

STATE OF MICHIGAN  
IN THE SUPREME COURT

SCOTT M. NEAL,

Plaintiff,

-vs-

SC NO. 166865, 166866  
COA Case No. 358987, 360585  
Wayne County Circuit Court  
Case Nos. 20-007497-NF, 20-012305-NF

FARM BUREAU MUTUAL INSURANCE  
COMPANY

Defendant.

*Consolidated with*

CHANDRA McDUFFIE, Personal Representative  
of the Estate of William Howard McDuffie-Connor,  
Deceased,

Plaintiff-Appellant,

-vs-

SCOTT M. NEAL and N.S.S. CONSTRUCTION, INC.

Defendants-Appellees,

And MEMBERSELECT INSURANCE COMPANY

Defendants.

---

**PLAINTIFF-APPELLANT'S SUPPLEMENT APPENDIX**  
**Plaintiff-Appellant's Supplemental Brief**

## TABLE OF CONTENTS

Appendix	Description	Page No.
<b>1</b>	Michigan State Police Inspection	<b>A0001</b>
<b>2</b>	Wilson Dep.	<b>A0009</b>
<b>3</b>	Abbo Report	<b>A0024</b>
<b>4</b>	Baareman Dep.	<b>A0039</b>
<b>5</b>	Enhanced Video	<b>A0055</b>
<b>6</b>	Union Lawsuit Against NSS	<b>A0056</b>
<b>7</b>	Neal Dep. Vol. II	<b>A0072</b>
<b>8</b>	Neal Driving Record	<b>A0126</b>
<b>9</b>	USA Truck Sheet	<b>A0151</b>
<b>10</b>	Haggerty Accident Report	<b>A0153</b>
<b>11</b>	Abbo Dep.	<b>A0155</b>
<b>12</b>	Pace Dep.	<b>A0178</b>
<b>13</b>	Schubeck Dep	<b>A0210</b>
<b>14</b>	March 18, 2021 RTP	<b>A0231</b>
<b>15</b>	Public LARA Filing	<b>A0239</b>
<b>16</b>	Trial Court Order Denying MSD	<b>A0241</b>
<b>17</b>	Trial Court First Spoliation Order	<b>A0245</b>
<b>18</b>	Trial Court Second Spoliation Order	<b>A0249</b>
<b>19</b>	<i>Price v Austin</i> Opinion	<b>A0252</b>

<b>20</b>	<i>People v Bernaiche</i> Opinion	<b>A0260</b>
<b>21</b>	<i>Estate of James Thomas Bush v City of St Clair Shores</i> Opinion	<b>A0269</b>
<b>22</b>	<i>Fornari v Gregory Lee Hoover &amp; Midwest Fiberglass Pool Distrib</i> Opinion	<b>A0283</b>
<b>23</b>	<i>Presnell v Pac Gateway Transp, Inc</i> Opinion	<b>A0287</b>
<b>24</b>	<i>Melrose v Warner</i> Opinion	<b>A0294</b>
<b>25</b>	Baareman Report Opinion	<b>A0303</b>
<b>26</b>	<i>Forest Laboratories, Inc v Caraco Pharm Laboratories, Ltd</i> Opinion	<b>A0355</b>
<b>27</b>	<i>Applebaum v Target Corp</i> Opinion	<b>A0363</b>

**A0001**

# **EXHIBIT 1**



**MICHIGAN DEPARTMENT OF  
STATE POLICE****ORIGINAL INCIDENT REPORT**

<b>ORIGINAL DATE:</b> Tue, Jul 23, 2019	<b>INCIDENT NO:</b> 021-0008767-19
<b>TIME RECEIVED:</b> 0720	<b>FILE CLASS:</b> 89005

**VEHICLE DISPOSITION:**

The vehicle is at 9425 Grinnell St. in the custody of the Detroit Police Department.

**VEHICLE INSPECTION:**

I completed a Level V Inspection on the combination listed above and found several violations. The follow violations were found;

**TRACTOR:**

393.9TS-Inoperative turn signal: LEFT FRONT TURN SIGNAL LIGHTS UP BUT DOES NOT BLINK.

393.9TS-Inoperative turn signal: RIGHT FRONT TURN SIGNAL LIGHTS UP BUT DOES NOT BLINK.

393.9TS-Inoperative turn signal: RIGHT REAR TURN SIGNAL LIGHTS UP BUT DOES NOT BLINK.

393.9TS-Inoperative turn signal: LEFT REAR TURN SIGNAL LIGHTS UP BUT DOES NOT BLINK.

396.5B-Oil and/or grease leak: LEAKING UNDER THE ENGINE

396.5B-HLOW- Hubs - oil and/or Grease Leaking from hub - outer wheel: AXLE 1 RIGHT SIDE- HUB BROKE AND LEAKING DUE TO CRASH.--- CAUSED BY CRASH.

393.207C-Leaf spring assembly defective/missing: AXLE 1 LEFT SIDE- 1 BRACKET HOLDING SPRINGS TOGETHER IS BROKEN OFF.--- UNKNOWN IF CASUED BY CRASH

393.207A- Axle positioning parts defective/missing: AXLE 1 RIGHT SIDE- BROKEN U-BOLT.--- CAUSED BY CRASH.

396.3A1T- TIRES: TIRES IN CONTACT WITH HOOD AND BUMPER DUE TO CRASH.  
--- CAUSED BY CRASH.

396.3A1- Inspection, repair and maintenance of parts & accessories: AIR LOSS RATE- FAILURE. --- UNKNOWN IF CAUSED BY CRASH.

396.3A1BOS- BRAKES OUT OF SERVICE: The number of defective brakes is equal to or greater than 20 percent of the service brakes on the vehicle or combination

393.47E- Clamp or Roto type brake out-of-adjustment: AXLE 1 LEFT SIDE.

393.47E- Clamp or Roto type brake out-of-adjustment: AXLE 1 RIGHT SIDE.

393.47E- Clamp or Roto type brake out-of-adjustment: AXLE 2 RIGHT SIDE.

393.47E- Clamp or Roto type brake out-of-adjustment: AXLE 3 LEFT SIDE.

393.47E- Clamp or Roto type brake out-of-adjustment: AXLE 3 RIGHT SIDE.



<b>PAGE:</b> 2 of 3	<b>INVESTIGATED BY:</b> WILSON, RYAN, 155, MC OFFICER	<b>INVESTIGATED BY:</b>	<b>REVIEWED BY:</b>
------------------------	----------------------------------------------------------	-------------------------	---------------------

PRINTED: 7/23/2019 09:19

**A0003**

**MICHIGAN DEPARTMENT OF  
STATE POLICE**

**ORIGINAL INCIDENT REPORT**

<b>ORIGINAL DATE:</b> Tue, Jul 23, 2019	<b>INCIDENT NO:</b> 021-0008767-19
<b>TIME RECEIVED:</b> 0720	<b>FILE CLASS:</b> 89005

393.53B- CMV manufactured after 10/19/94 has an automatic airbrake adjustment system that fails to compensate for wear.

**Rolling Radius:**

Axle 1: Driver side- 1.58 FT, Passenger side- 1.62 FT

Axle 2: Driver side- 1.62 FT, Passenger side- 1.66 FT

Axle 3: Driver side- 1.62 FT, Passenger side- 1.62 FT

**Brake measurements:**

Axle 1: 20 Short, Driver side- 2 1/8", Passenger side- 2"

Axle 2: 30 Short, Driver side- 1 1/4", Passenger side- 2 1/8"

Axle 3: 30 Short, Driver side- 2 1/8", Passenger side- 2 1/2"

**Slack adjuster length:**

Axle 1: Driver side- 5 1/2" Passenger side- 5 1/2"

Axle 2: Driver side- 5 1/2" Passenger side- 5 1/2"

Axle 3: Driver side- 5 1/2" Passenger side- 5 1/2"

All slack adjusters were automatics.

**ACTION TAKEN:**

I completed a Level V Inspections MIWILSR02139 was completed at 9425 Grinnell St. which is the Detroit Police Department Fatal Squads hold facility. The vehicles were turned back over to the Detroit Police Department awaiting the completing of the investigation. I did not issue any citations.

**RELATED DOCUMENTS:**

Detroit Police Department incident number: 190717186

Inspection report: MIWILSR02139

**STATUS:**

Closed.

<b>PAGE:</b> 3 of 3	<b>INVESTIGATED BY:</b> WILSON, RYAN, 155, MC OFFICER	<b>INVESTIGATED BY:</b>	<b>REVIEWED BY:</b>
------------------------	----------------------------------------------------------	-------------------------	---------------------

PRINTED: 7/23/2019 09:19

RECEIVED by MSC 11/4/2024 7:59:14 AM

**A0004****MICHIGAN DEPARTMENT OF  
STATE POLICE**

ORIGINAL INCIDENT REPORT

ORIGINAL DATE: Tue, Jul 23, 2019		INCIDENT NO: 021-0008767-19	
TIME RECEIVED: 0720		FILE CLASS: 89005	
WORK UNIT: MSP METRO NORTH POST		COUNTY: WAYNE	
COMPLAINANT: WILSON		TELEPHONE NO:	
ADDRESS: STREET AND NO: 14350 W TEN MILE RD	CITY: OAK PARK	STATE: MI	ZIP CODE: 48237
INCIDENT STATUS: CLOSED			

**POST CRASH INSPECTION****SUMMARY:**

I was contacted by Michigan State Police Sgt Phipps at the request of MSP Accident Reconstructionist, Spl/Sgt. Lucidi to complete a post-crash inspection a commercial motor vehicle (CMV) involved in a fatal crash for the Detroit Police Department Fatal Squad. I completed an NAS Level V Inspection 9425 Grinnell St, Detroit, Michigan which is the DPD Fatal Squad holding site.

**VENUE:**

WAYNE COUNTY  
9425 GRINNELL RD  
DETROIT, MI 48213

**DATE & TIME:**

TUE, JUL 23, 2019 AT 0715

**INFORMATION:**

I arrived on scene, inspecting the vehicles and noted several violations that were found.

**CARRIER:**

BUSINESS NAME: N S S CONTRUCTION INC  
ADDRESS:  
25907 TRAWBRIDGE  
INKSTER MI 48141  
TXW: (313) 274-5178

CODE: REGULATED CARRIER  
DOT # 1677335

**LOAD/ORIGIN/DESTINATION:**

The vehicle was hauling rocks/dirt within the city of Detroit.

**VEHICLES:**

TRUCK: 1997 Ford, dump truck, red in color, VIN: 1FDYU90T5VVA29053, gross vehicle weight rating (GVWR) of 56,400 lbs. Michigan Apportioned Registration [REDACTED] The vehicle is owned and operated by the carrier.

PAGE: 1 of 3	INVESTIGATED BY: WILSON, RYAN, 155, MC OFFICER	INVESTIGATED BY:	REVIEWED BY:
-----------------	---------------------------------------------------	------------------	--------------

PRINTED: 7/23/2019 09:19

RECEIVED by MSC 11/4/2024 7:59:14 AM



**A0005**

**MICHIGAN DEPARTMENT OF  
STATE POLICE**

ORIGINAL INCIDENT REPORT

ORIGINAL DATE: Tue, Jul 23, 2019	INCIDENT NO: 021-0008767-19
TIME RECEIVED: 0720	FILE CLASS: 89005

**VEHICLE DISPOSITION:**

The vehicle is at 9425 Grinnell St. in the custody of the Detroit Police Department.

**VEHICLE INSPECTION:**

I completed a Level V Inspection on the combination listed above and found several violations. The follow violations were found;

**TRACTOR:**

393.9TS-Inoperative turn signal: LEFT FRONT TURN SIGNAL LIGHTS UP BUT DOES NOT BLINK.

393.9TS-Inoperative turn signal: RIGHT FRONT TURN SIGNAL LIGHTS UP BUT DOES NOT BLINK.

393.9TS-Inoperative turn signal: RIGHT REAR TURN SIGNAL LIGHTS UP BUT DOES NOT BLINK.

393.9TS-Inoperative turn signal: LEFT REAR TURN SIGNAL LIGHTS UP BUT DOES NOT BLINK.

396.5B-Oil and/or grease leak: LEAKING UNDER THE ENGINE

396.5B-HLOW- Hubs - oil and/or Grease Leaking from hub - outer wheel: AXLE 1 RIGHT SIDE- HUB BROKE AND LEAKING DUE TO CRASH.--- CAUSED BY CRASH.

393.207C-Leaf spring assembly defective/missing: AXLE 1 LEFT SIDE- 1 BRACKET HOLDING SPRINGS TOGETHER IS BROKEN OFF.--- UNKNOWN IF CASUED BY CRASH

393.207A- Axle positioning parts defective/missing: AXLE 1 RIGHT SIDE- BROKEN U-BOLT.— CAUSED BY CRASH.

396.3A1T- TIRES: TIRES IN CONTACT WITH HOOD AND BUMPER DUE TO CRASH.  
— CAUSED BY CRASH.

396.3A1- Inspection, repair and maintenance of parts & accessories: AIR LOSS RATE- FAILURE. --- UNKNOWN IF CAUSED BY CRASH.

396.3A1BOS- BRAKES OUT OF SERVICE: The number of defective brakes is equal to or greater than 20 percent of the service brakes on the vehicle or combination

393.47E- Clamp or Roto type brake out-of-adjustment: AXLE 1 LEFT SIDE.

393.47E- Clamp or Roto type brake out-of-adjustment: AXLE 1 RIGHT SIDE.

393.47E- Clamp or Roto type brake out-of-adjustment: AXLE 2 RIGHT SIDE.

393.47E- Clamp or Roto type brake out-of-adjustment: AXLE 3 LEFT SIDE.

393.47E- Clamp or Roto type brake out-of-adjustment: AXLE 3 RIGHT SIDE.

PAGE: 2 of 3	INVESTIGATED BY: WILSON, RYAN, 155, MC OFFICER	INVESTIGATED BY:	REVIEWED BY:
-----------------	---------------------------------------------------	------------------	--------------

PRINTED: 7/23/2019 09:19

RECEIVED by MSC 11/4/2024 7:59:14 AM

**A0006**

**MICHIGAN DEPARTMENT OF  
STATE POLICE**

**ORIGINAL INCIDENT REPORT**

<b>ORIGINAL DATE:</b> Tue, Jul 23, 2019	<b>INCIDENT NO:</b> 021-0008767-19
<b>TIME RECEIVED:</b> 0720	<b>FILE CLASS:</b> 89005

393.53B- CMV manufactured after 10/19/94 has an automatic airbrake adjustment system that fails to compensate for wear.

**Rolling Radius:**

Axle 1: Driver side- 1.58 FT, Passenger side- 1.62 FT

Axle 2: Driver side- 1.62 FT, Passenger side- 1.66 FT

Axle 3: Driver side- 1.62 FT, Passenger side- 1.62 FT

**Brake measurements:**

Axle 1: 20 Short, Driver side- 2 1/8", Passenger side- 2"

Axle 2: 30 Short, Driver side- 1 1/4", Passenger side- 2 1/8"

Axle 3: 30 Short, Driver side- 2 1/8", Passenger side- 2 1/2"

**Slack adjuster length:**

Axle 1: Driver side- 5 1/2" Passenger side- 5 1/2"

Axle 2: Driver side- 5 1/2" Passenger side- 5 1/2"

Axle 3: Driver side- 5 1/2" Passenger side- 5 1/2"

All slack adjusters were automatics.

**ACTION TAKEN:**

I completed a Level V Inspections MIWILSR02139 was completed at 9425 Grinnell St. which is the Detroit Police Department Fatal Squads hold facility. The vehicles were turned back over to the Detroit Police Department awaiting the completing of the investigation. I did not issue any citations.

**RELATED DOCUMENTS:**

Detroit Police Department incident number: 190717186

Inspection report: MIWILSR02139

**STATUS:**

Closed.

<b>PAGE:</b> 3 of 3	<b>INVESTIGATED BY:</b> WILSON, RYAN, 155, MC OFFICER	<b>INVESTIGATED BY:</b>	<b>REVIEWED BY:</b>
------------------------	----------------------------------------------------------	-------------------------	---------------------

PRINTED: 7/23/2019 09:19

RECEIVED by MSC 11/4/2024 7:59:14 AM

A0007

## ACCIDENT

## DRIVER/VEHICLE EXAMINATION REPORT

Inspect 1.105.7131



Michigan State Police  
Commercial Vehicle Enforcement Division  
P.O. Box 30634  
Lansing, MI 48909  
Ph: (517)284-3250 msp-cveddata@michigan.gov

Report Number: MIWILSR02139  
Inspection Date: 07/23/2019  
Start: 7:15 AM ET End: 8:28 AM ET  
Inspection Level: V - Terminal  
HM Inspection Type: None

## N S S CONSTRUCTION INC

25907 TRAWBRIDGE  
INKSTER, MI, 48141-2465

USDOT: 1677335

MC/MX#:

State#:

Location: 9425 GRINNELL DETROIT  
MICHIGAN

Highway:

County: WAYNE

Phone#: (313)274-5178

Fax#: (313)274-5183

Driver:

License#:

Date of Birth:

CoDriver:

License#:

Date of Birth:

State:

State:

Milepost:

Shipper: CARRIER

Origin: DETROIT,MI

Destination: DETROIT,MI

Bill of Lading: N/A

Cargo: ROCKS

## VEHICLE IDENTIFICATION

Unit	Type	Make	Year	State	Plate	Equipment ID	VIN	GVWR	CVSA #	Issued #	OOS Sticker
1	TR	FORD	1997	MI	AC32797	04	1FDYU90T5VVA29053	56400			YES

## BRAKE ADJUSTMENTS

Axle #	1	2	3
Right	2 1/8	2 1/8	2 1/4
Left	2 1/8	1 1/4	2 1/8
Chamber	C-20	C-30	C-30

## VIOLATIONS

Section	Type	Unit	OOS	Citation #	Verify Crash	Violations Discovered
393.9TS	F	1	N		N	Inoperative turn signal: LEFT FRONT TURN SIGNAL LIGHTS UP BUT DOES NOT BLINK
393.9TS	F	1	N		N	Inoperative turn signal: RIGHT FRONT TURN SIGNAL LIGHTS UP BUT DOES NOT BLINK
393.9TS	F	1	Y		U	Inoperative turn signal: RIGHT REAR TURN SIGNAL LIGHTS UP BUT DOES NOT BLINK
393.9TS	F	1	Y		U	Inoperative turn signal: LEFT REAR TURN SIGNAL LIGHTS UP BUT DOES NOT BLINK
396.5B	F	1	N		N	Oil and/or grease leak: LEAKING UNDER ENGINE
396.5B-HLOW	F	1	Y		U	Hubs - oil and/or Grease Leaking from hub - outer wheel: AXLE 1 RIGHT SIDE- HUB BROKE AND LEAKING DUE TO CRASH
393.207C	F	1	Y		U	Leaf spring assembly defective/missing: AXLE 1 LEFT SIDE- 1 BRACKET HOLDING SPRINGS TOGETHER IS BROKEN OFF
393.207A	F	1	Y		U	Axle positioning parts defective/missing: AXLE 1 RIGHT SIDE- BROKEN U-BOLT
396.3A1T	F	1	Y		U	Tires (general): TIRES IN CONTACT WITH HOOD AND BUMPER DUE TO CRASH
396.3A1	F	1	Y		U	Inspection, repair and maintenance of parts & accessories: AIR LOSS RATE- FAILURE
393.47E	F	1	N		N	Clamp or Roto type brake out-of-adjustment: AXLE 1 LEFT SIDE
393.53B	F	1	N		N	CMV manufactured after 10/19/94 has an automatic airbrake adjustment system that fails to compensate for wear
393.47E	F	1	N		N	Clamp or Roto type brake out-of-adjustment: AXLE 1 RIGHT SIDE
393.47E	F	1	N		N	Clamp or Roto type brake out-of-adjustment: AXLE 2 RIGHT SIDE
393.47E	F	1	N		N	Clamp or Roto type brake out-of-adjustment: AXLE 3 RIGHT SIDE
393.47E	F	1	N		N	Clamp or Roto type brake out-of-adjustment: AXLE 3 LEFT SIDE
396.3A1BOS	F	1	Y		U	BRAKES OUT OF SERVICE: The number of defective brakes is equal to or greater than 20 percent of the service brakes on the vehicle or combination

HazMat: No HM transported

Placard:

Cargo Tank:

## Special Checks:

Alcohol/Controlled Substance Check  
Conducted by Local Jurisdiction  
Size and Weight Enforcement  
eScreen Inspection

Traffic Enforcement  
PASA Conducted Inspection  
Drug Interdiction Search

X Post Crash Inspection  
PBBT Inspection

## State Information:

District: 2; CDL Verified: Y





**A0008**

RECEIVED by MSC 11/4/2024 7:59:14 AM

ACCIDENT

**DRIVER/VEHICLE EXAMINATION REPORT**

Inspect 1.105.7131



Michigan State Police  
Commercial Vehicle Enforcement Division  
P.O. Box 30634  
Lansing, MI 48909  
Ph: (517)284-3250 msp-cveddata@michigan.gov

Report Number: MIWILSR02139  
Inspection Date: 07/23/2019  
Start: 7:15 AM ET End: 8:28 AM ET  
Inspection Level: V - Terminal  
HM Inspection Type: None

Co-Inspector(s):  
Verbruggen (318)

Notes: 21-8767-19

Pursuant to authority contained in Title 49, Code of Federal Regulations, Section 396.9(c), I hereby declare vehicles with defects followed by an "Y" in the "Out of Service" column in the violations discovered section of this report OUT OF SERVICE. No person shall remove the out of service stickers applied to these vehicles, or operate such vehicles until the out of service defects have been repaired and the vehicles have been restored to safe operating condition.

**Advisory:** This vehicle has been identified as having brake adjustment violations. 49 CFR Section Section 393.53 requires that a brake system be equipped on this vehicle. A qualified service technician needs to determine why the defective brake has excessive stroke and make the appropriate repairs. Simply re-adjusting a self-adjusting brake adjustor, or replacing it, does not guarantee that the problem is corrected. The problem may exist in the foundation brake system. By certifying this inspection report you have indicated that this vehicle now has a properly functioning self-adjusting brake adjustment system.

**MECHANIC CERTIFICATION:** Repairer signature is required for "OUT-OF-SERVICE" equipment violations.

Signature Of Repairer X: \_\_\_\_\_ Facility: \_\_\_\_\_ Date: \_\_\_\_\_

**CARRIER ATTENTION:** All vehicle defects noted on this Driver/Vehicle Compliance Report must be corrected before the vehicle is re-dispatched. This report shall be signed and returned within 15 days by a company official certifying all vehicle defects, If noted, have been corrected. Return the report signed to the inspecting agency.

**CARRIER CERTIFICATION:** The undersigned certifies action has been taken to assure compliance with the Federal Motor Carrier Safety and Hazardous Material Regulations as applicable.

**CITATIONS:** If a citation has been issued, it is the defendant's responsibility to contact the court listed on the citation to resolve the matter. Do not contact the Michigan State Police, Commercial Vehicle Enforcement Division for citation resolution.

Signature of Motor Carrier X: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Report Prepared By: Badge #:  
R. Wilson 155

Copy Received By:

X

X



**A0009**

# **EXHIBIT 2**



STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

SCOTT M. NEAL,

Plaintiff,

vs.

Case No. 20-012305-NF

Hon. Sheila Ann Gibson

CHANDRA MCDUFFIE, Personal

Representative of the Estate

of William Howard McDuffie-Connor,

Deceased, Farm Bureau Mutual Insurance Company,

Defendants.

CONSOLIDATED WITH

CHANDRA MCDUFFIE, Personal

Representative of the Estate

of William Howard McDuffie-Connor, Deceased,

Plaintiff,

vs.

Case No. 20-007497-NF

Hon. Sheila Ann Gibson

SCOTT M. NEAL, N.S.S. Construction,

Inc., and MEMBERSELECT INSURANCE COMPANY,

Defendants.

