
17 truck?

18 A I would just go inside, find out where they want me
19 to dump the load down, and that's what I would do and take
20 it on back.

21 Q Dump it and go back and get another load and come
22 back. Is that basically it?

23 A Yes, sir.

24 Q When you make your left-hand turn -- when you're
25 approaching that intersection coming in you and the other

1 people have got the right-of-way; is that correct?

2 A No. I give them the right-of-way as I'm coming to
3 the landfill.

4 Q You let them come on out?

5 A Yes, sir. Well, no. They let me come on in, you
6 know, since I'm out there in the traffic, but I'm just
7 talking about the traffic coming towards me.

8 Q I'm sorry? Oh, the traffic coming towards you?

9 A Yes, sir.

10 Q Oh, I got you. All right. Now, as far as when
11 you're making that left-hand turn did you see
12 Mr. English's scraper with Mr. Lewis operating it coming
13 up there?

14 A Yes, sir.

15 Q Now let's go, if you don't mind, this wreck -- you
16 actually -- tell us if you would -- as of my understanding
17 you're coming on to do your usual job that day; correct?

18 A Yes, sir.

19 Q Tell us what you saw.

20 A I was coming up. I seen Johnny wave him to come on
21 and then he suddenly told him to stop and that's when I
22 seen, you know, that it came to rest on the stop sign and
23 the guy laid his motorcycle down.

24 Q And Johnny would be who?

25 A Over there; the spotter.

1 Q The spotter?

2 THE COURT: The guy with the blue shirt?

3 THE WITNESS: Yes, sir.

4 Q And Johnny -- was he sitting up to in the tractor?

5 A I can't remember a tractor. I believe it was a
6 tractor out there, but I just can't remember it's been so
7 long ago.

8 Q Okay. Did Johnny have any kind of flag in his hand?

9 A I don't remember a flag.

10 Q You don't remember a flag?

11 A No, sir.

12 Q Okay. He wasn't out there stopping traffic, was he?

13 A No, sir, just directing him.

14 Q Just directing Mr. English's scrapers to go through
15 the intersection; correct?

16 A Yes, sir.

17 Q And directing them to not -- to say if it wasn't
18 clear, he would direct them and they wouldn't even come to
19 a complete stop, would they?

20 A I hadn't witnessed them not going coming to a
21 complete -- I mean, going across, but --

22 Q Okay.

23 A -- I guess.

24 Q Now, you -- when you were sitting -- did you come --
25 where was the motorcycle when you first saw it -- the

1 motorcycle operator?

2 A As I was coming to a stop that's when the
3 motorcycle -- he laid the motorcycle down; so it came just
4 within a few feet of me in my lane.

5 Q And when you were stopped there did you see the
6 scraper approaching the intersection of Redds Branch Road?

7 A Yes, I did.

8 Q And were you stopped as he was approaching?

9 A I was coming to a stop as he was approaching.

10 Q And did you think -- and you're looking at him and
11 looking at his speed as he approached him, did you think
12 that he was going to come out in the road---

13 MR. COX: Object to form. Excuse me. Objection,
14 Your Honor.

15 THE COURT: And your objection is?

16 MR. COX: He is leading the witness, Your Honor.

17 THE COURT: Please ask a direct question.

18 Q As far as what you thought when you saw that scraper
19 coming down the road, where did you think it was coming?

20 A I thought it might of was coming in the road.

21 Q Okay. And come right -- Did you think it was going
22 to come in front of you?

23 A I did at the time.

24 Q And now what -- We agree and we'll stipulate, Your
25 Honor, that it did not enter the road; so we don't have to

1 worry about that anymore.

2 But did -- what did the scraper do in order not to go
3 into the road?

4 A I guess he applied his brakes and then he turned into
5 the stop sign, but I thought he dropped the pan to keep
6 from coming out in the road.

7 Q What do you mean by dropping the pan?

8 A Dropped the blades into the ground to where, you
9 know, to give it more I guess traction to keep from
10 moving, I guess -- something like that.

11 Q How could you describe the right-hand turn which
12 Mr. Lewis made? Quick, slow, what?

13 A It was quick.

14 Q And that turn where he made that turn, how close to
15 the actual roadway of Redds Branch Road was he when he
16 made that quick turn to that right?

17 A Maybe two or three or four feet; something like that.

18 Q Two or three to four feet. All right, sir. After he
19 made that right-hand turn and where -- what did his
20 scraper do?

21 A It stopped.

22 Q Did it run over the stop sign?

23 A Yeah, it ran over the stop sign.

24 Q Tell us now what happened after that? After you
25 said -- I think your testimony was the motorcycle -- well,

1 let's make sure you -- What did the motorcycle operator
2 do? Tell us that.

3 A He came up to his wife, you know, to see, you know,
4 was she all right. At that time I jumped out of my truck
5 and he asked me to help him out while he do CPR. I told
6 him that I didn't know anything about it but I got down
7 there and helped him anyway.

8 Q Before we get to that, you were sitting there. You
9 testified that you saw the motorcycle -- lay the bike
10 down?

11 A Yes, sir.

12 Q You testified you thought that Mr. Lewis was coming
13 out in front of you; is that correct?

14 A Yes, sir.

15 Q Was there anything else as you're looking there that
16 the motorcycle could have done other than lay that bike
17 down?

18 MR. COX: Objection, Your Honor.

19 THE COURT: Overruled.

20 MR. COX: Calls for speculation.

21 THE COURT: Overruled. You can answer it.

22 THE WITNESS: Okay. No, not really. I mean, it just
23 depends on the circumstances of who the person is, you
24 know.

25 Q It happened very quick, didn't it?

1 A It happened quick, yes, sir.

2 Q Okay. All right. Now if we could tell us what
3 happened now after the vehicles came to a rest,
4 Mr. Pruitt.

5 A Like I said, I jumped out and he asked me to help
6 him, you know, try to save his wife. I told him I didn't
7 know anything about CPR, but I got down and helped him
8 anyway and we just stayed there trying to revive her until
9 the paramedics got there.

10 Q You tried to help him?

11 A Yes, sir.

12 MR. DETRICK: Thank you very much. That's all I
13 have.

14 THE COURT: Cross-examine.

15 CROSS-EXAMINATION

16 BY MR. COX:

17 Q Mr. Pruitt, do you ride motorcycles?

18 A After that, no.

19 Q Have you ever had a motorcycle license in your life?

20 A No, sir, just permit.

21 Q You've -- Okay. You've had a permit. Now, do you
22 know the proper way to stop a motorcycle?

23 A Yes, sir; front brakes and the back brakes.

24 Q Front brakes and back brakes?

25 A Yes, sir.

1 Q You use them both at the same time?

2 A Yes, sir.

3 Q Okay. When was the last time you had your beginner's
4 permit?

5 A I done let them expire.

6 Q Okay. Now, let's go back to August 7, 2009. First,
7 let me ask you with regards to -- you've been working for
8 Waste Management and driving in and out of the Owens
9 landfill for how long?

10 A About 15 years.

11 Q About 15 years?

12 A Yes, sir.

13 Q Okay. And have you been familiar with Sam English
14 Grading Company operating the landfill?

15 A Yes, sir.

16 Q For all of those years?

17 A Yes, sir.

18 Q Okay. And are there other entities that operate
19 trucks and equipment in and down the driveway to the
20 landfill?

21 A Yes, sir.

22 Q What are some of those entities?

23 A Oh, you mean as far as trucks?

24 Q Right.

25 A AGY and sometimes other haulers come in to bring in

1 rock and dirt and stuff like that.

2 Q It is a fairly continuous activity of trucks,
3 big-sized dump trucks going in and out of the Owens
4 Corning landfill, is it not?

5 A Yes, sir.

6 Q Okay. And that's on a daily basis; correct?

7 A Yes, sir.

8 Q Okay. Now, when you were -- on August 7, 2009 you
9 witnessed this -- the motorcycle accident; correct?

10 A Yes, sir.

11 Q Okay. And you're driving to the landfill to drop off
12 a load?

13 A Yes, sir.

14 Q Okay. And you were -- where were you when you first
15 saw the motorcycle?

16 A It's kind of hard to remember. I can't remember
17 whether I was at a complete stop or coming to a stop. I
18 think I was just coming to a stop --

19 Q Okay.

20 A -- when I seen everything. I know the machine was
21 going to come across the road; so I was going to let them
22 have the right-of-way --

23 Q Okay.

24 A -- and that way I can just turn on in.

25 Q So you were coming to a stop already to turn left --

1 coming to a stop so that you could turn left eventually
2 into the landfill at the time you saw the motorcycle?

3 A Yes, sir.

4 Q Okay. So you were close to the crossing at that
5 time?

6 A Yes, sir.

7 Q Okay. And you said you were stopping as well to let
8 the scraper come on out?

9 A Yes, sir.

10 Q Okay. And is that because Mr -- why --- it's not
11 because you were concerned it was coming out. It is
12 because you knew that that was what they were doing?

13 A Yes, sir.

14 Q Okay. You knew that Mr -- you knew what Mr. Tindel's
15 role was?

16 A Yes, sir.

17 Q You knew what his role was on the other side of the
18 road?

19 A Yes, sir.

20 Q And what was that role?

21 A Just to be a spotter to wave them through if the
22 traffic is clear. If not, just to stop them.

23 Q Okay. And so Mr. Tindel would look for traffic on
24 Redds Branch Road?

25 A Yes, sir.

1 Q Would he make sure traffic---

2 MR. DETRICK: Your Honor --

3 THE COURT: Yeah, he can't testify.

4 MR. DETRICK: -- I object that he couldn't---

5 THE COURT: Sustained.

6 MR. COX: Okay.

7 THE COURT: You can ask Mr. Tindel. He is right back
8 there. You can call him.

9 Q But you understood what his role was?

10 A Yes, sir.

11 Q Okay. And you were stopping for the scraper because
12 Mr. Tindel had waved him across?

13 A Well, I can't -- I wanted to let them through because
14 it usually takes room for me to turn inside and, you know,
15 with both vehicles right there in the driveway somebody
16 have to let somebody through.

17 Q Okay. But you weren't stopping because you were
18 concerned that the scraper was going to fly out in front
19 of you?

20 A No, huh-uh.

21 Q Is there anything that would have been obstructing
22 your view of your Waste Management truck at the time that
23 the motorcycle was coming down Redds Branch Road?

24 A No, sir.

25 Q Did you have your left turn signal on?

1 A Yes, sir.

2 Q Now with regards to the motorcycle, how fast was it
3 going?

4 A I really couldn't tell about how fast. It seemed
5 kind of fast, but I don't think he was speeding or
6 anything like that; just speed limit.

7 Q Do you remember me taking your deposition in this
8 case?

9 A Yes, sir.

10 MR. DETRICK: Your Honor---

11 THE WITNESS: Yes, sir.

12 THE COURT: He can't testify about speed. He can't
13 give that opinion.

14 Q Did you believe the---

15 THE COURT: Sir, don't go into speed. You haven't
16 qualified him as an expert to give an opinion on speed.

17 MR. COX: Thank you, Your Honor.

18 THE COURT: You're welcome.

19 Once again, madam forelady and ladies and gentlemen,
20 I am not fussing at these lawyers, but a lay witness can't
21 give opinion testimony. That's just our rules. I am not
22 fussing at them. That's just the rule. I have to make
23 them play by the rules like a football referee.

24 MR. COX: I beg the court's indulgence, Your Honor.

25 THE COURT: They ought to give us flags. We can sit

1 up here and in some cases -- not this case -- I would run
2 out of flags.

3 Thank you, Mr. Cox.

4 MR. COX: Thank you.

5 MR. DETRICK: No further questions.

6 THE COURT: All right, sir. You may step down. Do
7 we need a break yet? You got a short one or what do you
8 want to do?

9 MR. DETRICK: The next witness is a video which will
10 take about an hour and 15 minutes.

11 THE COURT: I think we need a break. We're going to
12 take a quick afternoon break. Don't discuss the case.
13 Don't deliberate. We're going to go until about
14 5 o'clock.

15 (Whereupon, the jury exited the courtroom at 3:38.)

16 THE COURT: All right. I would invite both plaintiff
17 and defense -- you know, we've been talking about is there
18 a duty owed, what's the duty owed, motion for summary
19 judgment there is no duty owed. I invite everyone's
20 attention to two older cases: Spencer versus Kirby, 106
21 SE 2d 883; Williams v. Davis, 134 SE 2d 760. Those are
22 cases dealing with the statute on yielding right-of-way
23 from a road -- from an area other than a roadway where a
24 stop sign is not there.

25 MS. PAYNE: Your Honor, would you mind reading that

1 second cite?

2 THE COURT: I'm sorry. 134 SE 2d 760. The other one
3 is 106 SC 2d 883.

4 MS. PAYNE: Thank you, Your Honor. I just wanted for
5 the record the plaintiff and I -- we agreed that
6 Mr. Pruitt and Mr. Tindel could be released for the day.
7 I wanted to make sure that the court was aware so it
8 wasn't held against me.

9 THE COURT: I think there is a new court rule being
10 suggested that witnesses will allowed to be released
11 automatically unless there is some problem with that.

12 MR. COX: Your Honor, I've got a matter with regards
13 to -- I've got a matter that I'd like to take up with
14 regards to witnesses testifying about speed. We had --
15 Mr. Valenzuela was allowed to testify to what he perceived
16 to be speed --

17 THE COURT: You didn't object.

18 MR. COX: -- but then -- well, Your Honor, I just
19 wanted to know how it is going to be treated going forward
20 with regards to witnesses being allowed to---

21 THE COURT: If you qualify them and they're an expert
22 in the field of reconstructive speed they can testify. If
23 they're not and they're lay witnesses like me, they can't.

24 MR. COX: Okay.

25 THE COURT: But you got to object.

1 MR. COX: Thank you, Your Honor.

2 MR. DETRICK: I am going to publish responses to
3 requests to admit and then I am going to do the
4 deposition.

5 (Whereupon, the jury came into open court at
6 approximately 3:57.)

7 THE FOREPERSON: Hey, Judge, there is no cellphone.
8 That's a \$100 fine.

9 THE COURT: The best foreperson I've ever had. I'm
10 going to put it on silent. Now whose went off yesterday?

11 THE FOREPERSON: I don't know.

12 THE COURT: I get all of my e-mails off this little
13 ol' thing and my law clerk -- do I have permission to
14 leave it on? I like you. I like a feisty forelady.

15 THE JUROR: That's why she picked herself.

16 THE COURT: I am proud of you.

17 THE FOREPERSON: They just follow along.

18 THE COURT: I am used to feisty women. I have been
19 married to one for 43 years. She tells me everything I'm
20 supposed to do and should do and when I first took this
21 job eight and a half years ago I walked in the back door
22 with this robe on thinking I could just all of a sudden
23 I'm the judge. She said you take that so and so robe off
24 right now. When you walk in my house I'm the judge --
25 which is true.

1 Madam forelady, ladies and gentlemen, when a lawsuit
2 is begun or started you serve something called a summons
3 and complaint on the other side to let them know they're
4 being sued and then they respond to it by serving what we
5 call an answer or they respond to the lawsuit. Once all
6 of that happens then the lawyers get to become involved in
7 what we call pretrial discovery and you can ask for
8 certain documents like these contracts. You can ask them
9 the name of all the witnesses who are going to testify in
10 the case and you can serve on them things called requests
11 to admit. In other words, you say admit that today is
12 Monday. You admit it or deny it. I'd have to deny today.
13 Today is Tuesday.

14 Mr. Detrick served on the defendant some requests to
15 admit certain questions. I don't know what they are and
16 as part of the trying of the case you can publish those
17 what you asked them and what their responses are. He's
18 got a few he wants to do right now. Once we finish
19 that -- it'll take about a minute, two minutes -- then
20 we're going to do this deposition. It will take us
21 through the end of the day. Fair enough?

22 Mr. Detrick?

23 MR. DETRICK: Thank you, Your Honor.

24 Ladies and gentlemen, I am going to publish for y'all
25 what His Honor told you and this is defendant's responses

1 to plaintiff's requests to admit. I'll read the question
2 and then I'll give you their answer.

3 Number one: At the time of the wreck on August 7,
4 2009 the defendant was supposed to place truck crossing
5 signs 1,000 feet north and 1,000 feet south of the
6 intersection where the accident occurred? Response of
7 Mr. Cox, attorney for the Defendant Sam English Grading
8 Company, was denied.

9 Number two: At the time of the wreck on August 7,
10 2009 the defendant failed to place any truck crossing
11 signs north or south of the intersection where the
12 accident occurred. Mr. Cox's response for Sam English
13 Grading Company was denied.

14 Number three: At the time of the wreck on August 7,
15 2009 the defendant was supposed to place flagmen Ahead
16 signs 500 feet north and 500 feet south of the
17 intersection where the accident occurred. The defendant's
18 response by Mr. Cox on behalf of Sam English Grading
19 Company was denied.

20 Number four, the question you're supposed to admit or
21 deny was: At the time of the wreck on August 7, 2009 the
22 defendant failed to place any flagman ahead signs north or
23 south of the intersection where the accident occurred.
24 Response of Mr. Cox on behalf of Sam English Grading
25 Company was denied.

1 Number five, admit or deny question: At the time of
2 the wreck on August 7, 2009 the defendant was supposed to
3 have a flagman present to maintain the flow of traffic at
4 the intersection where the accident occurred. The
5 response of Mr. Cox on behalf of Sam English Grading
6 Company was denied.

7 And last, number six: At the time of the wreck on
8 August 7, 2009 the defendant did not have a flagman
9 present to maintain the flow of safety at the intersection
10 where the accident occurred. The defendant's response by
11 Mr. Cox on behalf of Sam English Grading Company was again
12 denied.

13 THE COURT: Thank you, Mr. Detrick. I understand the
14 next witness is a deposition?

15 MR. DETRICK: Yes, sir. We present the video
16 deposition of Mr. Clifford Merritt.

17 THE COURT: One of the things the lawyer can do once
18 they learn who the witnesses are they can take a
19 deposition of all the witnesses and all the parties. A
20 deposition is simply where the lawyers of the plaintiff
21 and the lawyers for the defendant meet with the person
22 giving the deposition or giving the testimony. It's done
23 before a court reporter. They're sworn to tell the truth
24 and our rules allow the use of that deposition just as if
25 they were live witnesses in the courtroom.

1 So accept the testimony as if it were a person
2 sitting right here. Even if the person is in the
3 courtroom they can still use the deposition if they're
4 certain people such as the parties.

5 This is of who?

6 MR. DETRICK: Sir?

7 THE COURT: Who is this deposition of?

8 MR. DETRICK: Mr. Clifford Merritt.

9 MR. COX: Your Honor, if we may, before we start, I'd
10 like to take up a matter with you.

11 THE COURT: Okay.

12 (Whereupon, a bench conference was held.)

13 THE COURT: Madam forelady, ladies and gentlemen, as
14 to each of the responses in the requests to admit before
15 they were denied the defendant says, Objection, calls for
16 a legal conclusion; without waiving said objection denied.
17 So those -- He objected to all of them. I just want to
18 make sure you had the full reading of it.

19 Anything else, Mr. Cox? Does that satisfy you?

20 MR. COX: That's it at this time.

21 THE COURT: Thank you. All right. You may play the
22 deposition.

23 (Whereupon, the video deposition begins.)

24 MR. COX: Objection, Your Honor.

25 (Whereupon, the video deposition stops.)

1 THE COURT: Redact that 2009.

2 Disregard that, ladies and gentlemen.

3 (Whereupon, the video deposition begins and is then
4 stopped.)

5 MR. COX: Judge, the next line after my question is
6 supposed to be played.

7 THE COURT: Gentlemen, y'all are supposed to have all
8 of that agreed on.

9 MR. DETRICK: That's part of what he said he didn't
10 want in there.

11 MS. PAYNE: He said he wanted through line 21.

12 THE COURT: That's page 34?

13 MR. MAXWELL: That's forty-eight.

14 (Whereupon, the attorneys conferred.)

15 THE COURT: This is who?

16 MS. PAYNE: Cliff Merritt.

17 MR. DETRICK: We're on page 47, line 21.

18 THE COURT: Page 47, lines 22 through page 48, line
19 4. That's what's out; so 47 through line 21 is in.

20 MR. DETRICK: Can you get back on it?

21 THE PARALEGAL: I did.

22 MR. DETRICK: Oh, okay.

23 MR. COX: Well, she didn't play line 21.

24 THE PARALEGAL: I was told to stop.

25 MR. DETRICK: Well, back it up and play line 21. I

1 apologize.

2 (Whereupon, the video deposition is started and then
3 stops.)

4 THE COURT: Is that it? Anything else?

5 MR. DETRICK: Yes, sir.

6 THE COURT: All right. Let's get going.

7 (Whereupon, the video deposition is started and then
8 stops.)

9 MR. DETRICK: That's it, Your Honor.

10 THE COURT: All right. Turn it off.

11 Cut the lights on, Ms. Barbara, Mr. Bill.

12 MR. DETRICK: Your Honor, from that contract we would
13 offer into evidence -- that contract -- that deposition we
14 would offer into evidence Exhibits 1, 2, 3, 4, 5, 6, 7.
15 Wait a minute. Let me make sure about this. I take that
16 back -- one, two, three, four, six.

17 THE COURT: Any objection?

18 MR. COX: Your Honor, we renew our previous objection
19 regards that contract.

20 THE COURT: Which is?

21 MR. COX: Which is it is a private contract. It is
22 not admissible. It doesn't create a duty outside of
23 between Owens Corning and Sam English Grading.

24 THE COURT: Overruled. Thank you.

25

1 (Whereupon, Plaintiff's Exhibit Nos. 1 - 4, 6 were
2 admitted into evidence.)

3 (Whereupon, Court's Exhibit No. 3 was marked for
4 identification only.)

5 THE COURT: Ready to go home?

6 THE JUROR: Yes.

7 THE COURT: You got to work tonight? All right.

8 Let's leave the pads in the seats. We'll collect those
9 and we'll put them back in the morning. Don't discuss the
10 case. Don't deliberate. What would you like for
11 breakfast in the morning? Are you going to be the
12 spokesman for breakfast? Do y'all want sausage biscuits?
13 Do you want fruit or do you want cookies? Do you want
14 doughnuts?

15 THE JUROR: Fruit. No more sausage biscuits.

16 THE COURT: All right. Mr. Whittle, a fruit platter
17 at 6:30.

18 THE FOREPERSON: You come at 6:30 by yourself.

19 THE COURT: Is 9:30 okay? We'll start at 9:30. If
20 you want that good fruit for you, be here a little early
21 and have some coffee. Have a pleasant evening.

22 Everybody else remain seated.

23 (Whereupon, the jury exited the courtroom at 5:05.)

24 THE COURT: Okay. Anything by the plaintiff before
25 we break for the evening?

1 MR. DETRICK: Nothing from the plaintiff.

2 THE COURT: By the defendant? I take that as a no.

3 MR. COX: No, sir, Your Honor.

4 THE COURT: All right. Tomorrow is Wednesday. I
5 will start needing some proposed jury charge if you want
6 me to consider them, verdict form if you want me to
7 consider it. Right now I'm thinking about a sudden
8 emergency charge, duty to yield the right-of-way -- not
9 the duty, but the statute dealing with yielding the
10 right-of-way just right off the top of my head. The rest
11 of it is pretty standard, but anyway I am amenable to
12 receiving any proposed jury charges to consider.

13 MR. DETRICK: Yes, sir. We will try to do that if we
14 can. We would as far as the statute I know---

15 THE COURT: Any statute that you want me to look at.

16 MR. DETRICK: Yes, sir, I do have some.

17 THE COURT: Yes, ma'am?

18 MS. PAYNE: Comparative negligence, sole negligence,
19 and any statutes relating to proper lookout, keep your
20 vehicle under control. We'll present all this.

21 THE COURT: I got all of that. Just tell me which
22 ones you want. Most of that is general.

23 MS. PAYNE: Yes, sir. Thank you.

24 MR. DETRICK: Your Honor, could I possibly have at
25 least until lunch? I've got to work with my expert

1 tonight. I don't know whether I'll have time to do that
2 to be honest with you.

3 THE COURT: I am just saying, you know, tomorrow
4 afternoon, late tomorrow afternoon.

5 MR. DETRICK: All right, sir.

6 THE COURT: I'd like to have them before I leave
7 tomorrow night so I can see what y'all are thinking about.
8 It is going to probably coincide with what I am thinking
9 about. You're thinking the same thing I'm thinking maybe.

10 MS. PAYNE: Just for planning purposes so we know
11 whether to have witnesses here, do we think that the
12 plaintiff is going to wrap up tomorrow?

13 THE COURT: Don't know.

14 Mr. Detrick, give me a good guestimate.

15 MR. DETRICK: Your Honor, we---

16 THE COURT: You still got the young boy, the son.
17 You've got an expert?

18 MR. DETRICK: Two of them. I'm glad to tell her what
19 I got if she'll tell us, you know, exchange courtesies. I
20 have no problem.

21 THE COURT: Well, and I know that, but do you think
22 you'll be through tomorrow? I am getting mixed vibes --

23 MR. DETRICK: I'm going to say yes, sir.

24 THE COURT: -- from your lady back there. Without
25 holding anybody's feet to the fire, you've got the young

1 fellow. That won't take long. You've got the two
2 experts. Is the expert the MAIT guy?

3 MR. DETRICK: We've got one MAIT guy and then an
4 accident reconstructionist first thing in the morning.

5 THE COURT: Who is that?

6 MR. DETRICK: Kelly Kennett.

7 MS. MCPHERSON: And we've got about four damages
8 witnesses.

9 THE COURT: Y'all will take most of tomorrow.

10 MR. DETRICK: Yes, sir, and then we plan to call
11 possibly two of theirs being Curtis English and we have a
12 video portion of Mr. Chris English possibly---

13 THE COURT: Who is Curtis English?

14 MR. DETRICK: Sitting right back there.

15 MS. PAYNE: One of our employees.

16 THE COURT: Kin to Mr. Chris English?

17 MS. PAYNE: His brother, Your Honor.

18 THE COURT: All right. I don't see how you can
19 finish tomorrow, to be honest with you.

20 MR. DETRICK: Sir?

21 THE COURT: It would be tough.

22 MS. PAYNE: Yes, sir. We have to argue directed
23 verdict.

24 THE COURT: You don't have to have anybody here in
25 the morning and then we'll reassess tomorrow morning when

1 we finish and I'll work with you.

2 MS. PAYNE: Thank you, Your Honor. We'll have
3 Mr. English here.

4 THE COURT: Sure. And y'all will have Mr. English.
5 How many do you think y'all will have?

6 MS. PAYNE: What about Mr. Dawes?

7 THE COURT: I am going to let him testify probably
8 about braking, but that's it -- alleged proper use of
9 braking.

10 MR. DETRICK: That would be, Your Honor, the same as
11 has already been testified to in the manual and nothing
12 further regarding causation.

13 THE COURT: Causation, radar and whatever that was,
14 his mental impressions and tests, I have ruled that out.
15 I'm not sure we'll finish Friday.

16 MS. PAYNE: We're trying.

17 MR. DETRICK: I don't know what witnesses they got.
18 If she'd tell me---

19 MS. PAYNE: I was---

20 THE COURT: Well, she's telling you. Dawes is going
21 to be short, whatever his name is.

22 MS. PAYNE: Dawes. And our expert---

23 THE COURT: We're off the record.

24 (Whereupon, the proceedings were concluded for the
25 day and are reconvened on August 29, 2012 as

1 follows:)

2 THE COURT: All right. Let me report that our
3 forelady Ms. Deidre Mack, juror number 103, met me in the
4 hall with the bailiff as soon as I got here this morning.
5 She has been bitten by some type of an insect or had
6 broken out in hives and welts and itching all over and she
7 felt like she needed to go to the doctor; so I have
8 excused her. We have three alternates: Juror number 193,
9 Timothy Williams; juror number 142, Hannah Richardson, and
10 juror number 42, Darell Dunn I think is how he pronounced
11 it. Normally, I select randomly.

12 Any objection to that, Mr. Detrick?

13 MR. MAXWELL: Your Honor, who was the first alternate
14 you said?

15 THE COURT: 193, Timothy J. Williams. The second
16 alternate is 142, Hannah Richardson, and the third is
17 Darell Dunn. I don't know which one is which.

18 What is y'all's pleasure, defendant? I can put them
19 in the hat and draw them out one randomly or I can do the
20 first one, however you want to do it.

21 THE DEFENDANT: Randomly is fine with us, Your Honor.

22 MR. DETRICK: Your Honor, it's been my experience --
23 and whatever the court decides -- I thought when we were
24 striking the jury that they were going to be in order
25 like, you know, down first alternate, second alternate,

1 third alternate. That was my understanding when we drew
2 the jury.

3 THE COURT: I think there may be a statute on it.
4 Hang on.

5 MR. DETRICK: Your Honor, it is my understanding,
6 Your Honor, we struck them one and then two and then
7 three.

8 THE COURT: I did. There is no question. I don't
9 see a statute on it. I expect it's discretionary with me.
10 I'll give y'all a second.

11 (Whereupon, the court confers with the law clerk.)

12 THE COURT: There is a statute 14-7-1340 that says if
13 a juror becomes unable to serve the court shall order him
14 to be discharged and draw the name of one of the
15 alternates if there be more than one by ballot to serve in
16 place of such then discharged juror throughout the
17 remainder of the proceedings by ballot.

18 MR. DETRICK: All right, sir.

19 THE COURT: I thought that stuck out in my mind. I
20 have had the clerk do me three little pieces of paper:
21 One, two, and three. One will be juror 13, two will 14,
22 and three is 15. Everybody clear on that? We will do
23 this very scientifically. We will put the names in a cup
24 and we'll shake them up.

25 MR. DETRICK: This is a first, Your Honor. I have

1 tried how many cases and I have never seen this done.

2 That's pretty cool.

3 THE COURT: I know y'all are suspensefully waiting.

4 And number three, Darell Dunn, juror number 42.

5 Anybody want to verify it was three? All right.

6 Anything for the record before I bring them?

7 MR. DETRICK: Yes, sir, I'm sorry to say. We failed
8 to I think make for the court to rule on the objections on
9 Chris English's deposition.

10 THE COURT: We didn't because y'all said you were
11 going to call him live. Isn't that the reason why we
12 didn't?

13 MR. DETRICK: They said they're calling him live.
14 Your Honor, I will play a little bit of portion.

15 THE COURT: That's no problem.

16 MR. DETRICK: I'm sorry for the confusion.

17 THE COURT: No problem. Hand me his deposition real
18 quick. Hold on a second. Your designations --
19 plaintiff's objections. Who is making the objections?

20 MR. DETRICK: They are, I think.

21 THE COURT: Hold on a second. What I have up here is
22 an amended defendant's deposition designations.

23 MS. PAYNE: Do you have the original, Your Honor?

24 THE COURT: Well, when y'all told me you weren't
25 going to do it I probably got rid of it. All right. I

1 assumed that the plaintiff is going to use 1 through 30.

2 Is that pages 1 through 30? What have you got?

3 MR. DETRICK: That's the defendant's was 1 through
4 30. Of course, we'll just do it in order.

5 THE COURT: All right. I need a deposition
6 transcript. Is this the first thing out the box this
7 morning?

8 MR. DETRICK: No, sir.

9 THE COURT: Just hand me Chris English's deposition.
10 All right. I have Chris English's deposition.

11 Can you tell me what you intend to publish,
12 Mr. Detrick, or hand it up to me while -- somebody can
13 hand it to me.

14 Ms. Barbara, don't make Paul walk up here. Hand me
15 that.

16 MR. DETRICK: Thank you.

17 THE COURT: All right. Chris English. Make sure my
18 -- your objections are what, Ms. Payne? Page 34, line 17
19 through 21?

20 MR. COX: That's correct, Your Honor.

21 THE COURT: Hold on. Page 35, lines 2 through 6?

22 MR. COX: Correct, Your Honor.

23 THE COURT: Page 45 and 46?

24 MR. COX: That's correct, Your Honor.

25 THE COURT: Page 48, lines 11 through 25?

1 MR. COX: That's correct as well, Your Honor.

2 THE COURT: And now I got an amendment this morning
3 page 34, lines 17 through 21; is that correct?

4 MR. COX: Your Honor, the amendment actually has a
5 mirror of our objections from the original; so, really, on
6 the amendment---

7 THE COURT: The same thing?

8 MR. COX: The same thing as far as the objections go.
9 No changes.

10 THE COURT: I will read that while you do the first
11 witness and we'll do that at the first break before you
12 intend to publish it. Is that fair enough?

13 MR. DETRICK: Yes, sir.

14 MR. COX: Yes, sir.

15 THE COURT: Anything else by the plaintiff?

16 MR. DETRICK: One other thing, Your Honor. At some
17 point in time the plaintiff intends to call Curtis English
18 as a witness. You deferred your ruling on their motion in
19 limine regarding a safety -- I questioned him. I'll give
20 you the gist of it. I asked him if they had any safety
21 meetings after the incident in question and he said---

22 THE COURT: After the incident in question?

23 MR. DETRICK: After the incident in question. That's
24 the issue and he said yes, sir, you know, the next day or
25 something like that. I said, what did you discuss? I am

1 giving you generalized---

2 THE COURT: Sure.

3 MR. DETRICK: And he said -- Mr. English said, well,
4 y'all got to make sure you stop for the stop sign,
5 generally, and we think that's not a subject of remedial
6 measure, but it is two things. The main thing is probably
7 an admission. If they say they're going to stop at the
8 stop sign why is he having a meeting the next day and
9 saying y'all got to make sure y'all stop at the stop sign?

10 THE COURT: All right. What is your argument? I
11 think your argument at the motion in limine was that it
12 was a subsequent remedial measure; is that correct? I may
13 be remembering wrong. Tell me what your objection was.

14 MS. PAYNE: Your Honor, we have several grounds for
15 our objection. Under 401, 402, and 403 and under 407 this
16 is not relevant evidence as to whether or not we --
17 Anything that happened on August 7, 2009, the day after
18 has nothing to do with that. We actually did stop at the
19 stop sign on August 7, 2009.

20 THE COURT: Well, you did in an unusual manner.

21 MS. PAYNE: I certainly understand the court's
22 position on that argument, Your Honor, but any
23 post-conduct meetings, any post-accident meetings go
24 directly to subsequent remedial measures and subsequent
25 direction by Chris English and would I think direct the

1 jury that they're admitting some liability and would be
2 completely prejudicial to our client under 403 and it
3 would be more prejudicial than probative.

4 This testimony would have no probative effect as to
5 our liability on August 7 of 2009. It is not relevant to
6 what happened that day, has nothing to do with what
7 happened on August 7, 2009 and we would strongly ask the
8 court to exclude this evidence.

9 THE COURT: I am going to allow it. I find it to be
10 relevant. Looking at 401, 402, and 403 I determine it to
11 be relevant and not more prejudicial than probative. The
12 driver of the pan --

13 MR. DETRICK: I'm sorry, Your Honor.

14 THE COURT: -- testified that on some occasions he
15 didn't stop, some occasions he did, and your driver has a
16 duty to yield the right-of-way and to ensure that that --
17 that he can safely enter the intersection without being a
18 danger to the motoring public. The cases I gave you
19 yesterday Spencer versus Kirby and Williams versus Davis
20 set out very clearly the duty owed by a driver who is
21 under the auspices of that particular statute, i.e.,
22 yielding the right-of-way and I find it not to be a
23 subsequent remedial measure. It is -- I find it to be
24 relevant; so I will allow it.

25 MS. PAYNE: Thank you, Your Honor. If I may, they're

1 going to limit it solely to the stop sign?

2 THE COURT: That's correct.

3 MS. PAYNE: No direction about signs or flagman?

4 MR. DETRICK: Not signs or flagmen after.

5 MS. PAYNE: Okay. Thank you.

6 THE COURT: All right. Bring the jury in.

7 (Whereupon, the jury exited the courtroom at 9:48.)

8 THE COURT: Good morning. I got some bad news. Our
9 little feisty forelady got bit by something. I don't know
10 what it was, but when she came in this morning she was all
11 welted up and itching all over and started getting like
12 hives or whatever; so I dismissed her, excused her. I
13 sent her to the doctor or suggested she go to the doctor.
14 I enjoyed her. She was feisty.

15 So what we do when with have alternates, the statute
16 says -- we have three alternates Mr. Williams, Ms.
17 Richardson and Mr. Dunn and I have to put your names in a
18 hat and shake it.

19 (Whereupon, a telephone makes noise.)

20 THE COURT: Is that your phone? We need the forelady
21 to fuss at you like she did me. Y'all make sure you got
22 your phones off.

23 So, I did that, and, Mr. Dunn, you're now on the
24 regular jury. So, if you'll have a seat right here for me
25 and I will ask y'all when we take our first morning break

1 let's select a new foreperson and we'll go from there.

2 That's a good looking outfit.

3 THE JUROR: Thank you.

4 THE COURT: What does it say?

5 THE JUROR: Red ape.

6 THE COURT: I'll tell you, these young people, they
7 got stylish clothes these days. You're a young person,
8 see? You're in that category.

9 All right. Thank you. We're going to move right
10 along and see how far we can get today.

11 Mr. Detrick?

12 MR. DETRICK: I will call Kelly Kennett.

13 KELLY B. KENNETT, after being duly sworn,
14 testified as follows:

15 THE CLERK: Please have a seat on the witness stand.
16 State your full name for the court.

17 THE COURT: Mr. Whittle, if you would take the notes
18 from the forelady who got sick, just tear those off of
19 that pad. Destroy them, shred them, tear them up, put
20 them in the trash so no one can see them.

21 Mr. Detrick?

22 DIRECT EXAMINATION

23 BY MR. DETRICK:

24 Q Mr. Kennett, you're Mr. Kelly Kennett; correct?

25 A Yeah, I never actually got to say that. Kelly Brian

1 Kennett.

2 THE COURT: Spell that last name.

3 THE WITNESS: K-E-N-N-E-T-T and Bryan with an I.

4 Q Mr. Kennett, I believe you actually grew up in the
5 Aiken area, did you not?

6 A I did. We lived here when I was a little kid. My
7 mom taught at the high school and my dad worked at
8 Graniteville for a while.

9 Q Okay. And your grandmama is still here?

10 A She is. Unfortunately, she's in Harbor Chase. She's
11 got dementia, but she's still here.

12 Q Give us, if you will, your educational background.

13 A I have a bachelor of science in aerospace engineering
14 from the University of Virginia and a master of science in
15 the biomechanical engineering also from University of
16 Virginia.

17 Q What kind of work experience have you had since
18 leaving the University of Virginia?

19 A Before, during, and after graduate school I worked at
20 the automobile safety laboratory which is an independent
21 lab at the University of Virginia which is basically a
22 contract lab for the federal government -- the National
23 Highway Traffic Safety Administration. The job of that
24 lab is to do impact testing to develop standards to which
25 your cars are designed. There is a huge list of rules in

1 the federal motor vehicle safety standards and somebody
2 has got to do the work to figure out what those rules
3 should be. So, that's what we were doing there.

4 Like I said, I worked there before, during, and after
5 graduate school for a total of about four years and
6 change. After that I left and went to a large consulting
7 company called Failure Analysis Associates and I was in
8 the vehicle practice -- biomechanics and vehicle practice,
9 and Failure Analysis is a large consulting company whose
10 primary vehicle clients are the auto manufacturers, you
11 know, Ford, GM, Chrysler, Toyota, Honda. So, we did
12 consulting work for them including litigation cases,
13 defect investigations, crash testing, basically looking
14 into whatever sort of safety-related problems they would
15 have and I worked there for seven years. I was hired as
16 an engineer, promoted to senior engineer, and promoted to
17 managing engineer.

18 I testified while I was there many different times
19 and then in beginning of 2003 five of us left and formed
20 our own little company and then in 2004 three of us formed
21 the company I have now. So we're doing the same business
22 in consulting. Since we've been independent we're able to
23 take cases and do investigations for all-comers, so to
24 speak; so I now don't have a particular, you know,
25 corporate bent or plaintiff bent. We take cases for folks

1 on both sides.

2 Q And what about your being qualified as an expert in
3 the courts of our country?

4 A I've testified in roughly 100 trials from the Virgin
5 Islands to Hawaii and everywhere in between. I haven't
6 been to Alaska yet; so that one I still got to get, but
7 otherwise I have testified in federal and state courts all
8 over the country and quite a few times in South Carolina.

9 Q Besides biomechanics have you also testified in
10 addition as an accident reconstruction expert?

11 A Yes, absolutely. Accident reconstruction is a big
12 part of my practice and it really just involves vehicle
13 dynamics, physics, times, distances, accelerations, impact
14 forces, and those types of things and I testified on that
15 quite frequently, yes, sir.

16 Q What kind of professional societies do you belong to?

17 A I belong to SAE, The Society of Automotive Engineers.
18 I am also a paper reviewer for them. I belong to AAAM,
19 the Association for the Advancement Automotive Medicine
20 which is engineers and doctors. Again, I'm a paper
21 reviewer for them as well. I am also a member of AIAA,
22 The American Institutes and Aeronautics and Astronautics.

23 Q Just generally tell us about some of the papers and
24 publications that you've written.

25 A I've written quite a number of papers and

1 publications. Some of them are strictly biomechanics like
2 skull and facial fractures and things. Relevant to this
3 case I've published a paper on immediate intersection
4 hazards, for instance, where we tried to give some
5 numbers, give some physics to that term that I guess
6 appears in law -- immediate hazard -- and what does that
7 mean. So, that's an example. Published talks and
8 presentations to different groups, bar associations about
9 evidence in vehicle dynamics and all sorts of things.

10 MR. DETRICK: Your Honor, we offer Mr. Kennett as an
11 expert in accident reconstruction.

12 THE COURT: Any cross examination on his
13 qualifications?

14 MR. COX: None, Your Honor.

15 THE COURT: All right. Ladies and gentlemen of the
16 jury, Mr. Kennett will be allowed to testify in the area
17 of automobile reconstruction as an expert and under our
18 rules of evidence unlike a normal lay witness he will be
19 allowed to give opinions. The law and the rules allow for
20 that.

21 MR. DETRICK: Thank you, Your Honor.

22 All right. Mr. Kennett, this particular case --

23 THE WITNESS: Yes, sir.

24 Q -- what were you asked to do?

25 A Basically, I was just asked to look at the physics of

1 this accident, reconstruct this accident from the
2 perspective of times, distances, the motions of the
3 motorcycle, the motions of the scraper, the perceptions
4 and reactions of the two, the visibility restrictions and
5 issues, the dynamics -- in other words, how did they move
6 during the accident; so, basically, just to investigate
7 the accident from the scientific perspective.

8 Q What information has been provided to you to review?

9 A Well, fundamentally, a lot. It's in these two
10 binders here, but as a general type we have reviewed, for
11 instance, all of the police investigation, the MAIT
12 report, the MAIT photographs, the MAIT interviews, the
13 MAIT survey data that they took out at the scene; so we've
14 reviewed and employed that data. We reviewed quite a
15 number of statements from the involved parties -- the
16 folks that were there at the day and time. We've reviewed
17 deposition testimony from those folks and some of the
18 neighbors up and down the road and some of the, I guess,
19 corporate officials.

20 We have reviewed extensive -- some of this kind of
21 gets into what we collected, but we reviewed extensive
22 vehicle specifications, SAE standards on their performance
23 to characterize the motorcycle and the scraper and I think
24 that's about it, but it's quite a bit of stuff we've been
25 through.