1 The Deposition of Officer Ryan Wilson,  
 2 Taken at 1300 Broadway Street, Fifth Floor,  
 3 Detroit, Michigan,  
 4 Commencing at 9:38 a.m.,  
 5 Thursday, July 15, 2021,  
 6 Before Deborah A. Culver, #3001.  
 7  
 8 APPEARANCES:  
 9  
 10 MAJED A. MOUGHNI (Via Zoom Videoconference)  
 11 Law Offices of Majed A. Moughni, PLLC  
 12 290 Town Center, Suite 322  
 13 Dearborn, Michigan 48126  
 14 (313) 581-0800  
 15 moughni@aol.com  
 16 Appearing on behalf of the Plaintiff, Scott M. Neal.  
 17  
 18 JONATHAN R. MARKO  
 19 Marko Law, PLLC  
 20 1300 Broadway, Fifth Floor  
 21 Detroit, Michigan 48226  
 22 (313) 777-7529  
 23 jon@jmarkolaw.com  
 24 Appearing on behalf of the Plaintiff, Chandra  
 25 McDuffie.

1 ALEXANDER R. BAUM (Via Zoom Videoconference)  
 2 Kopka Pinkus Dolin, PLC  
 3 32605 W. Twelve Mile Road, Suite 300  
 4 Farmington Hills, Michigan 48334  
 5 (248) 324-2620  
 6 arbaum@kopkalaw.com  
 7 Appearing on behalf of the Defendant, Chandra  
 8 McDuffie.  
 9  
 10 DANIEL GUMTOW (Via Zoom Videoconference)  
 11 Anselmi, Mierzejewski, Ruth & Sowle, P.C.  
 12 1750 S. Telegraph Road, Suite 306  
 13 Bloomfield Hills, Michigan 48302  
 14 (248) 338-2290  
 15 dgumtow@a-mlaw.com  
 16 Appearing on behalf of the Defendant, Farm Bureau.  
 17  
 18 AMY LOUISE DIVINEY (Via Zoom Videoconference)  
 19 Merry Farnen & Ryan, P.C.  
 20 300 Maple Park Boulevard, Suite 301  
 21 St. Clair Shores, Michigan 48081  
 22 (586) 541-6281  
 23 adiviney@mfr-law.com  
 24 Appearing on behalf of the Defendants, Scott M. Neal,  
 25 N.S.S. Construction, Inc.

1 SARAH BETH GALE-BARBANTINI (Via Zoom Videoconference)  
 2 Kramer, Corbett, Harding & Dombrowski  
 3 150 West Jefferson Avenue  
 4 Suite 1500  
 5 Detroit, Michigan 48226  
 6 (313) 237-5733  
 7 sbgale-barbantini@acg.aaa.com  
 8 Appearing on behalf of the Defendant, Membersselect.  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

1 TABLE OF CONTENTS  
 2  
 3 WITNESS PAGE  
 4 OFFICER RYAN WILSON  
 5  
 6 EXAMINATION  
 7 BY MR. MARKO: 6  
 8 EXAMINATION  
 9 BY MR. BAUM: 25  
 10 EXAMINATION  
 11 BY MS. DIVINEY: 28  
 12 RE-EXAMINATION  
 13 BY MR. MARKO: 47  
 14  
 15 EXHIBITS  
 16  
 17 EXHIBIT PAGE  
 18 (Exhibit attached to transcript.)  
 19  
 20 DEPOSITION EXHIBIT 1 6  
 21 (Inspection Report)  
 22  
 23  
 24  
 25

1 Detroit, Michigan  
2 Thursday, July 15, 2021  
3 9:38 a.m.

4 MARKED FOR IDENTIFICATION:  
5 DEPOSITION EXHIBIT 1  
6 (Inspection Report)  
7 9:38 a.m.

8  
9 OFFICER RYAN WILSON,  
10 was thereupon called as a witness herein, and after  
11 having first been duly sworn to testify to the truth,  
12 the whole truth and nothing but the truth, was  
13 examined and testified as follows:

14 EXAMINATION

15 BY MR. MARKO:

16 Q. Officer, thank you for coming today. My name is Jon  
17 Marko, I represent the McDuffie family in a lawsuit  
18 filed against N.S.S. Construction.

19 I understand you had some involvement in  
20 the investigation which we'll talk about today.

21 Could you state your name for the record.

22 A. Yes, Officer Ryan Wilson.

23 Q. And Officer Wilson, can you just kind of take us  
24 through your experience in law enforcement?

25 A. I spent ten years with the Michigan Department of

Page 7

1 State Police as a commercial vehicle enforcement  
2 officer. During that time, I did a two-week post  
3 crash commercial vehicle investigation course as well  
4 as a post crash investigation course through the  
5 Police Technology and Management Institute. I was  
6 responsible for post crash investigations for the  
7 Metro Detroit MSP post during my tenure while I was  
8 there.

9 Q. Okay. And was Michigan State Police your first job in  
10 law enforcement?

11 A. Yes, it was.

12 Q. And did you leave the Michigan State Police?

13 A. I did leave the Michigan State Police.

14 Q. And I can see now you're with Chesterfield Township?

15 A. Yes, I'm with Chesterfield Township.

16 Q. And what is your position with Chesterfield?

17 A. Patrol officer.

18 Q. Okay. And so you worked at MSP for ten years?

19 A. Yes.

20 Q. And all ten years were you doing this post crash  
21 investigation work that you talked about?

22 A. During that ten years I did do post crash. I was more  
23 involved with it as the primary the last five years.

24 Q. Okay. How many post crash investigations in your  
25 career have you done?

1 A. I've done roughly -- I can't give you an exact number,  
2 but roughly upwards around 50.

3 Q. And so let's talk about what that involves, kind of  
4 what your role is with the Michigan State Police. And  
5 so for those of us who don't know, tell us what you do  
6 in this post crash investigation?

7 A. So in this post crash investigation, I either arrive  
8 on scene or do it as a Level Five, which would be no  
9 driver, at a yard, either a tow yard, inspection yard.

10 MS. DIVINEY: Excuse me, I can't hear him  
11 very well.

12 MR. MARKO: Why can't you hear him, Amy?

13 MS. DIVINEY: I don't know. He's not  
14 coming through very well. It's muffled. So I can't  
15 hear him, what he's saying.

16 MR. MARKO: He's speaking at a pretty  
17 audible volume and the computer is literally probably  
18 two feet from him. Do you want me --

19 MR. DIVINEY: Then you need to move the  
20 computer closer because I cannot -- I'm missing words  
21 that he's saying and it's muffled. Thank you.

22 (Off the record at 9:41 a.m.)

23 (Back on the record at 9:42 a.m.)

24 MR. MARKO: Madam Court Reporter, can you  
25 read back the last question?

Page 9

1 (Indicated portion of the record read back  
2 by reporter.)

3 A. Where I complete the inspection. During the  
4 inspection, I check for documentation, registration,  
5 insurance, annual inspection. As well I check lights,  
6 exterior lights, headlights, taillights, turn lights.  
7 I check windshield, turn signals -- not turn signals  
8 -- windshield wipers.

9 And then I go underneath, I check brakes,  
10 tires, brake pads, axle rods, push rods.

11 Q. So let me ask you, Officer, what's the point, why does  
12 the Michigan State Police deem it important to do  
13 these inspections after a major crash?

14 A. To find if any of the equipment violations were a  
15 factor to the crash such as defective brakes, not  
16 being able to stop if the brakes worked, if they  
17 didn't work, if push rods were too far out, which  
18 means it would delay the time that it would react to  
19 stop. If lighting worked, depending on the time of  
20 day, if it was nighttime, if the taillights didn't  
21 work, and so on, or headlights, or if you're making a  
22 turn and turn signals did not work.

23 Q. And you know, I called you here obviously for the case  
24 of Mr. McDuffie, which was July 17th, 2019 involving  
25 this truck from N.S.S. Construction. Did you perform

1 a post crash investigation on the defendant vehicle  
 2 that was involved in this crash?  
 3 **A. I did perform a post crash inspection on that.**  
 4 Q. And just so we're clear about what you didn't do, did  
 5 you go to the scene in this case?  
 6 **A. I did not.**  
 7 Q. You obviously weren't present at the time of the  
 8 crash?  
 9 **A. Correct.**  
 10 Q. You have no personal observations that you saw with  
 11 your own eyes at the time of the crash?  
 12 **A. Correct.**  
 13 Q. And I have your report which we've marked as Exhibit 1  
 14 which is Bates stamp Defendant's N.S.S. Construction  
 15 164 through 170. And I put that in front of you. Is  
 16 this your report?  
 17 **A. It is.**  
 18 Q. And is it accurate to the best of your knowledge?  
 19 **A. It is.**  
 20 Q. And so outside of this report, did you produce or  
 21 create any other documents?  
 22 **A. I did not. The inspection form is connected to it;**  
 23 **correct? Yes.**  
 24 Q. I believe so.  
 25 **A. Those are the only documents that I had produced for**

1 **this inspection.**  
 2 Q. Do you take any pictures when you do these  
 3 inspections?  
 4 **A. I do not.**  
 5 Q. Outside of this inspection, did you do anything else  
 6 on this case?  
 7 **A. I did not.**  
 8 Q. Okay. So then I'll limit my questions today to what  
 9 you did, obviously.  
 10 So how did you find out something happened?  
 11 **A. I was contacted by Sgt. Lucidi of the Michigan State**  
 12 **Police. He is the Metro South accident**  
 13 **reconstructionist who routinely, when we have a**  
 14 **fatality crash or a serious injury crash, contacts me**  
 15 **to complete the post crash inspection on the**  
 16 **commercial vehicle. He contacted me, requesting me to**  
 17 **assist DPD fatal squad with their post crash**  
 18 **investigation. So I was in contact with them and**  
 19 **responded to DPD's fatal squad yard where I completed**  
 20 **the inspection there.**  
 21 Q. And is the way that this case handled just like all  
 22 the other post crash inspections that you've done?  
 23 **A. It is, correct.**  
 24 Q. So normal procedures?  
 25 **A. Yes.**

1 Q. And so what did you do after Sgt. Lucidi called you  
 2 and said we need some help?  
 3 **A. I was in contact with him, I scheduled a time that**  
 4 **would work with my schedule and he said that's fine,**  
 5 **we need to have it done during a specific timeframe.**  
 6 **I responded to the yard and started my inspection**  
 7 **there.**  
 8 Q. So you went -- where was the truck?  
 9 **A. The truck was at 9425 Grinnell, which would be, I**  
 10 **believe, the DPD's yard for the fatal squad for**  
 11 **vehicles where they put for crashes.**  
 12 Q. Okay. So is it your understanding then directly after  
 13 the crash, the vehicle was secured so it could be  
 14 inspected?  
 15 **A. Yes.**  
 16 Q. So then it's fair to say that there's a chain of  
 17 custody for the vehicle? In other words, no one --  
 18 the vehicle wasn't, for example, being used after the  
 19 crash; is that fair?  
 20 **A. That's correct.**  
 21 Q. And the vehicle should have been, during the time of  
 22 your inspection, it should have been in the same  
 23 substantial condition as it was at the time of the  
 24 crash?  
 25 **A. That's correct.**

1 Q. Which is obviously important so we know -- because  
 2 you're trying to figure out what caused -- if there  
 3 was anything wrong with the truck and if so, what  
 4 caused it or if it was there; right?  
 5 **A. Yes.**  
 6 Q. So what did you do? So you went to the DPD yard.  
 7 Tell us how you do your inspection?  
 8 **A. So when I go to the yard, my first thing I do when I'm**  
 9 **going to do my post crash inspection is I do a**  
 10 **walk-around. I size up exactly what happened with**  
 11 **this. I wasn't told what happened with the crash, I**  
 12 **just know I have the truck to inspect. So I walk**  
 13 **around the outside looking for defects, anything that**  
 14 **I believe where -- maybe where the crash may have**  
 15 **occurred.**  
 16 At that point I look up to find the  
 17 registration, the insurance, annual inspection. Once  
 18 I complete that, I turn all the lights on and I start  
 19 doing my walk-around where I'm checking headlights,  
 20 turn signals, brake lights, taillights, windshield  
 21 wipers, and horn.  
 22 Q. Okay.  
 23 **A. Once I complete that, I then begin to do my -- where I**  
 24 **check the brakes, push rod movements and everything**  
 25 **underneath, check the quality and condition under**

1 there.

2 Q. Let's talk about what you found with regards to this

3 N.S.S. Construction truck that was involved in this

4 crash. And we can go through your report. So it says

5 393.9TS, inoperative turn signal. So what is that

6 number that's before that?

7 **A. That is the federal regulations code. Every -- part**

8 **of the FMCSA, Federal Motor Carrier Safety Act,**

9 **everything is listed as the offense or regulation. So**

10 **you go in, just type FMCSA 393.9TS, it will bring up**

11 **turn signal violations and what the requirements with**

12 **the turn signals are.**

13 Q. Okay. And there's no question that the Federal Motor

14 Vehicle Code and the regulations apply to this truck

15 being operated on public roadways?

16 **A. No, no question. It qualifies and it's required to**

17 **follow and abide by all the regulations and laws.**

18 Q. And if someone said, hey, we can drive this truck

19 around on the public roadways and not follow the

20 regulations, that would just be wrong, wouldn't it?

21 **A. That would be correct.**

22 Q. And so because there's this Federal Motor Carrier

23 regulation, are these kind of laws or regulations that

24 the operator of these trucks are required to comply

25 with?

1 **A. Yes.**

2 Q. They have a legal duty?

3 **A. Yes.**

4 Q. And are these codes, at least in part, motivated to

5 keep the roadways safe?

6 **A. Yes.**

7 Q. And if they're violated, can it lead to crashes?

8 **A. It can.**

9 Q. Okay. So you found an inoperative turn signal, right

10 rear turn signal lights up, it does not blink.

11 Can you tell me what you did and what you

12 found with regard to the turn signals on this truck?

13 **A. So while checking the turn signals I found that all**

14 **four, the front and the rear turn signals lit up but**

15 **did not indicate blink. So when I turned the turn**

16 **signal on, it would indicate it would turn on, but it**

17 **would not give an indicator that it was actually**

18 **blinking.**

19 **So it would be the same as if I hit my**

20 **brake light and I only had one brake light, it would**

21 **turn on but you don't know what else is going on.**

22 Q. Okay. So just so I understand you, the turn signals

23 on the truck did not blink as they were required and

24 supposed to do?

25 **A. Correct.**

1 Q. And they were just solid?

2 **A. Yes.**

3 Q. Like a brake light?

4 **A. Yes.**

5 Q. So could someone who's not familiar with this

6 particular truck then, would it appear that it could

7 be a brake light that was on?

8 **A. Yes.**

9 Q. Tell us about that.

10 **A. If I'm looking at the rear of a truck, if I'm pulling**

11 **up from the rear or the side and I just see one light**

12 **come on, that light comes on and I'm not familiar with**

13 **this vehicle, as everyone knows, when you're driving,**

14 **you'll see a turn signal, you know turn signals blink,**

15 **so I know this vehicle is going to make a left or**

16 **right turn. If I see one solid light come on, at**

17 **least under my belief, I believe that vehicle is going**

18 **to stop. So if I'm driving behind a car and I see**

19 **just one light turn on, my assumption is maybe they**

20 **got a brake light out but they are stopping, not**

21 **indicating a turn.**

22 Q. So with this defect that was present in the truck, it

23 could lead a motorist that was behind the truck to

24 believe that the truck was slowing down or braking?

25 **A. It could lead them to believe. I don't know what**

1 **their assumptions were. But under normal**

2 **circumstances, they would believe that it may be**

3 **stopping.**

4 Q. Okay. Did you then endeavor to try to figure out as

5 part of your training, experiencing and knowledge,

6 whether this defective, these defective turn

7 signals -- which were all, every single turn signal on

8 this truck; is that correct?

9 **A. Yes.**

10 Q. It wasn't just one?

11 **A. Correct.**

12 Q. If these defective turn signals were defective as a

13 result of the crash, in other words, the crash broke

14 them, or if this disrepair existed before the crash?

15 **A. Under my training, when it's all four are not blinking**

16 **and the brake lights and the headlights work, and**

17 **where the impact of the crash was where I could see**

18 **the noticeable damage and no damage on anything else,**

19 **under my training, those are pre-existing conditions.**

20 Q. So fair to say it's your opinion that more likely than

21 not at the time of this crash the turn signals on this

22 truck were not working properly?

23 **A. Under my training, it would be that these lights were**

24 **not working prior to the crash.**

25 Q. And do truck operators under the Motor Vehicle Code



1 and just general due diligence, before they take one  
 2 of these big trucks out on the road, are they required  
 3 to do an inspection of the vehicles?  
 4 **A. Yep. At the beginning of their shift before the**  
 5 **vehicle goes out on the road, they're required to**  
 6 **perform a pre-trip, which requires to check the lights**  
 7 **and the brakes, as well as when they end their day,**  
 8 **they're required to check their lights and their**  
 9 **brakes.**  
 10 Q. So every day the truck driver is supposed to check the  
 11 truck before he takes it out on the road and then when  
 12 he drops it off at the end of the day?  
 13 **A. Yes.**  
 14 Q. And would this have been something that should have  
 15 been apparent when that truck was taken out on that  
 16 day, specifically the inoperable turn signals?  
 17 **A. Yes.**  
 18 Q. Now, let's see what else you found. You put that the  
 19 hubs, there was oil and grease leaking from the hub.  
 20 What does that mean?  
 21 **A. So with bigger trucks, you -- the axles are lubricated**  
 22 **by oil, you make sure they turn. If there's no oil**  
 23 **there, then it's just going to seize up, it's not**  
 24 **going to go anywhere.**  
 25 (Reporter Clarification.)

1 **A. The hub has oil in it, if it doesn't disperse, it's**  
 2 **going to just seize up.**  
 3 **The crash would have caused that hub to**  
 4 **break because it takes significant damage for that hub**  
 5 **to break. So where that hub was broke at, it led me**  
 6 **to believe that that was caused by the crash.**  
 7 BY MR. MARKO:  
 8 Q. Okay. So you were able to determine that that  
 9 particular thing was related to the crash?  
 10 **A. Yes.**  
 11 Q. That that's when it happened. Okay.  
 12 You found that the leaf spring assembly was  
 13 defective or missing. What does that mean?  
 14 **A. So leaf spring helps to adjust the weight and the axle**  
 15 **from moving around. It helps disperse the weight of**  
 16 **it, also helps it kind of ride smoothly and so you**  
 17 **don't lose your wheel.**  
 18 **With that one, I was unable to determine if**  
 19 **it was caused by the crash or if it was prior, just**  
 20 **not knowing what the condition of the vehicle was**  
 21 **before the crash.**  
 22 Q. So why is that -- what does this particular leaf  
 23 spring assembly, why is it important to have that in  
 24 working condition?  
 25 **A. It can help -- you can lose your tire that way. You**

1 **can lose that axle, axle can drop off, the truck can**  
 2 **drop to the right.**  
 3 Q. Okay. 396.3A1, repair and maintenance of parts and  
 4 accessories. Air loss rate failure.  
 5 What does that mean?  
 6 **A. It means -- a truck should run off of air, so your**  
 7 **truck should normally, just when you're idle at a stop**  
 8 **light, your truck should just be able to have air, no**  
 9 **issues. You have no air, your brakes are going to**  
 10 **lock up, you're not going anywhere.**  
 11 **The way we test it is we charge it up to**  
 12 **100 psi with brakes released like you're stopped at a**  
 13 **stop light, and I slam on the brakes. If your air**  
 14 **pressure drops -- it's always going to drop because**  
 15 **you're releasing air -- if it drops initially and**  
 16 **starts to rebuild, it's fine. If it drops**  
 17 **significantly and just keeps going, keeps going, keeps**  
 18 **going until it's zero'd out, that means that it cannot**  
 19 **maintain its air pressure.**  
 20 **With that, again, I was unable to determine**  
 21 **if that was a prior condition or if that was caused by**  
 22 **the crash due to the vehicle striking that axle.**  
 23 Q. And then you put brakes out of service?  
 24 **A. Yes.**  
 25 Q. Tell us what that means.

1 **A. So the way my inspection, I check the axle and the**  
 2 **brakes. We're checking the push rod movement.**  
 3 **Basically that is the push rod coming out of the brake**  
 4 **chamber, the longer it takes to come out, the longer**  
 5 **it takes for those brakes to apply for the vehicle to**  
 6 **come to a complete stop.**  
 7 **I found that five out of six brakes were**  
 8 **out of adjustment, which meant that the vehicle was**  
 9 **out of service.**  
 10 **These violations don't occur overnight,**  
 11 **these are a prolonged thing that a driver should**  
 12 **notice that the brakes take longer to apply.**  
 13 Q. So let's talk about that a little bit. So you say the  
 14 brakes -- there's six brakes on a truck like this?  
 15 **A. Yep. So there's one brake per every -- well,**  
 16 **essentially we say tire. So there's three axles, so**  
 17 **you're going to have three on the left, three on the**  
 18 **right. So axle one would have one -- or axle one left**  
 19 **side would have one, axle one right side would have**  
 20 **one, so on, so forth for all the axles.**  
 21 Q. So a normal car has four brakes; right?  
 22 **A. Yes.**  
 23 Q. This special commercial vehicle due to its size has  
 24 six brakes?  
 25 **A. Yes.**

1 Q. And your inspection found that five out of the six  
2 brakes did not meet safety standards?  
3 **A. Correct.**  
4 Q. And it's your opinion, based on your training and  
5 experience, that that was a condition that existed  
6 before the crash?  
7 **A. Correct.**  
8 Q. So in other words, the crash had nothing to do with  
9 those brakes not working; right?  
10 **A. No, those brakes were out prior to that crash.**  
11 Q. And is this a like serious violation? Is this a minor  
12 violation?  
13 **A. This is considered a serious safety violation which**  
14 **means the vehicle, if I were to stop this vehicle just**  
15 **on a regular traffic stop and complete an inspection,**  
16 **the vehicle would be placed out of service until those**  
17 **violations were corrected.**  
18 Q. Okay. So your testimony is this -- so this violation  
19 of safety regulations was so serious that if you had  
20 pulled this truck over just on like a routine patrol  
21 and discovered this, you would have taken it off the  
22 road?  
23 **A. Correct.**  
24 Q. And why would you do that?  
25 **A. It's not safe for the motoring public. It's essential**

1 **with a truck that big to have working brakes so it**  
2 **does not cause traffics. Or just like anything else,**  
3 **a kid could run out in the road, safe brakes, you**  
4 **could be able to stop in time. With that, your brake**  
5 **distance are going to drag on so it's going to take**  
6 **you longer to come to a complete stop.**  
7 Q. Do you have an opinion on how long these brakes were  
8 in disrepair? Like you said it takes some time but  
9 what does that mean? Does it take a week, does it  
10 take --  
11 **A. I don't know. It depends on the condition of the**  
12 **truck. I would say that it was at least several days.**  
13 **Typically through my training and through my**  
14 **experience with this throughout my years, I found that**  
15 **it could wear depending on the weather condition,**  
16 **however, it's not an overnight thing.**  
17 Q. And so did you find any other problems or violations  
18 with the truck that you found existed prior to the  
19 crash?  
20 **A. I did not.**  
21 Q. Okay. So how bad were these brakes?  
22 **A. So all four or all five brakes were full brake out.**  
23 **So there's considered a half a brake out, which only**  
24 **counts as a half a point, and a full brake which**  
25 **counts as a full point. So with six brakes, you're**

1 **only allowed to have two brakes that are defective.**  
2 **This, basically you had five, you've more than doubled**  
3 **the amount of brakes that are required to be out for**  
4 **service.**  
5 Q. So there's only one brake on this whole truck that met  
6 safety standards?  
7 **A. Correct.**  
8 Q. So these things -- let me ask you two questions then.  
9 Number one, if we boil it down, we know that before  
10 the crash, more likely than not the truck's turn  
11 signal lights were not working correctly and its  
12 brakes were grossly defective?  
13 **A. Yes. Before the crash, the vehicle had significant**  
14 **defective equipment violations.**  
15 Q. And were these violations that should have been  
16 discovered during a required normal inspection by the  
17 driver?  
18 **A. Yes, these are violations that should have been**  
19 **discovered by a driver who performed a correct**  
20 **pre-trip.**  
21 Q. And were these violations serious enough that this  
22 truck should have not been on the public roads?  
23 **A. That is correct, this should not have been on the**  
24 **motoring road.**  
25 Q. Okay. And you would have not allowed this truck on