1 Q Okay. And what tasks have you actually performed
2 yourself in this case?

3 A Well, we did quite a few things. The first thing we
4 do is we get all of these documents and we go through them
5 and we figure out what the parameters of the case are, the
6 who's, what's, when's, where's, that sort of thing just
7 getting the details down. The next big thing we did the
8 go out to the site. Myself and one of my junior
9 engineers -- we spent pretty much a whole day out there.
10 We laid out distance markings up stream on Redds Branch
11 Road. We laid out distance cones and flags on the
12 driveway that the scraper was traveling. We, of course,
13 did measurements. We did photographs. We did
14 drive-thrus. We did perspective photographs which is to
15 get at the eye height of either the scraper or the
16 motorcyclist. We did drive-thrus of a mock up of the
17 front end of the scraper driving down the driveway. So
18 then that's basically the details of what we did at the
19 site.

20 After that basically we come back and we start to
21 press that into some actual analysis and what I mean by
22 that is we generate diagrams. We make a to-scale diagram
23 with many different layers including the site layout, the
24 site evidence, the vehicle path, the vehicle positions at
25 various points in time and we'll see a lot of those and

1 then we do calculations. We do engineering nerdy stuff
2 and we run spreadsheets and we type in a bunch of numbers
3 and do calculations.

4 Q What initially after that was -- did you find a
5 description of kind of what generally happened?

6 A Well, what generally happened is we kind of have an
7 intersection issue. Obviously, Mr. Valenzuela is
8 southbound on Redds Branch Road. He is riding his
9 motorcycle. He is in -- squarely in that lane. There is
10 no issues of lane deviations or off road. The scraper is
11 coming from essentially the dump to the supplier. It is
12 attempting to cross Redds Branch Road. Fundamentally,
13 Mr. Valenzuela reacts to the oncoming scraper, skids his
14 motorcycle, lays the motorcycle down so there is a sliding
15 phase, and then ultimately right at the end the motorcycle
16 kind of -- the rear tire grabs and it flips half over. I
17 call that a vault phase and then comes to rest and,
18 unfortunately, at that time Mrs. Valenzuela was killed.

19 Q And what kind of evidence at the scene did you use?

20 A Well, there's significant site evidence both what we
21 observed when we were out there which was, of course, a
22 long time after the accident, but we relied heavily on the
23 photographs made by the police and they were made on two
24 different occasions. One is on the day of the accident
25 and then they come back a few days later to do their

1 measurements and reconstruction; so we went extensively
2 through those.

3 Q If we could, let's go through the photographs that
4 you've used in the evidence at the scene. Do you need the
5 lights off?

6 THE COURT: It's being taken care of.

7 THE WITNESS: You want me to tell them what I see?

8 Q Is it better off with the lights off?

9 A Probably, yeah.

10 Q For the record we're referring to -- if you would
11 Mr. Kennett, tell the court what exhibit you're referring
12 to so we can have it for the record. I think the first
13 one is Exhibit 13?

14 A Yes, sir.

15 Q Go ahead.

16 A This is a photograph of the motorcycle at its point
17 of rest. This is looking southbound on Redds Branch Road.
18 The scraper is over here. The supply area is over here.
19 This is the truck that was also parked at the site. Of
20 course, here is the motorcycle. You notice, of course,
21 it's on its left side. Obviously, the people have been
22 taken away. This is after the folks have been evacuated
23 from the scene and we'll see a lot of other pictures of
24 this, but you can see some of the scrape marks leading up
25 to the motorcycle and then perhaps most of note in this

1 picture, this is the tire mark left by the rear tire.

2 The motorcycle is sliding prior to this on its right
3 side and then it rocks to the point where the rear tire
4 kind of grabs on the ground and then it does a half
5 overturn.

6 Q You tell when you're ready to go to the next exhibit.
7 I'll just leave it up to you.

8 A Next one. So this is Exhibit 18. This is a picture
9 of the scraper at its point of rest. This is on the day
10 of the accident and so the MAIT Team leader comes and does
11 a reconstruction where they park the scraper back there.
12 We'll see a comparison of those later and you can see here
13 and we'll see a lot more of those later, but the tire
14 marks left by the scraper and there is some on the inboard
15 wheel here. So this is just the scraper at its point of
16 rest and you notice that it is, well, turned sharply or
17 basically it is a 90-degree angle roughly -- little
18 less -- at its point of rest.

19 This is Exhibit 20. This is another photograph that
20 was really key to our analysis. You can see a couple of
21 things. These orange dots here are dots laid out by the
22 police so, you know, when they paint up an intersection
23 these are the dots they're marking and what they're
24 marking here is the tire mark associated with the left
25 front tire of the scraper and the character of this tire

1 mark tells us some things about what the scraper was doing
2 and we can talk about that later, but fundamentally this
3 is the scraper at its point of rest and the photograph
4 revealing the tire marks.

5 This is Exhibit 15. This is another one that we --
6 that we took into account. This is, of course, showing
7 the cab of the scraper. The biggest thing you notice here
8 is it's, again, it's basically bent at a 90-degree angle,
9 but importantly it is stopped on the stop sign as opposed
10 to at the stop sign, but that's what we take away from
11 this photograph.

12 This is another -- I'm sorry, Exhibit -- is that 16
13 or 18? Sixteen. It is another exhibit of the scraper
14 again. It is at the point of rest. It is on the stop
15 sign and we can also see and we'll look at this later, but
16 the tire mark from this right front tire is exhibited in
17 this photograph as well.

18 So continuing with the scene evidence now, this is
19 Exhibit 40. This picture was taken a few days later when
20 the police came out to do their reconstruction so one
21 thing you can see throughout these pictures it was
22 drizzling a little bit that day and they set up a tent and
23 the tent is sheltering their survey equipment. What they
24 do is they take survey equipment and they shoot all of
25 these little red dots so ultimately they provided that to

1 us and so we incorporate that data in our diagrams that
2 we'll see extensively, but so they go along shooting these
3 paint marks, and, of course, in this photograph this is
4 the most upstream evidence from the motorcycle and this
5 mark here is a traditional police mark used to indicate
6 the beginning of the motorcycle tire mark. You see, of
7 course, it is light here and then a few feet later the
8 tire heats up and starts really laying down a mark. So,
9 that's the initiation of the skidding phase of the
10 motorcycle.

11 So this is just walking downstream. This is
12 Exhibit 44. This is additional aspects of the tire mark
13 and there's a couple of things to note of interest in this
14 picture. One is that it's a single tire mark and it
15 becomes an issue in the case, but it's a single tire mark
16 throughout its path and specifically if two tires on a
17 motorcycle are sliding once you get any sort of yawing or
18 any imperfection in the direction of travel you would see
19 the tire marks diverge if there were two tires sliding.
20 You never see that divergence in this case and we have
21 plain evidence that it takes on a yaw angle down in this
22 phrase; so what we learn from the tire mark is that there
23 are -- at no time are there two tires sliding. There is
24 only one tire sliding and based on the width of the mark
25 and the type of the mark it is a rear tire. I don't think

1 there is any dispute about that one.

2 So this continues to walk downstream. Again, this is
3 kind of the terminal phase of the tire mark and maybe we
4 can zoom in on this part. You can begin to see what we
5 call this directionality to the tire mark here, this
6 angulation. That's called siping and that's consistent
7 with a tire that's in a yaw slide.

8 So, there's a couple of ways to slide a tire. One is
9 to lock it up and slide it inline with it's direction.
10 Another is to slide it sideways. So, as the vehicle is
11 turning here that rear tire is taking on the siping
12 properties which means it is in a yaw slide. So, when you
13 look at a curved tire mark like this it could either be
14 making a left-hand turn, right, or it could be a yaw to
15 the motorcycle and in this case it is a yaw.

16 So, basically --

17 MS. PAYNE: Your Honor?

18 THE COURT: Yes, ma'am?

19 THE WITNESS: -- this is Exhibit 48.

20 MS. PAYNE: Can we have the Exhibit Number? We can't
21 see it.

22 THE WITNESS: I'm sorry. I forgot the last one,
23 didn't I?

24 MR. DETRICK: Back up.

25 THE WITNESS: Sorry.

1 MS. PAYNE: I didn't mean to interrupt.

2 THE COURT: That's okay.

3 THE PARALEGAL: This one is 48 and the one before
4 that is 47 -- 46; I'm sorry.

5 Q Okay.

6 A So continuing along with the site evidence here again
7 -- this is 48. I apologize. This is basically standing
8 at the end of the sliding phase -- excuse me; the skidding
9 phase of the motorcycle and now we get into a sliding
10 phase and so we begin to see this is the first gouge mark
11 that the motorcycle lays down and essentially we'll see
12 when we took at pictures of the motorcycle, but that is
13 the right side leg bar. That's kind of the widest point
14 on the motorcycle and when you lay it on its side that
15 right side leg bar begins to dig into the asphalt. So,
16 this is the very first gouge from the motorcycle. You
17 notice, of course, there is no tire mark right here. So,
18 basically, you end the tire mark and it takes a small
19 amount of time for the motorcycle to literally tip over
20 and strike the ground and that's what it does in this
21 case. This is the most upstream evidence where the bike
22 was laid down.

23 A couple of other things to notice here, you're
24 starting to get into pretty close proximity in the
25 driveway. So this is really, you know, what I would call

1 the terminal phase of the incident. This is in close
2 proximity.

3 This is Exhibit 51. We're beginning to get further
4 downstream and so there are a couple of things to note
5 here. Here is the one gouge mark that expands into
6 additional gouge marks and as we march down here there are
7 more orange dots. Basically, the motorcycle begins to
8 move. This is southbound; so it begins to move from the
9 west to the east and drift into the northbound lane. Now,
10 again, it's on its right side during this whole phase.

11 This is Exhibit 74 and essentially what we can notice
12 here -- here are the police again continuing to survey.
13 This is looking back in the direction of the motorcycle's
14 travel; so he comes from around this turn in this last --
15 this is about -- roughly the visibility limit up here at
16 this turn is about 550 feet; so just to give you a sense
17 of scale this is roughly 500 and change feet.

18 This is the point of rest. You'll notice there is a
19 little bar here and markings from the police. This is the
20 point of rest of the motorcycle. Then, of course, this is
21 the direction from the scraper. This is not the point of
22 rest. This is, I believe, a reference mark that the
23 police laid down -- either that or a memorial, one of the
24 two.

25 So this Exhibit 85. This is part of the physical

1 evidence of the motorcycle. This is the right side of the
2 motorcycle. A couple of things to note here: This leg
3 bar which we'll see in a close-up in a second is bent and
4 then the back seat is, of course, abraded on this side and
5 the chrome. So, essentially, there's undoubted
6 evidence -- I don't think that anybody disagrees that the
7 motorcycle was sliding on its right side right up until
8 that last flip.

9 This is Exhibit 86. This is a picture of the left
10 side of the motorcycle, obviously, and as -- two things
11 you have to look for when you investigate these cases when
12 you look at photographs is what's there and what's not
13 there. One way of the ways you decide what side the
14 motorcycle is sliding on is there are scratch marks on the
15 right and not on the left. So, you know, it doesn't
16 really go very far on the left. It kind of flips over and
17 stops.

18 You can see on this side where that leg bar belongs.
19 If you're not familiar with motorcycles it might be hard
20 to imagine where it's supposed to be, but -- and we'll
21 compare that to the other side, but this is where that leg
22 bar belongs. It is nice and wide and out front.

23 This is a close-up of the leg bar on the right side.
24 You can see asphalt abrasions and it's bent back. So
25 those singular gouges that start down the road and the

1 heaviest gouges and the singular gouges are made by this
2 bar.

3 Q All right. Did you prepare a diagram depicting the
4 evidence you just talked about?

5 A I did. We're engineers; so we love diagrams and
6 prepared a whole bunch of them.

7 Q Let's start with the first one.

8 A All right. You want me to just explain?

9 Q I do. Identify it, too, please.

10 THE COURT: Exhibit?

11 THE WITNESS: This is Exhibit 88. This is the
12 initial site layer of our diagram. There are a few things
13 to kind of note on here, if we can kind of get this area.
14 So our method for building the diagrams as we get a
15 satellite photograph like this, we go to the scene and we
16 take calibration dimensions. In other words, we know how
17 long some fixed points should be and I was describing
18 earlier at the scene we lay out this station marks. Like
19 this is 0, 0.5, 1.0. Those are 50 feet, 100 feet, 150
20 feet, 200 feet back from the center of the intersection
21 and then we overlay the scene evidence if you kind of zoom
22 in here. In subsequent diagrams we take out the
23 underlying photograph because it's harder to see the
24 evidence. You know, it's better than just on a white
25 sheet of paper, but I want to show the underlying

1 photograph in this one so that people get a sense
2 basically of where this evidence lies.

3 So, here is the initiation of the skid and it's here
4 at roughly 170 feet before the center of the intersection.
5 The path of the skid is about 85 feet long. It ends here.
6 The gouge marks begin here and we were just looking at the
7 scene evidence where it takes this arcing path into the
8 number one lane.

9 Can we move over here? This is the evidence -- these
10 are markers at our inspection; so these would be
11 alternating flags and cones and we put those in all of our
12 site photographs so that if we later need to go back and
13 do photogrammetry which is take measurements for pictures
14 that we have known distance markings in all of those
15 pictures so it makes it very easy to do measurements. So
16 we lay those out in our diagram. So, this would be flag
17 cone, flag cone, flag cone.

18 These were the marks that were laid down by the
19 scraper on the day of the accident. So this would be left
20 front tire, right front tire, and the left rear.

21 Q Okay. Did you describe or do you want to describe
22 any more the sequence used in that diagram of the
23 motorcycle or have you pretty much done it?

24 A Well, I think probably the next one is a better way
25 to do the sequence.

1 Q All right.

2 MR. COX: Paul, if I may, what exhibit was that
3 diagram?

4 THE WITNESS: The last one was 88. I'm sorry.
5 Excuse me.

6 THE COURT: Eighty-eight. This one is what?

7 THE WITNESS: Eighty-nine.

8 THE COURT: Eighty-nine.

9 Q What is 89?

10 A This is just a different layer on that same diagram.
11 So, we've done a few things. You can see we've gotten rid
12 of the background photographs so hopefully things become
13 clearer. We have put in pictures of the motorcycle at the
14 evidence. We've dimensioned some of the relative
15 dimensions. We've put in the scraper at its point of
16 rest.

17 So, looking at, again, the sequence for the
18 motorcycle, the motorcycle begins to skid here. It skids
19 for 85 feet. It takes 3 feet basically for it to lay down
20 on its right side. So we've pictured it on its right side
21 here. It is basically on its right side kind of still
22 more or less front wheel first if you look at the scratch
23 patterns on the motorcycle pictures and on the gouge
24 patterns and then right here at the end it begins to turn
25 and this turning is why this right -- there is no right

1 and left on the motorcycle tires. This is why the rear
2 tire grabs the ground and the motorcycle does this half
3 side flip to its left side and this is the points of rest
4 marked out by the police for the occupants of the
5 motorcycle.

6 For the scraper we have other sequence diagrams
7 later, but a couple of things to note on the scraper. The
8 overall length of this arcing tire mark is 33.1 feet which
9 turns out to be a critical dimension and indeed the
10 scraper is short of the fog line of the road. The
11 pavement edge here -- it is short by 7 feet and change and
12 short by right about 8 feet, 8 and a quarter feet from the
13 fog line -- the painted fog line to the side of the
14 scraper. So it, in fact, does not enter the southbound
15 lane.

16 Q That's at the point of rest?

17 A Yes, sir. That's correct.

18 Q All right, sir. Now, have you used this to calculate
19 the speeds of the motorcycle?

20 A We did. We sure did. Okay.

21 Q Go ahead.

22 A In the engineering world we work backwards. I've
23 described the vault phase and the slide phase and the skid
24 phase. Most people think forward, so to speak. So I'll
25 give you -- ultimately you're going to get the answer

1 first because I'll give them to you moving forward.

2 We calculate these using a range of what's drag
3 coefficient; so, how hard can the motorcycle stop. So,
4 one of the critical issues in the case is in the slide
5 phase here -- the skid phase, excuse me. In the skid
6 phase we've used braking coefficients between .3 and .4
7 G's.

8 Why did we do that? Well, we did that because there
9 is only single tire evidence; so we know there is not full
10 braking.

11 Q What is a G?

12 A A G is one acceleration of gravity. So you're
13 sitting in 1 G right now down and, of course, you know,
14 we're talking G's horizontal. So, it's a unit of
15 acceleration, but using the .3 to .4 G's we get a speed
16 range at the initiation of the skid of 42 to 50 miles an
17 hour. So, our conclusion is that right at this point the
18 motorcycle is going somewhere between 42 and 50 and then
19 at the end of the skid and the beginning of the slide
20 phase the speed of the motorcycle has descended from 42 to
21 50 to a range of 32 to 38.

22 So, basically, it is still going a little over
23 between 30 and 40 miles an hour, 32 to 38 miles an hour
24 here. So it begins to lose speed at a higher rate during
25 this slide phase and we've used drag coefficients of .4 to

1 .6 in this area. .4 is a commonly-accepted drag
2 coefficient of metal on asphalt just sliding like if you
3 were to take your hood and just pull it on the asphalt.
4 When you dig in and make these gouges you got to give it
5 credit for some more; so, you know, that's why we use the
6 upper range of .6. So, it's neither -- we know for a fact
7 it's not quite as low as .4 because there is gouging. It
8 is not quite as high as .6 because there are plainly areas
9 of just sliding without gouging the whole way.

10 So, the speeds associated with this -- again, it
11 starts at 32 to 38 and by the end of the slide which is
12 right here at the vault phase it's going right about 13
13 and a half miles per hour and this final vault it loses 13
14 and a half to zero to here and there.

15 Q Now, if we could, lets get into the scraper.

16 A Okay.

17 Q Can you just kind of give us a description of the
18 scraper -- its size, turning ability, such as that?

19 A This Model 623 Caterpillar, they call it an elevated
20 motor tire grader scraper. I just call it a scraper.
21 Everybody calls it a scraper. It is a very large
22 off-highway vehicle. It has only two axles; so one of the
23 things about a scraper is it's different from what you
24 might think of as large on-the-road vehicles. Like a
25 tractor trailer, right, it has three axles underneath the

1 tractor, okay? So all of the tractor's weight is kind of
2 on the tractor and the trailer's weight is divided up and
3 it turns fundamentally differently than one of these
4 scrapers. These scrapers have a hinge right here, but
5 there is no axle in the back of the tractor. So it can
6 turn much more sharply and we have videos of that. It can
7 turn much more sharply than a normal, over-the-road
8 vehicle.

9 In terms of size unloaded this scraper is
10 73,450 pounds. So, basically, you know, the max weight on
11 a track trailer is right at 80. It weighs as much
12 unloaded as a totally loaded over-the-road heavy truck.
13 It is a very large machine. Loaded it weighs about 130-,
14 128,000 some odd pounds. So it is a very, very heavy
15 machine, and is not generally, of course, suited for just
16 driving on roadways.

17 I am not suggesting that it is here, but I am giving
18 you a characterization. This is a construction site
19 machine.

20 Q How -- What is the height of it?

21 A It's a little over 12 feet high. Again, this is --
22 it's a very large machine. It is over 12 feet high. I
23 don't have the overall length memorized, but it is a long
24 machine.

25 Q That's okay. Can you -- for demonstration purposes

1 did you get a little short video of a similar scraper to
2 show the jury how it operates?

3 A We did. Caterpillar likes to sell them so they put
4 promotional videos on their website. So, we did get one
5 of those and there is a few seconds of it that just shows
6 a scraper driving around.

7 MR. DETRICK: Go ahead. Is that where we're at?
8 They told me I am out of order.

9 THE PARALEGAL: Nope. You are right.
10 (Whereupon, the video starts.)

11 THE WITNESS: Can we pause it right there?

12 THE COURT: You want to go back?

13 THE WITNESS: Yeah, go back. Can we go back just a
14 little bit?

15 (Whereupon, the video stops.)

16 MR. DETRICK: Go back.

17 (Whereupon, the video starts.)

18 THE WITNESS: May I comment on this?

19 MR. DETRICK: Sure. Yeah.

20 (Whereupon, the video stops.)

21 THE WITNESS: So in that particular -- Can you play
22 it again right through that turn phase?

23 (Whereupon, the video starts.)

24 THE WITNESS: Okay. Stop.

25 (Whereupon, the video stops.)

1 THE WITNESS: So the point of showing this, you can
2 see the track of the device here. It is basically doubled
3 back upon itself. One of the things they use these for at
4 construction sites is to make a huge area like this flat;
5 so they just run it back and forth and make it flat and so
6 literally it is able to turn in a way that normal vehicles
7 cannot and most people around readily familiar with how
8 fast it can turn. You notice basically it is just
9 dragging the back end around. The front end turns very
10 sharply. We can keep playing.

11 (Whereupon, the video starts.)

12 THE WITNESS: This is another portion of the video
13 that basically shows the machine kind of driving full
14 speed and here it is again turning very sharply.

15 Q It creates some dust, too, doesn't it?

16 A When it is grading dirt, it sure does. Depending on
17 what its grading, yeah, it can create quite a bit of dust.

18 Q All right. That's enough of that.

19 (Whereupon, the video stops.)

20 Q Now, did you do an analysis of the speed of the
21 scraper?

22 A We sure did; yes, sir.

23 Q Okay. If you would, go through that whole analysis.

24 A Okay.

25 Q And you need to go to the next exhibits?

1 A Most likely.

2 THE PARALEGAL: That's the video?

3 THE WITNESS: The next...

4 MR. DETRICK: Oh, I'm sorry.

5 THE WITNESS: Oh, okay. I'm sorry. So --

6 MR. DETRICK: I think we -- yeah.

7 THE WITNESS: Okay. So for the scraper we went about
8 that a couple of ways. One is we have testimony from
9 Mr. Lewis and in his deposition he said he was kind of in
10 the 15 to 20 miles an hour---

11 MR. COX: Objection, Your Honor.

12 THE COURT: What is the objection?

13 MR. COX: Calls for -- he's basing opinions on
14 testimony regarding speed and calls for speculation.
15 There is no evidence of -- reliable evidence of the speed
16 of the scraper. Lay testimony of the speed has been ruled
17 out and I object on that basis.

18 THE COURT: Mr. Cox, you know that under the rules
19 dealing with expert witnesses they can rely on what
20 generally other experts rely on rendering opinions
21 including testimony of the witnesses in the case.
22 Overruled.

23 Move along.

24 THE WITNESS: So one of the things we looked at in
25 looking at the scraper is there's a few factors. One is

1 the basic speed range quoted by Mr. Lewis who is the
2 scraper driver. Mr. Valenzuela also has some testimony
3 regarding the speed range of the scraper. So we always
4 check that with the physical evidence. If I look at the
5 physical evidence and came up with 50 miles an hour and
6 everybody else is saying 15 to 20, I'd have to kind of go
7 back and say what is the problem here.

8 We looked at the 33-foot long mark on the tire that
9 we had dimensioned and we looked at SAE specifications.
10 There is an SAE requirement for how hard these -- they
11 call it rubber-tired earth movers -- must brake. There is
12 a requirement for braking loaded and then, of course,
13 braking unloaded. So, we looked at that requirement and
14 when you call up that requirement, that requires basically
15 .3 G's of braking for the scraper.

16 Well, it just turns out if you run .3 G's on the mark
17 -- the length of that mark you happen to get 17 miles an
18 hour. So that turns out that agrees almost perfectly with
19 the ranges given by everyone else; so we looked at it from
20 that fashion.

21 We also looked at it from the character of the tire
22 marks. Keep in mind the scraper -- to saturate rubber, to
23 slide it on the ground, you know, usually .7, .8,
24 something like that. There is no way a scraper can brake
25 that hard, but we do see these marks. Well, the

1 combination of turning and braking you only have one
2 friction patch on your tire; right? This is why if you're
3 sliding your steering is no good; right?

4 So, when you look at the combination of friction
5 being used up in the turning which is required to move the
6 scraper and then in the deceleration, that also jibes, if
7 you will, with the .3 G's. So, putting that all that
8 evidence together actually we felt really good about right
9 about 17 miles an hour for the scraper prior to its --
10 prior to braking.

11 THE COURT: Prior to what?

12 THE WITNESS: Prior to braking.

13 Q I believe you were describing using the tire marks on
14 what in your analysis and on the speed; is that correct?

15 A Yes, sir.

16 Q And did -- I think you also mentioned that the MAIT
17 Team had done with the scraper in the position when they
18 went back to the scene; is that correct?

19 A Yes, sir.

20 Q Did you use any kind of analysis or comparison of
21 when -- of the photographs of the tires at the scene the
22 day of the wreck as compared to the tires when they were
23 just put up there by MAIT -- by Mr. Lewis of the MAIT
24 Team?

25 A I did, yes, sir.

1 Q And is that the next point in our exhibits, I hope?

2 THE PARALEGAL: The MAIT video.

3 THE WITNESS: Yes.

4 Q The MAIT video is next. Okay. She's got the video.

5 A That's fine.

6 Q Now, as far as -- we can go -- it doesn't matter
7 because it shows the same thing. As far as the video we
8 can do it first. No big deal.

9 A That's fine.

10 Q Did the MAIT Team do a video where Mr. Lewis was
11 operating the scraper and putting it in the position where
12 it was at the point of rest on the day of the wreck?

13 A They did. In fact, on that day that you saw the tent
14 out there when they were doing all the surveying they take
15 the scraper and shuffle it around a little bit to get it
16 in or close to its point of rest and so -- and they
17 actually videoed them doing that so we can watch that.

18 Q Before we show that video can you tell the jury what
19 to look for, what you're looking for in watching this
20 video that's relevant to your -- this case?

21 A Well, there's a couple of things that are relevant.
22 One is you'll see in the MAIT video it is very moving
23 very, very slowly. In fact, there is an officer just kind
24 of strolling along beside it. So this video while it
25 shows motions is not anywhere near the speed that it's

1 moving at the time. This video is a couple of miles an
2 hour at best.

3 Secondly, we're going to be looking at the character
4 of the tire marks and we have still photograph comparisons
5 after that, but watch that left front tire as it makes the
6 turn. It makes impressions in the dirt, but it doesn't
7 leave the same kind of scrubbing that you see on the day
8 of the wreck.

9 Q In reading Mr. Lewis' deposition are you aware that
10 Mr. Lewis testified under oath that this video we're
11 getting ready to see was exactly the same speed that he
12 did at the time of the wreck?

13 MR. COX: Objection, Your Honor.

14 THE COURT: All right. What's the objection?

15 MR. COX: Leading. Leading the witness.

16 THE COURT: Okay. Rephrase the question.

17 Q What did Mr. Lewis say regarding this video we're
18 getting ready to see that the MAIT Team did at his
19 deposition?

20 A My recollection is he said, basically, I did it just
21 like I did on the day of the wreck.

22 MR. COX: Objection, Your Honor.

23 THE COURT: What is the objection?

24 MR. COX: He's referencing a deposition without
25 giving us page, line. He's paraphrasing---

1 THE COURT: You can ask him that on cross.

2 MR. COX: Okay.

3 THE COURT: Relying on a deposition is something all
4 experts do.

5 MR. COX: I understand, Your Honor. Thank you.

6 THE COURT: Move along.

7 Q Is it possible that how it happened in the wreck and
8 how Mr. Lewis said that he did it -- is that possible?

9 A Well, it's not physically possible for a number of
10 reasons, not the least of which is the tire marks, but it
11 is not physically -- rolling along at one or two miles an
12 hour is not -- it is just not anywhere near what other
13 people say. It just didn't happen that way.

14 MR. DETRICK: All right. If you would show the
15 video, please.

16 (Whereupon, the video starts.)

17 THE WITNESS: This is the police officer as you're
18 watching him. He is directing traffic, so to speak. You
19 see the dirt on the ground. They've done this before, by
20 the way. You can see all these impressions here; so it's
21 not the first time they've done this. You'll notice he is
22 basically perfectly straight now and then all of a sudden
23 hangs a very sharp turn. You notice here no scrub marks
24 have been laid down by that tire.

25 THE COURT: You said no?

1 THE WITNESS: No. There are still photographs of
2 this. There are impressions in the dirt and I want to
3 look at those, but the scrub is not present.

4 (Whereupon, the video stops.)

5 Q And did the MAIT Team do some photographs at this --
6 after this?

7 A Yes, sir, they did.

8 Q Okay. And then you've also got the photographs of
9 the day of the -- taken on the day of the wreck by Trooper
10 McLaurin; correct?

11 A Yes, sir.

12 Q And can we -- are you ready to do a comparison of
13 those photographs?

14 A Sure.

15 Q And, Your Honor, that was for purposes of the record
16 that and we will introduce it to -- but that was
17 Plaintiff's Exhibit No. 110, the video that was just shown
18 to the jury.

19 THE COURT: That's the MAIT Team video.

20 MR. DETRICK: Yes, sir.

21 THE COURT: Thank you. Move along.

22 (Whereupon, Plaintiff's Exhibit No. 110 was admitted
23 into evidence.)

24 THE WITNESS: This is Exhibit 126. These are
25 side-by-side comparison photographs on -- in these cases

1 on the right is the day of the reconstruction and on the
2 left is the day of the accident. Keep in mind what you
3 just saw in the video is a little different than what
4 you're going to see here because it's been positioned and
5 jockeyed back and forth several times. Maybe we can zoom
6 in on this area here.

7 So this is again a repeat of some of the photographs
8 we were showing you before where the police had marked out
9 with the orange dots the scrub on that tire. You can also
10 see the scrub -- can we zoom in here -- on the inside
11 tire. Notice this is a nice uniform scrub. It is a nice
12 uniform scrub on the tread blocks itself. There is no low
13 speed turning.

14 Can we go to the one on the other side now? Look at
15 this one. Zoom in, I guess, first in this area. So this
16 is the track in the dirt from the outside tire and you'll
17 notice it is just prints in the dirt. There is not rubber
18 scrubbing off on the asphalt.

19 Secondly, you see this swirling here? If you ever go
20 in your driveway and you turn your steering wheel without
21 moving the car and you make a little circular swirl in
22 your driveway, that's what that is from. That's from
23 jogging it back and forth and, basically, wheel turn out
24 motion and, of course, you can see that swirling on the
25 tire right here as well. So these are not the same type

1 of uniform scrub that we saw on the day of the accident.

2 So this is 127. This is just a different angle. We
3 may have done overkill on all of this. We've got eight
4 pages of this, but, fundamentally, here is the scrub from
5 the outside tire. You can see the tread blocks themselves
6 so you know the tire is essentially rolling smoothly, all
7 right; so it's not locked, but it is much heavier on the
8 outside and the inside which makes sense as you're turning
9 that there is a load shift towards the outside and, of
10 course, you can see that inside tire mark is heavy and
11 what we were talking about before, these are just prints
12 in the dirt. You don't see that marking there.

13 This is 128. These are blow-ups of the inside tire
14 mark. I think I've said what I have to say. This is a
15 uniform tire mark with the individual tread blocks visible
16 as opposed to this zero-motion swirl here from moving it
17 around.

18 This is 129. This is just a picture further upstream
19 on the day of the accident. This outside tire starts
20 making marks all the way back here when it's essentially
21 traveling straight which gives you an indication of there
22 is not a lot of steer back here. It is mostly brake. So
23 the proportion, if you will, of steer and brake changes as
24 it moves -- the proportion of the tire friction that's
25 being used, and, of course, back here, this is clear.

1 Now this mark here is from shuffling back and forth
2 and dragging along and you notice that it does not align
3 with this tire parked in this position and it's not in the
4 video. So, it's made at some other time as the MAIT Team
5 jockeys back and forth. And, finally, this is 130. These
6 are the last couple of comparisons. It just shows the
7 same effect. And this is 131. Again, the same thing. I
8 am afraid I beat this horse to death.

9 Lastly, this 132 is a view from the back. I am just
10 trying to show that this mark here is from some other
11 thing they did. It doesn't line up with any of the tires
12 at this position. I'm not sure, but it, of course -- and
13 the subject accident -- can we zoom in right here? On the
14 subject day this tire does make this small scrub here.
15 This 133 is just a blow-up of those.

16 Q Okay. Now, as far as the -- can you tell us about
17 the using I think your diagrams the braking of the
18 scraper?

19 A Yes. This is 89 and there will be a comparison
20 between this and the next exhibit. Essentially what we
21 did is we took this -- can we zoom in on this area? One
22 of the engineering issues in the case at least is what
23 about crossing the road and did the scraper cross the
24 road. Of course, it did not on the day of the accident,
25 but what does this 33 feet of braking mean because one of

1 the things we'll find later is that the motorcycle, of
2 course, is already in its accident sequence by the time
3 this starts to happen with the scraper; right? So, people
4 have to perceive and react and decide before all the
5 evidence is in, so to speak.

6 You know, what I kind of do is Monday-morning
7 quarterbacking, so to speak. We look at the evidence
8 after its all finished. Mr. Valenzuela riding down the
9 road has to make a decision back up the road prior to
10 knowing what exactly is going to happen.

11 So if we take this 33 feet and we look at the next
12 diagram we basically ask the question what if he had done
13 just simply inline braking.

14 Q And it is 33 feet of skid mark by the scraper;
15 correct?

16 A Yes, sir.

17 THE COURT: Exhibit number, please.

18 THE WITNESS: Ninety. So in this particular exhibit,
19 basically, all we did is take this arc length and extend
20 it 33 feet linearly and put the wheels in the same place
21 and you can see had that happened -- in other words, had
22 Mr. Lewis not done a hard right on the scraper, had he
23 just braked linearly from where we started breaking, he
24 would have gone fully across the southbound lane and
25 partially into the northbound lane of Redds Branch Road.

1 So, I guess in my opinion that really makes the point that
2 it is not clear back earlier in the sequence when we look
3 at the sequence diagrams where here at the beginning of
4 the skid plus the perception-reaction time -- the fact
5 that this is not going to happen is not known to
6 Mr. Valenzuela at the time that he has to make his
7 decision.

8 Q In other words, if he makes a decision he is thinking
9 he could be thinking it is going to be right there in
10 front of him like you show on that exhibit; correct?

11 A I can't purport to know what he was thinking, but
12 what I can say is as that matter of physical fact if as a
13 motorist what you're doing is evaluating a likelihood of a
14 collision and then making decisions, right, your mind's
15 eye computation of whether or not that guy is going to
16 stop would likely lead you to something more like this
17 because motor vehicles that you and I drive don't do that.

18 Q When he had to make that decision where was the
19 scraper?

20 A That's in a sequence diagram --

21 Q All right.

22 A -- because he has to perceive and react; so it is
23 further back. It's not on this diagram.

24 Q All right. Now, as far as the scraper itself, you've
25 got where it started the braking; correct? Can you show

1 that to the jury?

2 A Yeah, it starts the braking right there, but that
3 might be the next exhibit.

4 MR. DETRICK: Next exhibit, please.

5 THE PARALEGAL: The site inspection photos.

6 THE WITNESS: Oh, well. Okay. That's the tree line.

7 It begins the braking right here, basically. Now
8 that's at the wheel. I have on another diagram
9 fundamentally if you put the scraper with the front tire
10 here and then you allow for the front overhang, the
11 distance from the front bumper at the fog line -- or at
12 the road edge, excuse me -- at the time the braking begins
13 is 20 feet. So, the scraper manages to get 33 feet of
14 braking with only 20 feet of clearance and it's because of
15 that hard right turn.

16 Q All right. I know you're going to do it in more
17 detail, but where the beginning of the braking started,
18 what was the speed of the scraper?

19 A Seventeen.

20 Q Okay. And if he is -- is there any way that the
21 braker [sic] could have stopped -- Excuse me, the scraper
22 could have stopped short of where we're showing here
23 without turning?

24 A No. That's beyond the capabilities of the scraper.
25 Had you just started here with the front tire here and the

1 front of the thing 20 feet from the intersection and just
2 jammed on the brakes you would have ended up either here
3 or further because this -- in this particular case he is
4 taking advantage of two tire friction laterally or side to
5 side and longitudinally; so this is really a very
6 conservative dimension here. If you brake linearly you
7 would end up here or yet some further distance across.

8 Q You have read the depositions of Mr. Lewis and
9 Mr. Tindel. Can you kind of give us a comparison of what
10 your finding is compared to what was testified by
11 Mr. Lewis and Mr. Tindel?

12 A Well, fundamentally I think everybody agrees that
13 Mr. Lewis reacts to the signaling of Mr. Tindel and we'll
14 see that in the sequence diagrams later, but at the point
15 where he reacts he cannot see the motorcyclist and I think
16 that's in agreement with their testimony. Mr. Tindel says
17 -- Mr. Tindel is at this corner here. I'm looking this
18 way. I see the oncoming motorcycle so I am waving my
19 arms. I am signaling to Mr. Lewis and Mr. Lewis says I
20 see Mr. Tindel signaling.

21 So, I think that agrees with the sequence that we've
22 come up with and that is that the scraper at the
23 beginning -- maybe in the midst, but at the beginning does
24 not react to the presence to the motorcycle that Mr. Lewis
25 himself sees. He reacts to Mr. Tindel waving his arms

1 over in this corner.

2 Q And, of course, Mr. Tindel was sitting on a tractor
3 according to his testimony?

4 A Yes, sir.

5 Q Okay. He wasn't standing in the road. If he had
6 have been he would have been the trouble, wouldn't he?

7 MR. COX: Objection, Your Honor. Leading the
8 witness.

9 MR. DETRICK: I'll withdraw it.

10 THE COURT: Withdrawn.

11 Q All right. Let's get into if you would, Kelly, let's
12 talk about some concepts of perception and reaction times.

13 A Okay.

14 Q Go into that for us. Tell the jury about perception
15 and reaction, avoidance, such as that, concepts in
16 accident reconstruction.

17 A Right. So, fundamentally in perception and reaction
18 it is that time that it takes you to perceive that a
19 problem has arisen, right -- while it might seem like an
20 instant in your brain, there is a finite time that that
21 takes to happen -- and then to choose what you're going to
22 do. You know, you got some options to you. You can
23 brake. You can steer. You can throw up your hands and
24 squeal, you know what I mean?

25 There are a few different things you can do, some of

1 which work better than others, but you got to perceive
2 that there is an issue, you got to choose what you're
3 going to do, and then you got to do it. It takes physical
4 time to prove your foot from the throttle to the brake in
5 your car and in a motorcycle to move your hands, move your
6 feet. So, it takes physical time for that to happen.

7 In the accident reconstruction world -- and I think
8 this is a number that myself and Mr. Smith both use---

9 Q Mr. Smith is who?

10 A He is the defendant's reconstruction expert is my
11 understanding.

12 Q Okay..

13 A Mr. Smith and I both use a 1.5 seconds perception
14 reaction and that's kind of a pretty standard number for
15 an unanticipated hazard. So, I want to be clear. People
16 who are what they call hypervigilant -- like if you're
17 riding down the road and you're watching that stoplight
18 and your foot is hovering and you're ready, you can react
19 faster than one and a half seconds, but for an
20 unanticipated hazard -- in other words, something that
21 happened that you didn't have any reason to suspect -- 1.5
22 seconds is a typical perception reaction time and that's
23 what we have both used.

24 Q Okay. And when you have to make that reaction you're
25 talking about, I think it's quite obvious but you do not

1 know the outcome at that time, do you?

2 A Yeah. I mean, that's kind of -- I mean, it is an
3 obvious conclusion, but it is one that I think is critical
4 in a case like this. You have to guess essentially using
5 your mind's computational eye what is going to happen and
6 then you have to make decisions based on that. It's what
7 we call predictive. Basically, you got to predict what's
8 going to happen, and, you know, sometimes you predict
9 correctly and sometimes you predict incorrectly.

10 You know, in this case the fact that the scraper
11 didn't enter the roadway and made a hard 90-degree turn is
12 not as easy to predict as it would be, let's say, for a
13 more traditional vehicle.

14 Q And when Mr. Valenzuela, I think you already
15 testified to, had to make that decision he had to make
16 that before the actual turn of the scraper; correct?

17 A That's right. We can see -- that probably is the
18 diagram. Well, we're still looking -- we got photos.

19 Q I think now let's get into the actual scene and I
20 think you took some photographs whenever you went there?

21 A I did.

22 Q Okay. Tell the jury -- kind of describe the scene
23 and what you found and what exhibit we're starting with.

24 A Okay. This is Exhibit 91. This is just simply in
25 Mr. Valenzuela's lane of travel; so this is looking

1 southbound. The driveway is kind of hard to see in this
2 photograph. You know, if you focus on it and you reflect
3 on it you can see it's here and you can see a little break
4 in the trees, but from, you know, 300 feet away or so this
5 is what it looks like and it's not 100 percent obvious
6 that there is a driveway there just on the passing glance
7 and what we'll see later is that this tree here at the
8 corner, that's really the pivot point about which
9 everybody's line of sight turns. That tree is the
10 furthest visual obstruction.

11 This is Exhibit 92. This a moving a good deal closer
12 to the driveway and all of a sudden, of course, it is much
13 more obvious that there is a driveway here, but not only
14 that, but this tree you can begin to see now where it's
15 going to obstruct and so, of course, the closer you get to
16 the intersection, the further up this driveway you can
17 see.

18 This is Exhibit 93. Not only is this close to the
19 intersection -- roughly 100 feet away -- but it's also
20 turned and looking in the driveway and, obviously, people
21 on motorcycles and cars can turn their head; so that's a
22 fair thing to do is turn and look at stuff. This is just
23 to give you a visual sense of what you can see in the
24 driveway at that time.

25 Q As far as now are you going to describe the reactions

1 at this time -- the reactions of Mr. Valenzuela?

2 A Well, yes. This is -- this has nothing to do so
3 much---

4 THE COURT: Exhibit, please.

5 THE WITNESS: I'm sorry. I just keep forgetting.

6 THE COURT: That's all right. I have to make sure
7 the record is clear. That's my job.

8 THE WITNESS: This is Exhibit 94.

9 Q What does it show?

10 A What this shows is this is just physical line
11 drawing; so what we've done is we've taken the beginning
12 of Mr. Valenzuela's skid, we've given him 1.5 perception
13 reaction; so we've taken him a second and a half back and
14 we've positioned him where he would be at that time.

15 Q Why do you do that?

16 A I'm sorry?

17 Q Why? Why do you do that?

18 A Well, because this is where Mr. Valenzuela has to
19 start deciding; right? He doesn't start deciding where
20 the skid mark appears. He starts deciding back up here.
21 So this is the point where its fair, so to speak, to
22 consider what people are doing and this is the position of
23 the scraper at that time just backing it up through its
24 braking and through its speed and the purple line here is
25 the line of sight across that tree from Mr. Valenzuela and

1 the blue line here is the line of sight from the driver's
2 perspective.

3 So, what this means is at this moment when
4 Mr. Valenzuela reacts he can see the scraper, but the
5 scraper cannot see him. So, this is the line of sight for
6 the scraper. The scraper cannot see him. The scraper can
7 from this line this way. Mr. Valenzuela can see the front
8 end of the scraper. That is consistent with the testimony
9 of Mr. Lewis and Mr. Tindel that he initially reacts to
10 Mr. Tindel and not to being able to see the motorcyclist;
11 so we have in a sense verified that by working it out in a
12 totally independent physical way and it does work out.

13 Q Okay. And I think you've said it, but as far as
14 where Mr. Lewis reacted, where would Mr. Lewis be when he
15 reacted?

16 A Mr -- that's on---

17 Q The next one?

18 A Yeah, because he gets credit, of course, for
19 perception reaction time; so he is further back up this
20 way. Mr. Valenzuela can't react until he can see
21 Mr. Lewis; right? So Mr. Lewis is further back up this
22 way and we know, of course, by then he is in the midst of
23 his perception reaction time. We'll see that on
24 subsequent sequences, but fundamentally Mr. Lewis is back
25 in this area when he begins to react.