1 the road as a safety officer?  
2 **A. Correct.**  
3 Q. And sir, did you do anything else after you did your  
4 inspection of the vehicle?  
5 **A. Nope. Once I complete my inspection, I do my**  
6 **inspection form and I write my report and I forward it**  
7 **to Sgt. Lucidi.**  
8 Q. And so you don't have -- you're not in a position to  
9 offer any testimony in this case about who's at fault  
10 or anything like that with the crash other than your  
11 inspection and defects that you found?  
12 **A. That is correct.**  
13 MR. MARKO: Okay. Officer, thank you very  
14 much. I don't have any other questions. Some of the  
15 other attorneys might.  
16 **THE WITNESS: Yes.**  
17 MR. BAUM: Thank you. Officer Wilson, I  
18 just have one question.  
19 MR. MARKO: Can you say -- excuse me. Can  
20 you just say, before you ask, like hello, my name is,  
21 because we can't see you and the court reporter is  
22 trying to take this down.  
23 **EXAMINATION**  
24 **BY MR. BAUM:**  
25 Q. Sure. Alex Baum, I also represent the estate of the

1 young man that was killed in this accident.  
 2 Earlier you testified that there were some  
 3 defects that based on your training you can tell  
 4 existed before this accident; correct?  
 5 **A. Yes.**  
 6 Q. And that included the blinkers and also the five out  
 7 of six defective brakes?  
 8 **A. Yes.**  
 9 Q. There were a couple other things, I believe you said  
 10 oil on the axles, things of that nature that you found  
 11 were defective after the accident but you couldn't  
 12 determine, based on the nature of those defects,  
 13 whether it was caused by the accident or whether it  
 14 existed beforehand; is that right?  
 15 **A. Correct.**  
 16 Q. Would prior, would previous records, whether it be  
 17 vehicle inspection or maintenance records, would  
 18 things of that nature help you to determine whether or  
 19 not these additional defects existed before the crash?  
 20 **A. Unfortunately, no. The way prior inspections work, we**  
 21 **take and believe that they have corrected that stuff,**  
 22 **so each individual stop and a different day is a**  
 23 **different thing.**  
 24 Q. Sure. But I guess for instance, if a prior inspection  
 25 was done and it listed that there was issues with oil

Page 27

1 on the axles, that would --  
 2 **A. Yeah, so --**  
 3 Q. -- help to determine that it existed beforehand?  
 4 **A. Yeah, it also would be regarding the timeframe. So if**  
 5 **we're doing -- say an inspection occurred 7-1 and the**  
 6 **same violation was noted, then we would note it as a**  
 7 **fail-to-correct violation. If it was a violation that**  
 8 **occurred 2-10 of '19, then we would not note it, we**  
 9 **would just factor it as they corrected and then the**  
 10 **violation occurred again.**  
 11 Q. Got you. Okay. So I think you're referring to  
 12 inspections as if they were conducted by an officer of  
 13 the law or by your department. I'm talking about just  
 14 business maintenance records, you know, kept by a  
 15 trucking company.  
 16 **A. We don't ever see those so I'm unsure.**  
 17 MR. BAUM: Okay. Fair enough. No further  
 18 questions.  
 19 MR. GUMTOW: Dan Gumtow, I have no  
 20 questions for you, Officer. Thank you for your time  
 21 today.  
 22 **THE WITNESS: Thank you, sir.**  
 23 MS. GALE-BARBANTINI: This is Sara  
 24 Gale-Barbantini for Memberselect Insurance Company. I  
 25 have no questions. Thank you for your time today,

1 Officer.  
 2 **THE WITNESS: Thank you, ma'am.**  
 3 **EXAMINATION**  
 4 BY MS. DIVINEY:  
 5 Q. This is Amy Diviney, I represent the construction  
 6 company that owned the dump truck and the driver of  
 7 the dump truck in this litigation.  
 8 Officer, I appreciate you taking your time  
 9 today.  
 10 I noticed on your report, was there another  
 11 officer present with you during your inspection?  
 12 **A. Officer Verbruggen was there to assist. All Officer**  
 13 **Verbruggen did was sit in the truck and listen to my**  
 14 **commands.**  
 15 Q. Say that again, please? He sat in the truck and did  
 16 what?  
 17 **A. He listened to my commands. He's the one who I told**  
 18 **hit the brakes or hit the left turn signal or hit the**  
 19 **right turn signal.**  
 20 Q. And I apologize because I didn't hear you earlier,  
 21 about how many inspections have you done over your  
 22 years with the Michigan State Police?  
 23 **A. Actual inspections or post crash inspections?**  
 24 Q. Post crash inspections.  
 25 **A. I can't give an exact number, but I would say roughly**

Page 29

1 **up to 50.**  
 2 Q. Up to how many?  
 3 **A. 50.**  
 4 Q. 50.  
 5 **A. Actual inspections, that's countless. That's all we**  
 6 **did so I wouldn't be able to give you an actual number**  
 7 **on that part.**  
 8 Q. Did you do anything to the determine why the turn  
 9 signal lights did not blink?  
 10 **A. Outside of just doing my inspection and ensuring that**  
 11 **the cables appeared to be connected, I did not.**  
 12 Q. So you don't know if there was a loose connection for  
 13 them or --  
 14 **A. I do look to see if the cables are connected because**  
 15 **that is part of the inspection. If they -- like if a**  
 16 **brake light is out, I will look underneath to see if**  
 17 **the cables are connected or if they came loose or**  
 18 **disconnected.**  
 19 **They did not appear at the time, at least**  
 20 **through my memory, that they had any issues.**  
 21 Q. And with respect to the turn signal lights, are they  
 22 -- is that with a fuse? Do they have like a fuse like  
 23 we see in regular motor vehicles, if you know?  
 24 **A. I do not remember on this vehicle.**  
 25 Q. So there could have been a possibility of a fuse that



1 was loose and maybe even while it was being towed the  
 2 fuse could have came loose?  
 3 MR. MARKO: Objection; speculation.  
 4 MS. DIVINEY: I understand.  
 5 BY MS. DIVINEY:  
 6 Q. Is that a possibility, Officer?  
 7 **A. If that was a possibility, then all the lights would**  
 8 **be out. Typically on most commercial vehicles all the**  
 9 **lights are connected to one fuse.**  
 10 Q. But do you know for sure if all the lights on this  
 11 particular dump truck were connected with one fuse?  
 12 **A. I don't know much about wiring and fusing so I would**  
 13 **be unable to testify to that.**  
 14 Q. Did you just examine this dump truck one time or did  
 15 you have to return and examine it again?  
 16 **A. I only examined it once.**  
 17 Q. And I know you said earlier you didn't take any photos  
 18 of the dump truck. Did you take any videos?  
 19 **A. I did not.**  
 20 Q. Based on your knowledge and experience, do you know  
 21 what effect a dump truck such as this would have if  
 22 the dump truck's being driven in first gear?  
 23 **A. I don't understand what your question is, ma'am. I**  
 24 **apologize.**  
 25 Q. Okay. So the dump truck, it has various gears;

Page 31

1 correct?  
 2 **A. Correct.**  
 3 Q. When it's in driving mode.  
 4 **A. Yep.**  
 5 Q. And in first gear, the dump truck would be going  
 6 slower, second gear the dump truck would be going  
 7 faster.  
 8 **A. Correct.**  
 9 Q. Third gear, it would be going even faster; correct?  
 10 **A. Yep.**  
 11 Q. So if the dump truck was in first gear, what affect  
 12 would that have on the braking of the dump truck?  
 13 **A. No difference, the brakes would still apply the same**  
 14 **way if it's in first gear or fourth gear.**  
 15 Q. Do you know offhand the specific make of the brakes on  
 16 this model of dump truck?  
 17 **A. Drum brakes. Or air brakes. Outside of that, the**  
 18 **actual manufacturer or anything like that, I do not.**  
 19 Q. So you don't write down any of the manufacturing  
 20 details with respect to the brakes?  
 21 **A. No, I do not.**  
 22 Q. In your report?  
 23 **A. No, I do not.**  
 24 Q. During your inspection, did you remove anything from  
 25 the dump truck?

1 **A. I did not.**  
 2 Q. During your inspection, did you collect into evidence  
 3 anything from the dump truck?  
 4 **A. I did not.**  
 5 Q. Did you see the chain of custody with respect to the  
 6 dump truck before you inspected it?  
 7 **A. I did not.**  
 8 Q. Did you have to sign anything with respect to the  
 9 chain of custody before you inspected the dump truck?  
 10 **A. I did not.**  
 11 Q. Did you do anything to determine if there were any  
 12 types of recalls with respect to this dump truck?  
 13 **A. I did not.**  
 14 Q. With respect to your brake-out-of-adjustment  
 15 determinations, you cannot tell me exactly how that  
 16 affected the operation of the vehicle insofar as the  
 17 stopping distance, whether it increased from X amount  
 18 to Y amount?  
 19 **A. All I can tell you with the brakes being out of**  
 20 **adjustment, it will increase how long it takes for the**  
 21 **vehicle to stop. That's why the Federal Motor Carrier**  
 22 **Safety Act, they set guidelines as to what the maximum**  
 23 **it can be. If it's over that max, it's out of**  
 24 **adjustment and having more than X amount of brakes out**  
 25 **of adjustment means the vehicle needs to be taken off**

Page 33

1 **the roadway.**  
 2 Q. Can you tell me exactly how you determined that the  
 3 brakes were out of alignment?  
 4 **A. So what I do --**  
 5 Q. Out of adjustment. I'm sorry.  
 6 **A. Yep.**  
 7 Q. Out of adjustment.  
 8 **A. So what I do is I take the vehicle as it's parked or**  
 9 **basically running, brakes released so as it's in a**  
 10 **normal driving position. I go underneath, I mark with**  
 11 **chalk the push rod at a certain mode, at park.**  
 12 **Typically I mark it right where it's coming out of the**  
 13 **chamber. I do it for all that. I come out. I have**  
 14 **whoever is assisting me hit and hold the brakes, I go**  
 15 **back underneath and I measure where -- at that point**  
 16 **now, so we're coming out of the chamber. So I mark**  
 17 **that -- or I measured that distance.**  
 18 Q. And what do you use to measure that distance?  
 19 **A. I use a metal ruler that's been issued to me by, at**  
 20 **the time the Department of State Police.**  
 21 Q. And you said you mark, you mark it at the chamber.  
 22 What do you use to mark it with?  
 23 **A. I use a soap stick.**  
 24 Q. A soap stick?  
 25 **A. Yes.**

1 Q. Is that also issued to you?  
 2 **A. That is.**  
 3 Q. Do you choke the wheels before testing the alignment  
 4 of the brakes?  
 5 **A. I do not because the vehicle does not move. Did you**  
 6 **say chalk or --**  
 7 Q. Choke, C-H-O-K-E.  
 8 **A. I do not.**  
 9 Q. Are you familiar with the free stroke method for  
 10 determining whether brakes are in alignment?  
 11 **A. I've not -- never heard the term. I'm sure I may have**  
 12 **heard of it before.**  
 13 Q. What is the method that you use? What is that called?  
 14 **A. Just the standard CVSA brake-measuring method.**  
 15 Q. What does CPSA stand for?  
 16 **A. CVSA, Commercial Vehicle Safety Alliance. That's the**  
 17 **governing agency that certifies all motor carriers**  
 18 **within the State of Michigan and the United States.**  
 19 Q. During your inspection, did you take any handwritten  
 20 notes?  
 21 **A. I did not. The only handwritten notes would have been**  
 22 **on a note pad that would have been relayed into the**  
 23 **same as what's on here, on my report.**  
 24 Q. When I'm looking at your report, page one and page two  
 25 and where you have the violations listed, do you see

1 where I'm referring to?  
 2 **A. In the actual report or the inspection form?**  
 3 Q. It is your driver/vehicle examination report.  
 4 **A. Okay. Yes.**  
 5 Q. And if I need to share my screen, I can share that  
 6 with you. But it looks like you have it in front of  
 7 you?  
 8 **A. Yes.**  
 9 Q. And it says the violations and then you have the  
 10 sections listed.  
 11 **A. Yep.**  
 12 Q. And then you have the type.  
 13 Does the F in that column, does that stand  
 14 for failure or what does the F stand for?  
 15 **A. The F -- and I apologize because it's been a while**  
 16 **since I've completed an inspection form under my new**  
 17 **position -- I believe the F is something to do with**  
 18 **the actual inspection. But I don't remember offhand**  
 19 **without having the inspection program in front of me**  
 20 **to see what the F meant. But I know the F does not**  
 21 **mean failure.**  
 22 Q. Thank you.  
 23 When it says unit and it all has one listed  
 24 in there, what does that mean?  
 25 **A. Unit means you have one, which means it's the truck.**

1 **If it had a trailer connected to it, it would say unit**  
 2 **and then two for a trailer.**  
 3 Q. Understood. And the next column, OS, what does that  
 4 mean?  
 5 **A. That means out of service.**  
 6 Q. Okay. And what does the N and the Y mean in that  
 7 column for out of service?  
 8 **A. N means the violation that's listed there is not out**  
 9 **of service. The Y means yes, which means the**  
 10 **violation that is there causes the vehicle to be out**  
 11 **of service.**  
 12 Q. And then what does verify mean?  
 13 **A. Verify means that could I verify on scene that it was**  
 14 **-- occurred there.**  
 15 Q. So say that again, verify means that --  
 16 **A. That if I verified if the incident occurred there or**  
 17 **not.**  
 18 Q. What do you mean incident occurred there or not? Do  
 19 you mean like verify whether it was the result of the  
 20 accident or verify whether it --  
 21 **A. Verify if it was caused by the accident or if it was**  
 22 **not caused by the accident.**  
 23 Q. Okay. So then what does N and U mean in that column  
 24 with verify?  
 25 **A. If I remember right, U means unknown and N means no.**

1 **Again, it's been almost two years since I completed an**  
 2 **inspection form.**  
 3 Q. Understood. And then with respect to the next column,  
 4 crash?  
 5 **A. Yes.**  
 6 Q. What does that mean?  
 7 **A. Crash means were these violations caused by the crash.**  
 8 **So N would be no, that these violations were not**  
 9 **caused by the crash. Y would mean yes, these**  
 10 **violations were caused by the crash. U would be**  
 11 **unknown if these violations were caused by the crash.**  
 12 Q. Thank you.  
 13 **A. You're welcome.**  
 14 Q. You were talking before about the air pressure for the  
 15 braking system.  
 16 **A. Yes.**  
 17 Q. And you were saying something that you put it up to,  
 18 was it 100 pounds?  
 19 **A. Typically it's 100 psi.**  
 20 Q. Okay. Why does it go up to 100 psi?  
 21 **A. Because a vehicle operating on the roadway, your**  
 22 **typically standing psi should be between 100 and 120**  
 23 **psi.**  
 24 Q. And if it's above 120, that's not good, and if it's  
 25 below 100, that's not good?

1 A. Below 100, it means you either have an air leak or  
 2 you've been on your brakes a lot, you're constantly  
 3 pumping it. If it's above 120, which is very, very  
 4 hard to do, it typically means you're trying to air up  
 5 an axle.  
 6 Q. Trying to air up what?  
 7 A. An extra axle, that would be a lift axle.  
 8 Q. Now, you said that you mark the starting point with  
 9 soap. I just want to make sure I understand. You  
 10 said you mark the push rod right at the chamber.  
 11 A. Yes.  
 12 Q. Did I understand that correctly?  
 13 A. Yes, that's what I use.  
 14 Q. And then you have somebody in the truck and they push  
 15 on the brake?  
 16 A. Yes, they press and hold the brakes.  
 17 Q. Do you have to pressurize the brakes before they push  
 18 on the brakes or how does that work?  
 19 A. No, when I do my inspection, I make sure before I  
 20 check brakes that the air pressure for the vehicle is  
 21 set at 100 psi.  
 22 Q. Okay. Do you do that before you put the -- mark the  
 23 beginning mark?  
 24 A. Yes, I do.  
 25 Q. So between the time of beginning to mark it and the

1 time that you ask the person to push on the brakes,  
 2 can that air pressure go down at all or does it stay  
 3 constant at all --  
 4 A. It stays constant.  
 5 Q. How do you know that it stays constants at that psi?  
 6 A. Because I have my assistant watch the gauge and to let  
 7 me know if that is dropping. Because if it's --  
 8 Q. Did you guys --  
 9 A. I'm sorry.  
 10 Q. I'm sorry, go ahead.  
 11 A. Because if it is dropping, then it causes me to be  
 12 unable to actually check the brakes.  
 13 Q. I understand.  
 14 And do you guys hook up your own gauge or  
 15 is there a gauge in the truck that you're watching?  
 16 A. We use the gauge on the truck. So we use what the  
 17 driver of the vehicle would be looking at.  
 18 Q. So now do you do one brake at a time, like you do one  
 19 brake and then make sure --  
 20 A. What I do is I mark all of them at the same time, I  
 21 have him hit and hold the brake, and then I check all  
 22 the brakes at the same time.  
 23 So just like if you're hitting -- stopping  
 24 your truck, I'm checking everything at the same time.  
 25 If you're doing one at a time, you're constantly air,

1 air, and that will cause different air pressures in  
 2 the truck.  
 3 Q. And then how long did it take you, if you recall or if  
 4 you can just give me an estimate, how long did it take  
 5 you to mark all of these six brakes?  
 6 A. Typically I'm marking them while I'm under there  
 7 checking brake, brake pads, the drums and everything  
 8 like that, so I couldn't give you an estimated time  
 9 because typically I'm under there for, depending on  
 10 the size of the vehicle, I would say this one I was  
 11 probably underneath, physically underneath the truck  
 12 for probably 20 minutes.  
 13 Actually checking the brakes, that's  
 14 typically within about -- it takes me about a minute  
 15 to verify when we're actually press and holding.  
 16 Q. Does it take you about a minute for each brake or what  
 17 does it take you?  
 18 A. I would say -- I'm only under -- when I'm checking the  
 19 brakes for when the brakes are applied, it only takes  
 20 me a minute or two because I go underneath there, I  
 21 check with my stick, I jot it down on my glove, and I  
 22 move on.  
 23 Q. When you check with your stick -- and I'm assuming  
 24 it's like a ruler?  
 25 A. It's a metal stick, about, I believe it's eight inches

1 long, I hold it up, I check the marking point and then  
 2 I write it down.  
 3 Q. How do you know that this ruler that you were provided  
 4 -- I understand that you were provided the ruler by  
 5 the Michigan State Police -- how do you know that it  
 6 was properly calibrated?  
 7 A. I have checked it against regular rulers because I've  
 8 seen stuff online before about tape measures. So it  
 9 was literally a running joke for a while about making  
 10 sure, check and make sure an inch is an inch, not an  
 11 inch and a half.  
 12 Q. Understood. And when you're going to use your -- to  
 13 make this simpler -- when you're going to use your  
 14 ruler to measure --  
 15 A. Yep.  
 16 Q. -- do you just do one measurement or do you do like  
 17 three measurements to make sure --  
 18 A. I measure, I write down, and then I double check  
 19 again. And a lot of times it's just -- I forget I  
 20 even checked it even though I wrote it, and I'm very  
 21 anal about making sure my numbers are right. Because  
 22 again, I know where stuff heads to, especially post  
 23 crash stuff, so I want to make sure that -- you  
 24 measure twice, cut once.  
 25 Q. Understood. Had you ever inspected a vehicle similar

1 to this dump truck in the past at any time?

2 **A. I'm sure I have but I'd be unable to recall if I have**

3 **exactly.**

4 Q. During your inspection, did the truck ever have to be

5 restarted to increase the air pressure as you were

6 measuring the brakes?

7 **A. The only time that we had to add up the air pressure**

8 **-- or started to add air pressure was when we were**

9 **checking the air loss rate violation.**

10 Q. When you were checking which one --

11 **A. The air loss rate violation.**

12 Q. So tell me the sequence that you did to check the

13 brakes. Did you start on the driver's side, passenger

14 side?

15 **A. I always start axle one driver's side and I work my**

16 **way around. So I start axle one driver's side and**

17 **then I go underneath the truck, I go, I inspect**

18 **everything in the truck, I mark the brakes, axle two,**

19 **then axle three, I come back out, I check axle one**

20 **passenger side, and then again I verify, make sure my**

21 **air pressure is still at 100 psi, I have my assistant**

22 **press and hold, start at axle one driver's side, I**

23 **check it, I go underneath, I check, check, come back**

24 **out, check axle one passenger side.**

25 Q. So you start on the driver's side?

1 **A. Yep.**

2 Q. And then you go --

3 **A. I go underneath -- yep, and I go underneath to check**

4 **axle two driver, axle two passenger, axle three**

5 **driver, axle three passenger, come back out to start**

6 **axle one passenger.**

7 Q. So you kind of go around, like counter-clockwise

8 around the vehicle?

9 **A. Correct, yes.**

10 Q. So following your sequence and because the truck did

11 not have to be restarted at any point to add

12 sufficient air pressure, the last check that you did

13 for the brakes, that would theoretically have had less

14 air pressure than the first brake check; correct?

15 **A. It could have less air pressure, yes.**

16 Q. And you agree that the amount of air pressure is

17 important because the affect on how far the rod -- for

18 how far the rod is pushed out?

19 **A. Yes. With the air pressure, when you have less air**

20 **pressure, the brakes will begin to lock which actually**

21 **means the push rod comes back in, which means it would**

22 **actually shorten the distance which would actually**

23 **benefit the driver.**

24 Q. Okay. If that air pressure were to fall below the 100

25 psi that day --

1 **A. We allow -- once it falls below 60 psi is when it's a**

2 **critical issue.**

3 Q. Okay.

4 **A. Because you're obviously -- when you're hitting**

5 **brakes, air brakes, you're going to lose air. It's**

6 **about how much air you're going to lose. Initially**

7 **your truck should still hold your air but when you're**

8 **dumping so much air where you're dropping -- dumping**

9 **40 psi worth of it, that's when you pull and start**

10 **having that critical issue.**

11 Q. And at no point during your inspection did you hit

12 that critical issue; correct?

13 **A. Outside of the air loss rate violation, I don't**

14 **remember it.**

15 Q. Do you know what the automatic slack adjuster is?

16 **A. I do.**

17 Q. What is that?

18 **A. Automatic slack adjuster means that a vehicle should**

19 **automatically adjust while -- or the brakes should**

20 **automatically adjust itself. Any vehicle manufactured**

21 **after 1994 should have it. However, we find that when**

22 **people adjust these by hand, it destroys the automatic**

23 **slack adjuster which causes it not to adjust.**

24 Q. Do you know if this vehicle had the automatic slack

25 adjuster?

1 **A. It did have it. It was manufactured after 1994 and I**

2 **observed it having it.**

3 Q. Do you know if it was functioning properly when you

4 were inspecting it?

5 **A. I would be unable to tell you if it was functioning**

6 **properly. I would say no due to it -- the brakes**

7 **being out of adjustment. The purpose of the automatic**

8 **slack adjuster is to prevent brakes from coming out of**

9 **adjustment.**

10 Q. And you don't believe that it was working based on

11 your experience and knowledge in inspecting these

12 vehicles post crash?

13 **A. Yes, ma'am.**

14 Q. Do you have an understanding of the ratchet mechanism

15 with a brake chamber for the air brakes?

16 **A. I do not know what that is.**

17 Q. Do you know if it's possible to readjust the air

18 brakes on a truck like this without even doing

19 anything to the brake chamber?