1 Q Did you prepare using what you've talked about some
2 sequence diagrams to show where each scraper and the
3 motorcycle were at particular times during these events?

4 A I did, yes, sir.

5 Q And did you use -- you've talked about you found
6 speeds of between 42 and 50 miles an hour; correct?

7 A Yes, sir.

8 Q In doing these sequence diagrams did you use these
9 speeds at those -- using the speeds at 42 and the speeds
10 at 50-mile an hour?

11 A That's right. In fact, what we did is two totally
12 different sets of diagrams -- one with the motorcycle
13 going 42, one with the motorcycle going 50 to embrace the
14 range of speeds that we calculated for the motorcycle.

15 Q I think you and I talked about it. You kind of go
16 backwards from a scene back --

17 A Yes, sir.

18 Q -- and I can't think that way because I'm just -- I
19 have to see chronologically.

20 A Right.

21 Q I've gotten you to do it the way I can think; is that
22 correct?

23 A Yes. We've agreed to show the pages in reverse order
24 the way I made them for that reason.

25 Q All right. And if we could, let's start with that.

1 You started with the high end -- I mean, the low end; is
2 that correct?

3 A It doesn't matter. I guess we cued up the low first;
4 so this is---

5 Q I think that's because I asked you to do that, too,
6 didn't I?

7 A I think that's right. This whole sequence is---

8 THE COURT: Number, please.

9 THE WITNESS: I'm sorry. Ninety-five. This whole
10 sequence -- it's noted up here in every diagram it's low.
11 So this is with the motorcycle initially going 42.
12 Obviously, the speed changes as he begins to brake and
13 slide and all these other things. This is with the low
14 speed range and so this is the beginning of the pan
15 grader's perception reaction; so there's a couple of
16 things to note.

17 Neither of these guys can see one another at this
18 time. Mr. Valenzuela is not yet perceiving and reacting
19 because he can't see the grader. The grader has no chance
20 of seeing Mr. Valenzuela. So, again, this is just
21 confirmation that he's, in fact, reacting. Mr. Tindel is
22 the first one in the whole affair to see anything is about
23 to happen.

24 So here we've moved along. This is Exhibit No. 96.
25 This is, again, low and then so what we moved up to now is

1 the beginning of the motorcycle. TPR stands for time
2 perception reaction. Here the motorcycle can see the
3 grader and just like the last diagram we showed you the
4 grader still cannot see the motorcycle. The grader is in
5 the midst of its perception reaction. In other words,
6 he's not yet physically doing anything. The machine is
7 not physically braking yet. The scraper is in the midst
8 of its perception reaction.

9 Q At this point in time where Mr. Valenzuela would have
10 seen the scraper -- and I know we see it on the diagram,
11 but what is the distance of the scraper from the
12 intersection at that point in time?

13 A Good question. I got that here -- 58 feet. So this
14 distance here is 58 feet back from the intersection is the
15 first point that Mr. Valenzuela can see the scraper.

16 Q All right. Did you measure that? I thought it was
17 38 feet. I might be wrong.

18 A That's at the beginning of the actual braking.

19 Q Braking.

20 A That's right and that's -- we'll see that later. The
21 front end is 20 feet from the roadway at the beginning of
22 the braking, but this position here is 58 feet back and
23 one of the other things to note from this because this all
24 basically adds up like puzzle pieces, I guess it goes then
25 without saying Mr. Valenzuela is attentive. He's not

1 asleep at the wheel. You know, if you just weren't paying
2 attention you'd see the geometry wouldn't work out right.
3 He'd be doing things way, way too late, but there is no
4 doubt that he is --

5 Q All right.

6 A -- an attentive driver. I don't think anybody
7 suggests otherwise.

8 Q All right. Proceed forward.

9 A So in this particular situation we've moved to the
10 beginning of pan braking.

11 THE BAILIFF: You didn't give the number.

12 THE WITNESS: I'm sorry. Yes, ma'am. Ninety-seven.
13 I am going to get it next time.

14 Q That is the one I was a little bit ahead of myself.

15 A That's right. That's right. So, this is 97. Of
16 course, the sight lines are now kind of irrelevant.
17 Everybody can see everybody, but also to be clear this is
18 just prior to the start of the motorcycle sliding. So
19 Mr. Valenzuela is in the midst of his perception reaction
20 time, and keep in mind he goes a lot further. He's at in
21 this case 42 miles per hour which is roughly 60 feet per
22 second; so he is covering 60 feet per second while the
23 scraper at 17 is roughly 25, 26 feet per second; right?
24 So this -- the distances are different from these people
25 because they're going different speeds.

1 Q Now, what -- how far is the scraper from the
2 intersection?

3 A Right. At the beginning here this distance here from
4 here to here is 20 feet and you notice the stop sign is
5 right here. So he is ultimately only going to go from
6 here to here before he hits the stop sign. So, in terms
7 of actual geometry, he is very, very close and that's
8 because it has this ability to do this hard turn.

9 Exhibit 98. Finally. It is like training my dog.
10 Eventually I'll get it. So this is the beginning of the
11 motorcycle braking and, of course, by the time
12 Mr. Valenzuela in the low-speed scenario -- it is a little
13 different in the high speed, but in the low-speed scenario
14 the pan is doing its thing -- it's braking -- by the time
15 that Mr. Valenzuela tires actually start laying down
16 marks. So, you know, that's just a physical fact.

17 Q The deal is done by then?

18 A Yeah, basically, the sequence is in -- the die is
19 cast as they say. This is Exhibit 99. The pan grader
20 comes to rest while the cyclist is finishing up his skid
21 and beginning his slide. So, unbeknownst to
22 Mr. Valenzuela at the time he ends up with some extra time
23 because the pan grader has done this turn, but he didn't
24 know that at the time, but, nevertheless, in fact, it is
25 true.

1 And Exhibit 100, this is just right at the pan grader
2 is still at rest and the motorcycle is, you know, just a
3 second or so from completing its journey and it's just
4 about the do the vault. The vault phase really only takes
5 about a second. This is at zero.

6 Q And now I think you did it at the high rate. Is that
7 the next ones?

8 A Yes, sir. This is Exhibit 101. That's just -- this
9 is one more low. Sorry. This is low with the people in
10 their paints of rest. So the next one starts high.

11 Q You got it up there -- just so I know -- that T
12 equals .00 seconds, that is point of rest; correct?

13 A Of the motorcycle. Yes. That's what I mean by
14 engineers. We work backwards from the end moving
15 upstream.

16 Q Okay.

17 A Okay. So, the next exhibits starts high. This is
18 102 and we can go much faster through this sequence, but
19 fundamentally the motorcycle begins this one at 50 miles
20 per hour rather than 42 and so what -- the effect of that
21 basically just -- it pushes the motorcycle a little
22 further back up this way during each step, but so this is,
23 once again, the beginning of the pan grader perception
24 reaction just like in the last situation. That's the
25 first thing that happens. The first thing that happens is

1 Mr. Lewis begins to react to Mr. Tindel, and in the high
2 situation you'll notice this gap in the sight distance
3 here is collapsed a bit.

4 Exhibit 103. I didn't stay learned for long, did I?
5 In the high situation this gap is smaller and this is the
6 beginning of the motorcycle's perception reaction and you
7 can zoom in here and give people a sense of distance.
8 That distance mark there, that's 250; so that's basically
9 265 feet or so back from the center of the intersection is
10 when in the 50-mile per hour scenario when Mr. Valenzuela
11 begins to perceive and react. If you can recall the
12 photographs that we showed from roughly 250, 300 feet out
13 just previous, this is still where the driveway is not
14 particularly obvious from here. So, once again, that's
15 sort of confirmation that Mr. Valenzuela is attentive and
16 is seeing things really at his first reasonable
17 opportunity.

18 Exhibit 104. People are helping me out now. So,
19 again, this is the high speed scenario. This is when the
20 pan begins braking. So you notice the pan has covered
21 distance, of course, during its perception reaction time.
22 No doubt that everybody is visible to everybody else.
23 This is -- again, here is the stop sign. Here he is.
24 This is 20 feet. He is close now when the machine
25 actually begins to respond to Mr. Lewis.

1 This is Exhibit 105. This is the motorcycle's
2 beginning of laying down its skid mark. Again, just like
3 we said in the last time, the pan is in the midst of doing
4 its thing. There is no doubt that by the time
5 Mr. Valenzuela physically starts laying down skid marks
6 that the pan is in the midst of its actions.

7 106, we're getting close to the end here. At this
8 particular point the motorcycle has transitioned from
9 skidding to sliding. The pan is almost at rest.

10 107, as I said, it was almost at rest, so 6/10ths
11 later the motorcycle is in the midst of its sliding
12 portion when the pan comes to rest.

13 108, again, the pan is at rest. The motorcycle is
14 just about -- this and the last couple of frames are the
15 same as the last thing -- 1.2 seconds the motorcycle takes
16 to do its vault.

17 109 is the point of rest and I mercifully skipped
18 one. I just put the motorcycle there and the people all
19 in one spot.

20 Q Now, Mr. Kennett, you've also had -- you've used some
21 of the MAIT Team and the trooper's placements and
22 measurements and such in your analysis; is that correct?

23 A Well, yes. In fact, I want to be very clear that the
24 site evidence overlay -- this comes from the MAIT's
25 survey. I mean, we literally copied the digital point.

1 We didn't copy their diagrams or whatever. We just copied
2 the raw data out of the survey machine and overlay it on
3 their own diagram, but to be absolutely clear I was not
4 there at the time myself to measure this. This is from
5 the police's measurements.

6 Q But you're familiar with the measurement techniques
7 used by the MAIT Team and by engineers; is that correct?

8 A Absolutely. Yeah, they used a Theodolite. That's a
9 fancy word for a survey machine. You know, people -- it's
10 kind of like a Frigidaire. A lot of people call it a
11 Topcon or whatever. That's a brand name. You know, the
12 Theodolite is to refrigerator as Frigidaire is...

13 Q The machine they used, is it what other engineers use
14 in the practice?

15 A Oh, absolutely. It is a professional -- surveyors
16 use it. Engineers use it. Police use it. I mean, it's a
17 laser range finder. I mean, it's the standard tool.

18 Q Its measurements are accurate?

19 A Yeah, to within tiny fractions of inches.

20 Q And you reviewed the MAIT Team's analysis in this
21 case?

22 A I did, yes, sir.

23 Q Do you have any kind of criticisms regarding their
24 analysis or can you explain that to the jury, if any?

25 A Well, I reviewed it from a couple of different

1 perspectives. One is I think they have expertly gathered
2 the facts in this case. I compliment them for the
3 photographs and for the measurements they -- you know,
4 sometimes the police investigations are better or worse
5 and from a fact-gathering standpoint this one is
6 excellent.

7 From an analysis standpoint they run a few different
8 scenarios, but fundamentally they draw their conclusions
9 from the primarily rear-braking on the motorcycle. They
10 use .3 to .41 I think they use for their braking
11 coefficients. I think that's an appropriate choice. I
12 agree with that based on the physical evidence of the
13 single tire mark and so they ultimately draw their
14 conclusion from using that braking, and one of the things
15 they do is they physically interviewed people and while
16 the audio on that particular interview is scratchy they go
17 back and ask a follow-up question that we can understand
18 and from that one-on-one questioning that's where they got
19 the idea to begin with to use the single tire braking.

20 So, I don't know that the MAIT Team looked at the
21 tire mark in the same way that I look at it, but they came
22 to the conclusion of the rear tire braking in a human way
23 I guess -- questions and answers, but I think
24 fundamentally the physical evidence bears that out.

25 Q Did the MAIT Team to do an analysis of the speed of

1 the motorcycle?

2 A They did.

3 Q And were they consistent with your findings?

4 A Yeah, I think it is a mile an hour this way or that,
5 but, yeah, I think they're right on.

6 Q Do you remember what theirs were?

7 A I do. The good thing is it's an open book test. Can
8 I flip to it? There is no way to memorize all of this. I
9 did come up with -- they come up with a range of 41 to 45.

10 Q Okay. So we're from 41 to 50?

11 A I'm from 42 to 50. They're from 41 to 45. I am
12 maybe a little more conservative than they are. You know,
13 they use some drag factors to the hundredth place -- .31,
14 for instance. You know, it is kind of like on a
15 calculator you can type in digits, but how precisely you
16 know something is important.

17 Q Did the MAIT do an analysis such as you did of the
18 speed of the scraper?

19 A They didn't really tackle the speed of the scraper.
20 I think that's kind of outside their general expertise and
21 the SAE standards and the performance of this kind of
22 machine I think is not what they normally deal with; so
23 they didn't really tackle the scraper.

24 Q Now, Mr. Kennett, based on your analysis have you
25 come to any conclusions to a reasonable degree of

1 engineering certainty?

2 A I have.

3 Q Could you tell the court and the jury what those
4 conclusions are?

5 A I think I've largely stated them along the way, but I
6 think Mr. Valenzuela is an attentive driver. I think he
7 reacts as reasonably first available opportunity. I think
8 that -- we've talked about the speed; so those are
9 conclusions. The scraper plainly reacts to Mr. Tindel and
10 not to Mr. Valenzuela. I think that's a conclusion of
11 mine, and, basically, that the die is cast by the time
12 these final actions of the scraper -- the fact that the
13 scraper didn't enter the roadway and the fact that it did
14 this 90-degree turn, that comes after Mr. Valenzuela has
15 already made his decisions and so while those are later
16 physical facts, they're not in play and available to
17 Mr. Valenzuela at the time that he makes his decisions.

18 Q Did you come to an opinion as to whether Mr. Lewis
19 based on the physical evidence intended to stop at the
20 stop sign?

21 MR. COX: Object to form -- Excuse me. Objection,
22 Your Honor.

23 THE COURT: He can render that opinion.

24 MR. COX: Objection as to intent of the driver of the
25 scraper.

1 MR. DETRICK: I'll rephrase it.

2 THE COURT: Rephrase it.

3 Q From what your analysis can you give an opinion as to
4 whether the scraper was being operated in a manner
5 consistent with being to -- with being able to stop at the
6 stop sign?

7 A No. Absolutely it was not and that's a lot of what
8 we were showing when we were drawing it out -- that
9 33 feet and going across the intersection. Under ordinary
10 braking in a non-emergency maneuver when you don't drive
11 off the road and hit stop signs and all that there was no
12 way this machine was going to stop without coming across
13 Redds Branch Road and into Mr. Valenzuela's lane.

14 Q All right. You understand the defense has hired an
15 accident reconstructionist named Joe Smith?

16 A Yes, sir.

17 Q Have you reviewed some of his conclusions and
18 opinions?

19 A I have. I reviewed his documentary work, his
20 diagrams, and his calculations, yes, sir.

21 Q If you would tell the jury what you think about them,
22 what -- any criticisms.

23 MR. COX: Objection, Your Honor.

24 THE COURT: What is the objection?

25 MR. COX: Pitting the witnesses.

1 THE COURT: Sustained.

2 MR. DETRICK: I'm sorry?

3 THE COURT: Sustained.

4 Q Do you have any -- as far as the methodology used by
5 Mr. Smith could you explain that to the jury and compare
6 that to the methodology you used?

7 MR. COX: Objection, Your Honor. Same objection.

8 THE COURT: Well, that's not pitting. That's -- if
9 he's being critical of his conclusions, that's pitting.
10 He can comment on the methodology used by your expert as
11 well as your expert with him.

12 MR. COX: Thank you, Your Honor.

13 THE WITNESS: I think fundamentally Mr. Smith -- he
14 is an engineer; so with regard to distances and diagrams
15 and that sort of stuff he uses different programs and it
16 has a different look, but he's got those basically
17 diagrammed out right. I don't -- I'm not one to sort of
18 nit pick on that kind of thing.

19 The substantive difference in methodology is he
20 arrives at his speeds for the motorcycle in his original
21 calculations using full braking -- using .705 or a little
22 over .7 G's which for this motorcycle would be essentially
23 maximum efficient braking with front wheel and back wheel.
24 I don't think that's an appropriate method in this case
25 because the evidence isn't there with the tire mark. The

1 evidence isn't there in the interviews and in the
2 testimony. The police don't appear to agree with that
3 methodology either.

4 So, essentially my methodological difference of
5 substance with Mr. Smith is that I think deriving speeds
6 from the motorcycle with full maximum efficiency two-wheel
7 braking is not consistent with the evidence.

8 Q Okay. And as far as the results in using -- as far
9 as the speed, what is the effect of using the full -- he's
10 got full front and rear braking?

11 A Yes.

12 Q Correct? That's what he used?

13 A That's right.

14 Q And what effects, if you can explain to the jury,
15 does that have on the speed conclusions?

16 A Well, when you do that it drives the speeds for
17 Mr. Valenzuela prior to the whole thing up. In fact, I
18 think it drives them into the mid-50's like 53 to 57 or
19 something like that. So, obviously, there is another
20 consequence to that. It drives the distances backwards
21 and that sort of thing, but fundamentally by using that
22 braking coefficient it drives the speeds of the motorcycle
23 into the mid to high 50's.

24 Q Have you come to any opinions as to what effect, if
25 any, physical effect would the presence of a flagman have

1 been?

2 A Well, I think a flagman gives everybody something---

3 MR. COX: Objection, Your Honor. Outside of the
4 scope.

5 THE COURT: Outside the what?

6 MR. COX: What he's been called as a witness to
7 testify to, Your Honor.

8 THE COURT: Overruled.

9 THE WITNESS: The effect of a flagman really is kind
10 of obvious in the sense that it gives everybody something
11 different to react to; right? You know, a flagman -- I
12 mean, you can debate about where exactly he should be in
13 the road, but the bottom line is he's in the roadway and
14 Mr. Valenzuela would could see him a long ways back and,
15 you know, people waving a flag in a roadway is a very
16 conspicuous thing that causes people to react, you know,
17 and that's what flagmen do. They give you notice prior to
18 when you would ordinarily be able to get notice in the
19 goings on that maybe you can't see.

20 So, it's really kind of -- I think it speaks for
21 itself the whole purpose of a flagman is to call people's
22 attention to a situation, give them plenty of time to
23 perceive and react and come slowly to a stop so that this
24 becomes a minor inconvenience instead of a fatality.

25 Q Have you done analysis as to whether you feel like a

1 flagman was needed at this particular intersection, this
2 particular scene?

3 MR. COX: Same objection, Your Honor. He's not an
4 expert in that field. He's not be asked to testify to
5 that. He's not qualified to testify to that, Your Honor.

6 THE COURT: He is not qualified to testify he has an
7 opinion as to whether or not a flagman was necessary from
8 an engineering standpoint?

9 MR. COX: That's correct, Your Honor.

10 THE COURT: Overruled.

11 MR. COX: That's governed by the Department of
12 Transportation and he's not a Department of Transportation
13 expert.

14 THE COURT: Overruled. You may answer it.

15 THE WITNESS: In this particular case a flagman just
16 purely from an engineering perspective is necessary for a
17 couple of reasons. One is not just what happened in this
18 wreck. Let's say you use choose to stop at the stop sign
19 and then you proceed across the intersection with the
20 scraper -- I ran this calculation -- unloaded. So the
21 scraper always goes this way unloaded. The dump is over
22 here. The borrow area is over here. The scraper goes
23 this way unloaded.

24 Unloaded it takes the scraper about seven seconds to
25 fully cross the road and we talked about before you got

1 about 550 feet of visibility back up this way. So let's
2 say people going 45 miles an hour which is roughly 65 feet
3 per second, right? It's going to take you seven seconds
4 to do this. So that's three -- that's roughly 400 feet of
5 travel along this road for people going exactly the speed
6 limit while this thing crosses which it's close. You
7 know, you're starting to get a little iffy, but what gets
8 much, much worse is when this thing crosses loaded from
9 the dirt borrow area backwards, okay---

10 MR. COX: Objection, Your Honor. It was coming
11 across the -- it wasn't coming from the borrow pit at the
12 time of this accident. He is referring to facts that are
13 not pertinent to the August 7, 2009 incident. It's not
14 relevant to the case.

15 THE COURT: Mr. Cox, you'll have an opportunity to
16 cross examine him on whether or not he's got his facts
17 right or wrong. Overruled.

18 THE WITNESS: In looking into whether a flagman is
19 necessary here it is dicey coming this way. Going this
20 direction it just plain won't work because loaded the
21 device weighs twice as much as it does unloaded and the
22 acceleration is half and the time to cross the road --
23 this is a little uphill grade here, too. It gets into --
24 it gets well into the low teens of seconds to get across
25 the road. So you could literally stop here, look back

1 this way, see absolutely nobody, get started and then
2 these people could come down the roadway and you're still
3 not finished.

4 So, when you have site distances and roadway
5 configurations that just do not allow a motorist to see
6 either a motorist driving a scraper going this way or a
7 motorist on Redds Branch Road here, then you need a
8 different method to alert people and, certainly, a flagman
9 is one of those ways.

10 Q What effect do these advanced warning signs have on
11 that if they're present?

12 A Well, the desired effect is just like they are out on
13 the highway or whatever. I mean, hopefully, you slow
14 down. You pay attention. You get additional time to
15 perceive and react because you're going more slowly. So,
16 you know, again, it just gives people notice from
17 something other -- you don't have to wait to actually see
18 the hazard. You get notice before you get to the hazard
19 that something is coming.

20 Q Mr. Kennett, is it your understanding that the
21 defendant, Mr. Sam English Grading Company, is criticizing
22 the braking by Mr. Valenzuela?

23 A That's my understanding, yeah.

24 Q Can you address that issue for the jury, please?

25 A Well, again, it goes back to the one---

1 MR. COX: Your Honor, objection.

2 THE COURT: What is the objection?

3 MR. COX: He's not qualified as a motorcycle safety
4 expert. He hasn't demonstrated or laid the foundation as
5 how he's an expert on the operation of a motorcycle.

6 THE COURT: I assume he is answering from an
7 engineering standpoint; is that correct?

8 MR. DETRICK: Yes.

9 THE COURT: Rephrase your question.

10 Q From an engineering standpoint can you address the
11 criticism the defendants have regarding the braking by
12 Mr. Valenzuela?

13 MR. COX: Same objection, Your Honor.

14 THE COURT: Overruled.

15 THE WITNESS: Yes, I can, and just in terms of the
16 physics, it is just a physical fact that single-wheel
17 braking on a motorcycle is less effective than two-wheel
18 braking. I mean, that's a physical fact. Braking on a
19 motorcycle based on physics is more difficult than it is
20 in a car. It doesn't generally have -- it has separate
21 brakes. It has a rear brake and a front brake. Your
22 automobile has a proportioning valve so you just have one
23 brake; right? You step on the pedal and the car knows how
24 to put the brakes on in proportion to the front and rear
25 so that hopefully you don't end up in yaw slides and

1 things of that nature.

2 Those devices aren't present on motorcycles. There
3 are substantial hazards to, for instance, front-wheel-only
4 braking. You can do a stand and flip over.
5 Rear-wheel-only has its own draw backs. It decreases the
6 gyroscopic stability. It decreases the total stopping
7 distance. So, from an engineering perspective it is a
8 physical fact that you can brake more quickly at .7 G's
9 than at .3, but from a usability standpoint, so to speak,
10 in a break proportioning it's not as clear cut as to say,
11 oh, there is only, you know, some sort of defective
12 property, if you will, of .3, .4 G's. It's not as
13 effective, but there are a lot of other factors that go
14 into that.

15 Q And you---

16 THE COURT: Mr. Detrick, hold on one second.
17 Everybody okay over there?

18 MR. DETRICK: I'm about---

19 THE COURT: Go ahead.

20 Q From an engineering standpoint have you come to any
21 conclusions as to what would have happened if the scraper
22 had approached the stop sign and intended to stop?

23 MR. COX: Same objection as to intent, Your Honor.

24 THE COURT: Rephrase the question.

25 Q Have you done an analysis as far as the -- if the

1 scraper given the speeds you're talking about had come to
2 the stop sign approaching it with an intent to stop?

3 MR. COX: Objection. Testifying as to intent of the
4 scraper driver.

5 THE COURT: Overruled.

6 THE WITNESS: Purely from an imminent hazard
7 perspective, it's kind of like when you address any
8 intersection. You see people approaching intersections
9 all the time. Mercifully you don't then have to jam on
10 your brakes and slide to a stop every time. You make
11 calculations based on their rate of approach and ascertain
12 whether or not you perceive they're going to stop or not.

13 In this particular case the scraper is literally
14 20 feet from the intersection at its unbroken speed. Now
15 it turns out it progresses very -- not very much more
16 distance and it does this hard 90-degree turn and it turns
17 out that it comes out of short of the intersection, but at
18 20 feet from at an intersection at an unbroken, unchecked
19 speed with no effective braking, that's going to appear to
20 be an imminent hazard to ordinary motorists.

21 MR. DETRICK: That's all the questions I have, Your
22 Honor. We would offer into evidence Exhibits 88, 110, 126
23 through 134.

24 THE COURT: Any objection?

25 MR. DETRICK: 133.

1 MR. COX: Can I get those numbers again?

2 MR. DETRICK: 88 through 110 and 126 through 133.

3 THE COURT: Who is going to cross examine? You made
4 the objections. You know the rules.

5 MR. COX: Your Honor, can we take a short break?

6 THE COURT: I need to know -- You need some time to
7 decide whether you're going to object? If you do, I'll
8 give it to you.

9 MS. PAYNE: We just want to review all of them real
10 quick.

11 THE COURT: That's fine. That is certainly
12 appropriate. That's no problem.

13 MS. PAYNE: Thank you, judge.

14 THE COURT: You're welcome. Let's take our morning
15 break. We'll come back for cross examination for this
16 witness. It is 11:30. How y'all want to handle lunch? I
17 got three choices: Number one, we can order in again
18 today; number two, you can all walk down to the Bowery and
19 I'll pay for it or, number three, I'll let you go out on
20 your own and buy your own lunch.

21 THE JUROR: Not number three.

22 THE COURT: I guess that's a unanimous vote on three.
23 Nobody wants to buy.

24 THE JUROR: Let's try number two.

25 THE COURT: That's going up to the Bowery? Walking

1 up there?

2 THE JUROR: Walking up there? No.

3 THE COURT: It's not far. Ma'am, I'll get you a
4 ride. Seriously, I mean, we can get her a ride, can't we?

5 THE BAILIFF: Yes, sir.

6 THE COURT: And anybody else who needs a ride. Let's
7 do that. That will be fun. I'll get y'all a place back
8 in the back. You'll be by yourselves. All I ask is to
9 not talk about the case and don't discuss.

10 Mr. Whittle, let's plan to call them and tell them
11 I'll have them up there about one or a little after one.

12 THE BAILIFF: Okay.

13 THE COURT: Does that suit? I'll get you -- one of
14 the bailiffs will take you, okay?

15 THE JUROR: I got one on mines, too.

16 THE COURT: Oh, get out of here. Thank y'all. Take
17 you about a 10-minute stretch break. Don't forget to get
18 me a foreperson.

19 (Whereupon, the jury exited the courtroom at 11:32.)

20 THE COURT: All right. We are going to take about a
21 10 or 12-minute break.

22 Mr. Witness, you're right in the middle of your
23 testimony so it will be improper to discuss it with
24 anybody including Mr. Detrick or anyone else. So just
25 enjoy your break, whatever you need to do, but don't

1 discuss the case.

2 THE WITNESS: Yes, sir.

3 THE COURT: Paul, you okay?

4 MR. DETRICK: Yes, sir.

5 (Whereupon, a break was taken.)

6 THE COURT: Mr. Cox, any objection to those exhibits?

7 MR. COX: No objections, Your Honor.

8 THE COURT: Thank you.

9 (Whereupon, Plaintiff's Exhibit Nos. 88 - 110, 126 -

10 133 were admitted into evidence.)

11 (Whereupon, the jury came into open court at

12 approximately 11:51.)

13 THE COURT: Who got elected?

14 THE FOREPERSON: I did.

15 THE JUROR: Oh, yes. Oh, yes, she's the best.

16 THE FOREPERSON: Thank you.

17 THE COURT: Mr. Cox?

18 CROSS-EXAMINATION

19 BY MR. COX:

20 Q Mr. Kennett, how are you doing today, sir?

21 A I am doing all right. Thank you.

22 Q I would ask you if you needed a break, but we just
23 had a short one.

24 A We did. It was great. Thanks.

25 Q You said with regards to Michael Valenzuela his --

1 that he reacted, skidded, and laid his motorcycle down; is
2 that right?

3 A Yes. He plainly slid on his tires and then he
4 plainly -- the motorcycle was on the ground and it slid on
5 the roadway. Whether or not he laid it down or whether or
6 not he -- you know, the bike went down as a result of
7 physics, I don't have a conclusion about that.

8 Q Didn't you testify a little while ago that he laid it
9 down?

10 A Well, that's true and let me be very clear. He said
11 in his deposition it was his intention to lay it down, but
12 one of the things that's absolutely going to happen as
13 just a product of physics, if you stop the rear that's
14 how -- you know, you can't ride your bicycle if you're not
15 moving; right? Sooner or later you're going to get slow
16 enough and you're not going to have the gyroscopic
17 stability and the bike is going to fall down; so I can't
18 differentiate where exactly the bike fell down if that was
19 a voluntary movement or a product of physics, but it my
20 understanding is it was his testimony that it was his
21 intention to do.

22 Q And you testified in your testimony today that you
23 cannot purport to know what Mr. Valenzuela was thinking on
24 August 7, 2009; isn't that right?

25 A Well, that right. I am an engineer.

1 Q Right.

2 A I mean, I look at the evidence. I analyze the
3 evidence. You can make deductions about people's chosen
4 actions based on the evidence, but, you know, I am not a
5 swami.

6 Q And the best source of information as to what
7 Mr. Valenzuela intended to do is the testimony of
8 Mr. Valenzuela. Would you agree with that?

9 A I think it's a good source of information, but, you
10 know, I come across cases where, you know, people say one
11 thing and, obviously, another was the reality; so, you
12 know, I don't want to say that for blanket for all
13 witnesses, but I think Mr. Valenzuela can certainly speak
14 for himself.

15 Q Okay. Thank you, sir. Now, and you also testified
16 that the scraper weighs less than an 18-wheeler; is that
17 right?

18 A It depends -- Well, loaded unloaded.

19 Q If it's unloaded.

20 A The empty weight of a scraper is about 74-,
21 75,000 pounds. A maximally-loaded 18-wheeler is right
22 about 80,000 pounds. So, if the 18-wheeler is unloaded,
23 no. If it's loaded, yes.

24 Q Well the scraper in this case is unloaded.?

25 A That's right.

1 Q And it weighs less -- 7,000 pounds less than an
2 18-wheeler that you would find on the highways of South
3 Carolina?

4 A It does indeed weigh slightly less unloaded, that's
5 right, if, in fact, they are maximally loaded. I am not
6 trying to give you a hard time. I am just trying to make
7 sure we're are correct.

8 Q I understand. You don't know the length of the
9 scraper. That was your testimony today.

10 A I said I didn't have it memorized, but I produced the
11 whole kind of vehicle specifications and I will be glad to
12 tell it to you.

13 Q Well, I'm asking -- the question was was that your
14 testimony you don't know---

15 A My testimony was I don't have it memorized. I have
16 several binders full here of information. The overall
17 length of the scraper is 41 feet, 4 inches.

18 Q Okay. Now, the -- and you've never actually been out
19 to see the scraper that was involved in this accident?

20 A It is true. I have not inspected this scraper;
21 that's correct.

22 Q Okay. And, in fact, the scraper -- I said the
23 scraper involved in the accident. This scraper did not
24 collide with the motorcycle. That's clear; right?

25 A It did not collide with the motorcycle. That's

1 correct.

2 Q Okay. And you have never inspected the scraper,
3 never looked at the scraper, never measured the scraper,
4 never operated the scraper that was involved in this
5 accident. Is that accurate?

6 A Well, that's true. I mean, I didn't directly inspect
7 it, no. You know, obviously, we've been extensively
8 through the purchase documents to identify exactly what
9 make, model it is and all that sort of stuff. We have
10 extensive photographs, but I have not physically measured
11 it myself. That's true.

12 Q Okay. And have you ever had a case in your
13 experience as an accident reconstructionist involving a
14 scraper in the past?

15 A As far as off-road equipment, not that I can recall.
16 Again, these are generally -- you don't find them on the
17 road too very often; so, no, not that I can recall.

18 Q And so this is your first time testifying or having
19 the case where you are rendering opinions about a scraper
20 and you have never even been to see the scraper involved
21 in this case; is that accurate?

22 A This particular scraper, that's clear. Now, I have
23 had lots of cases about heavy off-road vehicles, mining
24 cases, and things of that nature, but not about this
25 particular scraper.

1 Q Okay. And you testified the MAIT Team did not tackle
2 the speed of the scraper through their investigation; is
3 that right?

4 A Well, what I mean by that tackle it, they didn't do
5 what I would call a computative analysis of the speed of
6 the scraper.

7 Q And they didn't tackle it because -- why would they
8 not tackle it? Because they're not concerned about the
9 speed of the scraper?

10 A I don't -- again, I don't purport to say why the MAIT
11 Team does or doesn't tackle it. Deriving the performance
12 characteristics of this scraper requires knowledge of the
13 SAE standards and extensive knowledge of the
14 specifications. One of the things that came up in this
15 case was, you know, this a first generation 623E or second
16 generation 623E and all that. So, behind the scenes it
17 took quite a bit of background work to get all of that
18 done and so while I don't purport to know their
19 motivations, what I do know is that typically that sort of
20 thing is not within their purview.

21 Q Do you believe -- this is a motorcycle accident
22 involving a death. Do you believe it is important to know
23 the speed of the scraper that the MAIT Team -- the MAIT
24 Team that's called out in South Carolina to investigate
25 fatal accidents would investigate the speed of the scraper

1 if they had concern about it?

2 A Again, that -- I don't purport to know what the
3 motivations of the MAIT Team are.

4 Q Maybe it was obvious to them that that scraper was
5 not speeding when it approached the crossing.

6 A Well, I mean, I've told you 17 miles an hour. I
7 don't know that there is a posted speed limit on the
8 driveway, but speeding in terms of the lay definition of
9 the word, I mean...

10 Q I understand that that is your conclusions in this
11 case. Now, you did not go to the scene at Redds Branch
12 Road in this private drive down to Owens Corning's
13 landfill until how many years after the accident?

14 A Well, let me look at my notes. I was there on
15 March 20 of this year; so that's, what, two and a half,
16 three years. That's when I was brought into the case.

17 Q Okay. So the physical evidence was gone or at least
18 the skid marks were gone by the time on March 20, 2012 of
19 this year. Your first time to Redds Branch Road to
20 investigate in your capacity as an accident
21 reconstructionist this case the skid marks from both
22 vehicles were gone? They were not there any more?

23 A Yeah, that's true and I have stated repeatedly we
24 relied on the police's photographs and their survey
25 measurements to locate those. Absolutely.

1 Q Okay. And the measurements for the length from start
2 to finish of the motorcycle skid --

3 A 85 feet.

4 Q -- first off, you didn't measure it yourself. You're
5 relying on photographs?

6 A No, I am relying on their survey measurements.

7 Q Okay.

8 A I mean, you can get it off of photographs, but why
9 would I do that --

10 Q Okay.

11 A -- when I have a survey machine.

12 Q Survey measurements of?

13 A The police.

14 Q The police?

15 A Yes.

16 Q MAIT Team?

17 A MAIT Team.

18 Q Okay. And you were at 85 feet?

19 A That's right.

20 Q Of skid mark?

21 A Yes.

22 Q And you utilized the drag factor of .3 to .4 was your
23 testimony. Why did you -- you used that range why?

24 A I used that range because .3 -- If you look at the
25 motorcycle braking literature .3 is typical rear only and

1 if you looked at Mr. Valenzuela's deposition he discusses
2 touching the front brake, maybe light front brake
3 application; so I wanted to use a range that might give it
4 credit for some of that .3 to .4, but I think it's plain
5 and we talked about this before because of the
6 non-presence of two tire marks and everything you can't
7 get anywhere near heavy braking on the front.

8 So, I was trying to use a range that encompasses rear
9 only with potential slight application in the front.

10 Q Okay. Now, what is full braking? When we say full
11 braking, what does that mean?

12 A Well, in an ideal world it is maximally utilizing
13 your tires. So, like in your car this is why you have ABS
14 because you can get a tiny bit more friction out of your
15 tires if they're rolling than if they're sliding; so in a
16 motorcycle if you were going to perfect braking you would
17 use each tire right up to its absolute maximum friction
18 capacity and you would never exceed it because once you
19 exceed it then you become unstable and yaw and have a
20 wreck. So, you know, it would be riding that razor-thin
21 line perfectly.

22 Q Okay. Well, full braking -- would you agree that's
23 apply both the front and the rear brake evenly?

24 A Well, not necessarily evenly. I mean, the brakes
25 operate in different manners and you've got dynamic weight

1 shift and you got not equivalent weight on the two wheels
2 and, of course, the rear wheel has got all the drive train
3 associated where it's got a lot more inertia. So, full
4 braking is not even braking. Full braking is apportioning
5 the breaking effort between the pedal for the rear and the
6 handle for the front so that it maximally uses each tire.

7 Q But we can agree it is using both the front and the
8 rear braking?

9 A Yes.

10 Q Okay. And the front brake is -- the braking capacity
11 on a motorcycle with the front brake is what? 70 percent
12 of the motorcycle braking capacity?

13 A Well, I think are you talking about G's? I mean .7
14 is not a bad number for full braking front and rear.

15 Q No, no. I'm talking about do you know the braking
16 capabilities of a motorcycle with regards to if you only
17 use the rear brake are you using 30 percent of the
18 motorcycle's braking?

19 A Oh, I see what you mean. Okay. I see what you mean.
20 Yeah, I mean, that's a good rule of thumb. That changes a
21 lot with motorcycles. For instance, really long-wheel
22 base motorcycles where the weight distribution is
23 different it can change or sport bikes where you have a
24 more rider forward posture when you're leaning forward the
25 weight distribution changes. So, I mean, again, 70/30 is,

1 you know, that's a rule of thumb, but it's not chiseled in
2 stone, so to speak.

3 Q And I want to be clear what that rule of thumb is.
4 It's an accepted rule of thumb in your profession,
5 correct, that rear -- if you only use the rear brake
6 that's only 30 percent of the motorcycle's braking
7 capacity; is that right?

8 A Yeah, for a two-rider touring bike configuration a
9 lot of people might go 35, 40 percent because you got a
10 lot of extra weight on the back with two riders; so that's
11 a rule of thumb for a single-rider cruiser probably would
12 creep up to 35, 40 percent --

13 Q Okay.

14 A -- for a two rider cruiser.

15 Q So between 30 and 40 is the braking capacity of the
16 rear brake?

17 A As a percentage, yeah, that's fair.

18 Q Now does the type of motorcycle matter when you're
19 arriving at your drag factor?

20 A Yeah. Yes, absolutely. We were just talking about
21 that -- sport bikes, cruisers, yeah, absolutely.

22 Q But with regards to a sport bike and a cruiser --
23 this was a cruiser in this case?

24 A Yeah, in fact, this is a Harley Davidson Softail. I
25 mean -- it is a 2001 Harley Davidson Heritage Softail.

1 FLSTC is their model number.

2 Q And you used .3 to .4 G's in your evaluation?

3 A Of the?

4 Q Of the---

5 A Of the deceleration during the skid phase.

6 Q If this had been a sport bike but everything else was
7 the same what would be the G's that you would use?

8 A Well, that would depend on the relative brake
9 application. There is no doubt a sport bike is capable of
10 harder braking than a cruiser. No doubt.

11 Q Well, and what I am trying to do is I am trying to
12 draw a comparison if this had been a sport bike with all
13 the other factors the same meaning what you know about the
14 braking, your---

15 A I am not trying to be quip with you, but if this was
16 a sport bike and you had two riders on it I would say it's
17 not a two-rider bike and you're going to mess the braking
18 up badly if you're on a sport bike with two riders; so, I
19 mean, we'd be talking about apples and oranges.

20 Q Okay. So you can't tell me what G's you would use in
21 the rear braking only on a sport bike at these speeds?

22 A Again, I'd have to look into that because --

23 Q Okay.

24 A -- if I go to the standard specifications and roadway
25 tests sport bikes aren't going to have two-rider

1 configurations.

2 Q Okay.

3 A So I'm going to have to look at the center of gravity
4 movement, proportioning the valves. That's not a simple
5 question that you asked.

6 Q How many feet -- and some of this I am just going to
7 gloss back over. You've testified to some of this, but I
8 want to go back through it briefly so that I can move on
9 to some other points, but how many feet from the center of
10 the intersection did you calculate the start of the skid
11 marks were?

12 THE COURT: Skid marks for who?

13 Q Skid marks for the motorcycle. In other words, how
14 far from the middle of the intersection -- I think that's
15 the point of reference you used for your calculations.

16 A Yes.

17 Q Middle of the intersection to the point backing up to
18 the point where Michael Valenzuela started his skid -- how
19 many feet is that?

20 A Right around 170 and just to be clear that's not a
21 calculation of mine. That is just read right off the
22 survey data.

23 Q Okay. Now, what was -- with regards to the
24 perception reaction distance and what I understand by that
25 is backing up from that 170 feet where the skid mark

1 started you back up perception reaction 1.5 seconds
2 further back away from the crossing to get the distance
3 that Michael Valenzuela would have first perceived the
4 scraper; correct? I want to know how many feet was his
5 perception reaction time when he first perceived the
6 scraper from the middle of the intersection?

7 THE COURT: At what speed?

8 THE WITNESS: I was about to say are we at the high
9 or the low?

10 Q Well, Mr. Valenzuela testified he was going between
11 40 and 45 miles per hour; so and your low is?

12 A Forty-two.

13 Q Forty-two. So, between 42 and 45 if you've not
14 calculated the 40.

15 A Well, at 42 just off the diagrams about 265, 270.

16 Q Okay; 265 or 270?

17 A Yeah, I mean, obviously, I am just looking at the
18 diagram. It is to scale so I'm looking at our station
19 line markings.

20 Q And that's at 42 miles per hour. Did you calculate
21 it at 45 miles per hour which is the top speed that
22 Mr. Valenzuela said he was going?

23 A No, I did it at my calculated which is 50 which --
24 now, to be clear the sight line itself doesn't change, but
25 because of the relative timing at 50 he's really closer to

1 about 255. Keep in mind of the relative timing of the
2 scraper and motorcycle are changing.

3 Q So the sight line---

4 A The sight line is a little over 250, 270. Where
5 exactly it falls in that depends on the sequencing and the
6 sequencing is slightly different at the high and the low
7 speeds.

8 Q All right. So somewhere between 250 feet to 270 feet
9 from the scraper from the middle of the intersection is
10 where Mr. Valenzuela would have first according to your
11 opinions seen the scraper?

12 A Yeah.

13 Q Okay. How many feet away from the scraper was
14 Mr. Valenzuela when he laid the bike down?

15 MR. DETRICK: At what speed?

16 THE COURT: Ask the question again.

17 MR. DETRICK: No, he doesn't need speed.

18 THE COURT: Hold on. Hold on.

19 MR. DETRICK: I'm sorry.

20 Q How many feet away -- I don't believe I---

21 THE COURT: Go ahead and ask the question.

22 MR. COX: Thank you, coach.

23 THE COURT: Mr. Detrick.

24 Q How many feet away from the middle of the
25 intersection was Michael Valenzuela when he laid the bike

1 down?