20 **A. Yeah, you can adjust it by turning the push rods with**

21 **a wrench.**

22 Q. You can adjust it by turning the push rods --

23 **A. The push rods with a wrench.**

24 Q. Did you see any evidence that anything was adjusted

25 with the push rods with a wrench --



1 A. I did not.  
 2 Q. -- on this vehicle?  
 3 A. I did not.  
 4 Q. Do you have an understanding of any other method other  
 5 than a mechanical adjustment that can readjust the  
 6 brakes so that they're within compliance?  
 7 A. I do not know with my knowledge of it.  
 8 Q. When you do inspections like this, do you or the  
 9 person that's assisting you, do they ever wear any  
 10 type of body cam video?  
 11 A. Yes. However, depending on where it's at. Typically  
 12 when we're doing a post crash inspection in a secure  
 13 facility, we don't typically wear it; a lot of times  
 14 we strip down to just our normal uniform.  
 15 On-scene inspections, when we're on scene  
 16 of a fatal crash, body camera is on, all of our  
 17 uniform is on.  
 18 Q. So here do you know whether or not you had your body  
 19 cam video activated or whether the other officer  
 20 assisting you had his body cam --  
 21 A. I would say body camera and everything was probably  
 22 not activated.  
 23 MS. DIVINEY: I don't have any more  
 24 questions at this time. Thank you again for your time  
 25 today, Officer.

1 THE WITNESS: Thank you, ma'am.  
 2 MR. MOUGHNI: I don't have any questions.  
 3 MR. MARKO: I just have a couple more.  
 4 RE-EXAMINATION  
 5 BY MR. MARKO:  
 6 Q. Officer, you said that, just so we're clear, you did  
 7 approximately 50 crash inspections like the one in  
 8 this case but you said you did actually many more --  
 9 A. Yes.  
 10 Q. -- general inspections?  
 11 A. Yes.  
 12 Q. So tell us what's an actual inspection -- and I know  
 13 you said it's tough, but can you give us an estimation  
 14 of how many you've done in your career?  
 15 A. So we're required by -- to keep our certification,  
 16 we're required to have a minimum of 32 full Level One  
 17 inspections per year. I have always exceeded that  
 18 because we've always done -- the Feds have nit-picked  
 19 about what constitutes as a full one. Typically in my  
 20 career, my ten years there, I was averaging between 80  
 21 and 100 full inspections. So I've done almost --  
 22 between -- I'm not very good with math --- I've done  
 23 upward --  
 24 Q. Up to 800?  
 25 A. Yeah. And then I've done, which would be Level Two,

1 which would be a walk-around, Level Three, which would  
 2 be just paperwork, and I've done well over 1000 of  
 3 those a year.  
 4 Q. Okay. So this wasn't your first rodeo, so to speak?  
 5 A. It was not.  
 6 Q. And is there a way to see -- and forgive my ignorance  
 7 -- if a law enforcement agency had previously  
 8 conducted an inspection on this truck, some type of  
 9 LEIN system for trucks?  
 10 A. So inspections that were completed would be generated  
 11 and uploaded to what's called Safersys. I apologize,  
 12 I don't know what Safersys means, S-A-F-E-R-S-Y-S.  
 13 All inspections are kept in that for that specific  
 14 company and you can actually search in there and find  
 15 that specific vehicle. It only has access to it by  
 16 law enforcement agencies and then the U.S. Department  
 17 of Transportation.  
 18 Q. And do the Michigan State Police have access to that?  
 19 A. They do. Individual officers have access to that as  
 20 well as Lansing, the headquarters and whoever is in  
 21 charge of that department now.  
 22 Q. Which department, DOT?  
 23 A. Yeah, so it would be --  
 24 Q. MDOT?  
 25 A. So it would be MSP, Commercial Vehicle Enforcement

1 Division, whoever is in charge of that specific  
 2 section. I know when I left it was Sgt. Austin, but I  
 3 believe that might be Sgt. Hogan now who runs that.  
 4 Q. Did you look in Safersys to see if this vehicle had  
 5 past inspections?  
 6 A. I want to say I did but I would be unable to recall if  
 7 I did or did not.  
 8 Q. Would you have listed it if you did or no?  
 9 A. If I did, I would have listed to see if there was  
 10 previous same violations. But noting on my inspection  
 11 form that I didn't note any of that, I believe that I  
 12 probably did not notice anything.  
 13 Q. Got it. Now, you said that you're familiar with the  
 14 Federal Motor Vehicle Safety Code; right?  
 15 A. Yes.  
 16 Q. Are owners and operators of these trucks supposed to  
 17 maintain records related to the trucks such as  
 18 inspection records and driver logs and things like  
 19 that?  
 20 A. Yep, they're required to maintain all that in a file  
 21 so if they are audited by the U.S. Department of  
 22 Transportation or audited by the State Police's  
 23 investigating unit, that they can come in and present  
 24 that documentation.  
 25 Q. Did you ever ask for documentation related to the

1 truck directly from N.S.S.?

2 A. I did not.

3 Q. Did you ever have any contact with anyone from N.S.S.?

4 A. I did not.

5 MR. MARKO: I don't have any other

6 questions. Thank you very much.

7 MR. BAUM: No further questions.

8 MS. DIVINEY: No further questions.

9 MR. MARKO: Okay. Thank you, Officer.

10 (Deposition was concluded at 10:34 a.m.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Page 51

1 CERTIFICATE

2 STATE OF MICHIGAN

3 COUNTY OF MACOMB

4

5 I, Deborah Culver, a Notary Public in and

6 for the above county and state, do hereby certify that

7 this deposition was taken before me at the time and

8 place hereinbefore set forth; that the witness was by

9 me first duly sworn to testify to the truth; that this

10 is a true, full and correct transcript of my

11 electronic recording; and that I am not related, nor

12 of counsel to either party, nor interested in the

13 event of this cause.

14

15

16

17

18

19

20

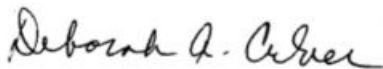
21

22

23

24

25



Deborah A. Culver, CER-3001  
 Notary Public  
 Macomb County, Michigan  
 My commission expires 12-21-2024

**A0024**

# **EXHIBIT 3**



August 2, 2021

## *McDUFFIE COLLISION*

The following materials were reviewed in this matter:

- UD-10 Crash Report from the Detroit Police Department
- Deposition of Scott Neal
- Deposition of Nick Schubeck
- Deposition of Matthew Pace
- Deposition of Officer Ryan Wilson
- Recorded Transcript of Matthew Pace
- VinLink Data for 2000 Chrysler Sebring
- VinLink Data for 1997 Ford LT9000 Dump Truck
- Vehicle Specifications for 2000 Chrysler Sebring
- Aerial Photographs of Crash Location
- Michigan Motor Vehicle Code
- Dash Cam Video taken by Caliber Consulting
- Photos of Scene taken by Caliber Consulting
- Photos of Crash Scene at Time of Crash

### *Collision Outline (per UD-10)*

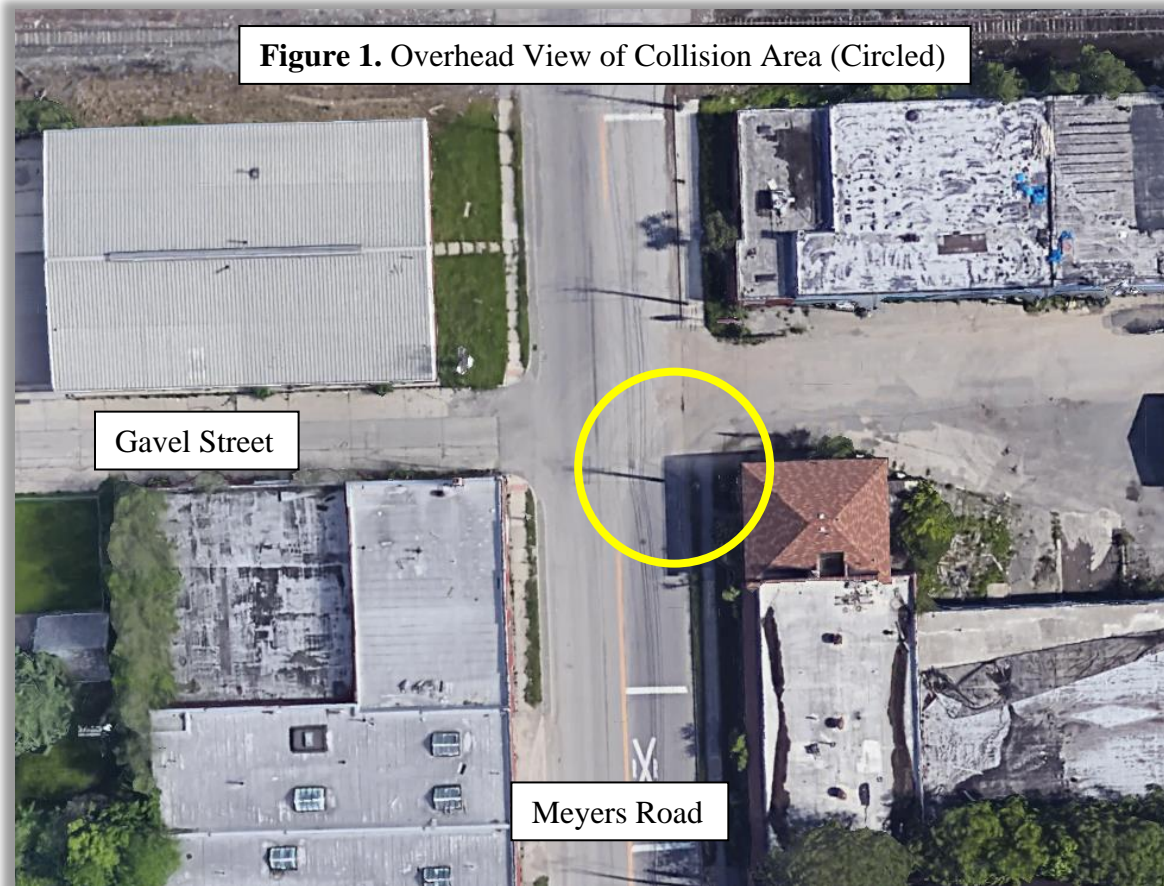
This collision took place on July 17, 2019, at approximately 11:45 am. The crash location was listed as Meyers Road, about 75 feet north of Gavel Street in the City of Detroit, County of Wayne, State of Michigan. The collision involved a car and a dump truck. The car was listed as a 2000 Chrysler Sebring, hereinafter referred to as *Sebring*. The *Sebring* was operated by William McDuffie-Conner (McDuffie). The dump truck was listed as a 1997 Ford LT9000, hereinafter referred to as *Truck*, and was being driven by Scott Neal (Neal). According to the crash report, the *Truck* was traveling northbound on Meyers Road Street when the *Sebring* attempted to pass the *Truck* on the right. The report further stated the *Sebring* struck the *Truck* and then rolled over onto its roof. McDuffie was pronounced deceased at the scene.

### *Location*

Meyers Road travels north and south for clarity of this report and contains one lane of travel in each direction and a center turn lane. The northbound and southbound lanes were measured to be 11'1". The center turn lane measured 9'4" feet in width. The northbound parking lane on the north side measured 6'10" and southbound side measured 8'2". According to the crash report, the collision took place in front of 14294 Meyers Road.



Meyers Road at the area of the collision had a posted speed limit of 30 mph. According to the crash report, the weather was listed as "clear," and the road conditions were described as "dry." An overhead view of the collision area can be seen in **Figure 1**, and a street view image can be seen in **Figure 2**.



## Vehicles

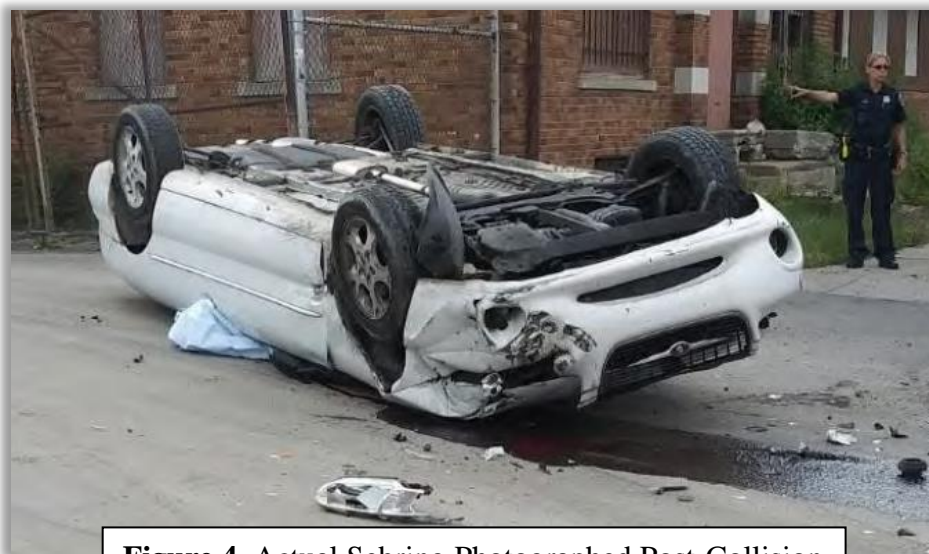
### 2000 Chrysler Sebring

The 2000 Chrysler Sebring operated by McDuffie was identified by Michigan registration plate ECL-7678 and had a listed VIN# 3C3EL55H8YT248671. The *Sebring* was a front-wheel-drive model powered by a 4.0 liter 6-cylinder motor and had a curb weight of 3396 lbs. An exemplar Sebring can be seen in **Figure 3**.



**Figure 3.** 2000 Chrysler Sebring Convertible (exemplar vehicle)

According to the crash report, the *Sebring* sustained its first impact on the vehicle's front driver's side corner. The extent of damage was listed as "Disabling." At the time of this report, the *Sebring* had not been inspected. However, there were a few post-crash photographs provided (**Figures 4, 5, 6**).



**Figure 4.** Actual Sebring Photographed Post-Collision



Upon reviewing the photographs, one can see the contact damage on the driver's side front corner. The damage appears to be consistent with striking the tire of the *Truck*. The remaining damage would have resulted from the *Sebring* rolling over onto its roof.



**Figure 5.** Rear of *Sebring*



**Figure 6.** Driver's Side of *Sebring*

### *1997 Ford LT9000 Dump Truck*

The 1997 Ford LT9000 Dump Truck operated by Neal was identified by Michigan registration plate AC32797 and VIN# 1FDYU90T5VVA29053. The *Truck* was equipped with two drive axles, was powered by a 10.5 liter 6-cylinder motor, and had a gross vehicle weight range of 33,001 to 55,000 lbs. An exemplar *Truck* can be seen in **Figure 5**.



**Figure 5.** 1997 Ford LT9000 Dump Truck (exemplar vehicle)

At the time of this report, I was unable to inspect the *Truck* in person. However, some photographs were provided that were taken at the collision scene. Upon reviewing the images, it appears the *Sebring* collided with the passenger side front tire of the *Truck*. As a result, the front tire and axle assembly was displaced in a forward direction, pushing the tire into the front fender and bumper (**Figures 6,7,8**).



**Figure 6.** Photo of Damage to Passenger Side Fender (circled)



**Figure 7.** Front Wheel Displaced Forward into Bumper and Fender





### ***Post Collision Vehicle Inspection***

After the collision, the Michigan State Police were requested to conduct a post-crash investigation on the *Truck*. The inspection took place on July 23, 2019, and Motor Carrier Officer Ryan Wilson was the inspector. According to the inspection report, Officer Wilson found "several" violations that placed the *Truck* "Out of Service" (OOS), which means the *Truck* would not have been allowed to continue to drive on a public road until the repairs were completed. While some equipment violations resulted from damage from the accident, there were also many violations, including "Out of Service" violations that were not caused by the collision. I noted those violations as the following:



- Inoperative Turn Signal: Left front turn signal lights up but does not blink.
- Inoperative Turn Signal: Right front turn signal lights up but does not blink.
- **Inoperative Turn Signal: Right rear turn signal lights up but does not blink (OOS).**
- **Inoperative Turn Signal: Left rear turn signal lights up but does not blink (OOS).**
- **Brakes: The number of defective brakes is equal to or greater than 20 Percent of the service brakes on the vehicle or combination (OOS). Officer Wilson measured and found that 5 out of 10 brakes were out of adjustment.**



**Figure 9.** Lamp Configuration on Truck

Upon reviewing the Truck photos, one can see the lamp configuration installed on the rear (**Figure 9**). The setup consisted of a pair of red lamps located on the Truck's back, on both the left and right sides. Next to the red lamps was a white lamp utilized for when the vehicle was in reverse. There were no amber turn signals located on the rear of the *Truck*.

## Statements

### Scott Neal

Neal provided sworn deposition testimony on March 16, 2021. During his deposition, Neal explained he came to work, conducted his pre-trip inspection, and noted that everything on the *Truck* worked. After his pre-trip inspection, Nick (company owner) called Neal and told him to pick up a load of gravel [SN 41.3]. So, Neal headed to the gravel place on Meyers to get a load of crushed concrete [SN 41.11]. Neal had to go around the block because it was too sharp of a turn to go left on Gavel [SN 42.7]. Neal recalls turning left onto Meyers, and the crushed concrete facility was on his right-hand side [SN 42.16]. Neal claimed he slowed down to a creep, had his right turn signal on, and turned into the facility [SN 44.24]. As he was making his right-hand turn, Neal heard a loud bang and the *Truck* jumped [SN 45.16]. Neal claims the turn signals were working before the crash [SN 163.22] and knows they were because of his pre-trip inspection but admitted there is no documentation [SN 164.4]. Neal also admitted that if the signal were not working, someone would not be able to know that he was making a turn [SN 165.3]. Neal stated he looked at his mirror before turning right but could not explain why he didn't see the plaintiff [SN 177.2]. Neal further noted that he never saw the plaintiff until after he was struck [SN 177.24]. Neal stated he checked his mirror and never saw the plaintiff [SN 182.9].

### Matthew Pace

Pace provided a recorded statement on February 4, 2020. In his statement, Pace recalled going northbound on Meyers and that there was a big truck in front of him, so he wasn't going that fast [MP 5.5]. Pace stated that when he and the *Truck* passed the *Sebring*, the *Sebring* began to drive beside him [MP 5.20]. Pace explained that he was close enough to the *Truck* that a car could not get between them [MP 6.8]. Pace stated that he slowed to let the *Sebring* in, but the *Sebring* sped up and ran into the *Truck* [MP 6.22]. Pace explained that the *Sebring* never got behind him and that it stayed in the parking lane [MP 8.4].

Pace also provided sworn deposition testimony on July 1, 2021. During his deposition Pace explained that he was on the way to his sister's house and was driving a blue Hyundai Sonata [MP 11.5]. Pace stated that as he passed the white vehicle, it began to drive. Pace stated he slowed down to let the white vehicle get in front of him, but the white vehicle continued along the side of him and the driver was bobbing his head [MP 11.16]. The white car continued and struck the passenger side area of the *Truck* [MP 12.3]. Pace stated that the blinkers for the white car were not on [MP 14.3]. Pace recalled the dump truck put on its turn signals as it got closer to the railroad tracks [MP 15.21] and specifically recalled it was blinking awhile before the *Truck* came to a stop [MP 16.3]. Pace also recalled seeing the *Truck's* brake lights [MP 16.21]. Pace could not recall if there was a center turn lane where the crash occurred [MP 33.14]. Pace could not remember where the blinker was located on the back of the *Truck* [MP 42.21]. Pace gave some conflicting testimony, first stating that he didn't know when the *Truck's* blinker came because he was paying attention to the guy that was on the side of him and he was waving at the guy in the white car to go ahead of him. Pace would then admit that he didn't know anything about the *Truck* [MP 46.3].



Pace reviewed the video and stated that when he passed the white car and it began to move, Pace slowed down and the white car stayed next to him [MP 48.20]. Pace didn't know if the Truck's front blinker was working [MP 51.8]. Pace did believe the white car was trying to pass the Truck before the Truck turned [MP 67.7]. Pace would admit that he wasn't paying attention to the Truck's brakes lights and wasn't sure if saw them [MP 73.21]. Pace also admitted that he did not know where the Truck's brake lights were located [MP 74.7-25]. Pace at one point stated the Truck's brakes lights were located up high [MP 75.3]. Pace stated in his deposition that he didn't care what the video showed and that he would rely on his memory instead of the video to refresh his recollection [MP 110.15].

### ***Officer Ryan Wilson***

Officer Ryan Wilson provided deposition testimony on July 15, 2021. During his deposition Wilson explained that at the time of the collision, he was a Commercial Vehicle Enforcement Officer with the State Police [RW 6.25]. During his last five years with the State Police, Wilson was primary officer who conducted post crash investigations [RW 7.22]. Wilson explained that he did perform the inspection on the *Truck* [RW 10.3] and that the inspection took place at 9425 Grinnell, which was DPD's Fatal Squad Yard [RW 12.9]. Wilson described that when he checked the turn signals on the *Truck*, he found that all four turn signals lit up, but did not indicate blink. Wilson explained that it would be the same as if he hit his brake light [RW15.13]. Wilson agreed that it would appear to someone that the brake light was on and that someone may believe the Truck is stopping [RW 16.10]. Wilson stated that based on his training, when all four signals are not blinking, but the headlights and brake lights worked, combined with the location of the impact on the *Truck*, the problem was a pre-existing condition [RW 17.15]. Wilson would further explain that five out of the six brakes on the *Truck* were out of service and that condition existed prior to the crash [RW 22.10]. Wilson summarized that before the crash took place, the vehicle had significant defective equipment violations [RW 24.13]. Wilson stated that he did not determine why the signals were not working, but did note the cables were connected [RW 29.14]. Wilson explained that if the lights stopped working because of a fuse, then all the lights would have been out [RW 30.7].

### ***Video Analysis***

During the crash investigation, it was discovered that one of the businesses along Meyers had video surveillance footage of the crash. Upon reviewing the video, the frame rate was noted as being 15 frames per second. The video starts at timestamp (TS) **11:31:06**, and the *Sebring* can be seen parked south of the camera. At TS **11:33:17**, the *Truck* is observed coming northbound and passes the *Sebring*. As the *Truck* passes the *Sebring*, the *Sebring* begins to accelerate behind it. There is also another vehicle that is following the *Truck*, which was the vehicle Matthew Pace was driving. At (TS) **11:33:24**, Pace's Hyundai can be seen starting to make a lane change to the right behind the *Sebring*. At (TS) **11:33:27**, the *Sebring* is observed passing the *Truck* on the right. At the same time, the *Truck's* front wheels begin to turn to the right. At **11:33:28** plus five frames, the *Truck's* left front wheel can be seen suddenly turning to the left, which would be the likely point of contact between the *Sebring* the *Truck's* right wheel. After the impact, the *Sebring* is observed rolling over onto its passenger side and lands on its roof at **11:33:30** plus seven frames.

During his deposition, Neal stated he did his pre-trip inspection and then headed to the crushed concrete facility, described as being two blocks away at 12838 Gavel Street. Since Neal stated he could not turn left and go directly to Meyers Road, the likely route that Neal would have driven from the yard was to go south on Steel Street, east on Intervale Street and then turn north onto Meyers (**Figure 10**). Utilizing that path, it was determined that the *Truck* would have traveled approximately **1920 feet** from its starting point to the area where the collision took place.



**Figure 10.** Truck Traveled Approximately **1920 Feet** from Yard to Collision Area

It is important to note that Neal claimed when he did his pre-trip inspection, he recalled the turn signals were working. The Michigan State Police determined the faulty turn signals were not a result from the crash. Therefore, for Neal's statement to be true would mean that both turn signals would have suddenly had to of become faulty after only driving about **1920 feet**. It is my opinion that scenario is highly unlikely.