2 A The gouge marks -- and that doesn't depend on the
3 speed. That's just evidence, you know. They just mapped
4 them out. They painted them in orange. We looked at the
5 photographs. The gouge marks begin about 70 feet from the
6 center of the intersection.

7 Q Seventy feet?

8 A That's right.

9 Q And the motorcycle comes to a rest in front of where
10 the scraper stopped; is that right?

11 A Yeah, I mean, just like we saw in the pictures the
12 motorcycle comes to rest basically in the middle of the
13 intersection just ever so slightly south of the middle of
14 the intersection -- the bike went south of the middle of
15 the intersection.

16 Q And the motorcycle loses stopping power when it's
17 laid down?

18 A Well, no, actually, again, if you're just looking at
19 raw deceleration it's really running .4 to .6 when you're
20 gouging the roadway while you're sliding as opposed to the
21 .3, .4 that the skid was doing; so, I mean, if you're just
22 looking at raw deceleration, you're getting more while
23 you're gouging down the asphalt.

24 Q But you're only gouging -- and we see the intervals
25 in the photographs. We'll get to those in a minute, but

1 where the motorcycle is gouging into the asphalt it's not
2 gouging the entire time. It is gouging --

3 A Periodically.

4 Q Clearly, when it's in the air it doesn't have the
5 stopping capacity that the tires do when they're on the
6 asphalt. Would you agree with that?

7 A Yeah. Now, the in-the-air part, there really isn't
8 much in the air. It's that last little flip over.
9 There's not a lot of in-the-air to that. The gouges are
10 certainly periodic which is why we used .4 to .6. So it
11 is more deceleration than the tire only.

12 Q Okay.

13 A That's just kind of a physical fact.

14 Q When its gouging?

15 A That's right.

16 Q Now you're not going to tell the jury -- correct me a
17 I am wrong because I want to be right. You're not going
18 to tell the jury that the motorcycle came to a rest closer
19 to -- came to a rest in a shorter distance than it would
20 have had it stayed on its tires the whole time, are you?

21 A Frankly, I think it's probably roughly even. It
22 probably did come slightly to a shorter rest than had it
23 stayed on its tires using only the braking that it was
24 which is different than its---

25 Q Only rear braking?

1 A That's right.

2 Q Okay. About the same spot is what you're telling me?

3 A Yeah. Again, because you're talking about .3 to .4
4 and then you convert to .4 to .6, but that's really only
5 to 70 feet and you got the little vault portion so you
6 don't get the additional decel for particularly long
7 distance; so you're not talking about a profound change in
8 the overall roll out, if you will, of the motorcycle
9 whether or not -- in this particular case whether or not
10 you choose to lay it down.

11 Q Very interesting. So while it's vaulting in the air
12 and while it's tumbling on the ground and sliding and
13 coming to a rest, that's the same stopping power as if he
14 stayed on the brakes?

15 A Again, I am trying to be very clear. The braking he
16 is using is primarily rear braking which is about .3 to .4
17 G's of deceleration. Okay? The sliding with the
18 motorcycle on the ground is about .4 to .6. Okay? So the
19 sliding is actually greater than the tires in this case
20 are generating. Okay? However, it's not greater than
21 what theoretical tires on a motorcycle may possibly
22 generate. Okay? So is it shorter or longer depends are
23 we talking about in this case or are we talking about in a
24 general sense?

25 Q I want to know about this case and in this case my

1 understanding is Mr. Valenzuela by your -- by what you're
2 telling me he utilized only rear brake which is by your
3 calculations 30 to 40 percent of the braking capacity of a
4 motorcycle and what you're telling me is that would be the
5 equivalent of the stopping power of the bike on its side
6 and tumbling down the road?

7 A Again, I --

8 Q Is that---

9 A -- really don't know how else to answer. I've tried
10 to give you as specific an answer as I can.

11 Q Okay.

12 A Let me try one more time to be very clear. If you
13 use that same braking coefficient while it's sliding all
14 the way to the end -- you just forget the fact that
15 motorcycles fall over if they're going too slow and all
16 that -- just forget all that -- you just drag that all of
17 the way to end -- the motorcycle will end up slightly
18 further south than it I did right now. It will go a
19 little further, but not a lot further. We're talking
20 about a few feet difference here one way or the other.

21 Q Okay. Now, if Mr. Valenzuela had utilized his front
22 brake and, say, some -- 40 percent -- say he utilized half
23 of his front braking capacity to where he's using
24 70 percent of the motorcycle's braking capacity. He stops
25 far short of the crossing, does he not, if he stays

1 upright and doesn't lay the bike down?

2 A I don't know about far short. It is interesting. We
3 ran all of those calculations so I was ready for you.

4 Q Okay.

5 A And they are in my deposition so you have them
6 already, but at a mid-grade braking -- let's say you do .5
7 G's of motorcycle braking, at a high end at 50 miles an
8 hour that's 164 feet and we already said the total
9 distance back at the beginning of the skid is 165, 170.
10 So, basically, at the high end you're nip and tuck -- I
11 mean, you're going to end up right there and that's if
12 you're using mid-grade motorcycle braking. At the low end
13 42 miles per hour the braking distance is 120 feet. So,
14 you're right. It will end up short of the intersection at
15 the low end with .5 G's.

16 Q Okay. So it will stop at full braking 120 feet and
17 you testified the middle of the intersection was 170 feet?

18 A That right. I am not trying to argue with you, but
19 you just said full braking and the question I was just
20 answering was some front brake -- mid-grade braking.

21 Q Right.

22 A I just want to make sure we're talking about apples
23 and apples.

24 Q I do, too. I really do. But then you said full
25 braking.

1 A Okay. With full braking you're absolutely right. If
2 you're able to do .7 G's you can clearly stop short of the
3 intersection from 170 feet away.

4 Q Okay. And roughly 50 feet from the intersection.

5 A Again, that depends on whether you're low or high in
6 the speed range.

7 Q I want to use your low, 42 miles per hour. If you're
8 using full braking which I believe you testified you agree
9 with the G's that that would be .705 as Mr. Smith, my
10 expert, used; isn't that right?

11 A That's right. So at .7 G's at full braking at
12 42 miles an hour that gives you 85 feet and at 50 miles an
13 hour at the high end that's 117 feet. So that's the range
14 under perfect braking, so to speak.

15 Q He stops in 85 feet, full braking at 42 miles per
16 hour?

17 A That's right. Perfect braking at 42. That's right.

18 Q And that's 85 feet from the intersection?

19 A Well, it's 170 minus 85. So what's that?

20 Eighty-five. How about that.

21 Q How about that. That was a pure guess.

22 A It was just luck, I guess.

23 Q I need to give my math skills the credit they
24 deserve. So 85 feet from the intersection if you use full
25 braking going at 42 miles per hour?

1 A Yeah.

2 Q Okay. Now, if perceiving an emergency wouldn't you
3 expect the driver to use full braking capacity?

4 A Again, that gets into what I might expect. I can
5 talk about physics, okay, but, you know, I do hundreds of
6 cases a year. I see people addressing emergencies who do
7 non-perfect things all the time and, frankly, one of the
8 realities in car wreck cases is if everybody did perfect
9 things there wouldn't be any wrecks. So, I mean, you see
10 what I'm saying? I mean, that just -- that's kind of...

11 Q And I understand and in fairness you said you don't
12 purport to know what he was thinking?

13 A That's right. I try to stick with engineering.

14 Q But you would agree with me that most of the time in
15 emergency situations people are going to apply their
16 brakes. They're going to apply all of their braking --
17 all of their brakes that they have at their disposal --
18 their front, their rear?

19 A I think in a general sense, but I do have caution
20 you're talking about a motorcycle and not a car, okay?
21 Your car is not going to fall over if you jam on the brake
22 pedal, okay? Your car also has systems to help you use
23 ABS. I mean, the car will think it and do it for you.
24 The motorcycle is not like that. The motorcycle will fall
25 down if you decel it too fast. The motorcycle will get

1 unstable if you decel it too fast. It does not have an
2 onboard computer to apportion the brakes for you and sense
3 the tires and everything. So, I mean, I just want to be
4 clear that as a concept, sure, that sounds great, but
5 we're not talking about the same thing in a motorcycle
6 and, you know, an ordinary experience in your car.

7 Q That's rights. Driving a motorcycle requires
8 specialized skills and knowledge on how to utilize those
9 brakes properly, doesn't it?

10 A Different from a car, yes, it does.

11 Q And someone who lacks the necessary knowledge and
12 skill on proper braking on a motorcycle may not know to
13 use his front brake, may not know how fully brake his
14 motorcycle, may not brake properly in an emergency
15 situation?

16 A Well, you know, that's---

17 MR. DETRICK: Your Honor, I object to the form of
18 that question. That is about four questions.

19 THE COURT: It is. Sustained. You have to ask one
20 question at the time, Mr. Cox. You asked him about six.

21 MR. COX: Thank you, Your Honor. I thought I would
22 get a little leeway on cross-examination.

23 THE COURT: You do get leeway. Don't argue with me.
24 You know what the rules are. Come on.

25 MR. COX: Thank you, Judge.

1 Q Now---

2 THE COURT: You can ask leading questions on cross --
3 you know the rules -- but you can't ask five questions in
4 one and don't argue back with me. You know that rule. I
5 have been as patient as I can be.

6 Q Sir---

7 THE COURT: All I ask is that y'all play within the
8 rules.

9 Q I would ask you if -- I want to show you defense
10 exhibit -- this has been moved into evidence. I don't
11 believe we have a sticker on it.

12 MR. DETRICK: A page.

13 THE COURT REPORTER: A page.

14 THE COURT: You were substituting a page.

15 MR. COX: Oh, okay.

16 THE COURT REPORTER: That's it right there.

17 Q Defendant's Exhibit 5 -- this is and I'll represent
18 to you it is a self-authenticating document. It is a
19 South Carolina Driver's Manual. It is the study material
20 to get your beginner's permit in South Carolina and it
21 talks about braking and this is the -- this is the fourth
22 paragraph under the motorcycle materials and it talks
23 about proper braking of a motorcycle and someone who has a
24 beginner's permit is required to have studied this
25 material and passed the test to get his beginner's permit

1 and I want to ask you what the material requires for
2 proper braking.

3 A Are we talking about page 133?

4 Q Yeah, 133, the short paragraph under braking.

5 A Okay.

6 Q Can you read that into the record, please?

7 A Sure. Brake. Use both brakes every time you slow or
8 stop. Using both brakes for even normal stops -- normal in
9 quotes -- will permit you to develop the proper habit or
10 skill of using both brakes properly in an emergency.
11 Squeeze the front brake and press down on the rear.
12 Grabbing at the front brake or jamming down on the rear
13 can cause the brakes to lock resulting in control
14 problems.

15 Q So if Michael Valenzuela had the basic knowledge at
16 the time of this accident on how to properly brake he
17 would have utilized full braking, utilized his front and
18 rear brake at the time of this accident. Would you agree?

19 A I agree in theory, but let me try it this way. I've
20 studied vehicle dynamics my whole life. I have read more
21 textbooks on vehicle dynamics than you can shake a stick
22 at and if I can precisely apply it I would make jillions
23 of dollars as a Nascar racer. That's the problem. There
24 is the difference between reading a book and being a
25 perfect driver is why I'm sitting here rather than driving

1 race cars on Sunday.

2 Q Let me ask you, in fact, Mr. Valenzuela did precisely
3 what the basic beginner's permit skills test knowledge
4 information in the DMV manual says not to do which is
5 don't jam down on the rear because that can cause the
6 brakes to lock resulting in control problems. That's
7 precisely what happened here in this accident, isn't it?

8 A I think that certainly may well have happened.
9 Again, we talked about whether or not he chose to lay it
10 down or whether it was at the point of laying down, but in
11 either event it was eventually going to fall on to it's
12 side. That's true.

13 Q If Mr. Valenzuela had stayed on his wheels -- excuse
14 me -- he would have -- if he had stayed upright in his
15 braking regardless of what method whether he used only his
16 rear brakes, only his front brakes -- regardless of his
17 breaking technique had he stayed on his wheels he would
18 have avoided any crash? He would not have wrecked his
19 motorcycle; is that right?

20 A Yeah. I mean, at the end of the day you're right.
21 The scraper does not intrude into the intersection; so if
22 by some form he can stay on his wheels that's true.

23 Q Okay. Now, I asked you during your deposition how to
24 characterize this Redds Branch Road and you said it is a
25 residential secondary road. Do you still agree with that

1 testimony?

2 A I assume it hadn't changed much since June or July or
3 whatever.

4 Q Well, I mean, I am asking you do you agree it is a
5 residential secondary road?

6 A Sure.

7 Q Okay. And you agree you encounter people leaving
8 their homes and sometimes children and other things on
9 this road?

10 A Sure, yeah.

11 Q You've driven the road at least, didn't you?

12 A I have.

13 Q And you've seen all the driveways. There is a church
14 or two?

15 A Yeah, not right in this area, but, yeah, further back
16 upstream around the curve, yeah, there sure is.

17 Q Right -- yeah, right before the curve --

18 A That's right.

19 Q -- and then you come out of the curve.

20 A I got pictures of them.

21 Q Okay. And you come out of the curve and it is a
22 straight shot --

23 A True.

24 Q -- to the stop sign at the end?

25 THE COURT: To the what? I'm sorry.

1 MR. COX: To the stop sign at the end of the street,
2 Redds Branch Road.

3 Now, and you testified the character of this road is
4 one, where one should be careful on residential secondary
5 road; is that right?

6 THE WITNESS: Yeah, I think that's -- I would hope
7 so. I have kids, too. I would like for you to be
8 careful.

9 Q Because sometimes on driveways people don't -- people
10 just come on out of their driveway; isn't that right?

11 A I have seen people make about every driving mistake
12 in cases that you can think of and some you can't.

13 Q Now you can see the driveway to Owens Corning as you
14 come out of that turn, can't you?

15 A Well, again, I think that's part of the reason we
16 were looking at those photographs. I mean, can you see it
17 in the sense of if you know what you're looking for and
18 you sit here and you reflect you can see where the drive
19 crosses, yes, but well upstream -- I mean, 500 or so feet
20 back when you come out of the turn. In fact, we can put
21 up the site inspection photographs because I did them in
22 stages so---

23 Q We'll get to those. I just wanted to -- is there
24 anything blocking the view of this intersection as you
25 come out of the turn?

1 A Other than the tree line. This photograph on the top
2 here, by the way, if you want to put that on ELMO or
3 whatever, that's 600 feet back. That's right at the, you
4 know, absolute coming out of the turn -- or excuse me;
5 550, 550 feet back. You can put that one up.

6 Q Do you know which exhibit that is?

7 A Well, it's got my photo number on it. I don't
8 know---

9 Q All right. Well, I just want to know, sir, without
10 referencing any photographs -- you've been to the scene.
11 When you come out of the turn you can see the drive -- you
12 can see the intersection as you come out of the turn?

13 A It's a clear shot, but, once again, the intersection
14 is a tiny little break in the trees. So as you come out
15 of the turn, it's --

16 Q Okay.

17 A -- it's physically able to be seen if you are
18 thinking about, hey, can I look at this still photograph
19 and pick out the intersection, but whether or not it's
20 conspicuous, that's a different question.

21 Q Okay. And you understand at the time of this
22 accident there was a blue tractor sitting on one side of
23 the crossing?

24 A Yes.

25 Q Okay. And you understand there was a Waste

1 Management truck approaching the intersection getting
2 ready to turn left?

3 A Sure.

4 Q Okay. And you're not telling the jury that you
5 cannot see the crossing as you are coming out of the turn,
6 are you?

7 A No, I'm not saying that at all. No.

8 Q It's visible?

9 A It is, but, again, visible and conspicuous and what
10 you take note of might be two different things. In fact,
11 you just mentioned the tractor and this other truck.
12 Those also have the potential to be distractions. It may
13 be that you come around the turn and you start looking at
14 them because there is a big blue tractor and a truck
15 there.

16 Q Is there any way that someone driving on Redds Branch
17 Road approaching that crossing with a blue tractor and a
18 Waste Management truck approaching that if they're keeping
19 a proper lookout that they're not going to see the Waste
20 Management truck, the blue tractor, or that crossing?

21 A No, and, in fact, I mean, I think I've stated
22 repeatedly I think Mr. Valenzuela based on his distances
23 and all that was plainly an attentive driver and I haven't
24 heard really an allegation otherwise.

25 Q And an attentive driver coming out of that turn is

1 going to see the Waste Management truck, aren't they?

2 THE COURT: Mr. Cox, he's answered that five times.

3 Please move on. He said that he can.

4 Q Now, I asked you in your deposition -- I asked you in
5 your deposition whether or not actually you answered one
6 of my questions and said Mr. Valenzuela did not utilize --
7 he used sub-optimal braking.

8 A Yeah, I think as a physical fact that's true.

9 Q Okay. And I asked you in your deposition -- I said,
10 I mean, we've talked about them. You can choose to hard
11 brake -- excuse me.

12 A Can you give me the page, by the way, so I can refer
13 to it?

14 THE COURT: Mr. Cox, ask him the question. If he
15 answers it different, then you can use your deposition.
16 That's how we use them on impeachment.

17 Q Do you recall when I asked you, sir, do you have any
18 opinions as to whether Michael Valenzuela could have done
19 something different to avoid this accident, and you said,
20 Sure, it was obvious from a physical fact there are other
21 options that you can take with a motorcycle that would
22 lead to a different outcome and that's not -- I mean,
23 that's just a question of physics, and I said, What are
24 those options, and then you said, I mean, we've talked
25 about them. You can choose to hard brake. You can choose

1 to drive off into the grass. I mean, there's all sorts of
2 options you can choose. You even said, You know, I mean,
3 you can kind of go on ad nauseam about that.

4 Is that still your testimony?

5 A True, yeah. I mean, there is not one solution to
6 what drivers might do. I mean, that's absolutely true.
7 Like I said in that answer, there are other choices
8 available. That's true.

9 Q Now with regards to the scraper -- and I want to be
10 clear. The scraper -- the closest any part of that
11 scraper ever came to Redds Branch Road was 8.25 feet?

12 A From the fog line. From the pavement edge it is
13 seven and a half or so.

14 Q Okay. From the fog line and the fog line we -- we
15 all know what the fog line is. That marks -- that's the
16 white line on the side of the road?

17 A Yes.

18 Q Okay. Which marks don't go -- if you're driving on
19 Redds Branch Road don't go to the right of the fog line?

20 A If you're driving on any road generally --

21 Q Yeah.

22 A -- you want to stay inside the fog line.

23 Q So the closest -- I want to be clear that the closest
24 any portion of that scraper ever came to that fog line was
25 eight-point---

1 MR. DETRICK: Your Honor, we stipulate to that.

2 THE COURT: That's stipulated to which means it's not
3 contested. Move along.

4 Q Now, you testified regarding the speed of the
5 scraper.

6 A Yes.

7 Q And you've said you arrived at 17 miles per hour?

8 A Yes.

9 Q And you are basing that on the tire marks of the
10 scraper?

11 A My calculation of 17 was based on the length of the
12 tire marks of the scraper indicating its deceleration
13 distance and the SAE standard for required braking
14 capability for these machines and, of course, what you do
15 is you check and see if that holds up with the rest of the
16 evidence and in this particular case it held up very well
17 both to Mr. Lewis and Mr. Valenzuela's general range of
18 speeds that they gave in their testimony.

19 Q And you measured -- you measured the skid marks of
20 the -- why don't we go to Exhibit 126. Can we go to
21 Exhibit 126? Okay. Now, can we zoom in to -- the
22 photograph on the right is the MAIT Team. That's not from
23 the date of the accident?

24 A That's right. It says right here August 12.

25 Q And on the left that is from the Highway Patrol from

1 the date of the accident?

2 A Yes.

3 Q Let's zoom in on the one on the left. I believe you
4 measured the skid marks. You said 33 feet of skid marks?

5 A For the length of -- Yeah, that's right for the
6 length of this mark and this police put their orange dots
7 on it, too.

8 Q Okay. Well, let's zoom in on that and we may have a
9 better picture of that mark.

10 A I'm sure we do. You can see the aft most dot right
11 here. There it is right there.

12 Q I believe Exhibit 90. Do we have these?

13 MR. DETRICK: She'll get you what you want. Just
14 tell her what you want.

15 I beg the court's indulgence, Your Honor. Let's try
16 Exhibit 90.

17 THE COURT: There it is right there.

18 MR. COX: No. That's not one of them.

19 MR. DETRICK: That's not it?

20 Q Let's go to 129, please -- no, actually 130 and if
21 we'll zoom in to the left side since that is from the date
22 of the accident. I wanted to ask you do you typically see
23 tread marks in a skid mark?

24 A Again, no, you don't, and I think maybe I failed in
25 being clear before, but I was trying to say this machine

1 cannot lock up a wheel. These wheels are way too big.
2 The machine is way too heavy. It is not physically
3 capable of locking this wheel and sliding like you think
4 of a traditional skid mark, but what it's doing here is
5 it's weighting this wheel because it's the front and it's
6 turning hard right. It is braking so that decel provides
7 friction with the ground and the tire and the lateral
8 movement, okay, so, you know, when you turn you create
9 lateral load on your tire. So the total frictional load
10 on this tire is causing this scrub on the ground, but
11 you're correct, it's not -- and the machine is not capable
12 of skidding in the classic sense.

13 Q Isn't that more indicative of a side slippage than a
14 skid?

15 THE COURT: A what?

16 Q A side slippage than a skid?

17 A I guess I don't know how to more clearly answer it
18 than it's indicative of both. It takes both the turning
19 and the braking to make this particular tire mark. If you
20 just turned this tire, it would look like it did in the
21 MAIT video on the reconstruction. It wouldn't lay down
22 marks like this. If you just braked it wouldn't lay down
23 marks like this because it was in a straight line and you
24 can't skid. This is a combination of braking and
25 skidding. I'm sorry. I said braking and skidding --

1 braking and turning. I'm sorry. Excuse me. I said the
2 wrong word.

3 Q And you got these opinions having never tested a
4 scraper before?

5 A A scraper, no, but, I mean, this is just kind of
6 basic tire mark 101. I mean, you can kind of flip open a
7 traffic accident manual and see pictures like this. This
8 isn't---

9 Q Does that not show a hard turn and a way it's darker
10 on the left side?

11 A Oh, absolutely.

12 Q And it shows -- and is that tire mark not the same
13 width of the actual tire?

14 A I think it's undoubted. Look, it is definitely more
15 pronounced on the outside. I mean, that's because of the
16 dynamic load shift. The vehicle leans to the left as you
17 turn to the right. That's because of the way that a tire
18 deforms and the contact patch happen. I mean, this is why
19 your front tires wear on the edges and your back tires are
20 fine. That's undoubted that that's true.

21 Q Well, how -- and so if it's -- is it slipping further
22 out? I mean, if it's skidding and sliding, isn't there
23 going to be -- isn't that tire mark going to be wider than
24 the tire itself?

25 A No. If you look at -- I mean, you're getting in the

1 inside baseball here, but tread lugs, okay, are just
2 stacks of rubber. They have a sheer stiffness just like
3 anything else. So, if you do studies on your tire on the
4 way that they interact with the ground these tread lugs
5 load up and they shear; right? And then when they come --
6 when they get unloaded they unload and they go back into
7 place; right? That's how your tire deforms.

8 If you think about it, it has to do that. Every time
9 it goes around it gets flat on the bottom, right, and then
10 it gets round where it's not touching the ground; so it's
11 that shifting back and forth that is slippage in the
12 classic sense of the word and if you go to, for instance,
13 tire data they'll do slip angles, right, to the point of
14 saturation, but that's not slippage in the lay sense which
15 means westward movement towards the roadway. Okay?

16 Q Okay. Now, let's move to Exhibit 132, please, ma'am.

17 Now, I want to be clear because this can be somewhat
18 -- could be confusing. The picture on the right is from
19 the MAIT Team reenactment days after the accident?

20 A Yeah.

21 Q And you're not representing that picture on the right
22 -- Would you please point to that mark behind the tire?

23 A You're talking about this one right here?

24 Q You're not representing that that is a skid mark
25 involved in this accident; correct?

1 A No, absolutely. It is August 12 and I think I
2 plainly said you go back and do the whole MAIT thing.
3 These guys move it back and forth a few times. The police
4 officers are not satisfied with where he puts it and, you
5 know, they go back. He backs up a little bit, does this
6 zero movement turn which you saw before. I mean, so this
7 mark is the process of back and forth and scrubbing along
8 and you'll notice it doesn't really line up with anything
9 where it is---

10 Q That is not at all from the accident?

11 A No, no.

12 Q Let's go to the one that's from the accident, if you
13 don't mind, please. Thanks. Could we zoom in on the rear
14 tire skid mark from the accident? How long is that rear
15 tire skid mark?

16 A I'd have to dimension it off my drawing. I mean,
17 it's not but a few feet, but it runs right under the
18 center of the tire.

19 Q Just a few feet?

20 A Yeah.

21 Q And there's no skid marks before that skid mark
22 starts. You got the tire impressions leading up to that
23 rear tire skid mark going of only a few feet?

24 A Well, right, and that's because just exactly what we
25 were talking about before. This wheel doesn't do very

1 much turning; right? The front end of this thing does a
2 bunch of turning, but this wheel basically does
3 straight-line braking; so up except for the very end of
4 this whole affair of where this wheel turns it's not
5 capable of laying down those marks either. That and this
6 is a bald tire, too, by the way. This tire is way past
7 its useful service life.

8 Q And it still only left a few feet of skid mark?

9 A That's right. Again, because it doesn't make on
10 turning until down here. The straight line portion -- I
11 don't know how to say it more times. This machine is not
12 capable of locking up these tires. It can't.

13 Q Now, let's go to Exhibit 129, please. Excuse me. I
14 meant to say -- my apologies -- Exhibit 92. Okay. This
15 exhibit is showing the approach -- of course, this was on
16 your trip to the scene this year in March; right?

17 A Yes.

18 Q Okay. And this is showing the approach to the
19 intersection?

20 A Yes.

21 Q Okay. And you're not contending that was not
22 visible, are you?

23 THE COURT: What's not visible?

24 Q That the crossing there is not clearly visible?

25 A No.

1 Q And how far off of that tree line from the road from
2 the fog line? Or did you measure that?

3 A I think it is right around 29, 30 feet; something
4 like that.

5 Q Did you measure it?

6 A Well, I was reading it off the diagram but I did. I
7 mean, we -- one of the things we did with that corner
8 tree -- off the fog line it's---

9 Q If you don't have the exact, that's fine, sir.

10 A Well, here it is -- my measurement. The fourth tree
11 was 28 feet exactly. That tree is slightly off -- the
12 fourth tree 28 feet 8, but with my handy-dandy ruler and
13 my site diagram I got 29; so I was pretty close.

14 Q There actually is some visibility through the trees
15 you can see the scraper. I mean, you can see a vehicle
16 driving through there -- through the trees if you're
17 looking; right?

18 A Well, in fact, I mean, we didn't show them. We
19 didn't even go into that, but I took extensive videos of
20 that. I mean, I took videos with the big yellow scraper
21 front end attached to my truck driving from this drive
22 way. I took them at 300, 250, 200, 150. I mean, we can
23 cue up one of the videos and just --

24 Q No. I'm asking---

25 A -- let it speak for itself.

1 Q I'm asking you can you see a vehicle driving through
2 the---

3 A That's what I am saying. That's a complex question
4 and that's why I would like to let it speak for itself in
5 the sense of if I tell you---

6 THE COURT: Hold on a second. Just what -- ask your
7 question again. Where are you talking about?

8 Q On approach if there is a vehicle driving down that
9 private driveway can you see it through the trees: Yes or
10 no?

11 A Well, that's not a question or no question.

12 Q Okay. Then you've answered my question.

13 A Can I not explain?

14 THE COURT: You may.

15 THE WITNESS: If I cue up one of my videos and I tell
16 you, hey, my truck here with the big yellow thing on the
17 side of it is going to come down this road at 15 miles an
18 hour; watch through these trees and tell me if you see it,
19 then you'll see it. Absolutely. I mean, it's a big
20 moving yellow thing.

21 Q You see it through the trees?

22 A That's right, but on the other hand if I tell you get
23 on your motorcycle and go 45 miles an hour and move along
24 the way and don't tell you what to watch for, you just
25 tell me what do you see, that's a different question, and

1 that's why I think the video would speak for itself in the
2 sense of, yeah, if you concentrate you can see it, but it
3 is not obvious. I mean, I investigated that specific
4 question at some length.

5 THE COURT: All right. Thank you.

6 Q Now, Mr. Kennett, when did -- in your investigation
7 did you determine when Mrs. Valenzuela exited the
8 motorcycle?

9 A Right there in the vault portion. She's what we call
10 high-sided. So when the motorcycle flips like this -- if
11 this is the front end and this is the back end, it flips
12 from it's right to it's left side, she basically just
13 comes off right at the end.

14 Q And that was -- and the vault was -- Let's go to
15 Exhibit 48, please, ma'am.

16 If I may approach, Your Honor.

17 Can we go back? I am trying to find a particular
18 exhibit.

19 THE COURT: What do you need, Mr. Cox?

20 MR. COX: I am trying to get a photograph of the skid
21 mark -- the close-up of the skid mark.

22 THE WITNESS: At the vault or back up the road?

23 MR. COX: I think they go in unison back up the road
24 and through the vault.

25 Paul, do you know what it is?

1 MR. DETRICK: I'm sorry. I don't know what you want.

2 (Whereupon, a discussion was held off the record.)

3 Q Let's start with this one. That orange marks --

4 THE COURT: That's Exhibit 40.

5 Q -- Exhibit 40 -- marks the beginning of the skid and
6 then my question I want to know and we'll move forward --
7 I want to know where Mrs. Valenzuela -- I beg the court's
8 indulgence, Your Honor.

9 THE COURT: What you need?

10 MR. COX: I misplaced something, Your Honor.

11 THE COURT: Maybe we can find it. What did you
12 misplace?

13 MR. COX: Yeah, it's a -- it's my -- it is a little
14 green piece of notebook paper.

15 You didn't see it, did you, Paul?

16 MR. DETRICK: No.

17 THE COURT: All right. Let's just take a deep
18 breath. It is just a little piece?

19 MR. COX: I am notorious for misplacing things.

20 THE COURT: A little green piece of paper?

21 MR. COX: Yeah, it is a little green pad like that.

22 THE COURT: Paul, you can't look over there.

23 THE JUROR: It is folded up in the book. Flip
24 through the book. I think you closed a page on it or
25 something.

1 THE COURT: Mr. Cox, you remind me of my son; my baby
2 son.

3 MR. COX: Well, I will take that.

4 THE COURT: I'll tell you what. How much longer are
5 you going to be?

6 MR. COX: I'm going to be --

7 THE COURT: I am not cutting you off.

8 MR. COX: -- you know, 15 or 20 minutes; maybe less.

9 THE COURT: Well, let's try to finish it up before
10 lunch. You know why? Because when we go to lunch these
11 lawyers get all this new energy and they'll ask---

12 MR. COX: I found it.

13 THE COURT: Where was it?

14 MR. COX: My apologies. It was in my notebook.

15 THE COURT: Right where the juror told you.

16 MR. COX: Right. I'm glad I can provide some comic
17 relief, you know, in a serious case.

18 But, now, that's the start of the skid mark on
19 Exhibit 40 marked by the orange line; correct?

20 THE WITNESS: Yes.

21 Q And then if we move forward to the next photo in the
22 sequence, that---

23 THE COURT: We're still on 44.

24 Q Forty-four -- still in the skid phase?

25 A Yes.

1 Q And my question -- I want to move to the next one.
2 Where did Mrs. Valenzuela exit the motorcycle? When did
3 she come off the motorcycle? Do we need to move forward
4 again?

5 A She comes off -- you're not going to see it great
6 because this is five days later in the rain, but she comes
7 off in the vault phase which is right in the middle of the
8 intersection and remember when we looked at the motorcycle
9 at it's point of rest it had that place where the rear
10 tire grabbed right there --

11 Q Okay.

12 A -- and, in fact, the vault distance is only 12 feet.
13 So, I mean, we're talking the whole occupant issue happens
14 basically just right here.

15 Q Okay. And do you understand where -- let me ask you
16 this. Stay on that picture. Why did the motorcycle
17 change direction when he steered to the left?

18 A I don't think this is a steer to the left. The
19 motorcycle is becoming unstable. Remember we were talking
20 about the siping marks? So it's taking on a yaw slide.
21 It is the same reason in your car if you lock up the back
22 wheel and not the front wheel you don't have any
23 directional stability. This is not the product of, I
24 don't think, a steer to the left --

25 Q Okay.

1 A -- but just a yaw slide.

2 Q And just a few -- did you examine the motorcycle?

3 A By the police's photographs, but not directly, no,
4 sir.

5 Q Why didn't you examine it in person?

6 A Well, two reasons. Number one, it was years later
7 and I didn't know that it was available, but, secondly, I
8 don't think there is any controversy about what side of
9 the motorcycle slid. I didn't really see it as pivotal to
10 the---

11 Q Do you know what kind of brakes the motorcycle has?

12 A Sure. I mean, I got extensive specifications, but, I
13 mean, they're pretty well ordinary motorcycle brakes. If
14 you have a more specific question, I'll be glad to answer
15 it.

16 Q Yeah, do you know what kind of -- if you can explain
17 the type of brakes. I mean, there are different kinds of
18 brakes, are there not?

19 A Well, I mean---

20 Q On the 2001 model of this Harley Davidson in this
21 case.

22 A Well, I mean, fundamentally it's got a pedal for the
23 rear brake and a grab handle for the front brake. They're
24 separate actuators.

25 Q Okay. Do you know is it -- Okay.

1 A I think they're mechanical brakes. I don't think --
2 they're certainly not air brakes. I don't recall. I'd
3 have to look. I don't think they're hydraulic brakes. I
4 think they're -- I think they're just pure mechanical
5 brakes.

6 Q You would have to refer to the specifications of that
7 model of motorcycle --

8 A Sure.

9 Q -- for that information --

10 A Sure.

11 Q -- is that accurate?

12 A Yes.

13 Q Okay. Now, let's go to Exhibit 94, please. Okay.

14 And I believe you testified that -- okay. This is
15 showing -- the red line is showing the perception reaction
16 time of Michael Valenzuela?

17 A Well, it's not the time. It's the sight line.

18 Q This diagram is to scale; correct?

19 A Oh, yeah.

20 Q And the motorcycle -- the red line drawn to the
21 motorcycle is where---

22 A You're talking about this? This is a purple line.
23 Are you talk about this dimension line here 100 feet or
24 are you talking about---

25 Q I guess the purple line.

- 1 A Okay.
- 2 Q That one that you're following.
- 3 A This one. Okay.
- 4 Q That is reflecting the -- where Michael Valenzuela
- 5 first saw the scraper?
- 6 A I think so, yeah.
- 7 Q Okay. I mean, that's what---
- 8 A Sure, that's my diagram. I'm not -- is there---
- 9 Q So he starts reacting as soon as he can see it; is
- 10 that right?
- 11 A I think that's true, yep.
- 12 Q Okay. And you read Mr. Valenzuela's -- you've read
- 13 his testimony, have you not?
- 14 A I have.
- 15 Q Okay. And do you recall the testimony where he says
- 16 his wife started tapping him on the side?
- 17 A That right, yeah.
- 18 Q Okay. That's -- and do you recall that he indicated
- 19 he -- when she tapped him he didn't know what she was
- 20 tapping him for?
- 21 A That's right, yeah.
- 22 Q Okay. And then she taps him three times; is that
- 23 right?
- 24 A I think that's right, yeah.
- 25 Q Okay. And he testified I thought -- I knew

1 immediately something was wrong?

2 A I mean, I don't remember the exact words he used,
3 but, I mean, obviously, she was tapping him for some
4 reason.

5 Q Okay. And, well, you've reviewed his testimony?

6 A Yes.

7 Q And it was important to review his entire testimony?

8 A Oh, yeah.

9 Q He said. I don't know -- on page 32. I'll read it
10 to you.

11 A You read it. That's fine.

12 Q Okay. He says, And we're riding -- First, let me
13 back up. On page 31, line 23, in response to my question
14 when I asked him what you recall happening leading up to
15 and then the accident, he says, We were going about 40 to
16 45 miles an hour, come around the curve, and it's an open
17 shot all the way to Fiberglass and we're riding and my
18 wife taps me. When she tapped me on I immediately let off
19 the gas, started pulling the brake -- front brake, back
20 brake, looks in my mirrors, looked ahead, didn't see
21 anything; so I thought it was a dog or a deer. I just
22 kept scanning and looking.

23 Okay. If that testimony is accurate and that's
24 indeed what Mr. Valenzuela did, he is being tapped before
25 by his own testimony before he sees the scraper, is he

1 not?

2 A That's exactly right and I want to be clear. That's
3 the reason I undertook this whole exercise that we haven't
4 shown that I put the banners on the side of the truck. We
5 drove -- because I think she's seeing the scraper through
6 the woods and I think he's scanning and it's not obvious
7 to him, but I think she has seen through the trees some
8 hint of something coming and that's why she's tapping him.
9 So, I -- that's specifically why I undertook that
10 whole---

11 Q But based on that testimony that I just read to you
12 from Mr. Valenzuela he is starting to let off the gas and
13 brake before that perception reaction time on your
14 diagram?

15 A Let off the gas, certainly. That's his testimony.
16 Now, I interpreted his testimony in the context of what
17 else he was saying to be he was essentially taking up
18 slack on the brakes because these pedals on a mechanical
19 brake like a motorcycle -- you know, I essentially mean he
20 is just kind of starting to get ready to do something.
21 His wife is tapping him. He is scanning. He assumes it
22 is something but he doesn't yet see it. I did not
23 interpret that as he was previously braking.

24 Q All right. You can't purport to know what he was
25 doing or what he was thinking, but, I mean, he says he was

1 pulling the brake -- front brake and back brake?

2 A That's right. Now, to be clear, we have the physical
3 evidence -- we have the physical evidence of where his
4 tire mark begins. So, if he is doing any of that it's
5 further upstream.

6 Q It is further upstream from his perception reaction
7 time?

8 A Yes, because he says he is scanning and then he --
9 then he sees the device emerge from behind the trees and
10 then he gets on the brake hard.

11 Q And that in turn lowers his speed heading into the
12 skid mark?

13 A You know, the mere coasting doesn't lower your speed
14 a great deal.

15 Q How about pulling the front brake and the back brake?

16 A Again, if you're just taking up slack, no. If you're
17 doing some significant braking, then, obviously, but I
18 think, you know, if you just look at that in the context
19 of his testimony that's the way I interpreted it, but I'm
20 sure it is open to your different interpretation.

21 Q Okay. Now I asked him -- I asked him -- I asked him
22 what those maneuvers did on page 43 of his testimony
23 you've reviewed in this case. I said, What effect -- page
24 43, line 8: What effect did those maneuvers have on your
25 motorcycle? He says, None. It slowed it down just

1 5 miles an hour, probably 3, 4, 5 miles an hour --

2 MR. DETRICK: Whoa, whoa, 3 to 4---

3 MR. COX: -- and I just---

4 THE COURT: Hold on. The objection is you're not
5 reading it right. I don't know if you're reading it right
6 or not. Just re-read it.

7 Q Line 43 -- I mean, excuse me---

8 MR. DETRICK: I didn't hear the three if you said it.
9 I'm sorry.

10 MR. COX: Thank you, Paul. I appreciate that. I
11 want to be clear.

12 THE COURT: Y'all are doing fine.

13 Q Mr. Kennett --

14 A Yes, sir.

15 Q -- page 43 of Mr. Valenzuela's deposition, line 8.

16 A Okay.

17 Q I asked him what effect did those maneuvers which is
18 -- I asked him, What effect did those maneuvers have on
19 your motorcycle? His response was, None. It slowed it
20 down just 5 miles an hour probably, 3, 4, 5 miles an hour
21 and I just was taking it in because I didn't know if it
22 was a deer or what was fixing to happen. I figured it was
23 a dog or deer fixing to jump out.

24 THE COURT: And your question is?

25 Q So my question is by his testimony does he not slow

1 down before he sees the scraper 3, 4, 5 miles an hour by
2 his testimony?

3 A Yes. And, in fact, I would suggest -- and I thank
4 you for reading it. That is exactly the context that I
5 was giving in his description of getting off the throttle,
6 starting to coast down, taking up the slack in the brakes.
7 I mean, 3, 4, 5 miles an hour is not anything big with
8 regard to heavy braking and I plainly presented a range of
9 42 to 50. I have tried to account for the fact that, you
10 know, that I don't know everything down to the tenth; so,
11 yeah, that's exactly the context that I took those remarks
12 in that prior to this onset of tire evidence and the
13 perception reaction to get there to that he had simply
14 entered basically a hypervigilant state because his wife
15 had tapped him and he is by his own testimony scanning
16 around.

17 Q But if he is perceiving and braking before his
18 perception reaction time, doesn't that drop your speed
19 range from 42 to 50 to -- here goes my math again -- 37 to
20 45 -- to 45?

21 A No. I think you and I are talking about different --
22 the speed range I presented assumes a range of braking
23 efficiency, okay? And we talked about that at length and
24 I used .3 to .4. If -- and the very reason I did that was
25 because .3 is rear only efficiency and .4 accounts for

1 some -- some portion of front brakes. So I tried very
2 hard to account for that. I think the true speed lies
3 between 42 and 50, but that issue that you're talking
4 about is already accounted for in the calculations that I
5 have done.

6 Q The fact that he was slowing down before he ever saw
7 the scraper was accounted for in your math?

8 A Yes.

9 THE COURT: Mr. Cox, how much more you got?

10 MR. COX: I got a little bit more, Your Honor.

11 THE COURT: All right. You want to break for lunch?

12 MR. COX: Yes, sir.

13 THE COURT: You should have told me that a while ago.

14 MR. COX: Well---

15 THE COURT: I'm not fussing. I am going to crack the
16 whip at lunch time. We're going to move along a little
17 faster. Turn the light on. Both of you. I'm not fussing
18 at you. Both of you.

19 MR. COX: Do what?

20 THE COURT: I said I'm going to crack the whip at
21 lunch time. We're going to move a little more
22 efficiently. Both of you.

23 MR. COX: Thank you, Your Honor.

24 THE COURT: Not just you.

25 I am fussing at both of them equally. Don't think I

1 am taking sides. All right. You got a ride for---

2 THE BAILIFF: I am going to drive her over there.

3 THE COURT: Ms. Barbara, you be careful.

4 THE BAILIFF: Yes, sir. I sure will.

5 THE COURT: Those that need to ride you can ride with
6 Ms. Barbara. Those that would like to walk, it's a
7 pleasant walk over there. We got you a room set up.

8 THE BAILIFF: Your Honor, she brought her motorcycle
9 today.

10 THE COURT: Ms. Barbara? Bless her heart. All
11 right. Y'all don't discuss it. Don't deliberate. Enjoy
12 your lunch. We'll start back at 2:30.

13 (Whereupon, the jury exited the courtroom at 1:09.)

14 THE COURT: All right. Everybody, lawyers -- First
15 of all, sir, you may step down. You're still in the
16 middle of your testimony. Please do not discuss anything
17 at lunch with anyone dealing with the testimony.

18 THE WITNESS: Okay.

19 THE COURT: We have gotten to a snail's pace this
20 morning. The cross -- I mean, the direct was longer than
21 I think any of us anticipated and the cross is probably a
22 little longer, too. We're not going to finish tomorrow.
23 I think it is in everybody's best interest -- you can look
24 at the jury. They like to be -- have the facts presented
25 to them, but they don't like to be redundant, and, quite

1 frankly, both of you are getting a little redundant, but
2 y'all try your cases like you want to. I am just telling
3 you that you're tiring out that jury over there.

4 So, having said that, when we get back we got to
5 finish up Mr. Kennett. Then who you got?

6 MR. DETRICK: Sir?

7 THE COURT: Who do you have after that? You don't
8 have to stand. You can sit. I am not holding you to it.
9 Just tell me your best case estimate.

10 MR. DETRICK: Your Honor, what we have left -- I
11 really don't know what order exactly. We have of course
12 which is going to get a little -- I try to get it quick,
13 but the MAIT Team Sergeant Coffin which is what it is.

14 THE COURT: It is what it is.

15 MR. DETRICK: Yes, sir. We tried to have a short
16 video of Mr. English which you were going to rule on.
17 Mine was 18 minutes. I thought they were calling him to
18 the stand. I just wanted to prove some facts.
19 Apparently, they've added at least 30 minutes to that
20 deposition. I'm sorry.

21 We need to call Mr. Curtis English, also, and we may
22 call Mr. Tindel -- I'm not sure -- and then we've got
23 about four or five --

24 THE COURT: Damage witnesses.

25 MR. DETRICK: -- damage witnesses. So you'll be this

1 time tomorrow at least.

2 MR. DETRICK: I don't know, sir.

3 MS. MCPHERSON: Our damage witnesses will be short.

4 THE COURT: I understand that. I understand that.

5 All right. I hadn't pushed anybody. I mean, I am letting

6 you try it like you want to basically, but I think it

7 would behoove you to step on the gas a little bit as

8 Mr. Cox says. No pun intended. All right. We'll stand

9 at ease until 2:30. Y'all be back about 2:20 and I'll

10 rule on that.

11 (Whereupon, a lunch break was taken.)

12 THE COURT: Mr. Detrick, anything for the record

13 before we start back?

14 MR. DETRICK: Nothing, Your Honor.

15 THE COURT: Mr. Cox?

16 MR. COX: Nothing, Your Honor.

17 THE COURT: All right. You got more cross

18 examination of Mr. Kennett; right?

19 MR. COX: Yes, sir.

20 THE COURT: All right. Right back up here. How

21 about the objections on Mr. Chris English?

22 MR. DETRICK: We can deal with that.

23 (Whereupon, the jury came into open court at
24 approximately 2:35.)

25 THE COURT: Okay. Mr. Cox you may proceed.

1 CONTINUED CROSS-EXAMINATION

2 BY MR. COX:

3 Q Mr. Kennett?

4 A Yes, sir.

5 Q Your testimony is that the scraper was already
6 breaking and in mid-turn by the time the plaintiff laid
7 down his -- by the time Mr. Valenzuela laid down his skid;
8 is that right?

9 A Yes. Well, I mean, it's in the diagrams, but, yes,
10 fundamentally the scraper was already in the midst of its
11 actions when Mr. Valenzuela's tire began to make its mark.

12 Q When Mr. Valenzuela's tire began to make its mark the
13 scraper was already braking in the middle of its turn?

14 A Well, I wouldn't know if it was in the middle of it,
15 but, yeah, it was already braking and beginning of its
16 turn.

17 Q Okay. And so and we can agree had Mr. Valenzuela
18 stayed upright on his brakes that this accident would have
19 never happened -- regardless of his speed?

20 A Upright on the wheels.

21 Q Upright on his wheels.

22 A That is true.

23 Q Okay. Now, Mr. Kennett, you routinely handle cases
24 for Mr. Detrick's firm, do you not?

25 A I mean, I've had probably a dozen or so over the last

1 few years. I don't know what the definition of routinely
2 is, but that's how many.

3 MR. COX: Thank you, sir. That's all the questions I
4 have.

5 THE COURT: Redirect?

6 MR. DETRICK: No questions.

7 THE COURT: You may step down. May he be excused or
8 released from his subpoena?

9 MR. DETRICK: He is not subpoenaed.

10 THE COURT: I'm sorry. Call your next witness.

11 MR. DETRICK: I call Sergeant Mathew Coffin.

12 MATHEW B. COFFIN, after being duly sworn,
13 testified as follows:

14 THE CLERK: Please take a seat in the witness box and
15 state your full name for the court.

16 THE WITNESS: My name is Mathew Blaine Coffin.

17 DIRECT EXAMINATION

18 BY MR. DETRICK:

19 Q Sergeant; right?

20 A Yes, sir, two weeks Sergeant.

21 Q Sergeant, I think you're a member of what we always
22 talk about is the MAIT Team; is that correct?

23 A That's correct.

24 Q Describe to the jury what that is and what y'all do.

25 A Well, the exact acronym MAIT is taken from the

1 California model. It's stands for Multi-disciplinary
2 Accident Investigation Team. Basically, what we do is we
3 investigate more complex collisions. We're an assist unit
4 for field troopers when they have what they believe to be
5 more complex collisions or felonies. We just come in. I
6 am stationed in Columbia and I cover 14 different
7 counties. Me and my team come in and we do whatever
8 behind the troops that we feel is necessary to complete
9 the investigation.

10 Q If you would tell us your background, education,
11 training in accident reconstruction.

12 A Did you want my formal education, also?

13 Q Whatever involves accident reconstruction.

14 THE COURT: Mr. Detrick, if we can agree that he is
15 highly qualified -- do you agree to his qualifications,
16 ladies and gentlemen?

17 MS. PAYNE: Yes, without objection.

18 MR. DETRICK: All right. Sounds good.

19 THE COURT: Instead of going through all of the
20 qualifications for these fellows and ladies to be members
21 of the MAIT team they have to have special training we're
22 going to stipulate that he has that training and he is
23 qualified to testify as a reconstructionist and give
24 opinion testimony.

25 Q And, Sergeant, whenever the MAIT Team goes to a scene

1 to investigate most of the time it is fatalities; is that
2 correct?

3 A For the most part; not always, but for the most part.

4 Q And when you go you go as a team, work together, and
5 rely upon each other's work at the scene in rendering
6 opinions; is that correct?

7 A That's correct.

8 Q Now, were you and the other members of the MAIT Team
9 asked to go to the scene of the wreck that occurred on
10 August 7, 2009?

11 A We were.

12 Q Okay. And I believe y'all went to do -- you go on
13 the day, but you ended up going on August 12, 2009; is
14 that correct?

15 A That's correct.

16 Q And what members of the MAIT Team went?

17 A Myself, Corporate Sally Farmer, and Corporal James
18 O'Donnell.

19 Q And did y'all get a general understanding kind of
20 what happened in the wreck on August 7, 2009 so you would
21 know how to---

22 A Correct. Generally in these type of cases we're
23 briefed beforehand so we know what we're looking for and
24 looking at.

25 Q Just briefly, what was your general understanding?

1 A Going into the collision?

2 Q Just generally what happened so you know what to do?

3 A The basic understanding was a single motorcycle
4 wreck, two occupants, one fatality, involving a piece of
5 construction equipment. At that point I am not sure
6 exactly what the dynamics were, but that the motorcycle
7 was on the right-of-way and that the construction
8 apparatus was on the private road.

9 Q All right. And when you went there could you tell us
10 who -- what was generally done at first, who did what, you
11 know?

12 A Generally, the SOP when we get there -- standard
13 operating procedure -- is the same. You document the
14 scene with digital photography which was done by, i
15 believe, Corporal Farmer.

16 THE COURT: Slow down.

17 THE WITNESS: Am I talking too fast?

18 THE COURT REPORTER: You're getting there.

19 THE WITNESS: Okay. Yeah, I tend to get there. It's
20 like rolling downhill. Then Corporal -- I believe
21 Corporal Farmer did the video. I can't recall

22 specifically and Corporal O'Donnell did the pictures. I
23 can look at my notes if you want me to tell me exactly.

24 Q That's fine. Help yourself.

25 A Generally, that's what is done when we get there. As

1 to who does them, it doesn't really matter because we're
2 all trained in each aspect of the collision
3 reconstruction, but we do make notes of who does what. I
4 believe the video was done by Corporal Farmer and the
5 pictures don't have it indicated here but I believe they
6 were done by Corporal O'Donnell. I could be wrong on that
7 one.

8 Q Did you also set up to where you could do
9 measurements?

10 A Yes, we did set up the total station forensic
11 mapping.

12 Q Explain that to the jury, please.

13 A Basically, a forensic mapping apparatus -- if you're
14 driving down the road you see mapping people on the side
15 of the road where the guy is looking through what it looks
16 like is a little mechanism and he's shooting towards the
17 guy holding the pole, that's basically a forensic mapping
18 state. What it does is EDI -- electronic distance
19 instrument or measuring device. It shoots a beam out and
20 it sends a beam back and documents that point in relation
21 to where the station is; so it gives you an accurate
22 measurement, I believe, to one-thousandth of an inch of
23 the entire collision scene or the scene that you're
24 working on.

25 Q Y'all did that in this case?

1 A That's correct.

2 Q And you're doing it -- what areas are you concerned
3 about as far as mapping and measurements in this
4 particular case?

5 A Well, basically, I just want to get a general layout
6 of the entire collision scene, the roadway, the edge of
7 pavements, anything maybe -- anything that comes into play
8 in the collision. Then you want to map in the evidence
9 like skid marks, gouge marks, whatever you may have --
10 final rest of the vehicle so that you can place them back
11 in the scene correctly and also if need be do a CAD which
12 is Computer Animated Drawing or animation.

13 Q And you also took photographs sort of showing that
14 and doing that; is that correct?

15 A That's correct.

16 Q Okay. We're going to start if we would -- I think
17 the photograph we started here with and we'll try to go
18 through these because I think the jury has seen most of
19 the same thing before, but starting with photograph 39,
20 could you tell us what it shows?

21 A That basically shows the roadway coming in in the
22 direction of travel of the motorcycle coming in to the
23 collision scene.

24 Q And let's quickly go through them, Lynn. Could you
25 just go through 40? You got something wrong there.

1 THE COURT: There it is.

2 THE WITNESS: Again, this is just a step closer.

3 Basically, what your photographer will go do is go to the
4 farthest extent of the scene, maybe a little further, and
5 just walk in and take a snapshot every few feet and you
6 can see in this that the photographer was just taking
7 maybe a few steps further. You can see the roadway and
8 beginning of the skid mark that was marked by the field
9 troops on the scene of the collision.

10 Q And the markings -- the red paint markings, who made
11 those?

12 A That would be the investigating troopers the night or
13 the afternoon of the collision.

14 Q And then I assume from what you did -- and we'll go
15 through -- you went -- got closer to the scene as you took
16 the photograph?

17 A That's correct.

18 Q Okay. And if you want to stop me when we do this,
19 let me know if you want to kind of explain anything, but I
20 think we'll get at least to the area where we got gouge
21 marks.

22 Go through 41, Lynn.

23 Again, we're getting closer; is that correct? That
24 is the skid marks of the motorcycle?

25 A Yeah, the tire mark of the motorcycle.

1 Q Were you able to determine what part of the braking
2 of the motorcycle -- what wheels that was done by?

3 A We came to an agreement that it had to be the rear
4 wheel brake of the motorcycle and only the rear wheel
5 brake.

6 Q And then just go closer. Forty-three. And we're
7 getting closer to the scene again?

8 THE COURT: That's 42.

9 Q Is that 42?

10 A Uh-huh.

11 Q Then 43, please, and 44, and 45, and, again, 46.
12 These are your photographs of the MAIT Team?

13 A Yes, sir.

14 Q And now it looks like the marks from the motorcycle
15 are going to the left a little bit?

16 A Yes, sir.

17 Q Does that mean anything to y'all?

18 A Just means that the driver was -- rider was probably
19 taking some type of evasive action to the left --

20 Q Okay.

21 A -- to avoid something perceived in his field of
22 vision.

23 Q And 47, and I think 48. All right. Now, 49, I
24 believe is closer up of 48. What does that show?

25 A That's a gouge mark that appears where the motorcycle

1 had been laid down or the rider and occupant had been
2 ejected from the motorcycle. Where the motorcycle was --
3 that may be right where it happens, but that's where the
4 motorcycle or a part of the motorcycle dug a gouge into
5 the asphalt.

6 Q All right. I think 50 is also the same thing?
7 Closer up, probably? Correct?

8 A Yes, sir. Same mark. Just a little closer in.

9 Q And 51?

10 A That's just back focused on the roadway a little
11 further down. You can see the end of the gouge that he's
12 talking about and marks further up.

13 Q All right. We might have a pointer up there.

14 Do we have a pointer just in case he needs it?

15 THE PARALEGAL: It was up there.

16 MR. DETRICK: There was one up there. There it is.
17 If you need that, just use it. Fifty-three. I think
18 that's a little closer up. Can you describe what that is?

19 THE WITNESS: Again, it's just scratching or gouging
20 of the roadway from the motorcycle tumbling on its side,
21 tumbling on either side.

22 Q And go to 54, please. This is in the other lane.
23 What is that?

24 A It's just the continuation of the travel paths of the
25 riderless or uncontrolled motorcycle just gouging and

1 scratching the roadway traveling at the final rest.

2 Q And 55 would be a close-up of that?

3 A Yes, sir.

4 Q And 56? All these markings that you're referring to,
5 were they measured lengths and locations?

6 A Yes, sir.

7 Q Okay. And if you would -- that's 56. What about 57?
8 What is that one?

9 A That's a new gouge. As you can see the motorcycle is
10 probably at this point tumbling maybe side to side as both
11 the rider and occupant have been ejected. There is one
12 here. One here. It just continues on down.

13 Q And 58. That's just more of a close-up of that one;
14 is that correct?

15 A Yes, sir.

16 Q Fifty-nine is the same, a little further down. Is
17 that correct?

18 A Yes, sir.

19 Q And the same thing with 60. Stop me if you need to
20 explain anything. I'm just trying to---

21 A No, this is just continuation of the travel path of
22 the motorcycle as it slides out to final rest.

23 Q Sliding down the road?

24 A Yes, sir.

25 Q So 61, what is that?

1 A Same thing, another gouge. It is the motorcycle
2 still traveling up to final rest.

3 Q Sixty-two.

4 A Just the same mark a little closer, looking at some
5 more marks.

6 Q And 63, same thing?

7 A Yes, sir.

8 Q And 64?

9 A Same thing.

10 Q I am having to do these to get these into evidence.

11 A That's fine.

12 Q Sixty-five?

13 A Same thing; marks as you can see going to the final
14 rest.

15 Q Sixty-six?

16 A Same thing.

17 Q Sixty-seven?

18 A Same thing.

19 Q And 68?

20 A Same thing. You can see the marks.

21 Q Okay. Now, if you would, these others are of the
22 middle of the intersection I believe we have from 69
23 through 74 and basically it shows the same thing, but tell
24 us what that -- you know, you see the little white marks
25 in the front.

1 A You say 69 or 68?

2 Q Yes, sir, that's 69? Correct.

3 A Sixty-eight is what is up there.

4 Q Is that 68? Well, go to 69. That's closer up.

5 A Okay. Now, what was your question again? I'm sorry.

6 Q Go to 69.

7 A That's 69.

8 Q Okay. Describe what is seen there. I see the cross
9 in the middle of the intersection.

10 A Well, we don't -- this cross -- probably the only
11 corner of the state -- maybe not -- at least in my area
12 that does this is she puts a cross in the road where
13 there's a fatality or the victim of a highway fatality.
14 She generally tries to put it where she believes the
15 victim's final rest was in the roadway where the collision
16 happened. She usually does that the night of the
17 collision.

18 Q You -- go ahead.

19 A That was it.

20 Q Were you able to determine where the motorcycle ended
21 up in the intersection?

22 A Yeah, I believe they had marked the final rest in
23 here and there is fluid here it looks like from the
24 motorcycle.

25 Q All right. For the court's permission, 69 through 74

1 are the same thing, basically. Did -- While you were out
2 there did you actually have the scraper brought to the
3 scene?

4 A We did.

5 Q What was the purpose of that?

6 A Basically, I guess one of the issues in this
7 collision was whether or not the scraper actually entered
8 the roadway or broke the plain of the roadway to
9 constitute a failure of right-of-way and there was marks
10 you can see that the scraper had left as he turned right
11 hard to the stop sign. We basically just wanted to video
12 it and get it an idea of if we put them back on his marks
13 did any portion of the scraper actually enter the roadway
14 or the right-of-way.

15 Q And in doing that did you try to get the scraper
16 positioned in the same place where it was marked by the
17 investigating officer?

18 A It was marked. Marks were still there also when we
19 got there.

20 Q Okay.

21 A But not as dark, but they were there.

22 Q And let's go to 75, please, Lynn.

23 Is this a part -- how did y'all get -- explain to the
24 jury how you -- who did it and how it was done as far as
25 getting the scraper in hopefully the same position.

1 A Actually, we got the exact same operator as the day
2 of the collision and basically we just slowly walked him,
3 but not -- we didn't try to recreate the speed that he
4 actually had or what he would not have had on the day of
5 the collision. It's not safe to do that, plus at that
6 time we weren't sure what the speed was. So, we just
7 basically got him to come up and follow his marks and as
8 we followed the front of the scraper to see if it ever
9 broke the plain of the intersection.

10 Q And were you able to determine whether the scraper
11 actually went in the intersection?

12 A In our opinion the scraper never entered the plain of
13 the intersection.

14 Q Okay. And we'll go through the other exhibits here
15 from 75 on and kind of tell us what they are. That's 75
16 right there. What is that?

17 A That's just the right rear tire of the front of the
18 scraper. I guess it is a two-piece apparatus which is
19 connected. This is the motor part. The driver will be up
20 in here. This is just the right tire on its mark as it
21 comes around. This is where we believe the final rest of
22 the scraper was post-collision. This isn't from the
23 collision. This is from our recreation.

24 Q Okay. And the markings from the tire is not from the
25 actual wreck itself?

1 A Say that again.

2 Q I see some markings --

3 A Right here?

4 Q -- on that right rear tire. Is that---

5 A Yeah, these were the marks we believe or at least
6 some of these marks we believe were actually left on the
7 day of the collision.

8 Q Sir?

9 A These marks -- we believe some of these marks were
10 left on the day of the collision. That's how we tracked
11 the vehicle into its final rest.

12 Q Okay. And then 76, please, Lynn.

13 What does it show?

14 A The same. This is the entire front axle apparatus.
15 This is his left front, right front, transmission. Again,
16 we tried to put the vehicle back on -- you can see the
17 final rest the troopers had marked the day of and tried to
18 put the vehicle back on its track just to see on the
19 radius if the front ever entered the plain of the roadway.

20 Q Then those tire marks are marks whenever he was
21 actually trying to drive it in to reposition it?

22 A No. I believe these tire marks were from the day of
23 the collision.

24 Q Okay. And if you would -- number 77.

25 A That is just a little closer. This is just on the

1 left front. You can see where the trooper has marked
2 final rest of the tire the day of. This is a mark made
3 the day of. This is the mark leading up to the final
4 rest.

5 Q And go through -- what is 78.

6 A That's the entire construction apparatus there, front
7 and rear. This is actually the operator on the day of the
8 collision on the day of the recreation, left front, right
9 front. These are the mark the troopers made at final
10 rest. Using the marks we tried to put the tractor back to
11 recreate as close as we could just the radius of the turn
12 of the front of the apparatus.

13 Q It is my understanding that there was no markings on
14 the actual rear part of the scraper to where you could
15 line it up?

16 A Not that I remember, no.

17 Q And 79, please, Lynn.

18 That's basically the same thing?

19 A Same thing; just a different angle a little further
20 out.

21 Q And also 80.

22 A Again, just a little further out. You can see -- I
23 think we actually put it back on the bent-over stop sign.

24 Q That stop sign which we see there, trooper, we can't
25 get the other side of it, but is it a normal stop sign

1 that we see when we travel the roads?

2 A It is a red stop sign with white lettering that says
3 stop.

4 Q It says stop?

5 A Yes, sir. I don't know the exact size of it.

6 Q Okay. And then 81. Go ahead and go to 81 -- just go
7 in succession, Lynn, all the way to number 84.

8 A That's 84.

9 Q Now, if you would, you did a video where you got
10 Mr. Lewis to operate the pan; is that correct?

11 A That's correct.

12 Q The scraper?

13 A Yes, sir.

14 Q And that's 110. Could you go to that, please, ma'am?
15 Is this the video?

16 (Whereupon, the video starts.)

17 A It is.

18 Q You're not trying to reenact the speed?

19 A No, this is Corporal O'Donnell right here. He is a
20 MAIT member.

21 Q All right. Now while -- That's all.

22 (Whereupon, the video stops.)

23 Q Now while you're out there did y'all interview any of
24 the persons involved?

25 A I did not personally, but I believe Corporal Farmer

1 interviewed.

2 Q Did you talk to Mr. Lewis as to what Mr. Lewis said?

3 A I didn't do his interview, no. Are you talking about
4 the driver right here?

5 Q Yeah. Yes, sir.

6 A No, I did not interview him.

7 Q Did anybody interview---

8 A Some other MAIT members did interview him. I'm not
9 -- right now off the top of my head I couldn't tell you
10 what he said.

11 Q I'm sorry. I couldn't---

12 A I couldn't tell you what he said off the top of my
13 head. I don't have that in front of me.

14 Q Okay. What about a Mr. Tindel? Do you remember what
15 he said?

16 A Mr. Tindel, I believe, was sitting on a sweeper broom
17 or sweeper tractor across the roadway. Corporal Farmer
18 also interviewed him. I know the gist of what he said.

19 Q What is that?

20 A Basically, he said his day-to-day job with the
21 company is to run a sweeper tractor which comes up and
22 sweeps behind these big pans and cleans the roadway and
23 clears up any torn asphalt. He was sitting across the
24 road. You can't see it, but it would be over here sitting
25 across the road from this pan watching. In between when

1 he didn't have anything to do, he just kind of watches for
2 traffic. He doesn't always watch for traffic, but he was
3 sitting there. He didn't have any particular area to
4 sweep at this time; so he was watching for traffic for the
5 pan operator. He says he was sitting there.

6 He noticed a couple of cars coming, I believe he
7 said. Then he saw the motorcycle coming around the
8 corner. The cars had cleared the intersection, I believe,
9 and he tried -- I think he tried to signaled to the pan
10 operator to stop. The pan operator I think at that time
11 looked left and perceived the motorcycle and that's when
12 he did his action on the sharp right turn.

13 Q Did Mr. Tindel say he was sitting on the tractor at
14 that time?

15 A Yes, he did.

16 Q Okay. And, therefore, he didn't have a flag or doing
17 any flagging of the traffic; is that correct?

18 A That's correct.

19 Q All right. Now, after that, I believe did you
20 inspect the condition of the motorcycle -- you or someone?

21 A Someone from my team did. I did not.

22 Q Tell us, if you would, what was the -- what kind of
23 inspection did you do of the motorcycle and what did you
24 find? I've got Exhibit 85.

25 THE COURT: Go back, Barbara.

1 MR. DETRICK: I'm sorry. Did I mess you up?

2 Is that the motorcycle?

3 THE WITNESS: That would be it; yes, sir.

4 Q Y'all did an inspection to determine the condition of
5 the motorcycle?

6 A We do a cursory inspection on all the vehicles
7 involved in collisions we investigate. We just basically
8 look it over, check the brakes, check the over all
9 operating condition. Now, if we suspect some type of
10 mechanical failure we'll bring in one of our -- we have
11 three mechanics that we bring in to actually break the
12 motorcycle down or the vehicle down and see what the
13 actual condition of the motorcycle is or the vehicle or
14 what the actual mechanical malfunction was.

15 Q There was none in this case?

16 A No, sir; none that we could find.

17 Q Are you ready?

18 A Yeah.

19 Q Okay. As far as you found the motorcycle in
20 operating condition; is that correct?

21 A Yeah, it is fairly -- I don't know how new it is.

22 Q Do you remember anything else about the inspection
23 regarding the opinions that you may render regarding the
24 wreck?

25 A One more time. I'm sorry.

1 Q Anything involved in the inspection of the motorcycle
2 that would---

3 A No everything seemed to be in proper order. The
4 brakes -- obviously, just looking at it it was just a
5 well-kept motorcycle. He was conscientious about the
6 upkeep of it. It seemed fairly new. We could find
7 nothing wrong with the motorcycle as far as brakes or
8 gearing or anything like that or throttle.

9 Q Did you do an inspection of the headlights to
10 determine whether the headlights were on at the time of
11 the wreck?

12 A Generally, if the bulb is intact we'll look at the
13 bulb whether it be a rear bulb or front bulb just to see
14 if the lights were on. Especially in nighttime collisions
15 or motorcycles generally you look at them because they are
16 required to have headlights on at all times and this bulb
17 I show in my notes here that did indicate some hot shock
18 which would indicate that it was incandesced at the time
19 of the collision or on at the time of the collision.

20 Q It would indicate that the headlights were on at time
21 of the collision?

22 A Yes, sir.

23 Q Okay. All right, sir. Now, you did -- did you get
24 sufficient -- you and your other members -- get sufficient
25 information to calculate the speed of the motorcycle?

1 A One of our members did a speed calculation of the
2 motorcycle.

3 Q I guess those calculations in itself were made after
4 y'all left the scene; is that correct?

5 A Correct. Generally, you go and put the forensic
6 mapping back on the computer and you use various software
7 to recreate it and estimate collision -- or estimate
8 speeds.

9 Q Can you explain to the jury how the MAIT Team
10 calculated the speed of the motorcycle?

11 A I believe it was done by Corporal O'Donnell.
12 Basically, he takes the marks in the roadway that are out
13 there. He establishes a friction value for the roadway.
14 That's, basically, just in layman's term the
15 stick-to-it-ness [sic] of the roadway in relation to the
16 motorcycle, what kind of grip he has---

17 THE COURT: Slow down a little bit for me.

18 THE WITNESS: In other words, what kind of grip he
19 had to stop and you take the measurements based on the
20 published values and then combine with various distances
21 that he skidded, the various distances that he rolled.
22 Combine those together and come up with an approximate
23 speed. It won't be an exact speed.

24 Q And based on those -- that methodology and the
25 measurements and such that he had, was a calculation

1 made -- speed estimate made?

2 A Yes, sir. A speed estimate was made.

3 Q What was the speed estimate?

4 A Corporal O'Donnell in his notes indicates the
5 calculated speed I believe of is it 41 to -- 41.03 to
6 45.27.

7 Q In all of your calculations of speed what kind of
8 braking did y'all find?

9 A The only braking we saw out there was rear-wheel
10 braking which in my opinion is common for motorcyclists in
11 emergency situations.

12 THE COURT: I'm sorry. What was that last comment?

13 THE WITNESS: In my opinion it is what's common for
14 motorcyclists in emergency situations is rear-wheel-only
15 braking. They grab the rear wheel because if you grab the
16 front wheel you're going to spill right away.

17 Q Did y'all make -- make any calculation of any
18 stopping distances?

19 A I believe Corporal O'Donnell -- based on the 45 miles
20 an hour it would have taken him -- this includes the PRT
21 or perception reaction time. In other words, when you see
22 something you don't immediately -- the brakes don't
23 immediately go on. It takes a minute for your mind to
24 register and it takes a minute for your hand to get to the
25 brake and it takes a minute for you to pull the clutch and

1 get the brake or whatever. Using an industry standard,
2 basically, of 1.5 seconds on perception reaction time at
3 45 miles an hour it would have been about 270 feet for the
4 motorcycle to slide to a stop along -- that's with the
5 perception reaction distance.

6 Q That's where y'all's calculations were?

7 A Yes, that's 45. Now, 41 is almost the same, but at
8 41 you're using a lesser F value for that.

9 Q Did you make any calculations regarding the speed of
10 the scraper at the time of the wreck?

11 A No, sir, we did not; did not attempt that.

12 Q All right, sir. Did you determine whether there were
13 any advanced warning signs of this equipment crossing the
14 highway before and at the time of the wreck?

15 A I believe Mr. Tindel stated there were no signs out
16 there that day.

17 Q Did you make any determination whether there was any
18 kind of flagman that existed at the time of the wreck?

19 A According to Mr. Tindel's testimony there was no
20 flagman out there.

21 MR. DETRICK: That's all we have, Your Honor, and we
22 offer into evidence Exhibits 39 through 87.

23 THE COURT: Any objection?

24 MS. PAYNE: Without objection.

25 THE COURT: Thank you.

1 (Whereupon, Plaintiff's Exhibit Nos. 39 - 87 were
2 admitted into evidence.)

3 THE COURT: Okay ma'am.

4 MS. PAYNE: Thank you, Your Honor. May it please
5 the court.

6 THE COURT: Yes, ma'am.

7 CROSS-EXAMINATION

8 BY MS. PAYNE:

9 Q Sergeant Coffin, this jury has heard ad nauseam about
10 the rear braking. Are you familiar where with what the
11 South Carolina DMV requires with respect to proper braking
12 techniques with the motorcycle?

13 MR. DETRICK: Your Honor, I object to that.

14 THE COURT: Well, I don't know -- rephrase your
15 question. I don't know that it's a requirement. It is
16 something in the book. I don't know that it is a
17 requirement. Rephrase your question.

18 MS. PAYNE: Yes, Your Honor.

19 As an expert witness for the MAIT Team highly
20 qualified are you familiar with the South Carolina
21 Department of Motor Vehicles's rules, requirements with
22 respect to proper braking a motorcycle on the highways in
23 South Carolina?

24 THE WITNESS: I think as the judge indicated you're
25 probably speaking towards more of the driver's handbook or

1 manual. I don't think there is any law, but there is a
2 manual, no, I'm not -- I would couldn't rattle it off the
3 top of my head.

4 Q Okay. So you haven't seen what the South Carolina
5 Department of Motor Vehicles requires --

6 THE COURT: Ma'am.

7 Q -- per the driver's manual---

8 THE COURT: Require per the driver's manual?
9 Rephrase your question, please. Just ask him what it says
10 in there. How about that?

11 Q Do you know what the South Carolina Department of
12 Motor Vehicles Handbook says with respect to proper
13 braking?

14 A No, I do not.

15 Q Okay. If you'll look at Defendant's Exhibit 5 and
16 I'll hand that to you. It is right here. If I may
17 approach the witness. I'm sorry about that, Your Honor.

18 THE COURT: You may.

19 Q In you'll look at page 133.

20 A Uh-huh.

21 Q What does it say with respect to proper braking?

22 A Use both brakes every time you slow or stop. Using
23 both brakes -- you want me to read the whole thing?

24 Q Just continue on a little bit further.

25 A Use both brakes for even normal stops -- using both

1 brakes for even normal stops will permit you to develop
2 the proper habit or skill of using both brakes properly in
3 an emergency.

4 Q You can stop right there.

5 A Okay.

6 Q Are you aware that that is what is required for
7 someone applying for a beginner's permit to drive a
8 motorcycle in this state?

9 MR. DETRICK: Your Honor---

10 THE COURT: Hold on. Required what?

11 MS. PAYNE: To get a beginner's permit.

12 THE COURT: Required to read the book?

13 MS. PAYNE: Yes, sir.

14 THE COURT: That's proper.

15 MS. PAYNE: If you'll let me finish --

16 THE COURT: Hey---

17 MS. PAYNE: -- I'll get there.

18 THE COURT: -- hey, hey.

19 MS. PAYNE: Yes, sir.

20 Are you aware of that?

21 THE WITNESS: Required -- Yeah, there's, I believe, a
22 written test to get the beginner's permit.

23 Q Thank you. When you are investigating the scene of a
24 collision -- or not a collision; just an accident -- do
25 you collect all the evidence?

- 1 A We attempt to.
- 2 Q Do you take pictures of all of the evidence?
- 3 A We attempt to.
- 4 Q Like the motorcycle?
- 5 A Yes, ma'am.
- 6 Q When you're coming around that curve coming towards
7 the intersection, that curve is visible, is it not? I
8 mean, that intersection is visible.
- 9 A From which point?
- 10 Q Coming from the way the motorcycle is coming.
- 11 A At a certain -- I would assume at a certain point in
12 the curve, yes, you can see the intersection. From my
13 memory I can't recall.
- 14 Q Yes, sir. Could you see a tractor sitting up on the
15 side where the intersection was?
- 16 A Sitting on the side?
- 17 Q Yes, sir.
- 18 A Approaching the intersection?
- 19 Q Yes. Approaching the intersection could you see a
20 tractor sitting up on the side of the road?
- 21 A You should be able to, yes.
- 22 Q And could you see an oncoming vehicle in the opposite
23 lane if you're approaching that intersection?
- 24 A Yes.
- 25 Q Nothing impeding your---

1 A Not to my knowledge, no.

2 Q Now, it is my understanding that during the
3 investigation the MAIT Team determined that Mr. Valenzuela
4 laid the bike down; is that correct?

5 A Correct.

6 Q Okay. And it's my understanding that as a result of
7 laying the bike down that the motorcycle high-sided and
8 that's when Mrs. Valenzuela came off of the motorcycle; is
9 that correct?

10 A Sounds right.

11 Q And that occurred in the middle or close to the
12 beginning of the intersection; is that correct?

13 A Say that one more time. I'm sorry.

14 Q And when the motorcycle high-sided meaning it was
15 turning over that occurred either at the beginning or in
16 the middle of the intersection?

17 A I think the high-side usually occurs right after the
18 skid mark.

19 Q Okay.

20 A Between where the skid mark and when the motorcycle
21 starts tumbling it has already high-sided; so it would
22 have to be before the intersection.

23 Q Okay. Do you know if it tumbled more than once?

24 A Just based on the evidence I seen it did.

25 Q Okay. Were you sitting in here during -- I

1 understand. Were you in here when Mr. Kennett was
2 testifying?

3 A Who is Mr. Kennett?

4 Q The plaintiff's expert.

5 A I just saw the very end of the last one which --

6 Q Okay.

7 A -- that's it.

8 Q Okay. So you're not aware that the evidence shows
9 that it only high-sided once?

10 A You said tumbled.

11 Q Meaning it only tumbled one time.

12 A High-siding is when the motorcycle actually comes
13 over. Tumbling the just tumbling.

14 Q Okay.

15 A So there are actually two different things.

16 Q Okay. So it is your testimony sitting here today
17 that it tumbled more than one time?

18 A I would say that it did, yes.

19 Q Do you have anything to back that up?

20 A The gouges in the road, the breaks in the gouges. If
21 it only tumbled once you'd have a continuous gouge, but
22 the breaks and the gouges is where the motorcycle is
23 turning, gouging, turning, gouging, turning, gouging would
24 be my opinion.

25 Q Okay. Okay. During your investigation did you take

1 any statements from Mr. Valenzuela?

2 A I, actually, interviewed Mr. Valenzuela via
3 telephone.

4 Q Okay. And did you make any notes of those -- that
5 statement?

6 A I did. Well, the actual audio statement itself was
7 in the audio file. I believe I made some notes in
8 relation to that conversation.

9 Q Do you have a copy of those notes?

10 A If they're in here, I do. If not, then I don't. I
11 see notes are in here; so hopefully mine will be in here,
12 too. Yep, here they are.

13 Q Okay. What is the date of those notes?

14 A August 17, 2009.

15 Q Okay. And after you concluded your questioning of
16 Mr. Valenzuela did he make any statements?

17 A He did. After the recording had been stopped -- in
18 other words, I turned my recorder off -- he made the
19 statement I know I contributed to this collision.

20 MS. PAYNE: No further questions, Your Honor.

21 THE COURT: Anything on redirect?

22 REDIRECT EXAMINATION

23 BY MR. DETRICK:

24 Q Was he in the hospital?

25 A I believe he was out of the hospital at that time.

1 Q He was out of the hospital?

2 A I mean, he was obviously---

3 Q That's all right.

4 THE COURT: He was obviously what?

5 THE WITNESS: Bereaved. He was in probably a bad
6 mental, emotional state.

7 Q Bad emotional state?

8 A Yes, sir.

9 MR. DETRICK: That's all.

10 THE COURT: Thank you. You may step down.

11 MS. PAYNE: Your Honor, can we approach briefly?

12 (Whereupon, a bench conference was held.)

13 THE COURT: Madam forelady, would y'all please for
14 about two seconds -- thirty seconds -- step outside. I
15 got one little thing I got to do outside of your presence.
16 It is nothing earth-shattering. It is something I got to
17 do.

18 (Whereupon, the jury exited the courtroom at 3:17.)

19 THE COURT: Mrs. McPherson, take care of that matter
20 for me, please. She is crying and very emotional. She
21 needs to sit back in the back.

22 MS. PAYNE: Thank you, Judge.

23 THE COURT: Nothing. It's nothing -- I understand.
24 Thank you.

25 MS. MCPHERSON: Your Honor, that is Christie's

1 mother.

2 THE COURT: Okay. Well, I understand. I am just
3 trying to make sure everybody gets a fair shot. It is no
4 reflection. We understand.

5 MS. PAYNE: I certainly don't want them to be---

6 THE COURT: You're doing your job. Nobody --
7 everybody understands.

8 MS. PAYNE: Thank you, Judge.

9 THE COURT: You're more than welcome.

10 (Whereupon, the jury came into open court at
11 approximately 3:19.)

12 MS. MCPHERSON: The plaintiff calls Mrs. Renee Mack.

13 RENEE MACK, after being duly sworn, testified as
14 follows:

15 THE CLERK: Have a seat in the witness box and state
16 your full name for the court.

17 THE COURT: How are you?

18 (Whereupon, the witness speaks to the judge out of
19 the court reporter's hearing.)

20 THE COURT: She said she's never been this close to a
21 judge.

22 THE WITNESS: Not in this seat.

23 THE COURT: I don't want to go there. You don't have
24 to explain that one.

25 DIRECT EXAMINATION

1 BY MS. MCPHERSON:

2 Q Mrs. Mack, would you introduce yours please to the
3 ladies and gentlemen in the jury? Tell them your name and
4 where you live and what you do for a living.

5 A Sure. Renee Mack. I am the principal at JD Lever
6 Elementary School. It's an elementary school on
7 Highway 1.

8 Q How long have you been principal at JD Lever?

9 A Since '98. 1998.

10 Q You and your husband live here in Aiken?

11 A We did. I was born and raised here and then his
12 parents passed and so we moved to Williston -- the big
13 town of Williston and we're living in his house that he
14 was raised in.

15 Q Mrs. Mack, you were the principal at the school where
16 Christie worked for many years; is that right?

17 A Correct.

18 Q Let me ask you to begin with in your getting to know
19 her over the years did you also get to know some of her
20 family?

21 A I did. I was an assistant principal; so being a
22 principal -- this was my first time being a principal at
23 JD Lever, and, so, you know, I was a new person out there
24 and Christie worked there and she was a real personable
25 kind of person, very likable, and kind of took you under

1 her wing, and, so, you know, being a new person, of
2 course, you gravitate towards that. She worked in the
3 lunch room at that time and so she seemed to know
4 everything about the school and know everyone and so, of
5 course, you know, get your custodians on your side and
6 your lunch room on your side when you first start a school
7 and you kind of got it made after that. So, of course, I
8 became very good friends with her and knew that, you know,
9 she had a husband and a son.

10 Q Let me ask you this. You know Michael and Mikey, her
11 husband and son, don't you?

12 A I do.

13 Q Do you know her mother, the blonde-haired lady in the
14 purple blouse back here?

15 A I do.

16 Q Now, nobody on this jury ever had the opportunity to
17 meet Christie. Would you tell them what you would like
18 them to know about Christie?

19 A Okay.

20 Q Her personality, what she was like in the work place,
21 what kind of a friend she was.

22 A Well, it is hard to describe because sometimes you
23 meet people like that and spend a lifetime. Excuse me.
24 She was a very positive person, beautiful, but you can be
25 sometimes beautiful on the outside and not that way on the

1 inside, but Christie was beautiful on the outside and she
2 was beautiful on the inside.

3 She loved children and she loved everyone that she
4 worked with and she did everything she could for children,
5 especially those that did not have a loving home. Many
6 times being a new principal, you know, you really stay
7 long hours and you work over weekends and so I did that
8 and Christie was always with me when I did that from
9 planting flowers -- if I said I'm going to be at the
10 school at Saturday to plant flowers, I would look up and
11 here comes Mike and Christie and sometimes Mikey to
12 help --

13 Q To help you plant flowers?

14 A -- me plant flowers. Yes. And our plants or
15 whatever -- that's just the way she was -- or pull weeds
16 or dig or whatever it took to have the school beautiful
17 for our students and if she knew a child was in need she
18 was one of those people that would do whatever she could
19 to get whatever they needed. I know many times she's
20 bought school supplies for kids. She's gotten stuff from
21 families that have outgrown clothes and she started us
22 with our clinic keeping clothes there. She'll go buy, you
23 know, underwear for those children that have mistakes at
24 school which happens especially with our younger ones and
25 she always kept that filled for those kids so they

1 wouldn't be embarrassed. She was just a good person.

2 Q How did she get along with the staff?

3 A They loved her. Everyone loved her. I never met
4 anyone who didn't. She was -- she had a real knack for if
5 a parent came in and didn't understand what happened and
6 they were upset she could calm them down and then, you
7 know, if they needed to talk to me, then that would be
8 okay, but most of the time she could just kind of take
9 care of it herself because that was the way she was. She
10 kind of just knew people and then the staff loved her
11 whether it was a teachers, custodians, lunch room,
12 paraprofessionals because whatever they needed it seemed
13 like she could get that for us. Good. Special.

14 Q She started out in the lunchroom, you said?

15 A She did.

16 Q And over the years did she move into the office?

17 A She did. She has a real knack for numbers and very
18 good with them and she became my bookkeeper. I hired her
19 as my bookkeeper.

20 Q Were there times during her work in there that she
21 got certificates or awards or recognition for the good job
22 she did for the kids there in the school?

23 A She did. We would just give out random awards
24 monthly called the Lion's Pride Award and she got it many
25 times. You know, I would see e-mails where she would do

1 something as far as with numbers and our budget that -- we
2 were a Title One school and that takes very close
3 accounting and budgeting and even district people -- if
4 she would find mistakes, she is real quick to tell you
5 there is a mistake in your budget; you need to check that,
6 and so, you know, they would send her e-mails saying thank
7 you for telling us. We needed to know that. So, you
8 know, she was good at it.

9 Q Tell the jury whether she was instrumental in getting
10 supplies and equipment for the school that you still have
11 there today?

12 A Well, being a Title One school it's difficult to get
13 materials and supplies and so when I went out to JD Lever
14 we just had like overhead projectors. You know what those
15 are. But when Christie was there and she was in the
16 bookkeeping -- this is a good example. She just looked at
17 me one day and said, you know, I am going to have a smart
18 board in every one of these classrooms. That's when smart
19 boards had just came out and within a short time she had
20 smart boards in every one of our classrooms. That's major
21 for a teacher and for the children. I mean, that's huge.

22 Q How much energy did she put in to finding good
23 bargains and bargaining prices to get all of those things
24 for y'all, Mrs. Mack?

25 A Well, she would spend countless hours on the

1 telephone and she just had a way of calling one company --
2 if she was going to buy some kind of supplies she would
3 call a company and she'd tell them, you know, okay, what
4 can you give me? What is the best price you can give me
5 if I buy 30 smart boards, I'll just say for example. Then
6 she would call another company and tell them, you know,
7 this company told me they can give me this amount. What
8 can you do for me? And that is just the way she was. I
9 mean, she would try her best to squeeze the most you could
10 out of that dollar to get those kids and teachers what
11 they needed. I have never seen anything like it before.
12 She was excellent at it.

13 Q What kind of fundraisers or projects would she do to
14 raise extra money for those things?

15 A Well, she was real involved in our PTO which was very
16 instrumental in helping us do that, but not only that she
17 was really good with our budget and she would know where
18 to put our money and how to buy those supplies at the best
19 price that we could get.