***Application of Motor Vehicle Code***

In my opinion, the following motor vehicle statutes apply to this collision:

***257.647 Turning at intersection; violation as civil infraction.***

*(1) The driver of a vehicle intending to turn at an intersection shall do so as follows:*

*(a) Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.*

***257.642 Roadway divided into 2 or more marked lanes; applicable rules; designation as HOV lane; restrictions; exceptions; violation as civil infraction.***

*(1) When a roadway has been divided into 2 or more clearly marked lanes for traffic, the following rules in addition to all others consistent with this act apply:*

*(a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from the lane until the operator has first ascertained that the movement can be made with safety. Upon a roadway with 4 or more lanes that provides for 2-way movement of traffic, a vehicle shall be operated within the extreme right-hand lane except when overtaking and passing but shall not cross the center line of the roadway except where making a left turn.*

***257.637 Overtaking and passing on right of another vehicle or bicycle; conditions; violation as civil infraction.***

*(1) The driver of a vehicle may overtake and pass upon the right of another vehicle only if 1 or more of the following conditions exist:*

*(a) When the vehicle overtaken is making or about to make a left turn.*

*(b) Upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for 2 or more lines of moving vehicles in each direction and when the vehicles are moving in substantially continuous lanes of traffic.*

*(c) Upon a 1-way street, or upon a roadway on which traffic is restricted to 1 direction of movement, where the roadway is free from obstructions and of sufficient width for 2 or more lines of moving vehicles and when the vehicles are moving in substantially continuous lanes of traffic.*

*(2) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting the overtaking and passing in safety. The driver of a vehicle shall not overtake and pass another vehicle upon the right by driving off the pavement or main-traveled portion of the roadway.*

## Conclusion

My opinions outlined in this report are stated to a reasonable degree of scientific certainty and probability within the field of collision reconstruction. This writer reserves the right to supplement his opinions subject to further analysis and discovery and reserves the right to respond to any opinions proffered by other experts. This report is based on all material received and reviewed before this document's date. On receipt of any new document(s), a supplemental report may be generated seasonably in advance of trial.

The following facts appear undisputed in this matter:

- 1.) Scott Neal was operating a 1997 Ford 9000 Dump *Truck* northbound on Meyers Road.
- 2.) Scott Neal intended to turn right into the driveway of 14294 Meyers Road.
- 3.) According to the Michigan State Police, the *Truck* had many violations that would have placed the *Truck* "Out of Service," meaning the *Truck* could no longer operate upon a roadway until the violations were repaired.
- 4.) According to the State Police Inspection Report and Officer Wilson's testimony, neither the front nor the rear turn signals on the *Truck* worked properly. The lights would light up, but they would not blink.
- 5.) William McDuffie attempted to pass the *Truck* on the right, utilizing an open parking lane.
- 6.) The crash was captured on surveillance video.

Upon watching the video, one can see that McDuffie waited for the *Truck* to pass before pulling away from the curb. Although Neal stated he utilized a turn signal and Pace stated he saw a turn signal, no signal can be seen in the video. According to Neal's testimony, the turn signals on the *Truck* were operating when he did his pre-trip inspection. If accepted as true, that would mean that both front and rear turn signals all suddenly failed after the *Truck* drove approximately **1920 feet** or failed due to the collision. In my opinion, I find either scenario highly unlikely and in conflict with the physical evidence in this case. Based upon Officer Wilson's thorough inspection of the *Truck* and the location of damage, it is extremely unlikely the impact of the collision caused the signals to stop blinking. It is my opinion the turn signals were not operating when the *Truck* left the yard and drove upon the roadway.

It is also my opinion that Neal either failed to conduct a proper pre-trip inspection of the *Truck* before he began driving it or knew the turn signals were not working and decided to operate the *Truck* regardless. Since inoperative rear turn signals are an out of service violation, the *Truck* should have never been driven upon the roadway until the turn signals, and other violations were repaired.

Therefore, because the signals were defective when Neal approached the driveway and activated the turn signal, the right rear lamp would have illuminated but not blinked. Officer Wilson testified that when the turn signal is activated under those conditions, an individual behind the *Truck* may believe the *Truck* may be stopping. As such, McDuffie, in all likelihood, assumed the *Truck* was slowing or coming to a stop in the middle of the street, which would explain why he began to pass the *Truck* on the right.



Although the parking lane was not considered a travel lane, it was a paved portion of the roadway nonetheless, and McDuffie utilized it to drive around the *Truck*. According to MCL 257.637, the pass was legal to perform since the lane was unoccupied with parked vehicles.

According to MCL 257.647, Neal was required to make the approach for his right turn and the actual right turn as close as practicable to the right-hand curb or edge of the roadway. Upon reviewing the video, it shows Neal violated the statute. According to 257.642, Neal was also required to ascertain that before moving from his lane, he was required to make sure his movement could be made safely. Neal testified he looked in his mirror but admitted he did not see the car, which would have been in a position to be seen.

Therefore, based upon the totality of the circumstances, it is my opinion that Scott Neal is primarily responsible for this collision.



Timothy P. Abbo  
Collision Reconstructionist

**A0039**

# **EXHIBIT 4**



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE  
SCOTT M. NEAL,  
Plaintiff,  
vs. Case No. 20-012305-NF  
Hon. Sheila Ann Gibson  
CHANDRA McDUFFIE, Personal Representative  
Of the Estate of WILLIAM HOWARD  
McDUFFIE-CONNOR, Deceased and  
FARM BUREAU MUTUAL INSURANCE COMPANY,  
Defendants.  
Consolidated with:  
CHANDRA McDUFFIE, Personal Representative  
Of the Estate of WILLIAM HOWARD  
McDUFFIE-CONNOR, Deceased,  
Plaintiff,  
vs.  
SCOTT M. NEAL; N.S.S. CONSTRUCTION, INC.,  
and MEMBERSELECT INSURANCE COMPANY,  
Defendants.

---

<p style="text-align: right;">Page 2</p> <p>1 The Deposition of LARRY BAAREMAN,  2 Taken at 8900 Byron Commerce Drive,  3 Byron Center, Michigan,  4 Commencing at 10:36 p.m.,  5 Tuesday, September 28, 2021,  6 Before Sandra L. Stearns, CSR-6541.  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25 Job No. CS4740033</p>	<p style="text-align: right;">Page 4</p> <p>1 APPEARANCES CONTINUED:  2  3 SARAH B. GALE-BARBANTINI  4 Kramer Corbett Harding &amp; Dombrowski  5 150 West Jefferson  6 Suite 1500  7 Detroit, Michigan 48226  8 313.237.5640  9 Appearing on behalf of Dedendant Memberselect.  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES:  2  3 JONATHAN R. MARKO  4 Marko Law, PLLC  5 1300 Broadway Avenue  6 Fifth Floor  7 Detroit, Michigan 48226  8 313.241.8924  9 Appearing on behalf of the Plaintiff.  10  11 AMY DIVINEY  12 Merry Farnen &amp; Ryan, PC  13 300 Maple Park Boulevard  14 Suite 301  15 St. Clair Shores, Michigan 48081  16 586.776.6700  17 Appearing on behalf of the Defendants Neal &amp; N.S.S.  18  19 ALEXANDER R. BAUM  20 Kopka Pinkus Dolin, PLC  21 32605 West Twelve Mile Road  22 Suite 300  23 Farmington Hills, Michigan 48334  24 248.324.2620  25 Appearing on behalf of the Defendant Mcduffie.</p>	<p style="text-align: right;">Page 5</p> <p>1 TABLE OF CONTENTS  2  3 Witness Page  4 LARRY BAAREMAN  5  6 EXAMINATION BY MS. DIVINEY 6  7  8 EXHIBITS  9  10 Exhibit Page  11 (Exhibits attached to transcript.)  12  13 EXHIBIT 1 (deposition notice) 8  14 EXHIBIT 2 (witness folder) 8  15 EXHIBIT 3 (cv) 9  16 EXHIBIT 4 (affudavit) 10  17 EXHIBIT 5 (witness report) 12  18 EXHIBIT 6 (Champlain Construction) 19  19  20  21  22  23  24  25</p>

<p style="text-align: right;">Page 6</p> <p>1 Byron Center, Michigan  2 Tuesday, September 28, 2021  3 10:36 p.m.  4  5 LARRY BAAREMAN  6 * * *  7 THE COURT REPORTER: Raise your right hand,  8 please.  9 Do you solemnly swear or affirm that the  10 testimony you are about to give will be the truth, the  11 whole truth, and nothing but the truth?  12 THE WITNESS: Yes, I do.  13 MS. DIVINEY: Let the record reflect this is  14 the date and time set for the deposition of Larry  15 Baareman in a case that's currently pending in the  16 County of Wayne.  17 It's entitled Neil versus Chandra McDuffie,  18 and it's consolidated with the case of Chandra McDuffie  19 as the PR of the Estate of William Howard McDuffie  20 versus Scott Neal, N.S.S. Construction, and  21 MemberSelect Insurance Company.  22 This deposition is being taken pursuant to  23 notice and for all allowable purposes under law.  24 EXAMINATION  25 BY MS. DIVINEY:</p>	<p style="text-align: right;">Page 8</p> <p>1 reflect that the defendant, N.S.S. Construction, is the  2 only one that has those sanctions issued against it,  3 and there are current motions before the Court for  4 reconsideration on that issue.  5 But we thank the plaintiff's counsel for  6 allowing the dep to proceed this morning.  7 BY MS. DIVINEY:  8 Q. I'm going to hand to you, Mr. Baareman -- we're going  9 to mark it as Exhibit 1 to your deposition. It's your  10 deposition notice.  11 If you could, take a look at it and let me  12 know if you received that before.  13 A. Yes, I have.  14 Q. And if you'll note, on page 4 of the dep notice -- and  15 I see you have one in front of you.  16 It says that you shall produce at the  17 deposition any and all records, reports, notes, and  18 diagrams, memorandum of pertinent information of any  19 kind in your possession concerning this case.  20 Is that what is before you today?  21 A. Yes, it is.  22 Q. Okay. So we're going to mark your dep notice as  23 Exhibit Number 1 and then we're going to mark the  24 documents that you brought today as Exhibit 2.  25 DEPOSITION EXHIBITS 1 &amp; 2</p>
<p style="text-align: right;">Page 7</p> <p>1 Q. Good morning, Mr. Baareman. My name is Amy Diviney.  2 I represent the defendants Scott Neal and N.N.S.  3 Construction in this matter.  4 MR. MARKO: Let me just place a quick  5 objection. This is John Marko.  6 So the defendants filed pleadings -- you  7 know, we offered to let Mr. Neal out of this case  8 without prejudice.  9 The defendants have filed pleadings  10 indicating they are going to dismiss him without  11 prejudice, although an order hasn't been entered yet.  12 And Judge Gibson entered a previous order  13 striking all of defendants' affirmative defenses and  14 specifically -- let me make sure I have the correct  15 language here, but said that they are not allowed to  16 introduce any mitigating evidence.  17 So I'm going to allow the deposition of Mr.  18 Baareman to go forward this morning, but it's  19 plaintiff's position that defendants are not allowed to  20 introduce any mitigating evidence on liability,  21 including in the form of cross-examination.  22 However, for discovery purposes only, I'm  23 going to allow the deposition to go forward this  24 morning.  25 MS. DIVINEY: Okay. And let the record also</p>	<p style="text-align: right;">Page 9</p> <p>1 MARKED AT 10:39 a.m.  2 BY MS. DIVINEY:  3 Q. Can I take a quick look at what you brought with you  4 today? I just want to make -- before you hand it to  5 me, I just want to make sure there's no attorney/client  6 privilege, nothing like that.  7 A. There should be nothing in here.  8 Q. Do we need to make a copy of this or can we take it  9 with us or how --  10 A. It's been done a couple of ways. If you want a copy in  11 color, because I mark and highlight and write --  12 Q. Okay.  13 A. -- I take it to Kinko's and whatever that is, or  14 sometimes it's just give it to the court reporter and  15 they do it and ship it back to me. It doesn't matter.  16 Q. All right. I'm going to hand you what we're going to  17 mark as Exhibit Number 3 to your dep. It is your CV.  18 I just want to make sure that it's totally  19 up to date and you don't need to make any changes to  20 it, modifications to it?  21 A. Nope. That is the current one.  22 DEPOSITION EXHIBIT 3  23 MARKED AT 10:40 a.m.  24 BY MS. DIVINEY:  25 Q. When were you first retained in this matter, if you can</p>

<p style="text-align: right;">Page 10</p> <p>1 recall?</p> <p>2 A. I think my first contact was on or around September 25</p> <p>3 of 2020.</p> <p>4 Q. And who were you contacted by?</p> <p>5 A. I would believe the law firm of Mr. Marko's office.</p> <p>6 Q. And have you done other work for Mr. Marko's law firm?</p> <p>7 A. You know, the name doesn't ring a bell to me. So I</p> <p>8 could have. It could have been somebody else in that</p> <p>9 firm.</p> <p>10 Right now, I couldn't tell you. I don't</p> <p>11 remember.</p> <p>12 Q. What is your rate of pay for this particular matter?</p> <p>13 A. Working on the case is 210 an hour.</p> <p>14 Q. And do you divide your time evenly between defense</p> <p>15 work, plaintiff's work? Do you -- give me a</p> <p>16 percentage.</p> <p>17 A. Yeah. It ran 50/50 for years. I think lately it's</p> <p>18 been a little bit more defense than plaintiff, but it's</p> <p>19 very close to 50/50.</p> <p>20 MS. DIVINEY: I'm going to mark another</p> <p>21 exhibit here.</p> <p>22 DEPOSITION EXHIBIT 4</p> <p>23 MARKED AT 10:42 a.m.</p> <p>24 BY MS. DIVINEY:</p> <p>25 Q. This is going to be marked as Exhibit 4. This is an</p>	<p style="text-align: right;">Page 12</p> <p>1 quickly.</p> <p>2 (Off the record at 10:43 a.m.)</p> <p>3 (Back on the record at 10:47 a.m.)</p> <p>4 MS. DIVINEY: Mr. Baareman was kind enough</p> <p>5 to have his assistant make a copy of the report, so we</p> <p>6 are back on the record.</p> <p>7 DEPOSITION EXHIBIT 5</p> <p>8 MARKED AT 10:47 a.m.</p> <p>9 BY MS. DIVINEY:</p> <p>10 Q. So, Mr. Baareman, I'm going to stick with your</p> <p>11 affidavit for a moment here.</p> <p>12 Did you draft this affidavit yourself?</p> <p>13 A. It was a combination between Mr. Marko's office and</p> <p>14 myself. This is all my information and my opinions,</p> <p>15 which are stated in my report.</p> <p>16 But as far as drafting, I did not do that,</p> <p>17 no.</p> <p>18 Q. Okay. Do you know who did draft it?</p> <p>19 A. All of the information that's in here is information</p> <p>20 that I gave.</p> <p>21 Q. Okay.</p> <p>22 A. And I don't for this reason, because I believe</p> <p>23 information was given to Mr. Marko's office, and it</p> <p>24 could have been, also, with the help of my paralegal</p> <p>25 once I gave that information and then reviewed it.</p>
<p style="text-align: right;">Page 11</p> <p>1 affidavit that we were provided.</p> <p>2 And that's your affidavit; correct?</p> <p>3 A. That is correct.</p> <p>4 Q. Is there anything -- since you signed this affidavit,</p> <p>5 is there anything that you've reviewed or any changes</p> <p>6 to this affidavit that you would need to make at this</p> <p>7 time?</p> <p>8 A. No. That affidavit would be current at the time of the</p> <p>9 affidavit.</p> <p>10 Q. Correct.</p> <p>11 A. Since then, I've done more work and added more to the</p> <p>12 bases of my opinions.</p> <p>13 Q. And give me -- what is your opinion with respect to</p> <p>14 this case?</p> <p>15 A. Do you have a copy of my report?</p> <p>16 Q. All I have is your affidavit. I was never provided a</p> <p>17 copy of your report.</p> <p>18 A. I just sent it yesterday afternoon late, hoping that</p> <p>19 maybe you got a copy, but my opinions are in here in</p> <p>20 writing in a report.</p> <p>21 If you would like, I can get someone to make</p> <p>22 a copy for you real quick.</p> <p>23 MS. DIVINEY: That would be really great.</p> <p>24 Thank you.</p> <p>25 So we're going to go off the record real</p>	<p style="text-align: right;">Page 13</p> <p>1 So I don't know for sure.</p> <p>2 Q. What's the name of your paralegal?</p> <p>3 A. She signed it. Kendra Smith.</p> <p>4 Q. Okay.</p> <p>5 A. She's also a notary.</p> <p>6 Q. And I did not see a date on the affidavit. Did I miss</p> <p>7 it?</p> <p>8 A. It looks like --</p> <p>9 Q. I know Kendra signed it, and she said her commission</p> <p>10 exists July 25th, 2022, but I don't see a date --</p> <p>11 A. Yeah. It shows the 20th day of May '21. It's right</p> <p>12 there, at the top of where she signed.</p> <p>13 Q. Okay. Thank you.</p> <p>14 A. Yeah.</p> <p>15 Q. No. Exactly what I was looking for.</p> <p>16 So your affidavit and your report, they</p> <p>17 would be -- they would merge together. You would have</p> <p>18 your opinions that are in your affidavit that are also</p> <p>19 in your report here?</p> <p>20 A. Oh, definitely. The report would be more detailed --</p> <p>21 Q. Correct.</p> <p>22 A. -- with all of the bases for all of the opinions.</p> <p>23 Q. Okay.</p> <p>24 A. You know, all the supporting.</p> <p>25 MS. DIVINEY: Now, this report is 50 pages,</p>

<p style="text-align: right;">Page 14</p> <p>1 and I've just been handed it today. So I haven't had a 2 chance to go through and review any of it. 3 So, on the record, I would like to reserve 4 the right to continue this deposition, if needed. 5 And I understand, Mr. Marko -- you know, 6 I'll allow you to keep your objection with respect to 7 the facts that you stated earlier on the record. 8 MR. MARKO: Hold on a second. 9 MS. DIVINEY: Sure. 10 MR. MARKO: Let me just say that, under the 11 Michigan Rules of -- Michigan Court Rules, we are not 12 required to even produce a report whatsoever. 13 However, for your convenience today, Mr. 14 Baareman produced a report to you, which he's given you 15 and that you have right now. 16 This was not something that we held on to. 17 It was produced after the close of business yesterday. 18 My assistant is out sick. She might have 19 COVID. So the quickest way we could get this to you is 20 Mr. Baareman giving it to you in person today. 21 We're happy to take a break if you want to 22 review the report, but that's why we're doing a 23 discovery deposition. 24 In fact, Mr. Baareman was listed on our 25 initial witness list in this case. He was also listed</p>	<p style="text-align: right;">Page 16</p> <p>1 of their time. 2 And, again, we had requested this 3 information months ago, and we're just being provided 4 it today. 5 MR. MARKO: Nobody requested that 6 information months ago, and you were provided the 7 substance of his opinions, which is all that we are 8 required to do under the Michigan Rules in Court, is 9 provide the substance of our expert opinion, which we 10 did. 11 And now you're going to get to take his 12 deposition and ask him whatever you want. 13 BY MS. DIVINEY: 14 Q. Mr. Baareman, is there any particular page I can go to 15 and just see what all your opinions are? 16 A. Yes. In the front is a table of contents that says, 17 Opinions: Page 47. 18 Q. Okay. Let's flip over to page 47. 19 Is this report a report that you drafted 20 yourself? 21 A. Yes. 22 Q. Okay. And it looks like you have 11 paragraphs. So 23 are those 11 different opinions? 24 A. Yes. 25 Q. Okay. And I see at the very top that you base those</p>
<p style="text-align: right;">Page 15</p> <p>1 in witness list interrogatory responses, which were 2 filed, specifically with regard to witnesses sent by 3 you. 4 And let me just state, Interrogatory Number 5 2 requested expert opinions and reports. We listed Mr. 6 Baareman, and we also provided you an affidavit 7 outlining his opinions prior to today. 8 So there's no basis for a continued 9 deposition, and absent a court order -- especially 10 given the fact that it's dubious that you can even take 11 a deposition of him today given the sanctions order, it 12 will not be occurring absent a court order. 13 MS. DIVINEY: So just let the record reflect 14 that I've just been handed 50 pages of a report by Mr. 15 Baareman. 16 And I'm sorry to hear of Mr. Marko's 17 assistant being out sick. 18 Again, we have motions pending before the 19 Court as to reconsideration with respect to the 20 sanctions motion. 21 So, therefore, it may turn out very well 22 appropriate to continue the dep if needed. 23 To take a break to review 50 pages, I don't 24 think that that's reasonable and a good expenditure on 25 the other attorneys appearing that are appearing today,</p>	<p style="text-align: right;">Page 17</p> <p>1 opinions on your 45 years of experience in the 2 transportation industry, having served in roles such as 3 truck driver, transportation manager, and safety 4 manager. 5 In your years of experience, have you ever 6 driven a dump truck, such as the one that's at issue in 7 this case? 8 A. I've driven a dump truck just like this one for Tanis 9 Trucking. He had a few of them around the farm over 10 there. And that's a '97 truck, so it's a very old 11 truck. 12 We did a couple of reconstruction -- or, 13 actually, we tried to do a crash with a truck similar 14 to that. 15 I actually have video of it in our back 16 yard, very similar dump truck, where we crashed into a 17 car, and that's when we have the state police here for 18 day of reenactment or crashes. 19 Q. But you didn't do a reenactment similar to how this 20 accident occurred; correct? 21 A. Definitely not. 22 Q. It was a different accident you're discussing; correct? 23 A. Correct. It had nothing to do with this one. 24 Q. And then how long did you drive that dump truck? 25 A. Oh, for Tanis, it was on and off. I was there for a</p>

<p style="text-align: right;">Page 18</p> <p>1 few years. I mainly drove tractor/trailer in an 2 eight-, nine-, ten-state area. 3 But, because he had a farming operation, 4 sometimes we hauled cattle. Sometimes we ran the dump 5 truck for him, but that was not my primary job. 6 Q. Would you say that you drove the dump truck a handful 7 of times, more than 20 times? 8 A. I would say, if you're -- I would cap it at 20. It 9 would be that or below. 10 Q. Did you haul things in the dump truck? 11 A. Oh, definitely. 12 Q. So you're familiar with how the dump truck operates 13 then? 14 A. Oh, definitely. 15 Q. Did you ever do any maintenance or repairs to that dump 16 truck? 17 A. Yeah. And if you would have read further in this, I'm 18 a Michigan State licensed mechanic. I have my own 19 fleet of trucks out back, including a straight truck. 20 The box, whether it's a dump truck or not, 21 doesn't matter. A straight truck is a straight truck. 22 I specialize in heavy-duty brakes. I 23 specialize in heavy-duty repair on classic vehicles, 24 which this one is, and I'm a licensed state mechanic 25 for those.</p>	<p style="text-align: right;">Page 20</p> <p>1 It was just cracked at the base. 2 Q. Okay. 3 A. Then I went to number 3. 4 Q. So can I stop you right there. With respect to the 5 right-hand fender, yeah, we do have pictures that shows 6 it was cracked. 7 So at some point before they -- Vermont 8 construction company received it, something else must 9 have happened to that right-hand -- 10 A. It could have. I'm just staying we know, from the 11 accident and impound, it wasn't ripped off. 12 Q. Okay. 13 A. What happened after that I could not tell you. 14 Q. After it was impounded? 15 A. That is correct. 16 Q. Okay. 17 A. The next item I have is number 3. 18 Q. Sure. 19 A. This is the one talking about the operation of the 20 brakes. 21 Q. Uh-huh. 22 A. If you look at the Motor Carrier report, he wrote them 23 up for out of adjustment. 24 Q. Okay. 25 A. Not for defective, but out of adjustment. Then he</p>
<p style="text-align: right;">Page 19</p> <p>1 I've many repairs on these types of trucks. 2 I know the wiring system on this truck. I think we can 3 clear the air today on the lighting issue on this as we 4 go, and the braking issue. 5 Q. Why don't you -- why don't you clear for me right now 6 the lighting issue with respect to the truck -- 7 A. Sure. 8 Q. -- what you feel needs to be cleared? 9 A. After I read this document that I received from 10 Champlain Construction, where the truck was purchased 11 and sent out to Vermont -- 12 MS. DIVINEY: Let's go ahead and mark that 13 as an exhibit. I have an extra copy. That will be 14 Exhibit 6. 15 DEPOSITION EXHIBIT 6 16 MARKED AT 10:36 a.m. 17 BY MS. DIVINEY: 18 Q. Go ahead. 19 A. When you get a copy of my book, you will see I 20 highlighted and marked things, which will be different 21 than the one you have. 22 Q. Okay. 23 A. Number 1, they said the new hood assembly with lights, 24 it said the entire right-hand fender had been ripped 25 off the hood. That is incorrect. We have pictures.</p>	<p style="text-align: right;">Page 21</p> <p>1 wrote them up for automatic slack adjusters, failure to 2 do automation or readjust them. 3 Q. Can you explain those two things for me, the first one 4 and then the -- 5 A. Sure. 6 Q. -- second one? 7 A. I'd be happy to. 8 And what they -- I'm just going to go back 9 to the Champlain Construction document. 10 Q. Sure. 11 A. All that document says is they went through and 12 inspected, they didn't find any damage. They didn't 13 talk about readjustment or putting it in service, so 14 that means nothing. 15 Now, I will explain it to you. 16 Q. Okay. 17 A. On an air-brake system, on your slack adjuster is an 18 adjustment tool. What happens with an automatic slack 19 adjuster is, as I apply my brakes and I wear lining off 20 the brake pads -- in other words, that thickness gets 21 smaller -- the automatic slack adjuster compensates and 22 readjusts it to keep it in the limits. 23 And on our truck, the steer axle was 24 defective. You're only allowed an inch and 25 three-quarter movement. These are well two inches.</p>



<p style="text-align: right;">Page 22</p> <p>1 On the drive axle, we have type three 2 chambers. That's allowed a two-inch movement. We have 3 plenty of them -- or actually another four -- I said 4 that incorrectly. There's a total of six, five out. 5 So the remainder of them were over two inches, which 6 put them out of service. 7 Again, the automatic portion of the slack 8 adjuster is failing. What makes that fail is improper 9 maintenance by a mechanic that doesn't know how to 10 properly adjust those, meaning you have to have the 11 special tool to pull the locking pin out to when you 12 adjust them. 13 If you just turn the ratchet on them, you 14 grind all the teeth and that makes the automatic 15 portion fail on there. 16 I've seen no evidence that Nick Shubeck was 17 a qualified person to do brake adjustments, and he 18 stated in his dep that he was the one that maintained 19 all of those vehicles. 20 But we show history in their Safety 21 Measurement System that, nine months before this 22 accident, he had another one that was put out of 23 service for brakes and automatic slack adjusters and 24 for lights. 25 That was nine months before, and he was also</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. Correct. 2 A. The difference you will have is this. If I went into 3 hard braking, instead of stopping in 120 feet, I'm now 4 going to stop in 200 feet, because I don't have enough 5 braking power to stop that wheel from moving. 6 Q. When you say you're stopping in 120 feet versus 200 7 feet, is that going at a certain speed on a certain 8 angle or is that going straight on a road at 25 miles 9 per hour? 10 Because I'm sure it would make a difference; 11 correct? 12 A. No -- well, it will. Downhill will make the brakes 13 work harder, because they get hotter. So it doesn't 14 matter if it's on the flat surface or on a downhill. 15 It doesn't matter. 16 The federal government came out with these 17 guidelines way back in the '60s and the guidelines are 18 there still. Like our officer that did this inspection 19 for Michigan Motor Carrier, all officers in all 48 20 states, lower 48, are trained the same way. The 21 manufacturers build our parts to meet that. 22 So what it means is if you get past -- the 23 quarter inch past the maximum, your braking power falls 24 to 30 percent. 25 Q. Okay.</p>
<p style="text-align: right;">Page 23</p> <p>1 written up -- I think it was ten months before, a month 2 before that one, for the same thing, and then he didn't 3 repair them after the ticket and the same truck was 4 caught again 30 days later on the road. 5 Q. I'm going to stop you right there, but I'll let you 6 continue. So don't worry. 7 A. Sure. 8 Q. So let's go back with respect to the brakes and what 9 the Michigan state trooper determined. 10 So when he's testing the brakes, is he 11 trying to test them so the truck will stop under 12 certain conditions? For example, going down a hill at 13 a certain speed, or what is he looking for? 14 A. He's doing what he's actually trained for, which is a 15 requirement that it doesn't exceed what we call a push 16 rod measurement. 17 Q. Okay. 18 A. In other words, he cannot have more than two inches of 19 free-play movement of the slack adjuster from the slack 20 adjuster moves until the brake shoes touch the drum -- 21 Q. Right. 22 A. -- for the friction to stop it. If that movement is 23 over two inches, all that means is this -- and the best 24 way I can explain it to make it simple, you will still 25 have brakes.</p>	<p style="text-align: right;">Page 25</p> <p>1 A. So the further you get past that maximum, the less 2 braking efficiency you have. 3 It doesn't mean you don't have brakes. It's 4 very common and typical for a driver -- his 5 responsibility in a pre-trip is to check this. 6 However, if a driver doesn't, he can likely 7 put his foot on a brake pedal, he feels reaction, he's 8 not at a hard brake or a panic brake and he doesn't 9 know that they're getting out of adjustment. He feels 10 he has brakes. 11 But if you understand how to operate this 12 dump truck -- I'm a driving instructor for these. I 13 have a school here that does it -- they're not on the 14 brakes very hard. They're using the transmission to 15 slow themselves down. So he wouldn't know it without 16 actually doing his pre-trip inspection. 17 And this doesn't happen overnight. For the 18 brakes that I saw out of adjustment and the 19 measurements, they've been this way for weeks. 20 Q. Okay. So when you -- I'm going to go back. When you 21 said with respect Mr. Shubeck, it's your understanding 22 that Mr. Shubeck did all of the maintenance on the 23 trucks. 24 A. According to his deposition testimony, he said he 25 maintained those trucks, he took care of them, and</p>

<p style="text-align: right;">Page 26</p> <p>1 under Michigan law and state law -- Michigan adopted  2 the Federal Motor Carrier laws out of Public Act 181 --  3 that whoever does service on brakes has to be an  4 qualified inspector.  5 There's three ways to be qualified, which  6 means he has to be the one to be able to do that. He's  7 the one that stated he maintained the vehicles.  8 He also stated they were always in perfect  9 working condition. Well, we have history from the  10 safety measurement system that that is not a true  11 statement.  12 Q. Let me go back. We -- maybe you're not aware of this,  13 but we also provided to Mr. Marko the names of  14 individuals that worked at N.S.S. that did maintenance  15 and repair work to this dump truck. Were you aware of  16 that?  17 A. No, I wasn't. And it wouldn't matter to me, because if  18 they weren't in an ASS school with a license -- which  19 they don't have to be, but that would be the ultimate  20 certification, but then they had to be on-the-job,  21 training before, underneath the direct supervision.  22 So there's ways to be qualified, and I would  23 have no idea if they are qualified or not qualified?  24 Q. And then --  25 MR. MARKO: Yeah. Let me just object --</p>	<p style="text-align: right;">Page 28</p> <p>1 cannot make an opinion on it.  2 Did the truck stop? Yes.  3 Q. Can we go back to the information from the Vermont  4 Construction Company, because I interrupted you to ask  5 you some questions.  6 A. That's fine.  7 Q. I know we were at number 3.  8 A. Yep.  9 Q. Anything else with respect to number 3?  10 A. No. That doesn't tell you the rest of the story on  11 measurements is all I've been pointing out.  12 Q. Okay.  13 A. Number 8, the key here is, after wiring the new hood on  14 the truck, all the lights worked as needed.  15 If you understand how this lighting system  16 works, it's pre-electronic, as we call it. Electronic  17 came out in 2000. So the ground needs to work on this.  18 Q. Okay.  19 A. And because all four lights lit up, but didn't blink,  20 the ground is where the issue is. If it's not properly  21 ground, then what we call a relay or a resistor --  22 there is no fuse on this. It's like a mini circuit  23 breaker. Without a proper ground, that can't tell  24 those lights to blink.  25 Q. Okay.</p>
<p style="text-align: right;">Page 27</p> <p>1 MS. DIVINEY: Sure.  2 MR. MARKO: -- to the question. It  3 mischaracterizes the evidence in this case. All the  4 repair records for the truck were shredded and put in a  5 dumpster behind the defendant's business.  6 So I think that that's a mischaracterization  7 of the evidence.  8 BY MS. DIVINEY:  9 Q. Did you see the video with respect to this accident?  10 A. Yes, I did.  11 Q. And did the dump -- did you see the dump truck stop in  12 that video?  13 A. Yeah, I did.  14 Q. And with your experience and your knowledge, you know,  15 did the dump truck sufficiently stop or should it have  16 stopped sooner?  17 What is your opinion with respect to the  18 stopping of the dump truck?  19 A. You can't have an opinion on that, because it depends  20 on how much braking the driver -- the defendant did.  21 If he did not hit the brakes hard, he's  22 going to stop when he stops. If he hit the brakes as  23 hard as he could, then, obviously, there's a  24 time/distance there that -- I'm not qualified to do  25 that -- an accident reconstructionist can do. So you</p>	<p style="text-align: right;">Page 29</p> <p>1 A. So the ground is where the issue is in this, which  2 could be a corroded ground.  3 This is something that didn't happen because  4 of the accident. The lights not working were there.  5 We have actually pictures and evidence to  6 show that, and I know where the wiring is on this  7 truck. It goes inside the frame rail, to the inside of  8 the hood, to the top of the fender. None of that  9 played a part of this accident. It did not play a part  10 of this.  11 Q. When you say that the ground needs to work, could there  12 have been a loose connection with respect to the  13 ground.  14 A. Well, according to Officer Wilson, he looked to make  15 sure the wires were connected, which would be an  16 appropriate thing to do.  17 And they can be connected and still not  18 work. It's still going back to the ground problem.  19 So when Champlain Construction put a new  20 hood on, they would have had to -- when they removed  21 the old hood -- cut all the wires, reconnect those  22 wires. Hooked to proper ground, the lights would work  23 appropriately, the way they should.  24 Q. So with respect to here, could that ground just have  25 been connected, but still had a short somewhere within</p>

<p style="text-align: right;">Page 30</p> <p>1 the wiring?</p> <p>2 A. Well, with -- you're saying, actually, two different</p> <p>3 things.</p> <p>4 Q. Okay.</p> <p>5 A. A ground is what is -- when it's connected to metal,</p> <p>6 it's grounded.</p> <p>7 Q. Uh-huh.</p> <p>8 A. It always works. So could that wire have been damaged</p> <p>9 up in there? That's possible. Could it be corroded?</p> <p>10 Yes.</p> <p>11 The object here is that didn't happen from</p> <p>12 the accident with Mr. Wilson's -- or Officer Wilson's</p> <p>13 statement that there were no wires disconnected.</p> <p>14 In other words, where the connection points</p> <p>15 are, there was nothing loose.</p> <p>16 In my opinion, as a licensed mechanic, more</p> <p>17 likely than not, it's simply a ground problem, and that</p> <p>18 ground problem was probably on the frame rail. That's</p> <p>19 where all of our grounds come from, is off the frame.</p> <p>20 And that's inside, not outside, the frame</p> <p>21 rail. All of the wiring harnesses running inside the</p> <p>22 frame rail, which is protected from movement of the</p> <p>23 truck or accidents. It's in a wiring loom.</p> <p>24 Generally, that's where it comes from. It</p> <p>25 could be the connection where the turn signals are, and</p>	<p style="text-align: right;">Page 32</p> <p>1 And I ran the SMS on N.S.S. Construction.</p> <p>2 It gave me history in 24 months, and when I went</p> <p>3 through history of every time they were pulled over,</p> <p>4 they had out-of-service violations.</p> <p>5 What that simply means is this, they were</p> <p>6 written up ten months before this for defective brakes;</p> <p>7 nine months before this, defective turn signals not</p> <p>8 working, defective brakes on the vehicle, and then, of</p> <p>9 course, our accident.</p> <p>10 So all of those are spelled out in here,</p> <p>11 this VIN number, plate number, date, where it happened,</p> <p>12 it's -- all that data is in there.</p> <p>13 Q. So the SMS report is for the particular dump truck at</p> <p>14 issue in this case?</p> <p>15 A. Yes.</p> <p>16 Q. Okay.</p> <p>17 A. But it shows all the equipment of N.S.S.</p> <p>18 Q. Okay.</p> <p>19 A. And so the one that -- and you've got to look at the</p> <p>20 license plate clearly, because they're a digit off.</p> <p>21 Ours ends in 7.</p> <p>22 The one that was previously cited ten months</p> <p>23 before ended in 6. It's one digit off, a different</p> <p>24 plate.</p> <p>25 Q. Was that also a dump truck?</p>
<p style="text-align: right;">Page 31</p> <p>1 it could have been a rear one.</p> <p>2 But, because there is a ground problem, all</p> <p>3 four are not working.</p> <p>4 Q. So is it your opinion that, when Mr. Neal left the</p> <p>5 yard, those lights would not have blinked?</p> <p>6 A. That's correct. I'm going to -- and my opinion is</p> <p>7 going to be strong. We do have evidence that Mr. Neal</p> <p>8 didn't do a proper pre-trip. We know that. He would</p> <p>9 have caught the brakes if he did.</p> <p>10 If you look at the history of N.S.S., nine</p> <p>11 months before -- actually, ten months before, they were</p> <p>12 written up for defective brakes or drivers not doing</p> <p>13 pre-trips.</p> <p>14 Q. And where did you get that information from?</p> <p>15 A. I don't know if you're aware of what they call an SMS.</p> <p>16 It's the Safety Measurement System on every company</p> <p>17 that has a commercial motor vehicle, and it's the data</p> <p>18 collector.</p> <p>19 So here's an example. On this accident,</p> <p>20 when Motor Carrier did that report, that on this date</p> <p>21 he inspected it, these are the violations. That gets</p> <p>22 sent to Washington to a data bank.</p> <p>23 So all motor carriers, doesn't matter what</p> <p>24 state you're in, it collects there, and this is a</p> <p>25 public document.</p>	<p style="text-align: right;">Page 33</p> <p>1 A. You know, I didn't run the VIN to tell, but it's easy</p> <p>2 to find out.</p> <p>3 Q. Okay.</p> <p>4 A. That truck was defective for the same problems we have</p> <p>5 here. Nine months --</p> <p>6 Q. What type of -- do you know what type of truck that</p> <p>7 was?</p> <p>8 I'm sorry to interrupt you.</p> <p>9 A. No. I looked at the VIN number. I didn't run it, but</p> <p>10 it's so simple to do. I'm connected to VIN numbers. I</p> <p>11 can tell you the make and model of any vehicle.</p> <p>12 I actually have the app on my phone. I</p> <p>13 could find it that quick.</p> <p>14 Q. Okay. And there was another vehicle? Was it that</p> <p>15 out-of-service issue or --</p> <p>16 A. Yes. And that data is -- and I've highlighted it in</p> <p>17 here to make it simple.</p> <p>18 Q. Okay.</p> <p>19 A. So you have one ten months before, nine months before,</p> <p>20 and then our accident.</p> <p>21 Q. Okay.</p> <p>22 A. There's also one before that that was cited for</p> <p>23 careless driving and the driving behaviors. So it</p> <p>24 gives the 24 months.</p> <p>25 The interesting thing that I just found out</p>

<p style="text-align: right;">Page 34</p> <p>1 this morning -- and I printed it real quick. When I</p> <p>2 reread Mr. Schumaker's deposition at his new company,</p> <p>3 Contract Excavating, so I ran his SMS on the new</p> <p>4 company.</p> <p>5 And what I just saw on here -- I want to get</p> <p>6 the date right. This one was 7/19 of 2021. So this is</p> <p>7 on his new company. He was just cited for a simple</p> <p>8 didn't put his name on the door, US DOT number, no</p> <p>9 medical certificate with a driver, no turn signals</p> <p>10 working. Again, he's got another write-up on turn</p> <p>11 signals.</p> <p>12 Operating a commercial motor vehicle with no</p> <p>13 annual inspection.</p> <p>14 He's written up for the same things, which</p> <p>15 we call -- and I teach motor carriers this. He doesn't</p> <p>16 have what we call -- the Federal Motor Carrier calls it</p> <p>17 a systematic way to maintain your vehicles in a safe</p> <p>18 working order so that defects are not found on the</p> <p>19 roadway that could cause or lead to an accident.</p> <p>20 And then your drivers have to be taught how</p> <p>21 to properly do a vehicle inspection so that they can</p> <p>22 catch those thing.</p> <p>23 But, anyway, it was a note of interest.</p> <p>24 It's not in my report, because I just ran it this</p> <p>25 morning and I brought a copy, that there's still an</p>	<p style="text-align: right;">Page 36</p> <p>1 file to prove they have that annual all the time.</p> <p>2 One thing I forgot to tell you about the</p> <p>3 SMS. There's a rating system the federal government</p> <p>4 gives carriers and they put them in their own peer</p> <p>5 group.</p> <p>6 So for N.S.S., they listed seven vehicles,</p> <p>7 nine drivers. So he's put into a category of companies</p> <p>8 in the united States that are probably -- they're</p> <p>9 probably going to have this five-to-ten category, so he</p> <p>10 fits in there.</p> <p>11 And then they rank them, 1 being the best,</p> <p>12 20 being the worst -- excuse me, 100 being the worst.</p> <p>13 He's rated at 100 --</p> <p>14 Q. Okay.</p> <p>15 A. -- on vehicle maintenance or the safety of the vehicle</p> <p>16 stopped on roadside.</p> <p>17 That document is in here, too, and I've</p> <p>18 highlighted it.</p> <p>19 Q. Okay. Thank you.</p> <p>20 With respect to the annual inspection -- and</p> <p>21 you said that the document should be maintained in a</p> <p>22 file. Do they have to submit that document to the</p> <p>23 State of Michigan at all?</p> <p>24 A. No. It has to be on the vehicle.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 35</p> <p>1 issue with lack of maintenance under his new company.</p> <p>2 Q. And you said that the Federal Motor Vehicle Code, they</p> <p>3 have a systematic way to maintain the vehicle.</p> <p>4 A. Yep.</p> <p>5 Q. Is that also included in your binder there or is</p> <p>6 that --</p> <p>7 A. No. That would be under 396 on the regulations. I</p> <p>8 didn't pull that section, but I could any time.</p> <p>9 It requires them to have a systematic way to</p> <p>10 maintain your vehicles. Most carriers have an A</p> <p>11 Inspection, B Inspection. It could be hours, it could</p> <p>12 be miles, it could be months, depending how the</p> <p>13 equipment is utilized.</p> <p>14 Q. Does a company's vehicles have to be inspected yearly</p> <p>15 by someone from the State or someone from the Federal</p> <p>16 Motor Safety Carrier Division?</p> <p>17 A. No. They have to have an annual inspection. It has to</p> <p>18 be done by a qualified inspector.</p> <p>19 Now, because I'm a licensed mechanic,</p> <p>20 qualified in heavy-duty trucks, I could do that.</p> <p>21 Q. Okay.</p> <p>22 A. I have no idea if he has anybody on board that can do</p> <p>23 it at his place, but they're required to have an annual</p> <p>24 done once a year.</p> <p>25 It's a document that has to maintain in the</p>	<p style="text-align: right;">Page 37</p> <p>1 A. And, also, in their driver maintenance file, which is</p> <p>2 required. If they get a roadside inspection, the</p> <p>3 officer is going to ask for that document, and if they</p> <p>4 can't provide it, that's a violation.</p> <p>5 Q. Going back to the information from the Vermont company,</p> <p>6 anything else with respect to that that you would like</p> <p>7 to --</p> <p>8 A. No. That's all I would have on that.</p> <p>9 Q. Okay. So will you go to your opinions on page 7?</p> <p>10 A. Okay.</p> <p>11 Q. I'm going to Number 2. I'm going to read it into the</p> <p>12 record since some of the other attorneys don't have</p> <p>13 your report.</p> <p>14 It says, Mr. Scott Neal violated Michigan</p> <p>15 Compiled Law 257.642 for moving his commercial motor</p> <p>16 vehicle from his lane without first ascertaining that</p> <p>17 his movement could be made safely.</p> <p>18 What information did you use to form that</p> <p>19 opinion?</p> <p>20 A. I think it was pretty simple, when you look at this</p> <p>21 accident, that the McDuffie car was there to be seen.</p> <p>22 And his CDL training and Federal Motor</p> <p>23 Carrier training for a CDL license states that, before</p> <p>24 you make a turn, whether left or right, the requirement</p> <p>25 is that you check your mirrors before you make that</p>




<p style="text-align: right;">Page 38</p> <p>1 turn to make sure there is nobody alongside of you.</p> <p>2 And we have this problem usually in cities,</p> <p>3 where there's bicyclists that could be alongside you.</p> <p>4 So you're checking that as you're coming up</p> <p>5 to it, and his mirrors would have clearly shown him</p> <p>6 there was a vehicle approaching in that lane.</p> <p>7 So we know he violated. He -- and I wrote</p> <p>8 it down there, too. He also made a comment to Mr. Neal</p> <p>9 that the white car came out of nowhere. That was the</p> <p>10 comment -- excuse me, that was in Mr. Schumaker's</p> <p>11 deposition. He said that Mr. Neal told him the white</p> <p>12 car came out of nowhere.</p> <p>13 I'm a driving instructor for</p> <p>14 tractor/trailers, and when I looked at that, this was a</p> <p>15 simple accident that shouldn't have happened.</p> <p>16 If the defendant driver simply would have</p> <p>17 looked in his mirror, he would have seen the</p> <p>18 approaching vehicle. Before he started slowing down,</p> <p>19 when he activated his turn signal, he would have seen</p> <p>20 the vehicle coming. If he had simply stopped, the</p> <p>21 vehicle would have passed him or maybe even stopped.</p> <p>22 This is the training required you have to</p> <p>23 have to get your CDL license. It's required by federal</p> <p>24 law, that's a requirement of this driver, and also</p> <p>25 through Michigan.</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. Okay. If we go to number 3, you say that, Mr. Scott</p> <p>2 Neal violated Michigan Compiled Law 257.647 for failing</p> <p>3 to make his approach for a right turn, and the right</p> <p>4 turn, as close as practicable to the right-hand curb or</p> <p>5 edge of the roadway.</p> <p>6 So what did you use to base your opinion on</p> <p>7 that? What did you --</p> <p>8 A. What did I use? It was pretty simple. Federal law.</p> <p>9 Q. Okay.</p> <p>10 A. We have that in making proper right-hand turns for</p> <p>11 commercial motor vehicles. Michigan adopted those</p> <p>12 laws, but the Michigan CDL manual is the interpretation</p> <p>13 of those laws for drivers. The manual is the same</p> <p>14 whether it's Ohio or Michigan or Indiana. The manuals</p> <p>15 are identical.</p> <p>16 And he was taught -- the defendant driver</p> <p>17 was taught how to properly make this turn. Because</p> <p>18 there was not parked vehicles there, he was taught</p> <p>19 always keep your vehicle -- or right rear of your</p> <p>20 vehicle close to that curbing. What that does is does</p> <p>21 not mislead anybody behind you.</p> <p>22 And if you watch that video, approaching</p> <p>23 this, he moved to the left. When he moved to the left</p> <p>24 to make that turn to the right, because he turned his</p> <p>25 wheel to the left -- not dramatically, but he moved</p>
<p style="text-align: right;">Page 39</p> <p>1 And, then, of course, we have the Michigan</p> <p>2 law that says it. They just coincide with each other.</p> <p>3 Q. In forming this opinion, did you consider Mr. Neal's</p> <p>4 testimony in which he testified that he checked his</p> <p>5 mirrors before beginning his turn and he was looking in</p> <p>6 his mirrors throughout his turn?</p> <p>7 A. Well, he said -- if I go back to exactly what he said,</p> <p>8 what I saw in the deposition was he saw a white flash.</p> <p>9 If he actually would have checked his</p> <p>10 mirror, like he properly should have done in the</p> <p>11 beginning -- and he said he went to school, you know,</p> <p>12 to get his CDL license. Then he knew he should have</p> <p>13 checked it prior to that. He would have seen the white</p> <p>14 vehicle.</p> <p>15 For only seeing a white flash -- we know the</p> <p>16 vehicle was there. We have a video to show us how long</p> <p>17 that vehicle would have been seen out the right side of</p> <p>18 the truck.</p> <p>19 Then, obviously, he didn't check his mirror</p> <p>20 to make sure it was clear. And if he waited until the</p> <p>21 last second to see it, the accident was going to</p> <p>22 happen.</p> <p>23 Q. In your opinion, did Mr. McDuffie-Conner violate any</p> <p>24 laws with respect to driving in the parking lane?</p> <p>25 A. According to what I see, no.</p>	<p style="text-align: right;">Page 41</p> <p>1 left to turn right. If you were behind that vehicle,</p> <p>2 you would see that vehicle moving left.</p> <p>3 Q. Do you know whether or not Mr. McDuffie-McConner -- Mr.</p> <p>4 McDuffie-Conner was directly behind Mr. Neal as Mr.</p> <p>5 Neal moved to the left?</p> <p>6 A. When you say directly, you're talking a point of</p> <p>7 distance. I can't tell you. That's an accident</p> <p>8 reconstructionist.</p> <p>9 Watching the video, I know that approaching</p> <p>10 that, he's behind him, but at some point he gets</p> <p>11 alongside of him.</p> <p>12 That's a timing thing belonging to an</p> <p>13 accident reconstructionist.</p> <p>14 Q. With respect to -- do you know where Mr. Scott Neal was</p> <p>15 headed when he was making that right turn?</p> <p>16 A. Yeah. He was going into that location there to pick</p> <p>17 up -- I believe it was crushed concrete or something</p> <p>18 like that.</p> <p>19 I don't know the name of the business</p> <p>20 anymore, but I have it in here somewhere.</p> <p>21 Q. Do you know how sharp that turn is into that business</p> <p>22 driveway? Do you know if there's any other hindrances</p> <p>23 in that driveway where he was turning into?</p> <p>24 A. I looked at it on Google Earth.</p> <p>25 Q. Uh-huh.</p>