20 Q Do you remember -- did she know all of the teachers
21 and custodians and everybody by name?

22 A She did.

23 Q And did they all know her?

24 A Yes.

25 Q Can you tell the jury a story about one of the

1 teachers needing some cubbies in her room?

2 A Yes. Oh, we had a teacher that needed cubbies --
3 kindergarten teacher. So, that's crucial to have cubbies
4 as a kindergarten teacher and we didn't have any money to
5 get the cubbies and she went -- she loved yard sales and
6 so she would go to yard sales and buy things and bring
7 them into the classroom and she found -- she found some
8 cubbies at a yard sale, I think it was, and I was working
9 there on a Saturday which is what I used to do all the
10 time and I looked up because I heard some rustling and
11 Michael and Christie were coming in with some cubbies for
12 that teacher and set them up; so then on Monday morning
13 when she walked in she had those cubbies and that was a
14 lot. It meant a lot to her. I mean, I can still remember
15 that teacher standing there and just tears running down.

16 Q Mrs. Mack, you supervised Christie, didn't you, and
17 you saw her everyday?

18 THE COURT: Are you okay? Do you need a break?

19 THE WITNESS: Okay.

20 Q Was she on time every day and reliable?

21 A She was and she's very reliable.

22 Q Was she a person that followed your rules and put
23 everything in to her job and whatever she did?

24 A Yes. Yes, she did and more.

25 Q Would you tell the jury about the flowers out around

1 the sign at when you ride down the road and you see the JD
2 Lever pretty sign, what did Christie have to do with
3 getting that sign and with the flowers planted around it?

4 A Well, she knew a lot of people in the community and
5 when you knew her -- I'm sorry. When you knew her you
6 just wanted to do whatever she wanted you to do because
7 you knew that if you ever needed her she would be there
8 for you and we had a real old sign at our school; so our
9 PTO bought a new sign and she knew someone that, you know,
10 could get the sign moved and put up the new sign, I mean,
11 just for like a fraction of the cost because she just knew
12 the community members.

13 So, she did that and so when the teachers came up and
14 all the kids and the parents came up and that sign was
15 there, it just -- I don't know. It just did something to
16 us because it really does show, you know, that she cared
17 about the school and, you know, she loved the people that
18 were there and so we planted flowers around it and then on
19 the other side of the school near our buses, you know, it
20 was kind of like bland. So, she and I thought, well,
21 let's make flowers and make a little flower bed over there
22 and we had torn down -- the old school and we had bricks
23 that you could put your name on. So, people bought bricks
24 and all. We just wanted to have something really nice for
25 the people that bought the bricks because it was Center

1 School then and it was very old school. We just needed to
2 have a place that you could see that.

3 So we got -- I think it's called rebar, but she had
4 it made where it would go way up and we trellised yellow
5 jasmine around it and when the kids walked through on the
6 bricks that were there and a patio that had the bricks
7 with the names on it, you know, they would be walking
8 under that yellow jasmine and so she helped do that.

9 Q From everything you ever saw was she just so proud of
10 JD Lever and what y'all were building?

11 A She was. She was very proud of it.

12 Q Did she seem to love her job and planned to stay
13 there?

14 A She did. She was going to stay with me until I
15 retired.

16 Q Mrs. Mack, you and Christie were good friends, too --
17 not just co-workers, weren't you?

18 A That's correct.

19 Q What did you find valuable about her as a friend?

20 A As a friend she was easy to talk to. Sometimes she
21 would tell you things you didn't want to hear, but it's
22 what you needed to hear, but no matter what you told her
23 you knew she loved you and I think that's very rare in a
24 friend.

25 Q Did you and she have frequent conversations about

1 what you did on your off time and about your families?

2 A We did. We talked, you know, especially over the
3 weekend. I know she would always come in on Mondays and
4 tell me what her and Michael and Mikey had done. They
5 loved to look for arrow heads and such.

6 Q I'm sorry. Arrow heads?

7 A Yes.

8 Q They collected them?

9 A Yes. They would walk.

10 Q How important was it to her based on your
11 conversations to spend as much quality time with these two
12 men -- her husband and her baby -- as possible?

13 A I mean, it was the world. She loved them very, very
14 much. Michael was her soul mate. That's for sure. She
15 loved him and Mikey was the apple of her eye. I mean, she
16 loved her son. It was evident.

17 Q When you saw her and Michael together what did you
18 observe about how they interacted and treated each other?

19 A You know, you just knew they loved each other to
20 death. You just knew it. I mean, they were -- they were
21 actually like, you know, just married you would think.
22 You would never know they had been married as long as they
23 had. They loved each other and they showed it.

24 Q Did she talk to you about her dreams and what she
25 wanted for her son Mikey?

1 A She did. She did. She wanted him to go to college
2 and live out on his own and grow up to be a good man.

3 Q Was there any question knowing her like you did,
4 Mrs. Mack, that her family was about as high up on the
5 priority list as you can get?

6 A They were the top. I mean, that was it. They were
7 her priority. Even if, you know, I was going to be there
8 and she was going to help me work on a Saturday, I mean,
9 little Mikey would be right there with us. That's all
10 there was to it. So, we put him to work. She didn't cut
11 him any slack. She made him work. And then big Mike when
12 he finished whatever he was doing he would come over
13 there. So me and them.

14 Q Did you ever -- when you were around Michael or
15 Mikey, did you ever see them show her or you anything but
16 kindness and respect?

17 A Did I ever see them show?

18 Q Her or you anything other than kindness and love and
19 respect?

20 A Oh, no. No.

21 Q Tell me what kind of things would make her laugh?

22 A Well, some of the stories that, you know, would come
23 in on Monday morning that I would tell her. Sometimes
24 when parents come in and they are irate about little
25 things she could laugh it off or make them see the right

1 -- you know, just how foolish they may be acting or just,
2 you know, stories about what she had done over the
3 weekend.

4 Q Is she somebody, Mrs. Mack, in your professional
5 life, in your work life that had your back?

6 A Yes, most definitely. It is my 35th year. I hadn't
7 had another Christie.

8 Q She had a beautiful smile, didn't she?

9 A Uh-huh.

10 Q Do you know for what purpose this picture was taken?
11 I am referring to Plaintiff's Exhibit No. 115.

12 A That looks like her school picture.

13 Q Was that pretty recent before she was killed?

14 A (Witness nods head.)

15 Q Now, along with the awards and certificates that
16 y'all gave out, parking spaces are the devil to find
17 sometimes?

18 A At our school it is. It is very limited.

19 Q Did y'all have some special award that was reserved
20 for a special person?

21 A We did. We have a faculty and staff -- a teacher of
22 the year and I also do staff of the year at our school and
23 so Christie and I were talking one day and said why don't
24 we just do a special parking space; so we did. You know,
25 we bought a sign that said, you know, teacher of the year

1 and staff of the year. We put it, you know, at -- near
2 the best parking lot because that's the easiest one to get
3 in and out of. So, that's what we did.

4 Q Who voted on this? Who decided who got the staff of
5 the year parking space?

6 A The staff did.

7 Q So, all of them had a vote and they picked the person
8 they thought that was the staff member of the year?

9 A Correct.

10 Q Did Christie ever get voted on by the entire staff to
11 be the staff person of the year at JD Lever?

12 A She did.

13 Q How many years?

14 A Two times straight in a row which is unusual.

15 Q Now, after she was killed tell the jury what happened
16 to that parking space.

17 A Well, after she passed -- She loved pink. It was her
18 favorite color. She is like I am. She liked sparkly
19 things; so we got a big pink bow with a lot of sparkle in
20 it and put it on the staff parking of the year sign and I
21 didn't say anything. It was just something that happened,
22 but for a year -- for the year that she was voted no one
23 parked in that parking spot and that went for visitors,
24 parents, or none of our faculty staff. It stayed empty
25 the whole year.

1 Q Mrs. Mack, tell the jury about how and when you found
2 out that there had been this wreck with Christie and
3 Michael.

4 A I found out on a Saturday, Saturday afternoon.

5 Q Tell them what happened, where you went, and why.

6 A Okay. Well, when I found out I called -- I have a
7 twin sister. I called my husband first because he knows
8 how much I loved her. Then I called my twin sister before
9 she came down to the house and she and I went to the
10 Medical College of Georgia where they had her.

11 Q Who was there and what did you do when you got there,
12 Mrs. Mack?

13 A Well, when we walked in we just sat down and then I
14 saw Mikey and her mother and so they were in a room,
15 though, away from us, but they asked me to come in to the
16 room where the family was waiting and I did. I felt
17 honored to have been asked actually.

18 Q Was Michael in that room with the rest of you --

19 A No.

20 Q -- waiting to hear about Christie?

21 A No. Michael wasn't.

22 Q Where was he?

23 A He was in the hospital. He was in a room.

24 Q Was he in surgery?

25 A I can't -- to tell you -- he may have been.

1 Q How long did y'all wait to find out whether she was
2 going to be okay?

3 A I don't know how long it was. It seemed like
4 forever. I can't remember how long.

5 Q Who came in and told you, Mrs. Mack?

6 A Oh, gosh. I can't remember the person's name, but,
7 you know, it was a doctor that came in and I knew it was a
8 doctor coming in so I was going to leave and they wanted
9 me to stay. That's who told us she had passed.

10 Q Told you she didn't make it?

11 A Yes.

12 Q Was her son right there with you when that doctor
13 came in and told you that?

14 A No. I don't think Mikey was in there at that time.
15 No.

16 Q Now, how did that feel?

17 A Oh, it was devastating. It was. I think when you
18 are a supervisor you walk a fine line. You can be
19 friendly with your employees but there is still a fine
20 line that you walk because someone -- some people don't
21 know that when you're at work you're an employee, but
22 Christie knew that and even if I had to fuss at her, you
23 know, she knew that was my position. That's what I had to
24 do.

25 So, I didn't -- I don't let myself get close to a lot

1 of employees, but I did her. It was a very close working
2 relationship that we had. It broke my heart.

3 Q Mrs. Mack, you've went to her memorial service?

4 A (Witness nods head.)

5 Q Tell the jury how many people were there.

6 A Oh, wow, we waited hours in line. Hours. Kids were
7 there. Parents were there. All of our faculty and staff
8 went.

9 Q Did y'all have it -- I'm sorry. Did you have it in
10 the school gym?

11 A No, we didn't. We didn't have that in the school
12 gym, no. I'm talking about at the -- you know where they
13 have the funeral home.

14 Q Let me ask you were there actually two separate
15 services -- one at the funeral home and one at the school
16 gym?

17 A Yes. We held something at our school.

18 Q Did the one at the funeral home come first?

19 A Yes.

20 Q Did you---

21 A I don't know. I'm sorry.

22 Q That's okay. Take your time. And it's at that
23 service that you had to wait hours in line?

24 A Yes.

25 Q Did you have a chance to speak to Mrs. Murl, the

1 mother, and to Michael and Mikey?

2 A I did.

3 Q Is it fair to say that her family was absolutely
4 devastated?

5 A Yes, they were.

6 Q Is it fair to say that losing Christie was
7 devastating to your school community?

8 A Yes. It still is.

9 Q Tell the jury then why y'all decided to have a
10 service at the school gym.

11 A Sometimes -- you know, kids really loved her.
12 Sometimes parents can't always take our -- take kids to
13 funeral, funeral homes; so we just thought it would be
14 fitting to do something at our school so that they could
15 see her and make it more of a, you know, a celebration of
16 her life because that's what we wanted to do.

17 Q There was a lot to celebrate about --

18 A Yes.

19 Q -- christie's life, wasn't it?

20 A And that's what we wanted to do, more of a
21 celebration.

22 Q How many people came if you can estimate? Was it
23 something like 750 people?

24 A I don't know, but I know -- I'm sure it was over
25 five. I mean, I know it was.

1 Q Did y'all believe that doing that, too, let the
2 students and the faculty say goodbye to her?

3 A Did we what?

4 Q Was that a way for you to let --

5 A Yes.

6 Q -- the kids and the faculty say goodbye to her?

7 A Yes.

8 Q Now, tell the jury whether you walk in the halls of
9 JD Lever to this day and you see Christie Valenzuela's
10 butterflies hanging from the ceiling.

11 A She loved butterflies. Some of our students are good
12 artists and they painted a ceiling tiles butterflies all
13 in her office. They painted on them and she put them up.
14 Then she bought these big, big butterflies like mobiles
15 and so they are hanging in the hallways as you walk
16 through the school.

17 Q Let me show you with -- and these photographs are all
18 without objection, Your Honor -- Plaintiff's Exhibit
19 No. 135.

20 (Whereupon, Plaintiff's Exhibit Nos. 124-125, 134-135
21 were admitted into evidence.)

22 Q Tell the jury what that is.

23 A Those are the mobiles at the end of the main hallway
24 as you enter the school. Christie did them.

25 Q When you walk in the school and you walk under those,

1 Mrs. Mack, who do you think about?

2 A I think about my girl, Christie.

3 Q Now, y'all have a yearbook every year that you put
4 out -- an annual?

5 A Yes.

6 Q Tell the jury -- Christie died August 7 of 2009.
7 Tell them what y'all as a staff decided to do for your
8 2009/2010 yearbook.

9 A We dedicated it to her.

10 Q Now, I know that you only had -- you only have one
11 copy of that; is that right?

12 A Correct.

13 Q And you want to keep that; true?

14 A I want to keep it in the school for others to see,
15 yes.

16 Q I am going to show you some photographs -- again,
17 Your Honor, all of these are without objection -- and ask
18 you whether or not these are parts of the dedication page
19 that y'all did for Christie. Plaintiff's Number 124,
20 please.

21 Mrs. Mack, is that the dedication page that y'all did
22 for Christie?

23 A Yes, ma'am.

24 Q Now the jury may not be able to read it. If you'll
25 read along with me, please -- who put these words

1 together?

2 A We did; the teachers and I.

3 Q Since you're so close if you will read along. Can
4 you do that for me, please?

5 A I am going to start under her picture. Mrs. Christie
6 loved each and every child at JD Lever and they loved her
7 back equally. It is with great honor, love, and respect
8 for Mrs. Christie that we -- that is what the kids called
9 her -- that we dedicate the yearbook in her loving memory.
10 Thank you for all that you did for everyone at JD Lever.
11 You taught us that anything is possible as long as we set
12 our minds to it and try.

13 Q Now, on the second page I am going to ask you about
14 those pictures, but if you'll read for me, please.

15 A On November 5 everyone honored Mrs. Christie's
16 birthday by wearing pink and playing on the new
17 playground that she had worked so hard to get for her
18 kids.

19 Q Now, those pictures are kind of small, but they are
20 pictures of the playground she helped build; isn't that
21 true?

22 A That's correct.

23 Q Now, there is a picture at the bottom and I am going
24 to blow that up for you and I want you to tell the jury
25 what Number 134 is.

1 A That's our faculty and staff in pink.

2 Q I can't hear you.

3 A I'm sorry. That's our faculty and staff wearing pink
4 on her birthday.

5 Q And that was November 5?

6 A Yes.

7 Q Two days short of three months after she was killed;
8 is that right?

9 A Correct.

10 Q Mrs. Mack -- 125, please. What is that a picture of?

11 A That's the Staff Of The Year parking space. It
12 stayed empty for a year.

13 Q The parking space is empty, Mrs. Mack. How much of a
14 void -- how much emptiness is there in your life and in JD
15 Lever's school life because Christie is not parked in that
16 parking space Monday through Friday and even Saturday of
17 most weeks?

18 A I mean, it's a big void. Personally it is because
19 she touched my life in a very special way and I miss her.
20 I miss her as much today as I did then.

21 Q Are you worried about Michael and Mikey? Do you have
22 concerns for them?

23 A I do.

24 Q Why?

25 A You know, I want them to be okay. I do, because I

1 know that as much as I'm hurting they have to be hurting
2 you know five hundred or a thousand times worse than I do
3 and it's hard to get over that.

4 Q Mrs. Mack, thank you so much.

5 MS. PAYNE: No questions, Your Honor.

6 THE COURT: Turn the lights on for me. Thank you,
7 ma'am.

8 Y'all okay? One more?

9 Next witness.

10 MR. DETRICK: We call Chris English.

11 CHRISTOPHER W. ENGLISH, after being duly sworn,
12 testified as follows:

13 THE CLERK: Have a seat in the witness box and state
14 your full name for the court.

15 THE WITNESS: My name is Christopher W. English.

16 DIRECT EXAMINATION

17 BY MR. DETRICK:

18 Q You're the owner of Sam English Grading Company?

19 A Co-owner.

20 Q And you're the person that told Mr. Jeffery Lewis
21 what to do before August 7, 2009 on the job; correct?

22 A That's correct.

23 Q And what he did is he followed your instructions out
24 there, didn't he?

25 A Yes, sir.

1 Q And I want to just get something straight here from
2 the start, Mr. English. You have been in this courtroom
3 all week, haven't you?

4 A Yes, sir.

5 Q And you heard your attorney say on opening statement
6 that you owed no duty to the traveling public unless you
7 went in the intersection. Did you hear that?

8 A Yes, sir.

9 Q Do you agree with that statement?

10 A If I did not enter that road, then I do agree.

11 Q You do agree. In other words, I want to make sure
12 the jury understands the position you're taking,
13 Mr. English, and that is if you -- your people as long as
14 they don't get out in the intersection they can do
15 anything they want to on that private road you call it;
16 right? That's your position?

17 A On the private road, yes, sir.

18 Q Okay. In other words, you can come up to that stop
19 sign -- there is a stop sign there; right?

20 A Yes, sir.

21 Q You put that stop sign there?

22 A Yes, sir.

23 Q Any difference from that stop sign to anybody else's
24 stop sign?

25 A Not that I know of.

1 Q Okay. Your position you want this jury to condone
2 and you condone to take is that you can come up there
3 with -- that scraper is a 73,000-pound piece of equipment,
4 isn't it?

5 A Yes, sir.

6 Q And it's about 41 feet long?

7 A I don't know exactly. I take your word for that.

8 Q And it's over 12 feet high?

9 A Somewhere near about.

10 Q It is a big ol' thing coming down the road if you are
11 traveling down Redds Branch Road, isn't it?

12 A Yes, sir.

13 Q And if you see that and what your position you want
14 this jury to take -- position you're taking is that you
15 can go down to that -- you can go towards that stop sign
16 at 17 miles an hour and you can turn that wheel and you
17 can not slow down until 20 feet from that intersection and
18 if a school bus going to the school down the road there --
19 a school bus driver saw you coming and that big ol' piece
20 of equipment, 20 feet, 17 miles an hour, and went to turn
21 to the right to react to that scraper and turned that
22 school bus over, you condone that. That's fine? Is that
23 correct? You didn't enter the intersection.

24 A I understand the question. What I am saying is as
25 long as my equipment did not enter that road, then that

1 machine and me are not liable.

2 Q That's okay. That conduct is appropriate conduct at
3 Redds Branch Road as far as you're concerned; correct?

4 A As far as this case is concerned, yes, sir.

5 Q I just want to make sure that we cleared that up from
6 the start. All right. Now, let's make sure we're clear
7 about some other stuff. I won't have you up there long.

8 A That's fine. Take your time.

9 Q I am going to hand you Exhibit No. 1. You're
10 familiar with it, aren't you?

11 A Yes, sir.

12 Q That's the contract between you and Owens Corning;
13 correct?

14 A That is correct.

15 Q And in that contract -- you agreed to that contract;
16 correct?

17 A That is correct. I'm sorry. I bent it. I didn't
18 mean to.

19 Q That's okay. No matter whether you signed it or
20 didn't sign it, it was an agreement where you were getting
21 paid by Owens Corning for work you did out there on Redds
22 Branch Road; correct?

23 A That is correct.

24 Q Set forth in that contract, Exhibit No. 1?

25 A Yes, sir.

1 Q And number four -- item number four of that
2 contract -- let's make sure I read it correctly. You can
3 come down. You can make sure I read it -- however you
4 want to do it -- but it says---

5 MR. COX: Your Honor, I am going to object at this
6 time.

7 THE COURT: What are you going to object to?

8 MR. COX: He's not -- that's not -- that's one page
9 of a thick contract.

10 THE COURT: Well, Mr. Cox, you know the rules. When
11 you have him on examination you can ask him about the
12 whole thick contract. Record of completeness. You
13 certainly are not limited to that. You can ask him
14 anything you want to.

15 MR. COX: Thank you, Your Honor.

16 Q As a matter of fact, Mr. English, we've already
17 admitted the whole contract into evidence. If you want to
18 ask any questions about it, it is an exhibit in there,
19 okay?

20 A Yes, sir.

21 Q And it is about that thick; correct?

22 A Yes, sir.

23 Q Most contracts are between big corporations and other
24 contractors regarding work such as you were doing;
25 correct?

1 A Yes, sir.

2 Q I mean, it is going to be a contract. It is going to
3 be thick. It involved a lot of money so it's going to be
4 thick; correct?

5 A I would assume, yes, sir.

6 Q Okay. We got that straight. Now, as far as this
7 right here is concerned, you agreed in this contract that
8 you will provide a flagman. That's first off, didn't you?

9 A Yes, sir.

10 Q And you didn't do it, did you?

11 A No, sir.

12 Q You ain't never done it?

13 A I did not say that.

14 Q Let's put it this way. We'll limit it to this. From
15 2005 too 2009 did you ever provide a flagman?

16 A I don't think so. I'm just trying to think back of
17 the activity that was a burm activity that was across that
18 road, but I don't believe so. I don't believe there was
19 another burm built in that length of time.

20 Q Now, I think Mr. Merritt says you provided a flagman
21 because you knew he was coming to the scene. Is that when
22 you provided the flagman?

23 A That is incorrect.

24 MR. COX: Objection; misclassification of the
25 testimony, Your Honor.

1 THE WITNESS: That is incorrect.

2 THE COURT: Overruled.

3 Q But it is correct that for at least four years we'll
4 talk about prior to this wreck we're here about today you
5 didn't provide a flagman?

6 A Yes, sir.

7 Q All right. Let's get -- Mr. English, you're a smart
8 businessman; so there is no need for us -- I understand
9 you probably more intelligent than me.

10 A I ain't going to say that.

11 Q But a flagman is -- and when y'all put this in and
12 you had to agree to it, you knew why it was in there,
13 didn't you?

14 A Yes, sir.

15 Q And you knew that it was in there for the public
16 safety of people riding down Redds Branch Road, didn't
17 you?

18 A Yes, sir.

19 Q And you knew it was needed for public safety, didn't
20 you?

21 A Yes, sir.

22 Q And yet you didn't provide it?

23 A Well, I didn't provide a flagman for the purpose is I
24 did not flag public traffic. I only -- the only time any
25 traffic got flagged is when I flagged my own equipment.

1 Q Wait a second, now. You agreed that that flagman was
2 necessary. You told me it was needed for public traffic;
3 correct?

4 A To flag my own traffic.

5 Q Now, did it -- okay. That's all -- that's how you
6 interpreted that flagman?

7 A Yes, sir.

8 Q Is that how you interpreted it? Safety measures to
9 comply -- it says the safety measures to comply with the
10 owner South Carolina high school -- Highway Department
11 Encroachment Permit; correct?

12 A Yes, sir.

13 Q And that doesn't say anything about you flagging your
14 own traffic, does it?

15 A It doesn't say anything about flagging anybody's
16 traffic. It says a flagman.

17 Q It says a flagman. But your position, though, I
18 think I heard you say, that's only for you flagging your
19 own people across the road; not the public -- not the
20 safety -- in other words, not having it for the safety of
21 the public, for school buses, or for whatever. You're
22 saying it's only for the safety of your people.

23 A That is not what I said.

24 Q I'm sorry if I misunderstand you. That's what you --
25 you did say that.

1 A Well, I think you did misunderstand what I said. I
2 flagged my traffic for the public safety is what -- if
3 that's not what I said, I apologize, but that is what I
4 meant.

5 Q That's okay. You can straighten out what you said.
6 I'm glad for you to do it. All right. Let's be certain I
7 understand what you're saying. We got this to provide for
8 a flagman; correct?

9 A Yes, sir.

10 Q And my understanding -- and tell me if I am wrong --
11 I understand a flagman for equipment crossing the road
12 would be someone who might have a an orange vest on;
13 correct?

14 A Yes, sir.

15 Q And that's a person who would have some sort of sign
16 as to where they would actually stop the traffic on this
17 public road so that equipment or whatever it is could
18 cross the road. Is that your understanding of a flagman?

19 A Yes, sir, but the person that I had there for that
20 job was not there 100 percent of the time for flagging
21 traffic.

22 Q Mr.---

23 A If my man was not there, the machines were ordered to
24 stop at that stop sign.

25 Q Mr. English, let's be honest about it.

1 A Yes, sir.

2 Q You ain't never had a man that would get out there in
3 that roadway with an actual sign with a vest and get in
4 there and stop the traveling public whenever your big
5 47,000 pound equipment was crossing the road, did you?

6 A Are you saying I never have?

7 Q Since 2005?

8 A 2005, no, sir.

9 Q Oh.

10 A I can explain why.

11 THE COURT: You may.

12 THE WITNESS: Can I?

13 THE COURT: Certainly.

14 THE WITNESS: Years ago I used to flag public
15 traffic. I used to stop the public traffic any time a
16 machine come across that road and a lady come down that
17 road, about run over my flagman standing in the road
18 trying to stop her. That's a fact. I don't have proof of
19 that. All you can do is take my word and I know you
20 probably won't do that, but that is the reason we quit
21 flagging public traffic and started flagging our own
22 traffic.

23 Q And Mr. English --

24 A Yes, sir.

25 Q -- if you had any problems with that, if you put --

1 did your fellow have on an orange vest at that time?

2 A He did not have on a vest. He had an orange sign in
3 his hand.

4 Q And if you had done that, couldn't you have called
5 out -- we've got not only signs that we have to help for
6 the public, but we've got law enforcement people.
7 Couldn't you have called out the law enforcement to stop
8 that -- that one lady? One lady out of how many hundreds
9 of people that go down Redds Branch Road including
10 Mrs. Johnson, Mrs. Boozer, and any of those that you heard
11 their testimony, but you stopped doing what's the public
12 measure because of one. That's your excuse. Like you
13 said, your excuse under oath -- one person who you won't
14 even bring in the courtroom who that flagman was who did
15 that to. One person and you say that's your excuse for
16 not doing flagging four years, correct, with a
17 70,000-pound---

18 A Well, I mean, no, sir. It's not just that one
19 occurrence, but that was the main occurrence, yes, sir.

20 Q Mr -- Mr. English, come on. Now, we have -- you
21 travel the highways of South Carolina and you see flagmen
22 stopping traffic all the time, don't you?

23 A Yes, sir.

24 Q And they're needed because of safety of the public,
25 aren't they?

1 A They're needed because as a general rule they're
2 stopping traffic in a lane and turning it most of the time
3 into a one-lane road.

4 Q And they're needed also because some time equipment
5 will be crossing the highway and that big piece of
6 equipment you need to stop the traffic so they want it to
7 be safe for everybody; correct?

8 A In some circumstances, yes, sir.

9 Q Okay. And bottom line is this. Let me ask you this.
10 You got this contract. You got -- you agreed to it;
11 right?

12 A Yes, sir.

13 Q And you -- it's been in existence since 2009.
14 August 2009?

15 A Say that again.

16 Q This contract we're talking about, that's what was in
17 existence when this wreck occurred?

18 A That's correct.

19 Q Okay. And this one little occurrence you're talking
20 about -- this one little time when you as your excuse for
21 not providing safety to the public on Redds Branch Road
22 was because of that one occurrence, but did you go back to
23 Owens Corning and say, you know, I don't believe this is
24 really going to be a safe thing for us to do? We better
25 change this contract?

1 A No, sir, I did not go to them.

2 Q This contract really was in existence at the time you
3 were supposed to have a flagman out there; correct?

4 A Yes, sir.

5 Q And Owens Corning -- the safety engineer who you
6 heard testify, he determined and you had determined that
7 that flagman was needed; correct?

8 A Needed to flag traffic -- either my traffic or public
9 traffic and we chose to flag my traffic.

10 Q You chose to flag your traffic.

11 A If there was a flagman there, if they were coming
12 across that road without stopping, there was supposed to
13 be a flagman there -- somebody there to motion for those
14 machines. If not, they were to stop at that stop sign.

15 Q Point out, Mr. English, in your contract, in your
16 agreement the language which says that it only applies to
17 when your people aren't stopping for the stop sign and
18 that only your people when they're coming -- it only
19 applies to stopping them for their safety.

20 A It doesn't say it.

21 Q It doesn't say that in the contract, does it?

22 A No, sir.

23 Q That's Mr. Chris English's interpretation of that
24 contract after this wreck that occurred on August 9th that
25 killed Christie Valenzuela; correct?

- 1 A After the wreck?
- 2 Q That's your interpretation now after the wreck?
- 3 A No, sir. That's the way we worked up until then,
4 too.
- 5 Q But that violated the requirements and it violated
6 the safety, didn't it?
- 7 A The requirements maybe, but, I mean, I was still
8 stopping my traffic.
- 9 Q You were stopping your traffic?
- 10 A That's correct.
- 11 Q That's your traffic out there. It's your traffic.
12 It's not the traffic of the motor public. That's what you
13 think, isn't it?
- 14 A No, sir, because, I mean, the motoring public is not
15 my traffic.
- 16 Q That's not your traffic. Not your concern, is it?
- 17 A I did not say that. I never said that and that would
18 be a false statement if anybody ever said that.
- 19 Q Mr. English, let's go to this encroachment permit
20 right here. That was a part of the contract referenced in
21 it, wasn't it?
- 22 A Yes, sir.
- 23 Q Been referenced in your contract for many, many
24 years; correct?
- 25 A Yes, sir.

1 Q Something you agreed to?

2 A Yes, sir.

3 Q Again, it's something that is needed for the safety
4 of the motoring public, wasn't it?

5 A Yes, sir.

6 Q Are you going to tell this jury now that these
7 advanced warning signs that you didn't have up at least
8 two months before from your testimony before this wreck
9 that that was only for your people?

10 A The signs were not, no, sir.

11 Q They weren't, were they?

12 A No, sir.

13 Q Again, what those signs are and the reason we have
14 this in this contract is because -- let's be honest. This
15 big equipment going across the road, y'all recognize that
16 it could be a danger to the motoring public, didn't you?

17 A Cars are a danger to themselves. I mean, cars are
18 danger to motoring public as well.

19 THE COURT: Mr. Detrick, ask that question again,
20 please.

21 Q Wasn't it -- the reason y'all had this is because
22 your big 70,000-pound equipment crossing the highway is
23 certainly more dangerous than a little comparatively motor
24 vehicle with children or their family in it; correct?

25 A Yes, sir, they are dangerous.

1 Q In other words, if you hit -- if somebody hits your
2 -- if you pull out in front of them or pull out behind
3 them and just miss them like Mrs. Johnson did -- like you
4 almost missed Mrs. Johnson, I mean, when you get hit by
5 that 70,000-pound equipment it is going to squash a little
6 car to death, isn't it?

7 A If it hits them, yes, sir.

8 Q So it is a little bit of difference. You said a
9 minute ago -- it is a little bit of difference now between
10 the motor vehicle and the danger that a 70,000-pound piece
11 of equipment does, isn't it?

12 A There is a difference in weight; that's correct.

13 Q There certainly is. All right. As far as these
14 signs, Mr. English, that you agreed to put there -- as a
15 matter of fact, they're really specific, isn't it?

16 A Yes, sir.

17 Q You agreed to have a sign a thousand feet away
18 because it's to warn the equipment crossing the road,
19 isn't it?

20 A Yes, sir.

21 Q And you agreed to have a sign that said flagman ahead
22 500 feet; correct?

23 A Yes, sir.

24 Q Mr. English, would you explain to me does that
25 flagman ahead that you put in that warning sign is

1 500 feet up the road -- is that the flagman ahead you're
2 talking about for your -- only for your equipment? Is
3 that what you want this jury to believe?

4 A Well, I mean, there would not be no need to put a
5 flagman sign out if there was no flagman there for the
6 people to look for flagging the traffic.

7 Q We certainly do agree. And that certainly is -- that
8 flagman ahead it says will be located at the crossing to
9 maintain traffic flow; correct?

10 A Yes, sir.

11 Q And that is -- that is traffic for the motoring
12 public on Redds Branch Road?

13 A That's correct.

14 Q Now that flagman -- now, we're back to -- let's back
15 up a little bit. You'll have to admit now that you should
16 have had -- that required a flagman for flagging the
17 traffic on Redds Branch Road?

18 A In my interpretation if I am not flagging the traffic
19 on Redds Branch Road, there was no need for the sign nor
20 the flagman there if I was not flagging the public
21 traffic.

22 Q All right. I won't debate that any more. The stop
23 sign.

24 A Yes, sir.

25 Q Now, it was a stop sign?

1 A Yes, sir.

2 Q And it required stopping?

3 A Yes, sir.

4 MR. COX: Object.

5 THE COURT: What is the objection?

6 MR. COX: He is asking about the law, Your Honor.

7 THE COURT: He is asking if it requires stopping.

8 Overruled.

9 Who put the stop sign out?

10 THE WITNESS: I believe I put it up, Your Honor,
11 years before.

12 THE COURT: What did you mean by putting it up? For
13 people to stop?

14 THE WITNESS: Yes, sir.

15 THE COURT: Okay.

16 Q And it doesn't say -- that stop doesn't say to go
17 through that stop sign without stopping, does it?

18 A No, sir.

19 Q Yet, you were directing your people and you were
20 directing Mr. Lewis not to stop at that stop sign;
21 correct?

22 A Only if there was someone there to motion him across
23 when traffic was clear.

24 Q Is that on that stop sign that we see in that
25 motoring traffic stop sign -- is there something that says

1 that there is an exception that says you're allowed to run
2 through that stop sign and not stop if there is someone on
3 the other side sitting in the tractor?

4 A No, sir. There is nothing on the sign that says
5 that.

6 Q And you didn't have any right to do that, did you?

7 A Well, a private street, yes, sir, I thought I did. I
8 thought we -- if the traffic was clear I had somebody
9 there watching for him to ease on across the road.

10 Q Okay. So it is clear so this jury will understand
11 your attitude and your position about the stop sign, it is
12 your position that because it's your private road again
13 that you are allowed as long as you got Mr. Tindel sitting
14 on the tractor across the road with his hands that it is
15 okay -- your people don't have to stop. They can go
16 through without stopping?

17 MR. COX: Objection, Your Honor.

18 THE COURT: What is the objection?

19 MR. COX: He is misstating the law. The law is---

20 THE COURT: No, sir. I'll tell you what the law is.
21 Hold on.

22 MR. COX: There is no requirement to stop.

23 THE COURT: No requirement to stop at a stop sign?

24 MR. COX: The statute -- the statute requires you to
25 yield at the bottom of your driveway to the traffic.

1 THE COURT: Show me that statute where it has a stop
2 sign there in a private driveway. Overruled. Move along.

3 Q Answer the question. That's your position?

4 A Reask the question, please. I'm sorry.

5 Q That's okay. It is your -- the private drive we keep
6 hearing about---

7 A No, it's not my private drive. It belongs to Owens
8 Corning.

9 Q You got the exclusive use of it, correct, along with
10 the people who go in there?

11 A Well, me and everybody else that's got authority to
12 go in there, yes, sir.

13 Q Okay. And everybody who has got authority to go in
14 there got the right according to you to use that private
15 drive and they don't have to stop at that stop sign and
16 they can go through it at whatever speed, go through it
17 without stopping as long as Mr. Tisdell or Tindel or
18 somebody sitting over there directing them through.

19 That's your position?

20 A Well, if there was somebody there directing you
21 through and traffic was clear, I would agree, yes.

22 Q Thank you. Now we -- just to make it clear about
23 Mr. Tindel, first off, he is your son-in-law; correct?

24 A He wasn't at the time. He is now, yes, sir.

25 Q Nothing against that? I'm not.

1 A Go ahead.

2 Q Don't get mad.

3 A Oh, I'm fine.

4 Q He seems like a nice gentleman.

5 A Yes, sir.

6 Q But at the time of this wreck now he was sitting in

7 that tractor, didn't he -- wasn't he?

8 A At the time of the wreck I believe that was the

9 statement, yes, sir.

10 Q And Mr. Tindel was not even directing Mr. Lewis

11 through, was he?

12 A I don't think -- I think he was.

13 Q He tried to stop him?

14 A That's what -- yes, sir.

15 Q But he did not have a flag to flag traffic, did he?

16 A No, sir. He did not have a flag in his hand.

17 Q And he was not in the roadway to try to protect and

18 stop either Mr. Valenzuela or anybody else to stop prior

19 to your equipment going across the road?

20 A No, sir. He was not in the road.

21 Q Okay. He didn't have a flag. He wasn't trying to

22 control the traffic whatsoever on Redds Branch Road?

23 A The traffic on Redds Branch Road, no, sir. He was

24 stopping the traffic of ours crossing the road.

25 Q Okay. He didn't have a vest on?

1 A No, sir.

2 Q And at the time of this wreck there was no -- any
3 kind of warning signs that said there was a flagman ahead
4 as you're required, was there?

5 A No, sir.

6 Q And there wasn't any other kind of warning signs?

7 A No, sir.

8 Q And Mr. Tindel's really primary job was to sweep the
9 road. That's the reason he was in the tractor because it
10 had a little sweeper on the back; correct?

11 A His main job was, yes, sir, keeping that road free
12 from dirt and debris.

13 Q And you want the jury to take the position as far as
14 that stop sign that that's okay to stop like that?

15 A I never said it was okay.

16 Q It's not okay.

17 A Well, I mean it's---

18 Q Knocked your stop sign down cost you some money?

19 A It's not the most ideal way to stop, no, sir.

20 Q Now, you are out there every day; right?

21 A Yes, sir.

22 Q As a matter to fact, you operate that scraper just
23 like Mr. Lewis did?

24 A Yes, sir. If he was not there, I was the one
25 operating it, yes, sir.

1 Q And you would operate it and not stop at the stop
2 sign and go through if there was someone like Mr. Tindel
3 on the other side; correct?

4 A If there was someone there to tell me, yes, sir.

5 Q Everything that was done out there you controlled.
6 You ordered it. They were doing what you said; correct?

7 A Pretty much, yes, sir.

8 Q Now, what about -- you heard Mrs. Johnson. You were
9 in the courtroom here today.

10 A Yes, sir.

11 Q The other day when she testified; right?

12 A Yes, sir.

13 Q Did you know about that?

14 A No, sir.

15 Q Isn't it stuff like that can occur when you don't
16 stop at the stop sign?

17 A Well, I mean, if they're somebody flagging you across
18 saying it is clear shouldn't nothing happen like that.

19 Q Was there a flagman out there like Mr. Tindel two
20 days before this wreck occurred on August 7, 2009 when
21 Laura Johnson almost got killed?

22 A You asked me was there a flagman there?

23 Q Yes, sir.

24 A I don't know if he was there at the time or not. He
25 could have been sweeping the road. I do not know.

1 Q But that's what happens when you get these
2 70,000-pound equipment running through the stop signs
3 without stopping on a public highway when almost people
4 get killed. It is dangerous, isn't it?

5 A I assume, yes, sir.

6 Q All right. Now, as far as Laura Boozer and poor ol'
7 Mrs. Virginia Gunter, I mean, Mr. English, did you know
8 that they -- a lady 80-something years old was having a
9 slam on brakes because y'all people were not stopping at
10 the stop sign in front of her? Did you know about that?

11 A No, sir, I did not.

12 Q Did you know about Laura Boozer having to slam on
13 brakes whenever they were coming out in front of her in
14 order to stop so they wouldn't run into this 70,000 pound
15 equipment? Did you know about that?

16 A No, sir, I did not.

17 Q If that was happening that was dangerous, wasn't it?

18 A Yes, sir.

19 Q And that's what happens, Mr. English, isn't it, when
20 you don't obey the laws and you run through stop signs?
21 Isn't that what happens?

22 MR. COX: Same objection, Your Honor.

23 THE COURT: Ask it a different way. When you don't
24 yield the right-of-way.

25 Q When you don't yield the right-of-way, that's what

1 happens?

2 A Without a flagman there?

3 MR. COX: Objection.

4 THE COURT: What is the objection?

5 MR. COX: Hasn't laid a foundation on failing to
6 yield the right-of-way.

7 THE COURT: Overruled.

8 THE WITNESS: Without a flagman there, yes, sir, it
9 would be dangerous. With somebody there motioning across,
10 no, sir.

11 Q What Mrs. Gunter and Mrs. Boozer described -- we
12 don't know whether there was a flagman there because they
13 didn't see it. They don't know. There wasn't no flagman
14 standing in the traffic controlling the traffic, but
15 whether your Mr. Tindel was over there on the top of the
16 tractor we don't know. I don't know. Do you know?

17 A No, sir. No, sir.

18 Q But no matter what, whether they're sitting out there
19 or not, if that -- if they're sitting there and something
20 happens, can poor Mrs. Gunter -- Mrs. Gunter is trying to
21 have to slam on brakes to keep from hitting your
22 equipment. Isn't that dangerous?

23 A If they had to do that, yes, sir, but that is their
24 word. I don't know. I don't know that that happened.

25 Q You don't know -- you question the veracity and the

1 honesty of that poor 80-year-old lady Virginia Gunter?

2 A I beg your pardon?

3 Q You question her veracity and honesty?

4 MR. COX: Objection, Your Honor.

5 THE COURT: Sustained.

6 MR. DETRICK: I don't have any further questions.

7 THE COURT: Anything on? Hold on. Anything else,
8 Mr. Detrick?

9 MR. DETRICK: No, sir.

10 THE COURT: Are you going to cross or do you want to
11 wait and call him in your case in chief?

12 MR. COX: I am going to cross.

13 THE COURT: All right. We're going to take a break
14 about five or 10 minutes. Don't discuss the case. Don't
15 deliberate. Leave your notes in the chair.

16 (Whereupon, the jury exited the courtroom at 4:25.)

17 THE COURT: Y'all know the rules. Come on. All
18 right. You may step down, Mr. English. You're right in
19 middle of your testimony. Please don't discuss it with
20 anyone.

21 THE WITNESS: Yes, sir.

22 THE COURT: You need to see me about a scheduling
23 matter?

24 MS. MCPHERSON: Now that the jury is out I can ask
25 you. I think the time will work out fine, but I have two

1 short -- not nearly that long -- that I think we can
2 finish after this. If we were to run five or ten minutes
3 after five -- these ladies have been here for a couple of
4 days.

5 THE COURT: I am going to do my best.

6 MS. MCPHERSON: Thank you, sir.

7 THE COURT: But, you know, if he gets into a long
8 cross, I don't know. We'll stand at ease for a few
9 minutes.

10 (Whereupon, a break was taken.)

11 THE COURT: I will only do this with your consent.
12 I've had it done to me before. I've done it before. Judge
13 suggests it or not suggest it or whatever. We can put up
14 those two witnesses -- two 10-minute witnesses and then
15 you can cross him tomorrow, take him out of turn or you
16 can go ahead and cross him now.

17 MR. COX: I am ready to do him now.

18 THE COURT: I know you're ready. I am just asking.

19 MR. COX: I would like to do it now.

20 THE COURT: Very well. That is your call. That's
21 fine.

22 (Whereupon, the jury came into open court at
23 approximately 4:44.)

24 CROSS-EXAMINATION

1 BY MR. COX:

2 Q Mr. English?

3 A Yes, sir.

4 Q Tell the jury, if you would, first off where are you
5 from, sir?

6 A Aiken, South Carolina.

7 Q You're from Aiken, South Carolina? How old are you?

8 A Oh, crap.

9 Q Sorry so ask you.

10 A I'm sorry; 46 I believe I am.

11 Q Forty-six?

12 THE COURT: That's not old. You could be like me --

13 65. That's old.