<p style="text-align: right;">Page 42</p> <p>1 A. If this case would go to trial, I'll go there, but  2 because I'm a driving instructor, I can tell you this  3 is a simple driveway to turn into with that truck.  4 There's nothing that would prevent him from  5 doing this correctly.  6 But, regardless of that, there was nothing  7 to prevent from doing the correct turn into there.  8 Q. And, basically, your opinion in number 4 basically  9 mirrors what you've already testified to you. Just  10 include some other information from the Michigan  11 Commercial Driver's License Manual and the Federal  12 Motor Safety Carrier regulations.  13 Let me look at number 5 here. Same thing  14 with number 5, you've testified to this.  15 If we go to number 6, you have in there that  16 the N.S.S. Construction violated the Federal Motor  17 Carrier safety regulation because they failed to  18 maintain and preserve their records for a minimum  19 retention period of three years?  20 A. That is correct. The Federal Motor Carrier regulation,  21 in the event of an accident -- you have got a  22 three-year retention period for accidents, and in that  23 hours of service, maintenance records, all of those  24 documents that are part of that accident.  25 But there's also other -- you will see other</p>	<p style="text-align: right;">Page 44</p> <p>1 they stay within those city limits, are some of those  2 vehicles exempted from the Federal Motor Safety  3 Carrier --  4 A. No. Federal Motor Carrier applies to any commercial  5 motor on a public roadway.  6 Now, Michigan will step in if you're an  7 interstate carrier -- intrastate state carrier and give  8 them some exemptions. However, since they touch public  9 roadways, federal law supercedes.  10 Now, some of those exemptions can be like  11 City of Detroit, a municipality, has some exemptions.  12 Some of your public transportation has some exemptions.  13 This truck does not qualify for any  14 exemption, because it was a commercial motor vehicle.  15 It doesn't matter the distance it's driving.  16 Now, he wouldn't even get an exemption for  17 recapped tires, either. No. He would still apply to  18 all federal law.  19 Q. With respect to number 8, Pursuant to the Federal Motor  20 Carrier Safety Regulations, and On Guard. What's On  21 Guard?  22 A. Federal Motor Carrier put out a warning when CDL came  23 out, and this is exactly what Nick Schumaker said. He  24 had a CDL, so he was qualified.  25 Back in 2010, Federal Motor Carrier came out</p>
<p style="text-align: right;">Page 43</p> <p>1 requirements in retention period under 379, as  2 maintenance records is -- under normal circumstance,  3 with no accident, maintenance records have to be housed  4 a year and a half after the vehicle leaves your  5 facility or your control or ownership of that vehicle.  6 But in the event of an accident, now you  7 move it to three years. So there's going to be  8 differences of that all the way through, but I just put  9 all of the regulations for driver qualification files,  10 hours of service -- all of those things are just listed  11 in here.  12 Q. Are there any vehicles that could be exempt to some of  13 the Federal Motor Carrier regulations or the ones  14 adopted by the State of Michigan, if you know?  15 A. Yes. I actually teach it. The exempt ones are going  16 to be under from 10,001 gross vehicle weight rating,  17 unless they're hooked to a trailer. Then they fall  18 back into law.  19 Q. Okay.  20 A. Now, there are going to be some exemptions, like  21 farmers get some exemptions. They still have to do the  22 maintenance. They just don't need the documents.  23 So there's exemptions. Michigan has  24 exemptions, yes.  25 Q. Vehicles that are can driven within certain cities and</p>	<p style="text-align: right;">Page 45</p> <p>1 and put an on guard -- and it's a Federal Motor --  2 Federal Highway one, but it came from Federal Motor  3 Carrier.  4 And I've got the actual documents in my  5 report. So you can read the entire thing and where it  6 came from.  7 It's simply saying this, just because  8 somebody has a CDL does not qualify him to operate a  9 truck. That means he just met minimum criteria.  10 However, it's the company's responsibility to train, do  11 his background checks, make sure he hasn't exhibited  12 any unsafe actions or unsafe equipment or accidents on  13 the road that would, you know, hurt the general  14 motoring public, and that was a warning Federal Motor  15 Carrier put out, and they put this out every couple of  16 years. It's very well known.  17 But I put the document in here. It was just  18 showing that Mr. Schumaker actually was in violation of  19 that. His thinking was he had a CDL, so he was  20 qualified, that's all I needed.  21 That was not a true statement.  22 Q. So are you saying he -- I know you say pursuant to the  23 safety regulations and on guard, but on guard is just a  24 warning, just so I understand it correctly?  25 A. No. It's not a warning. It's the Federal Motor</p>

Page 46	Page 48
<p>1 Carrier saying -- because we have 391 -- I actually put</p> <p>2 it in here.</p> <p>3 We've got 391, and I think it's 3, says that</p> <p>4 a qualified driver has to have a CDL, has to have a med</p> <p>5 card, but he has to be properly trained and understand</p> <p>6 laws and taught the laws to operate this truck safely,</p> <p>7 which goes from how to do a pre-trip inspection.</p> <p>8 And it's Mr. Schumaker's responsibility to</p> <p>9 make sure it's getting done, make sure that he</p> <p>10 understands commercial motor vehicle laws, how to make</p> <p>11 right turns properly, how to use his mirrors properly.</p> <p>12 And we can see from the history of this</p> <p>13 defendant driver, he has as a pretty good history of</p> <p>14 unsafe actions while driving a commercial motor</p> <p>15 vehicle. So he's exhibited those already.</p> <p>16 Q. So, in your opinion, it's simply not enough for</p> <p>17 somebody to come in and hand an employer, Hey, here is</p> <p>18 my CDL. I can go drive your dump truck?</p> <p>19 They should be given more by their employee.</p> <p>20 Am I understanding that correctly?</p> <p>21 A. Oh, yeah. They're required to do more. Yes.</p> <p>22 (Phone ringing) Excuse me. I'm sorry.</p> <p>23 Q. If you need to take it --</p> <p>24 A. No, no.</p> <p>25 Q. Let's go to your last opinion. This accident was a</p>	<p>1 are in out-of-service conditions or unsafe conditions,</p> <p>2 which, obviously, affects the general motoring public</p> <p>3 in violation of federal law.</p> <p>4 When he was asked about driver qualification</p> <p>5 files and things that he was asked for, all of those</p> <p>6 that he ignored federal law on all of those safety</p> <p>7 violations with all of his answers.</p> <p>8 And I could go through and list all of them,</p> <p>9 but we have them in deposition testimony.</p> <p>10 His disregard for the safety of the general</p> <p>11 motoring public started with the owner, and safety</p> <p>12 starts at the top.</p> <p>13 When you move from there to the condition</p> <p>14 his vehicles were in, you look at his testimony, but</p> <p>15 then we look at the actual facts or the documentation</p> <p>16 of these vehicles listed through roadside inspections,</p> <p>17 we know they're defective and unsafe.</p> <p>18 And then, if you go to defendant driver, Mr.</p> <p>19 Neal, and look at his past history operating commercial</p> <p>20 motor vehicles and his disregard for the general</p> <p>21 motoring public and then his actions on this day, not</p> <p>22 doing a proper pre-trip inspection, which these items</p> <p>23 could have been caught, including the brakes. We know</p> <p>24 about the lighting system that, in my opinion -- and</p> <p>25 I'm very strong in that opinion, it's a ground problem.</p>
Page 47	Page 49
<p>1 preventable accident as defined by the Federal Motor</p> <p>2 Carrier Safety Regulations, and you give the</p> <p>3 regulation, but for the actions and/or inactions of Mr.</p> <p>4 Neal and N.S.S. Construction.</p> <p>5 You've elaborated on it quite a bit.</p> <p>6 Anything more you want to put in there as to how this</p> <p>7 could have been preventable, but for the acts or</p> <p>8 inactions of either Mr. Neal or the construction</p> <p>9 company?</p> <p>10 A. No. I think it's going to be completely covered in my</p> <p>11 report, because I've got all the basis for that.</p> <p>12 This is, under the definition of preventable</p> <p>13 with Federal Motor Carrier commercial motor vehicles,</p> <p>14 this one lines up exactly with that for the owner that</p> <p>15 had the vehicles and that hired the driver and for the</p> <p>16 driver.</p> <p>17 It was their actions that put this into</p> <p>18 motion.</p> <p>19 Q. Okay. What actions specifically?</p> <p>20 A. Specifically -- and I'm probably not going to get them</p> <p>21 all, but I'll do my best.</p> <p>22 Q. Sure.</p> <p>23 A. If we go back to N.S.S., if you look at his history of</p> <p>24 his vehicle stopped on the road and now his new</p> <p>25 company, that he's putting trucks out on the road that</p>	<p>1 I don't think it's a breaker problem.</p> <p>2 When the lights were totally rewired, we now</p> <p>3 have lights again, which means we cured the problem.</p> <p>4 All of that should have been taken care of.</p> <p>5 Not properly using his mirrors under his</p> <p>6 training and education or requirement of Federal Motor</p> <p>7 Carrier law.</p> <p>8 So it stacks right up onto how this was put</p> <p>9 into motion and how the accident happened that day?</p> <p>10 Q. I'm going to go back to the lights real quick. When</p> <p>11 you say it's a ground problem, not a breaker problem,</p> <p>12 and your basis for that is the information that you</p> <p>13 received from the Vermont Construction Company?</p> <p>14 A. A little bit of that, but when the officer said that he</p> <p>15 checked all of the connections and the wires were</p> <p>16 connected, but all four would not blink, whether it was</p> <p>17 right or left. That, right away, told me it was not a</p> <p>18 circuit break problem, and there is no fuse in this.</p> <p>19 That it was a ground problem. It needs to finish the</p> <p>20 circuit to work properly.</p> <p>21 And any of that wiring would not be near</p> <p>22 where this accident happened.</p> <p>23 Q. And then, with respect to Mr. Neal, I'm sure you read</p> <p>24 his deposition and he had his CDL training in another</p> <p>25 state.</p>

<p style="text-align: right;">Page 50</p> <p>1 As part of that training, would he have</p> <p>2 received training with respect to the Federal Motor</p> <p>3 Safety Vehicle Act and the pre-trip inspections?</p> <p>4 A. Well, that's hard to say for this reason. Coming</p> <p>5 February of next year, now there's a mandate by Federal</p> <p>6 Motor Carrier to the schools that they have to now</p> <p>7 teach this stuff.</p> <p>8 Q. Okay.</p> <p>9 A. Previous to this coming February, the school could</p> <p>10 teach whatever it wanted to. Some schools actually</p> <p>11 taught Federal Motor Carrier, some don't.</p> <p>12 Our school here has actually been in the</p> <p>13 federal pilot program for three years. So we've been</p> <p>14 on that program, doing exactly what the new program is.</p> <p>15 But, regardless of that, I don't know if he</p> <p>16 was taught that, but if he passed his CDL test, that</p> <p>17 means he did 80 percent of what the inspection required</p> <p>18 during testing to pass the inspection portion.</p> <p>19 When he did his backing maneuvers, he had to</p> <p>20 pass that by 80 percent, and when he drove on the road,</p> <p>21 he had to pass that by 80 percent.</p> <p>22 Now that's a microfilm document, because</p> <p>23 it's licensing. I would imagine you can go to the</p> <p>24 original licensing location and found out how he did in</p> <p>25 all of this.</p>	<p style="text-align: right;">Page 52</p> <p>1 A. Well, there's two things I said here. The ten-year is</p> <p>2 the MCMIS report, and that's Federal Motor Carrier.</p> <p>3 So any time an N.S.S. truck was pulled over,</p> <p>4 any state, anywhere, county, city, it's the data that I</p> <p>5 told you that the SMS has. This is the master one.</p> <p>6 Q. Okay.</p> <p>7 A. It would have shown -- and I would imagine that he</p> <p>8 closed that business because he probably got a letter</p> <p>9 from the Feds saying they were coming out to audit him,</p> <p>10 because in the event of a fatality, a Federal Motor</p> <p>11 Carrier person is going to be on site at his business,</p> <p>12 which would have shut him down with the violations I've</p> <p>13 seen. They would have pulled his authority.</p> <p>14 He has now reopened underneath a new name</p> <p>15 and new USD number.</p> <p>16 It would show that the letter was sent, they</p> <p>17 were going to go, business closed, they -- it shows the</p> <p>18 whole history.</p> <p>19 But I would be more interested in the</p> <p>20 repetition of safety defects on the vehicle over the</p> <p>21 last ten-year period. That's what I would look at.</p> <p>22 Now, the PSP is a five-year history. That's</p> <p>23 on a driver, individual.</p> <p>24 That's the two different ones.</p> <p>25 Q. So the PSP, can you ask for a specific five years or is</p>
<p style="text-align: right;">Page 51</p> <p>1 There's two things I haven't done. I didn't</p> <p>2 think that there was need to, but if I need to, I can</p> <p>3 go further.</p> <p>4 Mr. Neal has a five-year history on a PSP.</p> <p>5 That's like a personal safety record of him. What that</p> <p>6 five years will do is this, it will show every time he</p> <p>7 was pulled over.</p> <p>8 So it's not a driving -- and it's part of a</p> <p>9 driving record, too. We have two records as commercial</p> <p>10 motor vehicle driver. We have our driving record, but</p> <p>11 then we have a PSP.</p> <p>12 So if I got pulled over and have got</p> <p>13 defective brakes or lights out, nobody would see that</p> <p>14 on my driving record, but it's on my PSP that I've been</p> <p>15 pulled over for safety violations.</p> <p>16 So there's a big back history on him.</p> <p>17 That's something I can FOIA Washington and get, like</p> <p>18 you do on a ten-year MCMIS report.</p> <p>19 I didn't see the need, because there's more</p> <p>20 than enough evidence here on N.S.S., but I could do a</p> <p>21 ten-year history on N.S.S., and that ten-year history</p> <p>22 will give me every time their vehicle was pulled over</p> <p>23 and every violation in the past ten years.</p> <p>24 Q. The ten-year history that you would request is a PSP</p> <p>25 request?</p>	<p style="text-align: right;">Page 53</p> <p>1 it just the five years -- the past five years?</p> <p>2 A. Yeah. What it's going to give you is -- they've been</p> <p>3 collecting this data since 2011. Generally, they'll</p> <p>4 just give you five, but you can FOIA and ask for a</p> <p>5 complete history.</p> <p>6 Q. Okay.</p> <p>7 A. So anything Mr. Neal would have done since he obtained</p> <p>8 his CDL and since that program got up and running, he's</p> <p>9 got a complete history of any time he's been pulled</p> <p>10 over.</p> <p>11 So these other carriers that he drove for</p> <p>12 over the road or long haul, if he was stopped in Utah</p> <p>13 would show down there. All of those things show up.</p> <p>14 Q. If you know, do employees usually request the driver's</p> <p>15 PSP?</p> <p>16 A. It's required by law, but my other company, Fleet</p> <p>17 Compliance Group, we act as the safety department for</p> <p>18 many trucking companies, that's pretty standard.</p> <p>19 Federal Motor Carrier collected that data,</p> <p>20 gave it to employers to help them find the bad ones or</p> <p>21 the bad drivers with history that you couldn't find on</p> <p>22 a license, because I could cancel my licence in</p> <p>23 Michigan and get one in Ohio and my record went away,</p> <p>24 or I could change my name, but on a PSP, it stays with</p> <p>25 you.</p>



<p style="text-align: right;">Page 54</p> <p>1           So that is put out by Federal Motor Carrier, 2   and motor carriers have been doing that for years. It 3   was their way to find the bad ones. 4 Q. Besides the 11 paragraphs for your opinion here -- and 5   I see that you reserve the right, at your discretion, 6   to change or modify your opinions at any time. 7           Anything else you would like to add or 8   modify at this time? 9 A. Not in my report. I just want to make sure I gave you 10  the last-minute thing. 11          No. There would be nothing else. 12          MS. DIVINEY: Okay. I have no more 13  questions. 14          MR. MARKO: Alex? Sarah? 15          MS. BAUM: I have no questions. 16          MS. GALE-BARBANTINI: I have no questions. 17          MR. MARKO: No questions. 18          Thank you, Mr. Baareman. Have a great day, 19  everybody. 20          (The deposition was concluded at 11:37 a.m. 21  Signature of the witness was not requested by counsel 22  for the respective parties hereto.) 23 24 25</p>	
<p style="text-align: right;">Page 55</p> <p>1           CERTIFICATE 2 STATE OF MICHIGAN 3 COUNTY OF ALLEGAN 4 5           I, Sandra Stearns, a Notary Public in and 6   for the above county and state, do hereby certify that 7   this Deposition was taken before me at the time and 8   place hereinbefore set forth; that the witness was by 9   me first duly sworn to testify to the truth; that this 10  is a true, full and correct transcript of my 11  stenographic notes so taken; and that I am not related, 12  nor of counsel to either party, nor interested in the 13  event of this cause. 14 15 16 17 18 19 20 21 22           23          Sandra Stearns, CSR - 6541 24          Notary Public, 25          Allegan County                 My Commission Expires: 11-07-2026</p>	

# **EXHIBIT 5**

Enhanced Video  
(to be mailed to  
Court on Flashdrive)

**A0056**

# **EXHIBIT 6**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

TRUSTEES OF THE OPERATING ENGINEERS'  
LOCAL 324 PENSION FUND, OPERATING  
ENGINEERS' LOCAL 324 HEALTH  
CARE PLAN, OPERATING ENGINEERS' LOCAL  
324 VACATION & HOLIDAY FUND, OPERATING  
ENGINEERS' LOCAL 324 RETIREE BENEFIT FUND,  
OPERATING ENGINEERS' LOCAL 324 APPRENTICESHIP  
FUND, and OPERATING ENGINEERS' LOCAL 324  
DEFINED CONTRIBUTION PLAN,  
Trust Funds Established and Administered  
Pursuant to Federal Law,

Plaintiffs,

v.

Case No. 18-cv-  
Hon.

N.S.S. CONSTRUCTION, INC., a Michigan  
corporation, N.S.S. CONSTRUCTION, INC.,  
d/b/a RG BILLS CONSTRUCTION, and  
NICHOLAS SCHUBECK, III, individually,

Defendants.

---

**DAVID J. SELWOCKI (P51375)**  
**MATTHEW I. HENZI (P57334)**  
**JESSICA L. SCHUHRKE (P77561)**  
Sullivan, Ward, Asher & Patton, P.C.  
Attorneys for Plaintiffs  
25800 Northwestern Hwy., Suite 1000  
Southfield MI 48075  
(248) 746-0700  
(248) 746-2760 fax  
dselwocki@swappc.com  
mhenzi@swappc.com  
jschuhrke@swappc.com

---

**COMPLAINT**



**NOW COME** the above-named Plaintiffs, by and through their attorneys, **SULLIVAN, WARD, ASHER & PATTON, P.C.**, and for their Complaint against Defendant, N.S.S. CONSTRUCTION, INC., N.S.S. CONSTRUCTION, INC., d/b/a RG BILLS CONSTRUCTION, and NICHOLAS SCHUBECK, III, individually, state as follows:

1. Plaintiffs are the Trustees of the OPERATING ENGINEERS' LOCAL 324 PENSION FUND, OPERATING ENGINEERS' LOCAL 324 HEALTH CARE PLAN, OPERATING ENGINEERS' LOCAL 324 VACATION & HOLIDAY FUND, OPERATING ENGINEERS' LOCAL 324 RETIREE BENEFIT FUND, OPERATING ENGINEERS' LOCAL 324 APPRENTICESHIP FUND, and OPERATING ENGINEERS' LOCAL 324 DEFINED CONTRIBUTION PLAN, (hereinafter referred to as "FUNDS"). The Funds are Trust Funds established under and administered pursuant to Section 302 of the Labor Management Relations Act (hereinafter referred to as "LMRA"), 29 USC §186; and the Employee Retirement Income Security Act of 1974 (hereinafter referred to as "ERISA"), 29 USC §1001 et seq., with administrative offices in the Township of Bloomfield, Oakland County, Michigan.

2. Defendant N.S.S. CONSTRUCTION, INC. and N.S.S. CONSTRUCTION, INC., d/b/a RG BILLS CONSTRUCTION, is a Michigan

corporation with its principal offices in the State of Michigan (hereinafter “N.S.S.”).

3. Defendant NICHOLAS SCHUBECK, III (hereinafter “SCHUBECK”) is an individual who is the principal owner and officer of N.S.S. SCHUBECK is responsible for running the day-to-day operations of N.S.S. and is responsible for all its decisions pertaining to the payment of contributions to the FUNDS, including decisions whether to pay contributions.

4. SCHUBECK is an employer or agent of an employer engaged in commerce and in an industry or activity affecting commerce as defined in §501(1) and (3) of the LMRA, 29 USC §142(1) and (3), and within the meaning of §301(A) of the LMRA, 29 USC §185(A), or the agents acting in the interest of such an employer as defined in §501(3) of the LMRA, 29 USC §142(3). SCHUBECK is an employer within the meaning of §3(5) of ERISA, 29 USC §1002(5), and is thus obligated to make contributions to a multi-employer Plan within the meaning of 29 USC §1145.

5. The Plaintiffs administer the FUNDS pursuant to the terms and provisions of their respective Agreements and Declarations of Trust. The FUNDS have been established pursuant to a Collective Bargaining Agreement heretofore entered into between Local Union No. 324, and 324-A Union of Operating Engineers, AFL-CIO (hereinafter referred to as “Union”) and certain Employers

and Employer Associations, whose members employ members of the Union, and are required to be maintained and administered in accordance with the provisions of the LMRA, ERISA and other applicable state and federal laws.

6. At all times relevant hereto, Defendant N.S.S. was signatory to a Collective Bargaining Agreement with the Union.

7. The FUNDS are third-party beneficiaries of the Collective Bargaining Agreement.

8. Pursuant to the terms and provisions of the Collective Bargaining Agreement between N.S.S. and the Union, N.S.S. agreed to pay, in addition to wages, employee fringe benefit contributions to the FUNDS for each employee employed by N.S.S., and covered by the Agreement.