14 Q Are you married, sir?

15 A Yes, I am.

16 Q You lived in Aiken all your life?

17 A All but about I think three years of it -- my first
18 three years.

19 Q Okay. First three years. Where did you live your
20 first three years?

21 A Compton, Georgia.

22 Q All right. And so do you have any children?

23 A Yes, sir.

24 Q Tell me about your children.

25 A I got two daughters of my own, Brittney and Amanda

1 English, a stepdaughter Terry and a stepson Danny.

2 Q Okay. And how old are they?

3 A They go from the range of -- Danny, I think, is 28 --
4 down to 21.

5 Q So you got some grown children?

6 A Yes, sir.

7 Q Probably some trying times raising them?

8 A Yes, sir.

9 Q You raised them here in Aiken?

10 A Yes, sir.

11 Q And where did you do -- where did you do your school?

12 A South Aiken High.

13 Q South Aiken High. Did you finish at South Aiken
14 High?

15 A Yes, sir.

16 Q When did you finish?

17 A 1984.

18 Q What did you do after you finished high school?

19 A I went to work.

20 Q Where did you go to work?

21 A Sam English Grading.

22 Q And tell me a little bit about Sam English Grading.

23 A We're a family-owned business. My father started Sam
24 English Grading -- Well, it used to be E & N Construction
25 and then it turned over to Sam English Grading. We first

1 went in business in 1978. Bob Penland wanted my father to
2 build another golf course; so we went in business in
3 Houndslake golf course building the Laurel Nine at
4 Houndslake and we've been in business ever since --

5 Q Okay.

6 A -- and worked for him the whole time until 2005 when
7 my father passed away.

8 Q Okay. So and you said you built the golf course.
9 The company did the land and the grounds work and all
10 that?

11 A Done all the clearing and grading and shaping for
12 that course all the way up to the irrigation and grass.

13 Q Okay. Very good. And that leads me to my next
14 question. What type of business is Sam English Grading?
15 What do y'all do?

16 A Well, we do about anything. I mean, we will clear
17 land. We'll build roads. We'll build ponds, shopping
18 centers, golf courses, lay pipe, whatever.

19 Q Okay.

20 A Whatever the job needs.

21 Q Okay. And how many employees does Sam English
22 Grading have?

23 A Five.

24 Q Five?

25 A Yes, sir.

- 1 Q Including yourself?
- 2 A Yes, sir.
- 3 Q Very good.
- 4 A I am trying to figure up secretaries and all. Yes,
- 5 sir.
- 6 Q Are you the owner of the company?
- 7 A I am co-owner.
- 8 Q Okay. Who is your other co-owner?
- 9 A My mother.
- 10 Q Your mother? And how old is your mother?
- 11 A Sixty-eight.
- 12 Q Okay. So has this been a family business since your
- 13 dad started it I think you said in '78?
- 14 A Yes, sir.
- 15 Q Okay. Very good. Have -- how long has your company
- 16 had -- been working out at Owens Corning?
- 17 A Don't hold me to the exact year. I believe it is
- 18 1980 or 1982, if I am not mistaken.
- 19 Q Okay. Now, and y'all have been operating the
- 20 landfill -- Sam English Grading has been operating the
- 21 landfill at Owens Corning?
- 22 A Yes, sir.
- 23 Q Since about '82 you said?
- 24 A I think that's close to it, yes, sir.
- 25 Q Okay. And now what do y'all do at Owens Corning --

1 like, say, you know, during all of these years? What is
2 your job out there?

3 A Well, they'll all in their debris, their trash, their
4 waste, and we will stack it, chop it up, cover it up,
5 compact it and cover it, and, you know, get grass growing
6 and things of that nature, you know, just the keep it
7 progressing forward.

8 Q When you first started working with your dad in '78
9 was that right after high school or close to it?

10 A No, sir. Actually, that was before I ever got --
11 before I ever graduated. Excuse me.

12 Q Oh, I am trying to make you older than you are?

13 A Yes, sir.

14 Q And you started off -- what did you start off doing?

15 A I started off as a laborer. I throwed roots, tote
16 oil, grease machines, fueled machines, whatever it took,
17 you know. I was basically the grunt.

18 Q Okay. And you worked yourself up. Eventually you
19 started operating the equipment and things like that?

20 A Yes, sir.

21 Q Okay. And where currently is the office for Sam
22 English Grading located?

23 A 3801 Wagener Road, Aiken.

24 Q What is that?

25 A That's my mother's address.

1 Q That is your mother's address. Is that where the
2 scraper and your trucks are kept?

3 A Well, no, sir. Most of the time they're kept at --
4 on the jobs or a lot of times I'll keep the trucks at my
5 place.

6 Q Okay.

7 A At 222 Coleman Bridge Road.

8 Q And that is your house?

9 A That is correct.

10 Q Is that where you raised your children?

11 A That is correct.

12 Q With regards to -- tell me. With regards to the
13 operation of the landfill every so often you will -- at
14 some point they started building burms, is that correct,
15 down at the landfill?

16 A Yes, sir. They build what they call containment
17 burms around. They done dug all the holes that they could
18 dig to put cells in the ground; so they run out of land
19 doing that so they want to go vertical with it -- a dam,
20 if you will -- build an earthen dam, you know, 15-foot
21 high, however many feet long.

22 Q Okay.

23 A And they'll dump their debris against it until it
24 fills up and then they'll build another one.

25 Q Okay. And majority of the time are your trucks and

1 your scraper -- it's located will in the landfill and
2 stays in the landfill area? Do you have that correctly?

3 A Well, some. Sometimes yes, sometimes no.

4 Q Okay.

5 A I mean, it all depends on if it is needed on another
6 site.

7 Q Okay. Okay. And but as far as the landfill
8 operation goes, most of what you need over the past couple
9 of decades as far as being able to do your work there
10 that's required to operate a landfill such as getting
11 additional dirt and putting it over the fiberglass
12 shavings or whatnot can be accessed there in the landfill
13 area?

14 A That's correct.

15 Q In other words, you're not crossing the road; is that
16 right?

17 A That is correct.

18 Q Okay. And but from time to time I think we heard
19 Mr. Merritt testify on video from Owens Corning, Owens
20 Corning in addition to having y'all operate the landfill
21 they would have y'all build burms every -- I think he said
22 every four to five years you'd have a concerted effort of
23 getting dirt from across the road and taking it to fill in
24 the landfill?

25 A That's correct.

1 Q Am I saying that correctly?

2 A Yes, sir.

3 Q Okay. And those contracts typically lasted? How
4 long does it take to complete those contracts typically?
5 Those build-the-burm contact every four to five years.

6 A It generally takes somewhere a month and a half, two
7 months good weather.

8 Q All right. So one to two months every four to five
9 years approximately y'all -- Sam English Grading --
10 crosses the road with their dump trucks, with their
11 scraper to the borrow pit to get dirt to put into the
12 landfill; is that right?

13 A Yes, sir.

14 Q Okay. And if you're not operating under one of those
15 two contracts every -- one of those one to two-month
16 contracts that comes into existence every four to five
17 years you're not crossing the roads frequently, are you?
18 Or are you?

19 A No, very unfrequently. Up until that time it was not
20 frequently at all.

21 Q Okay. And can you explain to the jury why that is?

22 A Because at the time there was enough excess dirt in
23 the landfill itself to maintain the landfill to where you
24 did not have to go across the road to get it -- to get
25 extra dirt.

1 Q Okay. Very good. Now, at some point in time --
2 we've seen a lot of testimony. We've seen the photographs
3 of the Owens Corning private drive that goes to the
4 landfill and goes across Redds Branch Road where this
5 incident that we're here on today occurred on August 7,
6 2009. That access road used to be somewhere else, did it
7 not?

8 A That is correct.

9 Q Okay. Where was that access road previously?

10 A It originally was right there in that curve --

11 Q Okay.

12 A -- about I'm saying -- I have never measured -- I am
13 saying 500-foot further down the road.

14 Q Okay. The curve where -- that we seen on the
15 pictures where Mr. Valenzuela came out with his
16 motorcycle?

17 A That's correct.

18 Q On the approach to the crossing; is that right?

19 A That's correct.

20 Q The access road -- when was the access road actually
21 in that curve?

22 A I know -- now, don't hold me to a date because I
23 promise you I don't know an exact date, but I know the
24 road got moved prior to 1994. I believe it was in the
25 late 80's, early 90's when it got moved.

1 Q Now, tell me -- I want to talk about August 7, 2009.

2 Okay?

3 A Yes, sir.

4 Q Tell me what your operation was at the landfill on
5 that date. Let's start with -- if I understand correctly,
6 Sam English Grading had entered into a contract with Owens
7 Corning; is that right?

8 A Yes, sir.

9 Q To build a burm?

10 A Yes, sir.

11 Q And that's one of those every four to five year
12 contracts that come up that we were talking about earlier?

13 A That's correct.

14 Q Is that right?

15 A Yes, sir.

16 Q That takes one to two months to complete; is that
17 right?

18 A Yes, sir.

19 Q All right. And at the time of the accident on
20 August 7, 2009 how long had Sam -- how long had y'all been
21 operating under that contract?

22 A Under the burm contract?

23 Q Yes, sir.

24 A I'd say a couple of weeks.

25 Q A couple of weeks?

1 A Yes, sir.

2 Q Okay. So you had been crossing the road -- prior to
3 August 7, 2009 you had been crossing the road -- Redds
4 Branch Road -- pretty much on a daily basis, I guess,
5 Monday through, what, Friday?

6 A Yes, sir.

7 Q For two weeks?

8 A Well, with the exception of a few days because we had
9 some site prep to do on that side of the road. We had to
10 get it cleared. We had to get the grass stripped. We had
11 to put down geogrid and things of that nature before we
12 could start hauling dirt.

13 Q Okay. All right. And did you hear Mr. Merritt from
14 Owens Corning talking about it was during these short
15 contract periods every four to five years that you -- that
16 y'all were required to have that concerted effort of going
17 back and forth across the road?

18 A Yes, sir.

19 Q Okay. And is that accurate with what the operation
20 required?

21 A Yes, sir.

22 Q Okay. Now, on August 7, 2009 you've been out there,
23 like I said, for a couple of weeks plus the additional
24 days going back and forth. Tell us what the -- tell us
25 how y'all operated on August 7, 2009.

1 A I mean, it was basically we go in there in the
2 morning. We get all of our equipment checked out and when
3 the time comes and everything is ready to go we start
4 hauling dirt.

5 Q Okay. What does hauling dirt require?

6 A Well, we was hauling dirt with trucks and a pan --

7 Q Okay.

8 A -- you know, and I had an excavator in the pit
9 loading the trucks and the pan was a self-loading machine
10 and it loaded itself --

11 Q Okay.

12 A -- you know, and then Johnny -- Mr. Tindel -- he was
13 there on the tractor to make sure when -- every road has
14 got a little bit of a bump to it because every road is
15 crowned --

16 Q Okay.

17 A -- and I always tell them to slow down across there
18 because I don't want them hitting the bumps hard to knock
19 off any more excess dirt on the road. It's that much more
20 dirt to clean up.

21 Q Well, let's talk about that. Let's focus on the
22 scraper.

23 A All right.

24 Q Okay. When the scraper would have to go from the
25 landfill across Redds Branch Road to the borrow pit to

1 pick up dirt and bring it back, how would you get across
2 the road?

3 A I'm sorry?

4 Q How -- what was the -- how would y'all cross the
5 road? What were the requirements to cross the road?

6 A Well, the requirements was, I mean, if there was
7 nobody there to motion the pan across to look for traffic,
8 he was to stop at the stop sign. When it was clear he
9 could go across.

10 Q Okay. And who primarily drove during that -- during
11 this contract during the two-week period? Who was driving
12 the scraper?

13 A I'm not going to say I never did, but it was
14 primarily Jeff.

15 Q Okay. Jeffery Lewis?

16 A Yes, sir.

17 Q Okay. And he would -- if there was -- did you have
18 -- did you have a flagger across the road watching for
19 traffic?

20 A Not a flagger, per se. I had Johnny Tindel there to
21 sweep the roads. Whenever he was not sweeping he would be
22 served as a spotter.

23 Q So, if Johnny Tindel -- one of your employees;
24 correct?

25 A That's correct.

1 Q If he was not located across the road, what were --
2 what did your -- what did Mr. Lewis operating the scraper
3 do to get across the road?

4 A Stop at the stop sign just like you do anywhere else.
5 You stop at the stop sign. You look for traffic. If
6 anything was coming, you waited until it passed. Then you
7 went across.

8 Q Okay. And then you went across?

9 A Yes, sir.

10 Q And then the same way coming back the other way?

11 A That is correct.

12 Q Now, with regards to if -- tell me -- if Mr -- from
13 time to time you would have Mr. Tindel on the other side
14 of the road; right?

15 A Yes, sir.

16 Q Okay. And he had -- he also operated the sweeper to
17 get the dust off the road?

18 A That's correct.

19 Q Okay. And if he was there what did you -- how would
20 your -- how would Mr. Lewis get the scraper across the
21 road if Mr. Tindel was on the other side of the road?

22 A He was on the other side motioning for him?

23 Q Yes, sir.

24 A Well, he would slow down and come across the road
25 whenever he told him it was free to come across. If there

1 was nothing coming when he was coming -- when he was
2 approaching the road and there was nothing coming, he'd
3 never stop. He would motion him on across.

4 Q Was Mr. Tindel there watching for traffic?

5 A Was that his sole duty? No.

6 Q Okay.

7 A I mean, his main duty was cleaning the roads, but if
8 he was not -- if he did not have roads to clean at the
9 time, yes, he would stay there and serve as a spotter for
10 the pan, yes, sir.

11 Q So if I understand correctly, if he was not sweeping
12 the road you would allow him to serve as a spotter
13 flagging Mr. Lewis across provided he had checked to see
14 that the traffic was clear in both directions?

15 A That is correct.

16 Q And Mr. Lewis -- what is your understanding of how
17 Mr. Lewis would approach the stop sign on Redds Branch
18 Road before he would get the signal from Mr. Tindel?

19 A I'm sorry. Ask that one more time.

20 Q I asked a bad question. What is your understanding
21 of how Mr. Lewis would approach Redds Branch Road before
22 he would get the signal from Mr. Tindel?

23 A Well, he would be -- my understanding is that he was
24 going up to the stop sign slowing down and if he flagged
25 him across he would go on across. If he told him to stop,

1 he would apply brakes and stop.

2 Q Okay. And do you have an understanding that
3 Mr. Lewis or yourself if you were driving the scraper
4 would also look to see for traffic as well?

5 A That is correct.

6 Q Okay. So, I want to get this straight. Was there --
7 was there ever a time where the driver of the scraper
8 would not stop before entering Redds Branch Road if he did
9 not have someone watching the traffic for him?

10 A Not to my knowledge.

11 Q Okay. And did -- there's been a lot of talk about
12 the contract in this case, okay? And I believe -- is this
13 a copy of what you understand the contract --

14 A Yes, sir, I think---

15 Q -- Plaintiff's Exhibit 3?

16 A Yes, sir. Don't ask me to read it unless you're
17 going to get my glasses.

18 Q Does that appear to be the contract?

19 A Yes, sir.

20 Q Okay. And does that appear to be that -- the
21 burm-build contract that you were operating on August 7,
22 2009?

23 A Yes, sir.

24 Q Okay. Now, and then you've been pointed to -- thank
25 you. You've been pointed to an addendum which there's

1 been a lot of talk about and which indicates, paragraph
2 four, contractor must maintain dust control on all access
3 roads between borrow area and the landfill at all times.
4 It says the contractor will provide a flagman. To your
5 understanding were you providing a flagman on August 7,
6 2009? At the time that you had entered this contract did
7 you understand Mr. Tindel to be your flagman flagging your
8 traffic across the street?

9 A Flagging my traffic across the street, yes, sir.

10 Q Okay. And it says maintain road crossing signs and
11 other road crossing safety measures to comply with owner's
12 -- who is the owner --

13 A Owens Corning.

14 Q -- Owens Corning's South Carolina Highway Department
15 encroachment permit. And so that sentence is telling you
16 that you're -- does it tell you what type of road crossing
17 signs?

18 A No, sir, it does not.

19 Q Does it spell it out specifically?

20 A No, sir.

21 Q Does it spell out specifically what other road
22 crossing safety measures you're required to use?

23 A No, sir.

24 Q Okay. And but it indicates so as to comply with
25 Owens Corning's encroachment permit, right?

1 A Yes, sir.

2 Q Okay. The next sentence says a copy of the permit
3 will be supplied by the owner Owens Corning. Did Owens
4 Corning ever supply you with the encroachment permit?

5 A Not that I know of.

6 Q Okay. And, in fact, did you hear the testimony that
7 the encroachment permit they're referencing expired in
8 1984?

9 A Yes, sir, that's what I heard.

10 Q Did you -- what were the safety measures that you
11 had -- the other safety measures that you had in place to
12 assure that -- the public safety?

13 A Make sure we had good dust control. Make sure the
14 road stayed clean and made sure that people obeyed the
15 traffic laws.

16 Q Okay.

17 A And I mean, that meaning if there was no -- the only
18 time anybody was ever allowed to run that stop sign is if
19 somebody was there flagging, motioning for them to come
20 across when it was clear.

21 Q Okay. And when you say run that stop sign, we heard
22 the testimony of Mr. Lewis where he said he approached it
23 -- approached Redds Branch Road, slowed down, was rolling
24 to a stop, and then when he would get the signal from
25 Mr. Tindel to that it was clear and come across he would

1 pick up speed and roll through the stop sign. Is that
2 consistent with your understanding of how it was working?

3 A That is correct.

4 Q Okay. If Mr. Tindel was there; is that right?

5 A That is correct.

6 Q And Mr. Tindel to your knowledge -- to your
7 understanding was serving as your flagman to watch for
8 traffic and to motion your equipment across; is that
9 right?

10 A That is correct.

11 Q Did you also -- did you also put a stop sign at the
12 driveway?

13 A Not for that particular purpose. The stop sign had
14 been there for a number of years.

15 Q Okay. Okay.

16 THE COURT: What purpose was it put there for?

17 THE WITNESS: Well, just for everybody traffic coming
18 in and out.

19 THE COURT: But not for your guys?

20 THE WITNESS: Not necessarily, no, sir. I mean, it
21 was for my guys as well if there was not a spotter there
22 to spot them across the road.

23 Q But who put the stop sign there?

24 A Owens Corning furnished it. If I am not mistaken one
25 of my men put it up.

1 Q Okay. One of your men put it up; is that right?

2 A I believe if I remember correctly, yes, sir.

3 Q Okay. And your men were under strict orders to stop
4 for the stop sign; is that right?

5 A Yes, sir.

6 Q Stop before entering Redds Branch Road?

7 A Yes, sir.

8 Q Unless you have Johnny Tindel watching to make sure
9 traffic was clear in both directions; is that right?

10 A That is correct.

11 Q And when he's watching to make sure traffic is clear
12 in both directions, were your men under orders to also
13 watch before they rolled through the stop sign?

14 A That is correct.

15 Q So you got two people watching for the traffic on
16 Redds Branch Road -- the driver of the scraper and
17 Mr. Tindel?

18 A Yes, sir.

19 Q Now, let's talk about -- there's been a lot of talk
20 about how the scraper is operated and you were here for
21 that testimony?

22 A Yes, sir.

23 Q Tell me about the scraper and its operation.

24 A Meaning how it operates? How it actually moves dirt?
25 Is that what you're asking?

1 Q Well, we've heard about --

2 THE COURT: Just ask your question, please.

3 Q -- the tire marks that it left. We heard the experts
4 talking about when that scraper would turn.

5 A Yes, sir.

6 Q Does it leave a tire mark?

7 A Yes, sir, it will leave tire marks.

8 Q On the asphalt?

9 A Yes, sir, it will.

10 Q Okay. And at what speeds does it leave a tire mark?

11 A It don't have to be going at a high rate of speed to
12 leave tire marks.

13 Q Okay.

14 A In any kind of a turn -- those tires are that wide.
15 Any kind of turn they will leave a mark.

16 Q Okay. I beg the court's indulgence, Your Honor.

17 Now, Mr. English, how many companies and entities
18 work inside of the Owens Corning landfill -- operate
19 trucks in and out of the landfill?

20 A As far as I know on an everyday basis myself, Waste
21 Management, AGY, and sometimes AWS and sometimes another
22 hauler may be hauling in some dirt or something in there
23 from another site, but that's not -- that's not very
24 often.

25 Q Do Owens Corning's folks go in and out of there?

1 A Owens Corning does not have any trucks -- Owens
2 Corning does not have any trucks that dump in there.

3 Q Okay.

4 A Other than Waste Management does all of their hauling
5 for them.

6 Q Okay. Is Owens Corning's plant right there by the
7 landfill?

8 A It's -- at the end of Redds Branch Road you hang a
9 left and Owens Corning is right there on the right; so
10 about three quarters of a mile at the most away.

11 Q Okay. Has anyone from Owens Corning ever come out to
12 the landfill and told you that how you were operating your
13 equipment across the road was not in compliance with their
14 understanding of their contract?

15 A No, sir.

16 Q So no one from Owens Corning has ever come to you and
17 said, hey, you're not doing this right?

18 A No, sir.

19 Q Okay. Did any of the investigating officers tell
20 you, hey, you're not doing this right from this accident
21 on August 7, 2009?

22 MR. DETRICK: Your Honor, I object as far as any
23 investigating officer.

24 THE COURT: That's a question for this jury to
25 determine as to whether or not he was acting as a

1 reasonable person handling this situation. Sustained.
2 That's what this whole lawsuit is about -- whether or not
3 he was doing it right.

4 MR. COX: Now, I beg the court's indulgence, Your
5 Honor.

6 THE COURT: Sure.

7 Q Since 1978 have you ever -- has you and your mama's
8 company ever had an incident where---

9 MR. DETRICK: Your Honor, I object to that. That has
10 nothing to do with this lawsuit.

11 THE COURT: An incident to do with what?

12 MR. COX: I haven't finished my question.

13 THE COURT: I know you haven't. I want to know what
14 the question is. Don't answer it.

15 MR. COX: I am going to ask him if he's ever had any
16 incidence of any accidents or any close call --

17 THE COURT: That he knows of.

18 MR. COX: -- situations that he knows of since 1978.

19 MR. DETRICK: That's okay.

20 THE COURT: Well, they've talked about all the
21 incidents. You can answer that.

22 MR. COX: Thank you, Your Honor.

23 Q Do you know of any others?

24 A No, sir, I do not.

25 Q Have any other incidents ever been reported to you?

1 A No, sir.

2 Q Do you know anything different about this crossing on
3 -- on Redds Branch Road is a straight shot from both --
4 where your access road is is a straight shot to the left
5 and it is a straight shot to the right. It is a straight
6 shot to the right to a stop sign where Owens Corning --

7 A 302, yes, sir.

8 Q -- where 302 is and then to the left coming from the
9 landfill is a straight shot until you get to the curve
10 several hundred feet down the road; is that right?

11 A Yes, sir.

12 Q Okay. Do you know anything unique about this
13 crossing as compared to any other crossing located
14 anywhere else in South Carolina?

15 A No, sir.

16 Q And you make sure that traffic -- your men are
17 instructed to make sure that traffic is clear before they
18 cross that road; is that right?

19 A That is correct.

20 Q Mr. English, that's all I have. I appreciate it.

21 MR. DETRICK: A few follow-up, please.

22 THE COURT: All right. It is 5:15. Y'all please
23 bear with me.

24 REDIRECT EXAMINATION

25

1 BY MR. DETRICK:

2 Q First off, as far as hauling dirt across another
3 company -- Sam English Grading Company is the only one
4 that actually crosses Redds Branch Road; right?

5 A That is correct.

6 Q Okay. So Waste Management doesn't. Owens Corning
7 doesn't.

8 A They do not cross the road, no, sir. They come down
9 the road and they turn into the landfill, yes, sir.

10 Q And so we can be clear and I heard your testimony now
11 today that Mr. Lewis' testimony about a flagman being out
12 there and in the middle of the road waving the stick and
13 all that, that is just plain isn't true; correct?

14 A That is correct.

15 THE COURT: That is correct it's not true?

16 THE WITNESS: It is not true. I apologize. I'm
17 sorry.

18 THE COURT: No problem.

19 Q And you mentioned other crossings. Do you know any
20 other place -- any other place in the State of South
21 Carolina where people are allowed to run -- not stop at
22 the stop sign and run through the stop sign?

23 MR. COX: Objection, Your Honor.

24 THE COURT: Which is? What is your objection?

25 MR. COX: Mischaracterization saying they were

1 running through the stop sign.

2 THE COURT: Well, you asked him all about all the
3 other intersections around is it similar to those and
4 Mr. Detrick is asking him---

5 MR. COX: He's implying they were doing more than
6 rolling through when the traffic is clear and we've been
7 signaled through.

8 THE COURT: Well, the jury has heard enough to know
9 in their minds and they'll have to determine what happened
10 whether it was rolling through or whatever. You may ask
11 the question which is do you know of any other
12 intersection like this.

13 THE WITNESS: No, sir.

14 Q Do you know of any time that someone just
15 intentionally runs a stop sign when they know it's not
16 clear?

17 A Intentionally runs --

18 Q Yeah, that's---

19 A -- the stop sign when it's not clear?

20 Q When you run the stop sign you say it's okay
21 intentionally because you know it is clear. Any other
22 time you know when people run it intentionally when they
23 know it's not clear?

24 A Well, it is foolish to run a stop sign if you know
25 it's not clear.

1 Q Isn't that correct?

2 A But I mean, my men were instructed to go only if they
3 had been instructed to come across when it was clear.

4 Q As far as safety, though, we have those stop signs,
5 Mr. English --

6 A Yes, sir.

7 Q -- because you're supposed to come up -- not just to
8 have someone on the other side say it's clear. Isn't it
9 the purpose for you to stop at that stop sign so you can
10 take the time as a human being and look to your right and
11 look to your left to see if it is clear to make sure it is
12 clear?

13 A Yes, sir.

14 Q Thank you.

15 THE COURT: All right. You may step down.

16 MS. MCPHERSON: Judge, one witness, five minutes?

17 THE COURT: What do I do when some lady asks me that?
18 Do y'all mind a five-minute witness?

19 THE JUROR: We're fine.

20 THE COURT: No. Yes, ma'am.

21 MS. MCPHERSON: Amanda Washington.

22 THE COURT: Thank y'all for being patient, okay?

23 THE JUROR: Thank you for lunch.

24 THE COURT: We're just trying to move it along so we
25 can be efficient. How about that?

1 AMANDA WASHINGTON, after being duly sworn,
2 testified as follows:

3 THE CLERK: Have a seat in the jury box and state
4 your full name for the record.

5 DIRECT EXAMINATION

6 BY MS. MCPHERSON:

7 Q Amanda, will you tell the jury who you are, what your
8 name is, where you live, and who lives there with you?

9 A My name is Amanda Washington.

10 THE COURT: Speak up, Mrs. Washington.

11 THE WITNESS: My name is Amanda Washington. I live
12 in Bath with my husband and my two-year-old son.

13 Q What relation were you to Christie Valenzuela?

14 A I was her cousin.

15 Q Tell the jury about your relationship with Christie
16 and Michael and Mikey?

17 A We were all very close. I didn't look at her as my
18 cousin. She was more like a mother figure. She was the
19 one I always wanted to be like.

20 Q Was she a good role model for you and those people
21 around you, Amanda?

22 A Oh, yeah.

23 Q What was it about her that made you want to be like
24 her?

25 A She never let anything stop her from being who she

1 wanted to be. She never let anything get her down. The
2 love that she had, it was like nothing I've seen before.
3 I wanted to love everybody like she loved everybody. She
4 was just the one I always went to. I could always call.

5 Q Amanda, what was her and Michael's relationship like?

6 A They were sweet. She always called him Bug.

7 Q Bug?

8 A He would call like if he was -- like if he was gone
9 out maybe fishing, you know, he'd call her and she would
10 answer the phone and her sweet voice -- I can still hear
11 it. She would always say, Hey, Bug, and it was like this
12 little baby voice.

13 Q What about her and Mikey?

14 A Oh, that was her pride and joy. I remember one time
15 he was I want to say three or four and we took him to see
16 Batman when it first came out in the theaters and some guy
17 turned and told him to hush because he kept saying batman,
18 batman, and she said, huh-uh, you don't talk to my kid
19 like that. She said, You want to take this outside? She
20 loved him. She fought hard to have him.

21 Q Did she cut him much slack or did she make him do
22 what a mama -- good mama makes her son do?

23 A She made him do what he was supposed to do. She said
24 that she was going to make sure he went to college if she
25 had to get up every day and walk him to class because she

1 didn't want him to fight for a position like she had to.

2 She didn't want him to start from the bottom.

3 Q Is it fair to say that Christie was the go-to person
4 for you and for her son and her husband?

5 A Yeah. I still talk to her.

6 Q Amanda, her being killed has been very hard for you,
7 hadn't it?

8 A My husband and I -- we tried for years to have a baby
9 just like they did. She was the first one I told before I
10 ever told my husband.

11 Q What did she say to you?

12 A She told me I was going to have a boy.

13 Q Let me show you a picture -- number 123, please -- if
14 you'll tell the jury what this is.

15 This is without objection, Your Honor.

16 (Whereupon, Plaintiff's Exhibit No. 123 was admitted
17 into evidence.)

18 A That is my wedding picture.

19 Q That's Christie there with you?

20 A She picked out the colors.

21 Q She did?

22 A She picked out the dresses. I had my appendix taken
23 out two days before that. She did my hair. She did my
24 nails.

25 Q Amanda, what is your son's name?

1 A Drayton Scott Washington.

2 Q Did Christie ever get to see your baby?

3 A No.

4 Q You do know how proud she would be of you, don't you?

5 A I ask her that everyday.

6 Q You ask her that? She would be proud of you, honey.

7 What are you going to tell your son when he's old enough
8 to be able to talk and know who special people are?

9 A I show him her picture every day. I talk about her
10 even though it's hard.

11 Q Amanda, do you worry about Mikey and Michael without
12 Christie?

13 A They were -- she was like the glue that held
14 everybody together. It is like when she -- now that she's
15 gone you can't -- you can't find the other piece of you
16 that's missing.

17 Q Thank you, Amanda.

18 THE COURT: Anything?

19 MS. PAYNE: Sorry, Your Honor. Nothing.

20 THE COURT: Thank you, ma'am. Be careful. It is a
21 little dark. Ms. Barbara?

22 All right. That's the last witness for the day?

23 MS. MCPHERSON: Yes, sir.

24 THE COURT: All right. Can you cut the light on?

25 Madam forelady, would it be an imposition -- a

1 problem -- to start at nine in the morning instead of
2 9:30? If it is, let me know.

3 THE FOREPERSON: No.

4 THE COURT: Well, how about anybody else?

5 THE FOREPERSON: I can answer for me.

6 THE COURT: Well, you're the spokesperson. Are you
7 okay? All right. Let's start at nine in the morning to
8 get a little quicker start.

9 We don't have anything, do we, Adam?

10 THE LAW CLERK: 1:30.

11 THE COURT: All right. We'll be here at nine in the
12 morning.

13 Where is Mr. Whittle?

14 THE BAILIFF: He wanted me to call him after you
15 decided what you want to do.

16 THE COURT: It's not what I want. What y'all
17 tomorrow morning? Here are the choices---

18 THE JUROR: Doughnuts. We want doughnuts.

19 THE COURT: Doughnuts. Ma'am, I'm so sorry. He
20 can't hear a thing.

21 Doughnuts, Mert.

22 THE BAILIFF: What?

23 THE COURT: Doughnuts.

24 THE BAILIFF: Doughnuts.

25 THE COURT: And they want all kinds. They want those

1 with the cream in it and the chocolate in it and the
2 jelly.

3 THE BAILIFF: A variety.

4 THE JUROR: Yes, sir.

5 THE COURT: Don't let me down.

6 THE BAILIFF: Huh?

7 THE COURT: I got great bailiffs. I have a good time
8 with them.

9 Y'all have a wonderful evening. Leave your pads
10 right there. We'll collect those. Don't discuss the
11 case. Don't deliberate. I'll see you bright and early in
12 the morning. Thank y'all.

13 Everybody else remain seated, please.

14 (Whereupon, the jury exited the courtroom at 5:29.)

15 THE COURT: All right. First of all, anything for
16 the record before we break for the evening, Mr. Detrick?

17 MR. DETRICK: Nothing.

18 THE COURT: Mr. Cox?

19 MR. COX: None, Your Honor.

20 THE COURT: All right. How about jury charges?

21 Y'all were going to get me some today.

22 MR. DETRICK: Can I get it to you in the morning? Is
23 that possible?

24 MS. PAYNE: Can I email them?

25 THE COURT: Y'all just bring them in the morning.

1 How about that? Or you can email them, however.

2 MS. PAYNE: I have them, but whatever, Your Honor.

3 THE COURT: Just print them off for us in the
4 morning. What else now? We got to think about a verdict
5 form.

6 MR. DETRICK: We're working on that, Your Honor.

7 THE COURT: All right. And y'all are working jointly
8 on it?

9 MR. DETRICK: Sir?

10 THE COURT: Working jointly?

11 MR. DETRICK: No, sir.

12 THE COURT: Why does that not surprise me?

13 MS. PAYNE: We could if they would ask.

14 THE COURT: All I would ask that y'all at least give
15 it a stab and share with each other --

16 MR. COX: Absolutely.

17 MS. PAYNE: Yeah.

18 THE COURT: -- and see what we can do with that.

19 Now, Mr. Detrick, without holding you to it---

20 THE COURT REPORTER: Is this off?

21 THE COURT: Yes.

22 (Whereupon, the proceedings were concluded for the
23 day and were reconvened on August 30, 2012 as
24 follows:)

25 THE COURT: Is the plaintiff ready to start?

1 MR. DETRICK: Plaintiff is ready.

2 THE COURT: The defendant?

3 MR. COX: The defendant is ready, Your Honor.

4 THE COURT: Bring the jury in, please.

5 (Whereupon, the jury came into open court at
6 approximately 9:04.)

7 THE COURT: Good morning. Everybody got their right
8 notes? Who ate the most doughnuts?

9 THE JUROR: You did.

10 THE COURT: I only had one. I'm so glad you wore
11 your Clemson shirt this morning.

12 THE JUROR: You don't tell a judge you're going to
13 wear your orange shirt and not wear your orange shirt.
14 That could be assigned to jail for perjury.

15 THE COURT: Or worse for wearing it. Okay. We're
16 going to get moving right along this morning.

17 Mr. Detrick?

18 MR. DETRICK: I would call Sam Curtis English.

19 SAMUEL C. ENGLISH, after being duly sworn,
20 testified as follows:

21 THE CLERK: Have a seat in the witness box and state
22 your full name for the record.

23 THE WITNESS: Samuel Curtis English.

24 DIRECT EXAMINATION

25

1 BY MR. DETRICK:

2 Q I'm sorry. I called you Sam. I apologize.

3 Mr. English, you are the brother of Chris English; is that
4 correct?

5 A Yes, sir.

6 Q And as I understand it you previously worked for Sam
7 English Grading Company and you went out for a while and
8 came back in about 2005; is that correct?

9 A Yes, sir.

10 Q Tell the jury what you did as far as the operations
11 of Sam English Grading from 2005 on? We won't go back
12 forever and ever.

13 A I mean, to help run the equipment, track hoes,
14 dozers, loaders, trucks, and help do mechanic work.

15 Q Okay. And you were working out there at the site
16 we've been talking about all week at Owens Corning's plant
17 where y'all were crossing the dirt with equipment on Redds
18 Branch Road; correct?

19 A Yes, sir.

20 Q But your main -- I don't think -- you didn't operate
21 this scraper. That wasn't your job?

22 A I mean, I do know how to operate it, but, no, sir, I
23 wasn't operating it.

24 Q As I understand it most of your job was -- tell me if
25 I am wrong. My memory might be a little short this

1 morning, but it was to fill -- to fill the dump truck and
2 then cross, dump dirt on the other side; is that correct?

3 A Yes, sir.

4 Q And with the dump truck it's -- you can't get as much
5 dirt as the scraper; is that correct?

6 A Well, I mean, the dump truck can't load itself. You
7 got to load it with a track hoe.

8 Q Do you load it with the tractor yourself or someone
9 else?

10 A I load it.

11 Q You load it with the tractor and then you put the
12 dump truck and then you go across Redds Branch Road?

13 A No, sir.

14 Q Oh, I'm sorry.

15 A I was running just the trackhoe loading it.

16 Q Sir?

17 A I was running---

18 Q Oh, you were just running the tractor and someone
19 else would cross the highway with the dump truck?

20 A Yes, sir.

21 Q Okay. Now, and as far as crossing Redds Branch Road
22 it was Sam English Grading Company is the only company
23 just like I think Mr. English said that was actually
24 crossing with the dirt with the heavy equipment; correct?

25 A Yes, sir.

1 Q Now, is -- let's get -- I want to make sure. I think
2 it is fairly clear now. I want everybody to bring it out.

3 Mr. Johnny Tindel -- you know him?

4 A Yes, sir.

5 Q Your brother-in-law -- Mr. English's son-in-law.

6 A Yes, sir.

7 Q His job prior to August 7, 2009 was just pretty much
8 to sweep the highway, wasn't it?

9 A Yes, sir.

10 Q His job was not to do any kind of flagging, was it?

11 A I'm not sure about that.

12 Q Well, his job primarily -- well, I think you
13 testified, though, that he was not a flagman, didn't you?

14 A No, sir. He didn't have a flag.

15 Q Okay. And his primary job was to do -- to get on
16 that tractor and sweep the dirt?

17 A Yes, sir.

18 Q His job was not to do anything regarding control or
19 safety of the public on Redds Branch Road; correct?

20 A No, sir. We didn't stop the traffic on Redds Branch
21 Road.

22 Q His job wasn't to do that?

23 A No, sir.

24 Q Didn't have a flagman?

25 A No, sir.

1 Q And I think that it's clear to everybody now that
2 there was a stop sign at -- when you're crossing; correct?

3 A Yes, sir.

4 Q And I believe it's your testimony you didn't know
5 that they were never not stopping at that stop sign, did
6 you?

7 A No, sir.

8 Q You didn't know that?

9 A No, sir.

10 Q And as a matter of fact, if you had known that you
11 would have gone and talked with Mr. English about it,
12 wouldn't you? Is that your previous---

13 A Yes, sir.

14 Q Isn't that correct?

15 A Yes, sir.

16 Q And that's because your opinion was that running the
17 stop sign down at Redds Branch Road with the public coming
18 down the road running the stop sign and not stopping was a
19 danger; right?

20 A Yes, sir.

21 Q Now, as far as from 2000 -- when you came back in
22 2005 and up until August 7, 2009 you never saw any
23 advanced warning signs for construction ahead or flagman
24 ahead, did you?

25 A No, sir.

1 Q And you went to work every day. You drove Redds
2 Branch Road; correct?

3 A Yes, sir.

4 Q And you would have seen them if they had been there,
5 wouldn't you?

6 A Yes, sir.

7 Q They weren't there?

8 A No, sir.

9 Q And you went to working from 2009 -- from 2005 to
10 2009 when you went to work you never saw a flagman, did
11 you?

12 A No, sir.

13 Q And you didn't know -- it is my understanding you
14 didn't know that Sam English Grading had agreed to provide
15 those advanced warning signs, did you?

16 A No, sir.

17 Q And you didn't know until we got -- until this case
18 started that they had agreed to provide a flagman out
19 there, did you?

20 A No, sir.

21 Q You didn't know that?

22 A No, sir.

23 Q Now August 7, 2009, again, so the record is clear you
24 went to work that day. There weren't any kind of signs
25 up, were there?

1 A No, sir.

2 Q There wasn't any kind of flagman present, was there?

3 A No, sir.

4 Q And if you didn't -- if they had been running the
5 stop sign like that not stopping at the stop sign before
6 entering into Redds Branch Road you would have considered
7 it dangerous before that day and you'd have told
8 Mr. English about it, wouldn't you?

9 A Yes.

10 Q And you would have hoped that he would have stopped
11 that, wouldn't he?

12 A Yes, sir.

13 Q Because people get killed when that happens, don't
14 they?

15 A Possibly.

16 Q That's all I have. Thank you.

17 THE COURT: Mr. Cox?

18 MR. COX: If it please the court, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. COX:

21 Q Mr. English, you were asked about running the stop
22 sign; that would be dangerous. That is your testimony?

23 A Yes, sir.

24 Q That's your opinion?

25 A Yes, sir.

1 Q Okay. Now, if you were -- were you aware that your
2 company or your brother's company -- your family's
3 company -- had a spotter flagging -- you heard your
4 brother testify?

5 A Yes, sir.

6 Q Flagging your traffic across Redds Branch Road. Did
7 you hear that testimony?

8 A Yes, sir.

9 Q Okay. And did you -- were you aware that Johnny
10 Tindel would from time to time be on the corner and wave
11 traffic -- wave the pan across if traffic was clear?

12 A No, sir.

13 Q Okay. Before being here today; right?

14 A Yes, sir.

15 Q Okay. If you were given that information --

16 A Yes, sir.

17 Q -- that the scraper -- that Mr. Tindel was standing
18 or on his tractor for the -- when the scraper was coming
19 for the purpose of watching for traffic?

20 A Yes, sir.

21 THE COURT: Are you asking him to give an opinion
22 now?

23 MR. COX: I am going to bring it all together, Judge.

24 THE COURT: Well, I am asking you a question.

25 MR. COX: I am going to ask him -- yes.

1 THE COURT: He can't give opinions.

2 MR. COX: Okay.

3 THE COURT: He is a lay witness.

4 MR. COX: Okay.

5 THE COURT: And whether or not that was a good
6 practice or bad practice, those twelve people over there
7 are going to decide that.

8 Q All right. Now, Mr -- your brother is Chris English?

9 A Yes, sir.

10 Q And you've been working for your dad's company since
11 when?

12 A Started in '78 and then I left for a while and then
13 came back in around '05.

14 Q You started when?

15 A In 1978.

16 Q Okay. How old were you when you started working with
17 your family's company?

18 A Right out of -- around 17.

19 Q Okay. And did you at some point leave and go out on
20 your own?

21 A Yes, sir.

22 Q And then approximately when was that?

23 A I left in '94.

24 Q And you started your own company?

25 A Yes, sir.

1 Q What was the name of that company?

2 A Curtis English Construction.

3 Q Okay. And then you came back to your family's
4 company; right?

5 A Yes, sir.

6 Q And when did you come back?

7 A In '05.

8 Q And what was the reason that you left your company
9 and came back to your mom and dad's company?

10 A My health reasons and divorce and then my dad died;
11 so I came back to work with my brother.

12 Q Started working with your brother again?

13 A Yes.

14 Q Now, you run -- I believe you testified you run all
15 the machines -- the scraper and the dump trucks and the
16 bulldozers?

17 A Yes, sir.

18 Q You know how to run them all; right?

19 A Yes, sir.

20 Q Do you work on them?

21 A Yes, sir.

22 Q Okay. And do you do all the mechanic stuff for Sam
23 English Grading?

24 A The majority.

25 Q The majority of it?

1 A Yes, sir.

2 Q And where is -- how many folks are -- how many
3 co-employees do you have?

4 A How many?

5 Q Who else works for you? What number of co-employees
6 do you have?

7 A There's about four of us in all.

8 Q Okay. And your mama owns the company?

9 A Yes, sir.

10 Q Along with your brother?

11 A Yes, sir.

12 Q Now, do you have any dealings with any contracts for
13 any work?

14 A No, sir.

15 Q You don't ever see any contracts or have any dealings
16 with them; is that right?

17 A No, sir.

18 Q Now, from 1980 to '94 back in that period where was
19 the access road to the landfill?

20 A It was up in the curve five or six hundred feet up
21 the road.

22 Q And then they -- they've since moved the access road
23 to where it is now?

24 A Yes.

25 Q And that would have been some time after '94 or

1 somewhere in that time period?

2 A No. It was moved before '94.

3 Q Okay. Do you know about when?

4 A I would say late 80's, early 90's.

5 Q Okay. Okay. Now, as far as the pan that's been --
6 do you drive the pan?

7 A Yes, sir, I can.

8 Q Do you ever drive it across Redds Branch Road?

9 A I don't remember that I have.

10 Q Okay. You typically work down in the pit; is that
11 right?

12 A Yes, sir.

13 Q Are you aware of any -- are you aware of any truck or
14 equipment -- pan, dump truck -- of any kind ever running a
15 stop sign at Redds Branch Road?

16 A No, sir.

17 Q Now on August 7, 2009 you were down in the pit?

18 A Yes, sir.

19 Q Okay. And loading trucks down there?

20 A Yes, sir.

21 Q On the borrow pit side?

22 A Yes, sir.

23 Q And you learned about this accident. How did you
24 learn about the accident?

25 A My brother called me.

1 Q Called you on your cellphone?

2 A Yes, sir.

3 Q Did he tell you to get there right away?

4 A He said shut everything down and come up there.

5 Q When you got there what did you do?

6 A I looked to see what was going on and pulled my truck
7 in the driveway on the opposite side so that no traffic
8 could get through there then and then saw what I could do.

9 Q Okay. So you assisted in parking your truck so that
10 traffic couldn't get through?

11 A Yes, sir, in the road.

12 Q Make sure everybody was okay?

13 A Yes, sir; headlights on, flashers, you know.

14 Q What other ways -- did you check on Mrs. Valenzuela?

15 A Yes, sir.

16 Q You did?

17 A (Witness nods head.)

18 Q Did you make sure 9-1-1 was called?

19 A Yes, sir.

20 Q Now there at Owens Corning at any time has any member
21 since 2005 we've been using that date as cut off date or
22 before has any member of Owens Corning ever come to you or
23 said, Hey, or come to any of your folks and said, Hey,
24 guys, you're not doing this right. You need to change
25 your procedures. You need to change how you're crossing

1 the road?

2 A No, sir.

3 Q Did you ever get any complaints from Owens Corning
4 about the operation that you can recall?

5 A No, sir.

6 Q Now, you were asked about from 2005 and 2009 there
7 were no signs. You were asked the question you never
8 observed any signs; is that right?

9 A No, sir.

10 Q Now you were here when Mr. Merritt testified and he
11 said signs were only required when you were building the
12 burm. Do you remember that?

13 A Yes, sir.

14 Q And before this accident you were building the burm
15 for how long?

16 A I mean, we hadn't been working long. I mean, I'm not
17 sure a couple of weeks or so.

18 Q So from 2005 to 2000 -- to sometime in July of 2009,
19 I mean, according to Mr. Merritt there was no crossing
20 sign requirement, was there? Owens Corning didn't have
21 some crossing sign requirement; is that right? According
22 to Mr. Merritt?

23 A I'm assuming so.

24 Q And if that scraper is approaching the stop, not
25 coming to a complete stop, but being waved across because

1 traffic is clear you would find that appropriate, wouldn't
2 you?

3 A Yes, sir.

4 THE COURT: Whoa. How many times do I have to say he
5 can't render opinions? He's not an expert witness.

6 MR. COX: Your Honor, he was asked opinions by
7 plaintiff's counsel.

8 THE COURT: Sir, I've ruled.

9 MR. COX: Yes, sir.

10 THE COURT: Thank you.

11 MR. COX: I beg the court's indulgence.

12 THE COURT: I tell you what. You can ask him that
13 last question. Go ahead.

14 MR. COX: I think I did.

15 THE COURT: Ask it again. He didn't answer.

16 Q Mr. English, if the scraper -- you've heard the
17 testimony in the courtroom; correct? If the testimony --
18 if the scraper is approaching Redds Branch Road and it's
19 slowing down on approach to prepare to stop and then the
20 flagger, Mr. Tindel, who is flagging Sam English Grading's
21 equipment watching for traffic and making sure it is clear
22 in both directions and nothing is coming and waves it
23 across -- it doesn't come to a complete stop, but rolls on
24 through and comes on across, do you see anything dangerous
25 about that?

1 A No, sir; not as long as there was somebody looking.

2 Q And making sure that traffic was clear; is that
3 correct?

4 A Yes.

5 Q Thank you, Your Honor. No further questions.

6 REDIRECT EXAMINATION

7 BY MR. DETRICK:

8 Q All right. Let's follow up with what the facts are
9 and let me ask you a question since we're giving opinions
10 here. Mr. English --

11 A Yes, sir.

12 Q -- if that equipment had been operated by Mr. Lewis
13 approached Redds Branch Road 17 miles an hour within
14 20 feet of that intersection and could not stop at that
15 stop sign going 17 miles an hour from 20 feet from the
16 intersection would you consider that not dangerous?

17 MR. COX: Objection, Your Honor; not what the
18 testimony demonstrates.

19 THE COURT: Overruled.

20 THE WITNESS: Would you repeat the question?

21 Q Yes, sir, I will. You -- if Mr. Lewis -- you've
22 operated the scraper --

23 A Yes, sir.

24 Q -- had approached that stop sign on Redds Branch Road
25 at 17 miles an hour within 20 feet of that intersection

1 would you consider the actions of Mr. Lewis dangerous?

2 A Within 20 feet of the road?

3 Q Yes, sir.

4 A Before he started braking?

5 Q Whenever he started braking; that's correct.

6 A Yes, sir, that would be a little fast.

7 Q That would be a little dangerous, wouldn't it?

8 A Yes, sir.

9 Q And if he didn't -- and if he went into that
10 intersection at that speed, then that would be dangerous,
11 wouldn't it?

12 A Yes, sir.

13 Q And if what happened to Mrs. Johnson as she
14 testified -- if a vehicle went down that road and was just
15 driving down Redds Branch Road and looks in the rear view
16 mirror and that scraper just missed her rear end without
17 stopping going across Redds Branch Road without stopping
18 at that stop sign, you would consider that dangerous,
19 wouldn't you?

20 A Yes, sir, if it happened.

21 Q And, Mr. English, those kind of actions when they
22 happen, that's when people get killed, isn't it? In a
23 70,000-pound piece of equipment?

24 A Yes, sir, it's possible.

25 Q Thank you.

1 THE COURT: All right. You may step down.

2 Next witness, Mr. Detrick.

3 MS. MCPHERSON: Michael Valenzuela, Jr.

4 MICHAEL VALENZUELA, JR., after being duly sworn,
5 testified as follows:

6 THE CLERK: Have a seat in the witness box and state
7 your full name for the record.

8 DIRECT EXAMINATION

9 BY MS. MCPHERSON:

10 Q You're Michael Valenzuela, Jr.?

11 A Yes, ma'am.

12 Q And you go by Mikey, don't you?

13 A Yes, ma'am.

14 Q Mikey, how old are you now?

15 A I'm 19 years old.

16 Q You've been in court all week, haven't you?

17 A Yes, ma'am, since day one.

18 Q Mikey, until this trial started had you ever seen any
19 of these pictures or videos about how your mother got
20 killed?

21 A Absolutely not; not one.

22 Q Would you have ever chosen to see them if we hadn't
23 had to try this case?

24 A I tried to -- I just didn't even want to even see any
25 of this. I wish I wouldn't have.

1 Q What has it been like sitting here this week looking
2 at those pictures and hearing Mr. Chris English say that
3 this wasn't his fault?

4 A It is the worst thing imaginable. I can't -- I just
5 can't even fathom how much I've went through. I don't
6 even feel alive.

7 Q Mikey, what has it been like since August 7 of 2009
8 and up through this very minute to know that Chris English
9 and his company have blamed your daddy for killing your
10 mama?

11 A I don't see how a human being could do that. I don't
12 see how anybody could blame a husband that loved his wife
13 so much for her death. I can't see it. I can't imagine
14 it. I could not imagine it until seeing it this day. I
15 could not see how the world could be so cruel.

16 Q Have you watched your daddy, seen him every day since
17 this wreck happened, Mikey?

18 A I have spent every single day with him.

19 Q Tell the jury what you've observed about your daddy
20 since the day your mama got killed?

21 A He's not the same person anymore. My dad was one of
22 the most strongest people I have ever met in my life. I
23 looked up to him. I just -- you know, he was my father
24 figure. He was the man I wanted to be and he just never
25 -- you know, he was very -- he was discipline --

1 discipline me and now it's just, you know, he's not
2 emotionally stable and it's so awful. It's awful seeing
3 him like this -- a man that was once so strong and it
4 really has faltered him.

5 Q I didn't hear you.

6 A It has really faltered him. Like he -- I can't even
7 explain it. I can't even explain it.

8 Q Would you tell this jury, Mikey, what it was like
9 seeing your mama and daddy together and having them raise
10 you -- the only child -- there in their home?

11 A I'm glad we could talk about some good stuff, but a
12 lot of people don't know what love is growing up and
13 stuff. You watch Disney movies or something, but I didn't
14 have to do that. I just watched my mom and dad and I
15 wasn't taught it. I was just grew up into it. Like, it
16 was just like a supernatural aura of just love around
17 them. They loved each other so much that I didn't believe
18 in negativity. I didn't believe in, you know, fighting or
19 anything. Everybody was so reasonable and it was like --
20 if there is a perfect life, I grew up into it. I know
21 that.

22 Q Did that change August 7 of '09?

23 A I died on August 7, 2009 along with my mother.

24 Q Mikey, tell this jury what it was like having
25 Christie Valenzuela as your mama.

1 A She kept me -- she kept me on track. I know that.
2 She wanted me to go to college. She wanted me to get
3 everything done. I had so many chores I had to do and,
4 man, if I didn't get those done I didn't know what was
5 going to happen to me. I was afraid to know. She was --
6 I mean, she was -- but like she was just so loving and
7 just, you know, like I had a best friend -- like I grew up
8 not having friends because I had my mother and that's all
9 I needed. I didn't need anybody else in my life and I
10 just told her everything. I mean, going from when I was a
11 young -- when I was young -- she loved kids and stuff, you
12 know, and she always taught at JD Lever.

13 I'm a single child. It is me, my father, and with my
14 mother, but I didn't feel like a single child. I felt
15 like I had 500 brothers and sisters at JD Lever Elementary
16 School. I really did. My mom would come home with
17 jackets or any type of clothing. I would be like, Oh,
18 that's so cool. No, that's for a kid at school. It
19 wouldn't be mine, you know.

20 It is just -- I can't even begin to tell you all the
21 good things about her. There is nothing bad about her. I
22 have never seen a perfect woman until I met her.

23 Q Mikey, did you absolutely feel adored by your mama?

24 A I didn't feel any other feelings. I just -- it was
25 just adoration [sic] like -- I definitely took it for

1 granted. I know that. Not having it now, it's hard.

2 Q Mikey, based on what you saw are you convinced that
3 your daddy was absolutely adored by your mama?

4 A Yes. Trust me. I see people that have been married,
5 you know, 10 or 15 years just mock at each other and, you
6 know, don't sleep in the same bed or, you know, anything
7 like that, but my parents -- they were always hugging and
8 kissing and just -- there was so much love.

9 We did everything as a family -- every single thing.
10 Like if something needs to be done outside, we'd do it.
11 If a neighbor needed something done, we'd all do it and
12 stuff. That's all I knew. That's the type of family I
13 was raised in was to help other people and it's just like
14 my dad and mom -- I don't think I have ever seen them
15 apart. They've always been together and if my mom was at
16 work doing something and if, like I said, if my dad was at
17 home and stuff, you know, they would stay in touch. They
18 would literally stay on the phone for hours in between.
19 They were never apart.

20 Q Mikey, did your mama leave little sticky notes on
21 your daddy's -- on their bathroom vanity and other places?

22 A Yes, every single day. Just there would be sticky
23 notes saying, Hey, Mickey, I love you. You need to get
24 your chores together or else, and it would be underlined.
25 So, I mean, I would get that and then when I -- I remember

1 when I was getting my braces the first time. I was really
2 nervous about it and like she wrote me a really like --
3 she wrote me like, you know, be safe and stuff, you know,
4 like you'll do fine, and that was just one example.

5 Anything I had important coming up on in my life, you
6 know, she would tell me and then she would leave me a
7 note. She would make me take that note and carry it with
8 me so I could look at it right before it happened. She
9 always left a little piece of herself anywhere she went.

10 Q Michael, she had kind of a way of leaving a piece of
11 herself with most everybody she came in contact with,
12 didn't she?

13 A To this day I have people I have never seen before in
14 my life saying your mother was the most brilliant woman I
15 have ever met before in my life and, I mean, it's hard to
16 hear that just knowing that she's not here today and I'm
17 sure long after this trial I'll have people come up to me
18 and say how much of a brilliant woman she was.

19 Q Mikey, is this your grandmama -- your mama's mama --
20 sitting here with her husband?

21 A Yeah. That's my very close grandmother.

22 Q And she -- Amanda Washington that testified yesterday
23 is your cousin; right?

24 A Yes, ma'am.

25 Q She kind of grew up at your house. Your daddy and

1 mama kind of raised her up?

2 A Yeah, she did. All right. I used to call her like,
3 you know, like Sissy Amanda when I was little.

4 Q Called her what?

5 A Sissy Amanda when I was really little. I didn't even
6 know she was my cousin until I was like eight or nine, I
7 guess.

8 Q You thought she was your sister?

9 A I mean pretty much. I mean, we were that close like,
10 you know.

11 Q And the lady sitting next to your grandmother, is
12 this Amanda's mama, your aunt Lynn Adams?

13 A Yes, that is my aunt Lynn.

14 Q Who is the lady sitting next to her?

15 A I can't see that far.

16 Q Mikey?

17 A I don't know her.

18 Q Your mama -- was she the kind of person that would
19 sleep late and take naps, sit around and wait for somebody
20 else to get something done?

21 A I was that person. I wanted to take naps. I wanted
22 to sleep. She wouldn't let me. I would see her go to bed
23 around nine or ten and then up at four or five in the
24 morning -- just every morning waking me up.

25 Q Did she like to exercise?

1 A I didn't have an alarm clock. Like my room was right
2 here and then the next room had a treadmill in it. That
3 thing would so loud and I would wake up at 4:30 in the
4 morning hearing that tread mill from her exercising.

5 Q And she loved to dress and wear pretty jewelry and
6 she liked flashy things?

7 A She did. My mom was -- she was pretty much stuck in
8 the 80's like. She loved every flashy clothes and she had
9 -- she had so many clothes. I don't think I ever saw her
10 wear everything twice to be honest.

11 Q Would she and your daddy do side jobs to make extra
12 money and stay busy?

13 A Well, my dad would work for my mom on side jobs. My
14 mom was the boss. Yeah, they would do stuff together.

15 Q Now, let me show you something, Mikey. That's your
16 mama full blown right there, isn't it?

17 A Yes, ma'am.

18 Q And she made that jewelry that she's wearing in that
19 picture, didn't she?

20 A Yes, she did.

21 Q She made jewelry for friends and family and made
22 extra money doing it, didn't she?

23 A Yeah, she did. I don't think anybody in our family
24 or anybody at her job or anybody she worked with didn't
25 have a necklace or bracelet from her. She even had her

1 own business like Christie's Crystals.

2 Q She and your daddy and you loved to go out and dig
3 and look for arrow heads?

4 A Oh, Yeah. When I was young I got dragged up on that
5 because of my dad and stuff, but now I enjoy it and stuff
6 because I hate walking, you know. I just, but, yeah, we'd
7 all go out together and stuff and walk. Like I said, we
8 just did everything together, you know. I didn't have
9 friends. I didn't have anybody to hang out with. I just
10 didn't need it.

11 Q You loved hanging out with your mom and daddy, didn't
12 you?

13 A Yeah, I mean if somebody wanted to come over to the
14 house or something like a friend from school, I mean I
15 wouldn't care. I'm fine.

16 Q Your mom and daddy together built a little pool house
17 and put in a swimming pool?

18 A Yeah. They did and I didn't really help that much.
19 I just kind of handed everybody tools and stuff and like,
20 you know, mom got on to me and stuff, but like other than
21 that like I just watched them do it and stuff and, you
22 know, that took about a year and stuff.

23 Q Could she lift and throw stuff over her shoulder?

24 A Oh, yeah. She showed me up on stuff like that
25 definitely.

1 Q If it needed to get done, your mama was a
2 get-it-done?

3 A Yes. She always had a saying. She was like, a job
4 worth doing -- a job worth doing is a job worth doing
5 right. I probably heard that twice a day every day of my
6 life.

7 Q Now, Mikey, there are a couple of pictures of you
8 here and a while ago I referred to Exhibit No. 115. This
9 is number 116. Now, the picture at the top, what is that?
10 I am going to move closer to you. You need to go see an
11 eye doctor.

12 A I know. I had glasses, but I lost them. Yeah, so...

13 Q What is the picture at the top?

14 A That is a sign that my mom made.

15 Q She made that?

16 A Yeah, she did.

17 Q Is it on kind of a rock and a stand at your back
18 door?

19 A Yeah, it is right there.

20 Q It is still there at this very minute, isn't it?

21 A Yeah, it is.

22 Q Now the couple of pictures of you -- the picture of
23 your mom and dad, how much before this wreck was that
24 picture taken?

25 A Probably I want to say like -- I don't remember --

1 maybe from like a year to a year and a half.

2 Q And your daddy has got that big ol' smile. Did your
3 mama make him smile lake that?

4 A Yeah. I haven't seen that smile since before
5 August 7. I know that.

6 Q Let me show you this one. Your mama and daddy got
7 married when she was just 16, didn't they?

8 A Yep.

9 Q And he was 19?

10 A Yeah.

11 Q And this picture -- I'm going to read it to you
12 because you probably can't, but it says, Bug, I love you.
13 You will always be my Bug. Hugs and kisses. Is that one
14 of the notes that she would leave him on their bathroom
15 vanity?

16 A Yes, always. That's still up today.

17 Q Honey, these pictures were taken in y'all's backyard,
18 weren't they?

19 A Yeah.

20 Q And this is Exhibit No. 118. Mikey, your mama
21 motivated you and kept you straight and did what a good
22 mama does, didn't she?

23 A Yeah.

24 Q What have you lost?

25 A I -- I have literally started from scratch just --

1 it's like I've had two lives. Like on August 7 my world
2 just crashed down and I didn't -- that first night, you
3 know, after the wreck I couldn't imagine it. Like I
4 didn't know how to -- it's like every day has been since
5 that wreck. It's like I have had two lives. I can't -- I
6 can't even begin to fathom how much this has affected me.

7 It's like I died on August 7, 2009 like I said and
8 then right after that I was born again and I didn't know
9 how to deal with anything. I didn't know how to handle
10 myself. I just -- I didn't. I didn't have that guide in
11 my life. I didn't have the support. I didn't have -- I
12 didn't have that. I just -- it was so hard seeing that
13 and seeing my dad go through this and just seeing both of
14 us and stuff just absolutely -- when you only have one
15 person for support like we did and you lose that
16 foundation, you're going to crumble. We just crumbled and
17 we tried -- we've tried our hardest to go back up, but we
18 are still just in ruins.

19 We can't do anything. It is literally like I've
20 lived two lives because I had one great life that was just
21 perfect and I was happy and I was just -- you know, I was
22 happy about getting up for the day. I was happy about
23 going out and doing things. I was a very pleasant person
24 and now seeing that when you're 16 years old you don't
25 have much -- I mean, you kind of lose your faith and

1 humanity of life.

2 Q Mike---

3 A And ever since then I have just -- I had to grow up a
4 lot faster than I wanted to. I know that. And I just --
5 ever since then I have just been really emotionally numb.
6 It is hard to feel anything anymore and the only thing I
7 can feel is sadness and this whole trial has just brought
8 everything up. It's been so much that I can't handle it.

9 Q It was necessary because they've denied it. You know
10 that; right?

11 MS. PAYNE: Objection, Your Honor.

12 THE COURT: Overruled. I mean sustained.

13 Q Mikey, you know your mama wanted you to go to
14 college. That was a big thing for her, wasn't it?

15 A Oh, Yeah. I think ever since I was 10 years old she
16 told me I was going to go to college and stuff. If she
17 had to work four jobs she would make sure I went to
18 college.

19 Q What are you doing now? What are your plans for the
20 future?

21 A My plans are to go to Aiken Tech and I have already
22 applied and I just want to go to nursing because me and my
23 mom talked about nursing and that's pretty much what I can
24 do and stuff. She always wanted me to help people.
25 That's what she did. I told her -- when I was very young

1 I told her when I was like 13 or 12 I was like I am going
2 to do nursing and I stuck with that and I assigned my
3 courses for nursing during high school and I promised my
4 mom I would do that and I am going to do that. I am going
5 to go to Aiken Tech for nursing very soon.

6 Q Thank you, Mikey.

7 THE COURT: Anything?

8 MS. PAYNE: I beg the court's indulgence. No
9 questions, Your Honor.

10 THE COURT: Thank you. Step down.

11 Next witness?

12 MR. DETRICK: That's the plaintiff's case, Your
13 Honor.

14 THE COURT: All right. Madam forelady, ladies and
15 gentlemen, that concludes the plaintiff's presentation of
16 the case. At this time I have to take up a few matters of
17 law with the lawyers. If you'd step back to your jury
18 room for a few minutes. Don't discuss the case. Don't
19 deliberate. Leave your notes here. We'll get you back
20 out in just a second.

21 (Whereupon, the jury exited the courtroom at 9:47.)

22 THE COURT: Anything from the plaintiff?

23 MR. DETRICK: Nothing from the plaintiff, Your Honor.

24 THE COURT: Mr. Cox, Ms. Payne?

25 MS. PAYNE: Your Honor, at this time we'd like to

1 make our directed verdict motion. First of all, I'd like
2 to renew all previous motions that have been overruled.
3 Specifically---

4 THE COURT: Those were pretrial motions, were they
5 not?

6 MS. PAYNE: Excuse me, Your Honor?

7 THE COURT: Weren't those all the pretrial motions --
8 motion for summary judgment and all that? Go ahead. What
9 motions have you made that you want to renew?

10 MS. PAYNE: Your Honor, we would renew our motion --
11 you excluded what we considered the dangerous-condition
12 witnesses. You allowed them to testify as to previous
13 conduct of the defendant as to running the stop sign, as
14 to not having advanced warning signs and a flagman up, and
15 you allowed them to testify regarding continuing to run
16 the stop sign.

17 THE COURT: Let me just comment on that.

18 MS. PAYNE: Yes, sir.

19 THE COURT: Your defendant -- your client -- created
20 this situation. This is a creature of his. He put the
21 stop sign out there -- or allowed it to be out there. He
22 has maintained a policy where he allows his drivers
23 driving this huge equipment to come through this into this
24 road where the public travels. He's allowed what they
25 think it is clear to put somebody over there sitting on a

1 tractor without a flag simply just hand waving come on,
2 come on. He's created this situation and I think it's
3 appropriate for the jury in making their determination as
4 to whether or not this situation is the proximate cause of
5 this lady's death.

6 I think all of that was highly relevant. That's why
7 I ruled that way and I continue to rule that way and you
8 have been protected fully on your objections to that
9 testimony. Go to the next one, please.

10 MS. PAYNE: Thank you, Your Honor. And just for the
11 record this is just my renewing my objections. I do have
12 a directed verdict motion at the conclusion. We also are
13 renewing our objections to allowing in any evidence
14 regarding the contract between Sam English Grading and
15 Owens Corning as well as the encroachment permit. We do
16 not believe that it was relevant to this testimony.

17 THE COURT: Well, Ms. Payne, under the rules I have
18 ruled.

19 MS. PAYNE: Yes, sir.

20 THE COURT: And you're protected. There is no need
21 to renew these motions at the conclusion of the case. If
22 you want to make a motion for directed verdict, that's
23 what is appropriate now. You are fully, fully protected
24 on all of that. You have well argued it. You presented
25 memos -- very prepared in your pretrial motions. I

1 applaud you, but I have ruled on all of that; so let's
2 make the motion for directed verdict.

3 MS. PAYNE: Yes, sir, and I just -- I am fully aware
4 of what the appellate court requires and they require me
5 to renew all motions.

6 THE COURT: I don't -- you've made them
7 contemporaneous and you're protected and preserved the
8 record. Motion for directed verdict.

9 MS. PAYNE: Yes, sir.

10 THE COURT: You need to make that. Out of an
11 abundance of caution to be perfectly fair to you I'll
12 allow you to make whatever motions you want to make if
13 you'll feel more comfortable.

14 MS. PAYNE: Yes, sir, I would. Thank you. We would
15 also renew our motion with respect to excluding any
16 testimony regarding the helmet. We also believe that that
17 was relevant. The case law was in direct controversy to
18 this situation with respect to a passenger. We'd also
19 renew our motions regarding at the requirement of the stop
20 sign. I have not heard any evidence from the plaintiff
21 that the stop sign was meant to be obeyed and---

22 THE COURT: Your client testified to that.

23 MS. PAYNE: No, sir, Your Honor.

24 THE COURT: He certainly did. He certainly did. He
25 said it is a requirement to stop unless they've waved

1 through. Everybody else that comes down that road stops
2 at the stop sign -- Waste Management, all of the rest of
3 them. Move along.

4 MS. PAYNE: Thank you, Your Honor. We'd also renew
5 our objections to allowing -- not allowing in any evidence
6 of violation of the laws. We believe that the MAIT Team
7 and the investigating officer should have been allowed to
8 testify to this as that was what their sole job was to do
9 and they decided that no---

10 THE COURT: Their sole job is to determine if
11 somebody violated the law? Their job is to go out and
12 reconstruct the wreck and give opinions as to what
13 happened out there.

14 MS. PAYNE: I do believe they are hired by the
15 Department of Public Safety and they're to investigate the
16 public safety to determine if any laws have been broken,
17 Your Honor, and they decided there had not been. I
18 believe that was applicable to this case and that the jury
19 should have been permitted to hear that.

20 We also objected to any evidence coming in about the
21 intent of Jeffery Lewis. I have submitted case law that
22 says that in a negligence case intent is not a factor. It
23 is an exercise of due care and I have that in my jury
24 charges, Your Honor. We believe that testimony was
25 irrelevant and prejudicial and then we just want to renew

1 our objections that we've made throughout the testimony
2 specifically with respect to opinion testimony. There's
3 been opinion testimony elicited by the plaintiff under 701
4 and we were not permitted to go into that in our case and
5 we'd just renew our objections to that.

6 At this time if the court would indulge me I'd like
7 to go into my directed verdict motion.

8 THE COURT: Ms. Payne, I have indulged you as much as
9 I know how. I don't think you can say I haven't indulged
10 you. Haven't I? Haven't I given you ample opportunity to
11 present whatever you want to? Have I?

12 MS. PAYNE: Yes, sir, Your Honor.

13 THE COURT: You don't have to agree with me. You can
14 say no if you want to. I don't know how much else
15 indulging I can be. Now make your motion for directed
16 verdict.

17 MS. PAYNE: Okay. Sorry, Your Honor. I'm looking
18 for my pen.

19 THE COURT: That's okay.

20 MS. PAYNE: At this point the defendant would make a
21 motion under Rule 50 for a directed verdict challenging
22 the sufficiency of the plaintiff's evidence and we are
23 asking the court to look at the evidence in the light most
24 favorable to the non-moving party which would be the
25 plaintiff. As the court is aware you do not consider the

1 evidence either contrary to or in conflict with the
2 evidence favorable to the plaintiff. You are asked to
3 look at what has been presented and determine if they have
4 established any material evidence to establish the issue
5 in the mind of a reasonable juror and we do not believe at
6 this time that they have.

7 The directed verdict rule, however, does not
8 authorize the submission of speculative, theoretical, and
9 hypothetical views to the jury. I bring to the court's
10 attention that in this case the plaintiffs have
11 strenuously argued that we had a duty to stop at the stop
12 sign and the court has made its position on that very
13 clear to the courtroom, and, however, we believe that they
14 have not established that we had a duty to do so
15 statutorily.

16 Whether or not Mr. English asked his employees to do
17 so certainly goes to his credibility and the exercise of
18 reasonable care in yielding the right-of-way which is
19 required. Stopping at the stop sign is not a statutory
20 duty and we would ask the court to grant a directed
21 verdict on that motion. The plaintiff has not presented
22 any evidence that we had a mandatory duty to do so.

23 THE COURT: Mandatory duty to do what?

24 MS. PAYNE: To stop at the stop sign.

25 THE COURT: You had a mandatory to yield.

1 MS. PAYNE: We had a mandatory duty to yield the
2 right-of-way which we did, Your Honor.

3 THE COURT: Well, you in your own charges have cited
4 the case of Spencer versus Kirby --

5 MS. PAYNE: Yes, sir.

6 THE COURT: -- which talks about yielding and it says
7 our law has interpreted yield as set out in the
8 appropriate code section which is 56-5-2350 says that
9 under the statute under certain circumstances it may be
10 incumbent upon one to stop before entering the highway
11 while under other circumstances a slowing down would be
12 sufficient to yield to oncoming traffic and conceivably
13 under different circumstances one might yield without even
14 slacking his speed, but under any and all circumstances he
15 would be required to exercise such care as a reasonable
16 and prudent person would exercise under such
17 circumstances. Reasonable caution and prudence would
18 dictate that a driver before entering a main artery of
19 travel from a private drive should look for vehicles which
20 might reasonably be expected thereon and wait until he can
21 safely enter the highway. A motorist entering a highway
22 must look for traffic thereon in such a manner that the
23 purpose of looking is accomplished and he is under a duty
24 to see what is in plain sight. It is the duty of a
25 motorist in entering from a private driveway into a

1 highway be vigilant and watchful and to anticipate and
2 expect the presence of other vehicles upon the highway and
3 to ascertain whether the highway is clear so that he may
4 enter.

5 So it is all a jury question as to whether or not he
6 exercised care, exercised his conduct as an ordinary
7 reasonable person would do, whether or not in his actions
8 he actually yielded.

9 MS. PAYNE: Well---

10 THE COURT: And then you got the whole issue of
11 sudden emergency and all that. There is ample evidence in
12 this record to send this matter to the jury. All of these
13 cases say it is a jury issue.

14 MS. PAYNE: And, Your Honor, I am going through the
15 particulars as outlined by the plaintiff and as he's
16 argued one of the most important things he's argued this
17 entire time was that we had to stop at that stop sign,
18 Your Honor. Nothing that you just read in Spencer versus
19 Kirby and the reason why we submitted it is because it
20 says that you do not have to stop.

21 THE COURT: And it says that you have so stop under
22 certain circumstances.

23 MS. PAYNE: You're right, Your Honor, and that is a
24 jury question and we -- excuse me.

25 THE COURT: It is a jury question; right?

1 MS. PAYNE: As to yielding the right-of-way, Your
2 Honor.

3 THE COURT: Okay.

4 MS. PAYNE: But -- and excuse me if I am wrong, but I
5 don't know if the court is planning to argue that we -- I
6 mean, excuse me---

7 THE COURT: I am going to argue anything.

8 MS. PAYNE: -- yes, sir -- to submit to the jury that
9 we had a duty under the -- read a statute to the jury that
10 we had a duty to stop at that stop sign.

11 THE COURT: I am going to read the statute that
12 requires you to yield the right-of-way.

13 MS. PAYNE: Yes, sir.

14 THE COURT: I am going to read the law that says what
15 yield means.

16 MS. PAYNE: Yes, sir.

17 THE COURT: Stop sometimes. Go sometimes. Slow down
18 sometimes. But you always have to be careful and
19 exercising due care.

20 MS. PAYNE: Yes, sir.

21 THE COURT: They can decide whether or not they did
22 that.

23 MS. PAYNE: I am asking the court to direct a verdict
24 on the plaintiff's particular that says that we failed to
25 stop for the stop sign. We stopped for the stop sign.

1 THE COURT: I am not going the charge the stop sign
2 statute, I don't think. I will consider that at the end.
3 You had a stop sign there. What is it there for?

4 MS. PAYNE: Your Honor---

5 THE COURT: What is it there for?

6 MS. PAYNE: At the end of the day on August 7,
7 2009 --

8 THE COURT: Yes, ma'am.

9 MS. PAYNE: -- we stopped at that stop sign.

10 THE COURT: Well, you did stop. I agree with that,
11 but you could -- you only stopped because you had a unique
12 piece of equipment that would articulate more than
13 90 degrees and if you -- if it couldn't do that it would
14 have been out in the intersection.

15 MS. PAYNE: Under their expert's opinion, Your Honor.

16 THE COURT: That's for the jury to decide.

17 MS. PAYNE: We would also argue that -- ask for a
18 directed verdict on the plaintiff's particular about
19 entering or attempting to enter the intersection without
20 stopping. We did not enter the intersection.

21 THE COURT: You attempted to enter it.

22 MS. PAYNE: Again, Your Honor, there is nothing in
23 the law that says we could not. We could yield the
24 right-of-way.

25 THE COURT: Thank you. Move along. That's almost --

1 strike that. I won't say that. Go ahead.

2 MS. PAYNE: Thank you, Your Honor. We've also
3 argued -- we are also arguing that the plaintiff's
4 particular -- that traveling too fast for conditions --
5 they have not entered any evidence on what too fast for
6 conditions was on that private road and upon entering --
7 approaching the stop sign. Again, we had a duty to yield
8 the right-of-way which we did. We'd ask for the court to
9 direct---

10 THE COURT: Well, that's for the jury to decide
11 whether or not you did. You know, Ms. Payne, you and
12 Mr. Cox throughout the pretrial and throughout this
13 case -- I've been doing this a long time. I have never
14 seen a factual situation quite like this and with all due
15 respect to you, with all due respect to both of you, your
16 position has almost been like tunnel vision on this case
17 and I know you are representing your client to the fullest
18 of your ability, but these facts are -- these facts give
19 this court high concern about the safety of the motoring
20 public out there.

21 I can't -- I have never seen a company create a
22 situation like this and as a result of that creation
23 perhaps if the jury finds someone met their untimely
24 death. It's just -- He's created the situation. Whether
25 or not he did it in a non-negligent manner, that's for the

1 jury to determine. Some of these statutes apply, but he
2 has a common law duty if he is going to create this
3 situation to exercise due care. That's what the case is
4 all about.

5 It's not necessarily whether there is one statute
6 says we have to yield and we didn't go through the stop
7 sign; so we yield. It is a another situation if you put
8 up the stop sign maybe you're supposed to or maybe you're
9 not supposed to stop at it. He says you are unless there
10 is nothing coming, but the totality of the circumstances
11 is your client created this intersection to be operated as
12 it was operated and the question for the jury to decide is
13 whether or not he's done it in a negligent manner or
14 whether or not he has not done it in a negligent manner.
15 That's what this case is about.

16 MS. PAYNE: And---

17 THE COURT: And to think just because you perhaps
18 technically didn't violate the failure to yield, that
19 doesn't relieve you of liability -- strike that. It
20 doesn't relieve you of the jury determining whether or not
21 you're liable. It is the totality of the whole factual
22 pattern the way I see it. You know, they may not see it
23 like that in Columbia. I don't know.

24 MS. PAYNE: Your Honor, as a matter of law we believe
25 that the plaintiffs have failed to show that we had a duty

1 and we ask the court---

2 THE COURT: A duty to what?

3 MS. PAYNE: A duty to stop at the stop sign, a duty
4 to have advanced warning signs, a duty to have a flagman.
5 There is no independent requirement -- and that's what
6 Durrell stands for. When a contract comes in such as that
7 it is a dual effect. It is an independent statutory duty
8 or regulation and a contract and we have a completely
9 different situation than Durel.

10 THE COURT: Okay. Let's assume you're correct.
11 Let's assume there is no contract. There's no statute.
12 Don't you agree with me that if you create a situation
13 like this that you have to exercise due care in carrying
14 it out? Regardless of any statute, regardless of any
15 contract?

16 MS. PAYNE: In this situation you're asking me---

17 THE COURT: You won't agree with me, will you?

18 MS. PAYNE: No, because you're asking me to agree in
19 a directed verdict motion and what it goes to is the
20 sufficiency of the evidence and the plaintiff has not
21 presented it.

22 THE COURT: I respectfully disagree with you. There
23 is more than ample evidence for the jury to determine
24 whether or not y'all have created a dangerous situation.

25 MS. PAYNE: May I move on to proximate cause, Your

1 Honor?

2 THE COURT: You may.

3 MS. PAYNE: It is the defendant's position that the
4 plaintiff has not proven proximate cause. The record is
5 clear that the decision to lay down the bike and the bike
6 flipping over caused the subsequent and unfortunate
7 ejection of Mrs. Valenzuela.

8 THE COURT: Why did he lay the bike down?

9 MS. PAYNE: Well, that was a decision that he made
10 and we believe---

11 THE COURT: And why did he have to make that
12 decision?

13 MS. PAYNE: I don't know. We've heard
14 Mr. Valenzuela's testimony on that, Your Honor.

15 THE COURT: Well, let's assume he is riding down that
16 road and that big piece of equipment is not coming out of
17 that driveway. He is not going to lay it down, is he? He
18 is going to keep on going down the road. So it is a jury
19 question as to whether or not the vehicle -- the pan
20 coming out and the way that has been testified to is the
21 proximate cause of him laying it down. That's a jury
22 question.

23 MS. PAYNE: Well, the court in some cases can take it
24 as a matter of law and decide---

25 THE COURT: They can when it is a matter of law, but

1 it's not in this case.

2 MS. PAYNE: Yes, sir.

3 THE COURT: It is a total factual issue for the jury
4 to decide.

5 MS. PAYNE: And we would argue that the motorist on
6 the public highways have a duty to keep a proper lookout,
7 reasonable control of their vehicle.

8 THE COURT: You're correct about that.

9 MS. PAYNE: Thank you, Your Honor.

10 THE COURT: As does your client, as does you driving
11 home and as do I driving home.

12 MS. PAYNE: Yes, sir.

13 THE COURT: We all have that duty.

14 MS. PAYNE: I beg the court's indulgence.

15 THE COURT: Yes, ma'am.

16 MS. PAYNE: Your Honor, that would conclude our
17 directed verdict motions at this time.

18 THE COURT: Thank you. All right. For the reasons I
19 have already expressed if I have ever seen a case that's a
20 jury question there is ample evidence in the record.

21 MS. MCPHERSON: Your Honor -- I'm sorry, Your Honor.

22 THE COURT: So, therefore, the motion for directed
23 verdict is denied.

24 MS. PAYNE: And I'm sorry. Just for the record, Your
25 Honor, punitive damages -- I know that we haven't argued

1 that because it's bifurcated, but we would just argue that
2 the evidence doesn't support a charge for punitive
3 damages. The plaintiff has failed to establish that our
4 conduct was willful, wanton, intentional, and reckless,
5 Your Honor.

6 THE COURT: Well, I respectfully disagree with you.
7 We're going to bifurcate it and there will be a question
8 or interrogatory on the verdict form and if you find the
9 defendant negligent then you have to answer the question
10 whether or not the plaintiff has proven by clear and
11 convincing evidence that the defendant was not only
12 negligent but willful, wanton, with conscious disregard
13 for the rights of the plaintiff and if you find that we'll
14 have a separate proceeding to decide the amount. There is
15 ample evidence that this conduct was extremely reckless in
16 my opinion.

17 Anything else?

18 MR. DETRICK: No, sir.

19 THE COURT: Y'all ready to present your case?

20 MR. COX: Judge---

21 THE COURT: Sir?

22 MR. COX: I'm convinced that we're going to finish
23 this case certainly on Friday based on---

24 THE COURT: On Friday? It is 10 o'clock Thursday
25 right now.

1 MR. COX: Well, we may -- I'm convinced that we'll be
2 done probably early; so what I was going to ask---

3 THE COURT: Early when? Today?

4 MR. COX: Early Friday, what I am projecting.

5 THE COURT: Well, how do you define end?

6 MR. COX: Well, rest and be ready to argue.

7 THE COURT: Tell me who all you're going to call
8 today. It is 10 o'clock. We've got -- we're ordering
9 lunch in; so we are going to go to one. We got three
10 hours. Then we got three or four more hours.

11 MR. COX: Really, Judge, the purpose of me raising
12 that was I was going to ask if I could get some exhibits
13 ready to go so we're clear and running smooth. We've got
14 them. It is just the ones that I want to compare them
15 with what which have up here and get them ready to go up
16 on the screen.

17 THE COURT: I'll give you five minutes and start. I
18 have told y'all to have your exhibits marked all along.
19 I've been patient. We're moving in five minutes.

20 MR. COX: Five minutes is all I need, Judge. Thank
21 you, sir.

22 THE COURT: Why didn't you tell me that? All right.
23 Stand at ease for five minutes.

24 (Whereupon, a break was taken.)

25 MS. PAYNE: At the appropriate time -- we'd tried to

1 work out the verdict form. We agree on just about
2 everything on it except we just ask that what's been
3 numbered number three be put down before number seven so
4 that they can properly go through the steps of analysis
5 that they need to.

6 THE COURT: I'll look at it.

7 MS. PAYNE: Okay. Thank you.

8 THE COURT: We're going to move on with the trial,
9 but the cases you gave me on the comparative negligence of
10 one beneficiary and not the other, those were all old, old
11 contributory negligence cases. We got one under the new
12 law of comparative negligence where -- I mean, the child
13 can't be negligent. He wasn't there.

14 MS. PAYNE: Right. We---

15 THE COURT: What if they find that the dad is perhaps
16 a percentage of negligence?

17 MS. PAYNE: I understand, Your Honor, and it's our
18 understanding and I'll continue searching if I can---

19 THE COURT: Well, we'll look at it. I am not going
20 to slow us down, but I am trying to get that concept but I
21 think that's what we had in the Riley v Ford case. We'll
22 talk about that.

23 MR. DETRICK: Yes, sir.

24 MS. PAYNE: Yeah, and our opinion is it's just
25 reduced against his -- what he statutorily would recover.

1 I understand, Your Honor.

2 THE COURT: And also on the stop sign issue, you
3 know, a stop sign means to stop. Now y'all take the
4 position since SCDOT didn't put it out there that you
5 don't have to comply with it. I am going to probably
6 charge the stop sign statute, but then I am going to say
7 there is evidence in the case that the stop sign is not a
8 SCDOT stop sign and if you find it not to be, there is
9 ample case law that we've found that says that even if
10 it's an unauthorized stop sign that's still circumstances
11 the jury can consider in determining the question of
12 negligence whether or not you comply or don't comply.
13 That's sort of my thinking on that. I'll be glad to share
14 those. There's a host of cases in A.L.R. 3 -- A.L.R. 3d
15 180. There is a host of cases on that.

16 MS. PAYNE: And Your Honor---

17 THE COURT: I'm just---

18 MS. PAYNE: -- I just haven't had a chance---

19 THE COURT: -- talking out loud.

20 MS. PAYNE: Yes, sir. I've researched that also and
21 the statutory language that talks about regulating private
22 roads, there is a complete section about that Article 45
23 and it's wholly inapplicable and it says that the
24 remaining sections of that chapter are inapplicable as
25 well.