9. That pursuant to the provisions of the CBA and the Plan and Trust documents of the FUNDS, contributions become vested plan assets on the date on which they are due.

10. That pursuant to the Collective Bargaining Agreements, Defendant N.S.S. is required to make fringe benefit contribution payments to be remitted with the standard contribution form no later than the 15<sup>th</sup> day of the month following the month in which the hours were worked.

11. That pursuant to the Collective Bargaining Agreement, when such submission of payments and contributions are not timely made, the signatory employer is charged with liquidated damages, costs of collection and attorney fees.

12. That, pursuant to the Collective Bargaining Agreement and in accordance with the Agreement and Declaration of Trust for each of the FUNDS, the Trustees acting thereunder are authorized and empowered to examine and copy the payroll records and books of a signatory employer to permit such Trustees to determine whether such an employer is making full payments as required under the Collective Bargaining Agreement

13. That Plaintiffs are entitled as a matter of law to enforce collection of such delinquent fringe benefits pursuant to 29 USC §1132(g)(2) and Section 1145.

14. This court has jurisdiction pursuant to Section 301 of the LMRA, 29 USC §185, this being an action arising out of a Collective Bargaining Agreement between the labor organization and an employer. Jurisdiction and venue are also proper pursuant to 29 USC §1132(e).

**COUNT I – Breach of Collective Bargaining Agreement and 29 USC §1145**

15. Plaintiffs hereby incorporate and adopt by reference paragraphs 1 through 14 above as though fully set forth herein.

16. That notwithstanding its contractual obligations, N.S.S. has failed and refused to pay its obligations, therefore violating the Collective Bargaining



Agreements and various provisions of ERISA, including but not limited to 29 USC §1145.

17. Plaintiffs are without adequate remedy at law and will suffer immediate, continuing and irreparable injury, loss and damage unless Defendants are ordered to specifically perform all obligations on Defendants' part required to be performed under the Collective Bargaining Agreement and are restrained from continuing to refuse to perform as thereunder required.

**WHEREFORE**, Plaintiffs request that this Honorable Court grant the following relief:

- A. Order an injunction against Defendant restraining it from continuing violations of the Collective Bargaining Agreement as set forth above;
- B. Enter an Order that N.S.S. CONSTRUCTION, INC., open its books and records for a complete payroll audit;
- C. Enter a Judgment in favor of Plaintiffs against Defendants N.S.S. CONSTRUCTION, INC., N.S.S. CONSTRUCTION, INC., d/b/a RG BILLS CONSTRUCTION, and NICHOLAS SCHUBECK, III, individually, for all unpaid fringe benefit contributions, including those set forth in the above ordered audit, together with any liquidated damages thereon, accumulated interest, actual attorney fees, court costs, audit and other collection costs mandated by 29 USC §1132(g)(2), and such other sums as may become due to the FUNDS during the pendency of this action;
- D. Enter an Order that jurisdiction of this matter be retained pending compliance with the Court's Orders; and
- E. Any such other, further, or different relief as may be just and equitable under the circumstances.

**COUNT II – Breach of Fiduciary Duties  
of Nicholas Schubeck, III**

18. Plaintiffs hereby incorporate and adopt by reference paragraphs 1 through 17 above as though fully set forth herein.

19. SCHUBECK is a fiduciary with respect to the various fringe benefit plans within the meaning of ERISA, 29 USC §1002(21)(A) in that he exercised discretionary authority or control respecting management or disposition of the assets of the plans.

20. By engaging in the acts and omissions described, SCHUBECK has breached his fiduciary duties regarding the FUNDS within the meaning of 29 USC §1104(a)(1)(A).

21. SCHUBECK is personally liable based on breaching his fiduciary duties pursuant to 29 USC §1109(a).

**WHEREFORE**, Plaintiff FUNDS request that this Honorable Court grant the following relief:

- A. Order an injunction against Defendant restraining it from continuing violations of the Collective Bargaining Agreement as set forth above;
- B. Enter an Order that N.S.S. CONSTRUCTION, INC., open its books and records for a complete payroll audit;
- C. Enter a Judgment in favor of Plaintiffs against Defendants N.S.S. CONSTRUCTION, INC., N.S.S. CONSTRUCTION, INC., d/b/a RG BILLS CONSTRUCTION, and NICHOLAS SCHUBECK, III, individually, for all unpaid fringe benefit contributions, including

those set forth in the above ordered audit, together with any liquidated damages thereon, accumulated interest, actual attorney fees, court costs, audit and other collection costs mandated by 29 USC §1132(g)(2), and such other sums as may become due to the FUNDS during the pendency of this action;

- D. Enter an Order that jurisdiction of this matter be retained pending compliance with the Court's Orders; and
- E. Any such other, further, or different relief as may be just and equitable under the circumstances.

Respectfully submitted,

**SULLIVAN, WARD,  
ASHER & PATTON, P.C.**

s/David J. Selwocki  
Attorney for Plaintiffs  
25800 Northwestern Hwy., Suite 1000  
Southfield, MI 48075  
(248) 746-0700  
dselwocki@swappc.com  
P51375

Dated: February 8, 2018

W2145897.DOC/A56-117351

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

TRUSTEES OF THE OPERATING ENGINEERS'  
LOCAL 324 PENSION FUND, OPERATING  
ENGINEERS' LOCAL 324 HEALTH  
CARE PLAN, OPERATING ENGINEERS' LOCAL  
324 VACATION & HOLIDAY FUND, OPERATING  
ENGINEERS' LOCAL 324 RETIREE BENEFIT FUND,  
OPERATING ENGINEERS' LOCAL 324 APPRENTICESHIP  
FUND, and OPERATING ENGINEERS' LOCAL 324  
DEFINED CONTRIBUTION PLAN,  
Trust Funds Established and Administered  
Pursuant to Federal Law,

Plaintiffs,

v.

Case No. 19-cv-  
Hon.

N.S.S. CONSTRUCTION, INC., a Michigan  
corporation, N.S.S. CONSTRUCTION, INC.,  
d/b/a RG BILLS CONSTRUCTION, and  
NICHOLAS SCHUBECK, III, individually,

Defendants.

---

**DAVID J. SELWOCKI (P51375)**

Sullivan, Ward, Asher & Patton, P.C.

Attorneys for Plaintiffs

25800 Northwestern Hwy., Suite 1000

Southfield MI 48075

(248) 746-0700

(248) 746-2760 fax

dselwocki@swappc.com

---

**COMPLAINT**

**NOW COME** the above-named Plaintiffs, by and through their attorneys,  
**SULLIVAN, WARD, ASHER & PATTON, P.C.**, and for their Complaint against  
Defendant, N.S.S. CONSTRUCTION, INC., N.S.S. CONSTRUCTION, INC., d/b/a RG

BILLS CONSTRUCTION, and NICHOLAS SCHUBECK, III, individually, state as follows:

1. Plaintiffs are the Trustees of the OPERATING ENGINEERS' LOCAL 324 PENSION FUND, OPERATING ENGINEERS' LOCAL 324 HEALTH CARE PLAN, OPERATING ENGINEERS' LOCAL 324 VACATION & HOLIDAY FUND, OPERATING ENGINEERS' LOCAL 324 RETIREE BENEFIT FUND, OPERATING ENGINEERS' LOCAL 324 APPRENTICESHIP FUND, and OPERATING ENGINEERS' LOCAL 324 DEFINED CONTRIBUTION PLAN, (hereinafter referred to as "FUNDS"). The Funds are Trust Funds established under and administered pursuant to Section 302 of the Labor Management Relations Act (hereinafter referred to as "LMRA"), 29 USC §186; and the Employee Retirement Income Security Act of 1974 (hereinafter referred to as "ERISA"), 29 USC §1001 et seq., with administrative offices in the Township of Bloomfield, Oakland County, Michigan.

2. Defendant N.S.S. CONSTRUCTION, INC. and N.S.S. CONSTRUCTION, INC., d/b/a RG BILLS CONSTRUCTION, is a Michigan corporation with its principal offices in the State of Michigan (hereinafter "N.S.S.").

3. Defendant NICHOLAS SCHUBECK, III (hereinafter "SCHUBECK") is an individual who is the principal owner and officer of N.S.S. SCHUBECK is responsible for running the day-to-day operations of N.S.S. and is responsible for all its decisions pertaining to the payment of contributions to the FUNDS, including decisions whether to pay contributions.



4. SCHUBECK is an employer or agent of an employer engaged in commerce and in an industry or activity affecting commerce as defined in §501(1) and (3) of the LMRA, 29 USC §142(1) and (3), and within the meaning of §301(A) of the LMRA, 29 USC §185(A), or the agents acting in the interest of such an employer as defined in §501(3) of the LMRA, 29 USC §142(3). SCHUBECK is an employer within the meaning of §3(5) of ERISA, 29 USC §1002(5), and is thus obligated to make contributions to a multi-employer Plan within the meaning of 29 USC §1145.

5. The Plaintiffs administer the FUNDS pursuant to the terms and provisions of their respective Agreements and Declarations of Trust. The FUNDS have been established pursuant to a Collective Bargaining Agreement heretofore entered into between Local Union No. 324, and 324-A Union of Operating Engineers, AFL-CIO (hereinafter referred to as “Union”) and certain Employers and Employer Associations, whose members employ members of the Union, and are required to be maintained and administered in accordance with the provisions of the LMRA, ERISA and other applicable state and federal laws.

6. At all times relevant hereto, Defendant N.S.S. was signatory to a Collective Bargaining Agreement with the Union.

7. The FUNDS are third-party beneficiaries of the Collective Bargaining Agreement.

8. Pursuant to the terms and provisions of the Collective Bargaining Agreement between N.S.S. and the Union, N.S.S. agreed to pay, in addition to wages,

employee fringe benefit contributions to the FUNDS for each employee employed by N.S.S., and covered by the Agreement.

9. That pursuant to the provisions of the CBA and the Plan and Trust documents of the FUNDS, contributions become vested plan assets on the date on which they are due.

10. That pursuant to the Collective Bargaining Agreements, Defendant N.S.S. is required to make fringe benefit contribution payments to be remitted with the standard contribution form no later than the 15<sup>th</sup> day of the month following the month in which the hours were worked.

11. That pursuant to the Collective Bargaining Agreement, when such submission of payments and contributions are not timely made, the signatory employer is charged with liquidated damages, costs of collection and attorney fees.

12. That, pursuant to the Collective Bargaining Agreement and in accordance with the Agreement and Declaration of Trust for each of the FUNDS, the Trustees acting thereunder are authorized and empowered to examine and copy the payroll records and books of a signatory employer to permit such Trustees to determine whether such an employer is making full payments as required under the Collective Bargaining Agreement

13. That Plaintiffs are entitled as a matter of law to enforce collection of such delinquent fringe benefits pursuant to 29 USC §1132(g)(2) and Section 1145.

14. This court has jurisdiction pursuant to Section 301 of the LMRA, 29 USC §185, this being an action arising out of a Collective Bargaining Agreement between the labor organization and an employer. Jurisdiction and venue are also proper pursuant to 29 USC §1132(e).

**COUNT I – Breach of Collective Bargaining Agreement and 29 USC §1145**

15. Plaintiffs hereby incorporate and adopt by reference paragraphs 1 through 14 above as though fully set forth herein.

16. That notwithstanding its contractual obligations, N.S.S. has failed and refused to pay its obligations, therefore violating the Collective Bargaining Agreements and various provisions of ERISA, including but not limited to 29 USC §1145.

17. Plaintiffs are without adequate remedy at law and will suffer immediate, continuing and irreparable injury, loss and damage unless Defendants are ordered to specifically perform all obligations on Defendants' part required to be performed under the Collective Bargaining Agreement and are restrained from continuing to refuse to perform as thereunder required.

**WHEREFORE**, Plaintiffs request that this Honorable Court grant the following relief:

- A. Order an injunction against Defendant restraining it from continuing violations of the Collective Bargaining Agreement as set forth above;
- B. Enter an Order that N.S.S. CONSTRUCTION, INC., open its books and records for a complete payroll audit;

- C. Enter a Judgment in favor of Plaintiffs against Defendants N.S.S. CONSTRUCTION, INC., N.S.S. CONSTRUCTION, INC., d/b/a RG BILLS CONSTRUCTION, and NICHOLAS SCHUBECK, III, individually, for all unpaid fringe benefit contributions, including those set forth in the above ordered audit, together with any liquidated damages thereon, accumulated interest, actual attorney fees, court costs, audit and other collection costs mandated by 29 USC §1132(g)(2), and such other sums as may become due to the FUNDS during the pendency of this action;
- D. Enter an Order that jurisdiction of this matter be retained pending compliance with the Court's Orders; and
- E. Any such other, further, or different relief as may be just and equitable under the circumstances.

**COUNT II – Breach of Fiduciary Duties  
of Nicholas Schubeck, III**

18. Plaintiffs hereby incorporate and adopt by reference paragraphs 1 through 17 above as though fully set forth herein.

19. SCHUBECK is a fiduciary with respect to the various fringe benefit plans within the meaning of ERISA, 29 USC §1002(21)(A) in that he exercised discretionary authority or control respecting management or disposition of the assets of the plans.

20. By engaging in the acts and omissions described, SCHUBECK has breached his fiduciary duties regarding the FUNDS within the meaning of 29 USC §1104(a)(1)(A).

21. SCHUBECK is personally liable based on breaching his fiduciary duties pursuant to 29 USC §1109(a).

**WHEREFORE**, Plaintiff FUNDS request that this Honorable Court grant the following relief:

- A. Order an injunction against Defendant restraining it from continuing violations of the Collective Bargaining Agreement as set forth above;
- B. Enter an Order that N.S.S. CONSTRUCTION, INC., open its books and records for a complete payroll audit;
- C. Enter a Judgment in favor of Plaintiffs against Defendants N.S.S. CONSTRUCTION, INC., N.S.S. CONSTRUCTION, INC., d/b/a RG BILLS CONSTRUCTION, and NICHOLAS SCHUBECK, III, individually, for all unpaid fringe benefit contributions, including those set forth in the above ordered audit, together with any liquidated damages thereon, accumulated interest, actual attorney fees, court costs, audit and other collection costs mandated by 29 USC §1132(g)(2), and such other sums as may become due to the FUNDS during the pendency of this action;
- D. Enter an Order that jurisdiction of this matter be retained pending compliance with the Court's Orders; and
- E. Any such other, further, or different relief as may be just and equitable under the circumstances.

Respectfully submitted,

**SULLIVAN, WARD,  
ASHER & PATTON, P.C.**

s/David J. Selwocki  
Attorney for Plaintiffs  
25800 Northwestern Hwy., Suite 1000  
Southfield, MI 48075  
(248) 746-0700  
dselwocki@swappc.com  
P51375

Dated: March 13, 2019



# **EXHIBIT 7**

STATE OF MICHIGAN

IN THE WAYNE COUNTY CIRCUIT COURT

SCOTT M. NEAL,

Plaintiff,

Case No. 20-012035-NF

Hon. Sheila Ann Gibson

-vs-

CHANDRA McDUFFIE, Personal Representative of the  
Estate of William Howard McDUFFIE-CONNOR,  
Deceased,

EMC PROPERTY & CASUALTY COMPANY,  
MICHIGAN AUTOMOBILE INSURANCE  
PLACEMENT FACILITY,

Defendants,

Consolidated With:

CHANDRA McDUFFIE, Personal Representative of  
The Estate of William Howard McDUFFIE-CONNOR,  
Deceased.

Plaintiff,

Case No. 20-007497-NF

Hon. Sheila Ann Gibson

-vs-

SCOTT M. NEAL, N.S.S. CONSTRUCTION, INC.;

1 MEMBERSELECT INSURANCE COMPANY,  
2 Defendants.  
3 \_\_\_\_\_/  
4 PAGES 1 TO 209  
5  
6 The Deposition of SCOTT NEAL,  
7 Taken via Hanson Remote  
8 Commencing at 12:10 p.m.  
9 Tuesday, March 16, 2021  
10 Before Ravin Neal, CSR-8420  
11  
12 Court reporter, attorneys &  
13 witness appearing remotely.  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Page 3

1 APPEARANCES:  
2 MAJED MOUGHNI (P61087)  
3 Law Offices of Majed A. Moughni  
4 290 Town Center Drive, Suite 322  
5 Dearborn, Michigan 48126  
6 (313) 581-0800  
7 moughni@aol.com  
8 Appearing on behalf of Plaintiff Neal.  
9  
10 JONATHAN MARKO (P72450)  
11 Marko Law  
12 1300 Broadway Street, Suite 500  
13 Detroit, Michigan 48226  
14 (313) 777-7529  
15 jon@markolaw.com  
16 Appearing on behalf of Plaintiff Chandra  
17 McDuffie.  
18  
19  
20  
21  
22  
23  
24  
25

1 APPEARANCES (CONTINUED)  
2 AMY DIVINEY (P77164)  
3 Merry Farnen & Ryan  
4 300 Maple Park Boulevard, Suite 301  
5 St. Clair Shores, Michigan 48081  
6 (586) 776-5927  
7 adiviney@mfr-law.com  
8 Appearing on behalf of Defendants NSS  
9 Construction and Scott Neal.  
10  
11 MARK NAWROCKI (P69017)  
12 DANIEL GUMTOW (P82748)  
13 Anselmi, Mierzejewski, Ruth & Sowle  
14 1750 South Telegraph, Suite 306  
15 Bloomfield Hills, Michigan 48302  
16 (248) 338-2290  
17 mnawrocki@a-mlaw.com  
18 dgumtow@a-mlaw.com  
19 Appearing on behalf of Defendant MAIPF.  
20  
21  
22  
23  
24  
25

Page 5

1 APPEARANCES (CONTINUED)  
2 MICHAEL SAPICK (P80999)  
3 Kopka Pinkus Dolin  
4 32605 West 12 Mile Road, Suite 300  
5 Farmington Hills, Michigan 48334  
6 (248) 699-1570  
7 mjsapick@kopkalaw.com  
8 Appearing on behalf of Defendant Chandra  
9 McDuffie, p/r of the Estate of William Howard McDuffie,  
10 Deceased.  
11  
12 MAUREEN CHRISTENSEN (P33565)  
13 Hom Corbett Kramer Harding & Dombrowski  
14 1450 West Long Lake Road, Suite 100  
15 Troy, Michigan 48098  
16 (248) 712-0602  
17 mchristensen@acg.aaa.com  
18 Appearing on behalf of Defendant Memberselect.  
19  
20  
21  
22  
23  
24  
25

1	TABLE OF CONTENTS	
2	Witness	Page
3	SCOTT NEAL	
4		
5	EXAMINATION BY MR. NAWROCKI	8
6	EXAMINATION BY MR. MARKO	82
7	EXAMINATION BY MR. SAPICK	191
8	EXAMINATION BY MR. GUMTOW	204
9	EXAMINATION BY MR. MOUGHNI	206
10		
11	EXHIBITS	
12	Exhibit	Page
13	DEPOSITION EXHIBIT 1	85
14	Police statement	
15	DEPOSITION EXHIBIT 2	87
16	Photographs	
17	(Exhibits attached.)	
18		
19		
20		
21		
22		
23		
24		
25		

1 Remote Deposition  
2 March 16, 2021  
3 12:10 p.m.  
4 \* \* \* \*  
5 COURT REPORTER: My name is Ravin Neal, a  
6 Michigan State Notary Public and Certified  
7 Shorthand Reporter. This deposition is being held  
8 via videoconferencing equipment. The witness and  
9 reporter are not in the same room. The witness  
10 will be sworn in remotely, pursuant to the  
11 agreement of all parties. The parties stipulate  
12 that the testimony is being given as if the witness  
13 was sworn in in person.  
14 Mr. Neal, can I have you please raise  
15 your right hand? Do you solemnly swear, or affirm,  
16 to tell the truth, the whole truth, and nothing but  
17 the truth?  
18 **THE WITNESS: Yes, ma'am.**  
19 COURT REPORTER: Thank you.  
20 SCOTT NEAL,  
21 having first been duly sworn, was examined and  
22 testified as follows:  
23 \* \* \* \*  
24 MR. MARKO: Before we start, can we have  
25 an understanding on what -- on the order of the

1 questioning? So who -- who noticed this  
2 deposition, I guess? And I'm assuming they're  
3 going to start.  
4 MR. NAWROCKI: I did. I have the MAIPF.  
5 MR. SAPICK: John, if you want, you can  
6 go before I do.  
7 MR. MARKO: Okay. And then there's  
8 Mr. -- so you are -- just so we're clear, sir, that  
9 you represent my -- who?  
10 MR. SAPICK: I got Chandra in  
11 Scott Neal's suit against the estate.  
12 MR. MARKO: Right. Okay. Okay. With  
13 Kopka's office, right?  
14 MR. SAPICK: Yep.  
15 MR. MARKO: Okay. Okay. Sorry.  
16 MR. NAWROCKI: That's fine.  
17 Okay. Mr. Neal, can you hear me?  
18 **THE WITNESS: Yes, sir.**  
19 \* \* \* \*  
20 EXAMINATION  
21 BY MR. NAWROCKI:  
22 Q All right. This is the date and time set for your  
23 deposition on two cases that were consolidated in  
24 the Wayne County Circuit Court. Case number  
25 20-012305-NF and 20-007497-NF. My name is

1 Mark Nawrocki. I am an attorney. I represent the  
2 Michigan Automobile Insurance Placement Facility.  
3 **A I am sorry. I couldn't hear you. My hearing is**  
4 **not the best.**  
5 Q All right. Fair enough. I will talk loud.  
6 I am an attorney, and I represent the  
7 Michigan Automobile Insurance Placement Facility.  
8 It might help if you turn the volume up on your  
9 computer.  
10 MS. DIVINEY: We -- we have it as loud as  
11 it is.  
12 MR. NAWROCKI: Okay.  
13 MS. DIVINEY: So --  
14 MR. NAWROCKI: Fair enough.  
15 BY MR. NAWROCKI:  
16 Q The deposition today is, at least for my part,  
17 regarding two motor vehicle accidents, one that  
18 happened on May 7th, 2020, and the other one  
19 happened July 17th of 2019.  
20 Do you remember both those accidents?  
21 **A Yes, sir.**  
22 Q Okay. Have you ever given a deposition before?  
23 **A No, sir.**  
24 Q All right. So I am going to go over a couple  
25 general rules so, you know, what's going on today,

1 okay? I am going to ask you a lot of questions.  
 2 And if you don't understand it or hear me or know  
 3 what I am asking, don't answer it. Tell me to  
 4 clarify it. Tell me to repeat it or to restate it,  
 5 and I will be more than glad to do so, okay?  
 6 Everything that is being stated today,  
 7 there's going to be a transcript created, so a  
 8 couple things. One, let me finish my question  
 9 before you answer, and I'll give you all the time  
 10 you need to answer. I won't cut you off. Two, we  
 11 can't talk over each other or the court reporter  
 12 will yell at both of us. She can only take down  
 13 one person at a time. And, three, if you can,  
 14 answer a question yes or no, please say yes or no.  
 15 Reason being is, if you nod your head or say uh-huh  
 16 or huh-uh, we're not sure what that is later when  
 17 we read your transcript. So we may say, "Mr. Neal,  
 18 is that a yes or no?" We are not trying to be  
 19 rude. We just want to make sure there's no  
 20 question as to what your answer is.  
 21 Make sense?  
 22 **A Yes, sir.**  
 23 **Q** Okay. If you don't remember, just tell me you  
 24 don't remember. If you don't know, just tell me  
 25 you don't know. I'm going to kind of put together

Page 11

1 a timeline of events as we talk, okay? And if you  
 2 don't remember a specific date or month, perhaps it  
 3 happened like in the fall of 2019, or early 2020,  
 4 or somewhere around springtime of 2022, something  
 5 like that, to give me some type of time reference,  
 6 okay?  
 7 **A All right. I'll be completely honest with you**  
 8 **right now. When it comes to time, I don't remember**  
 9 **times --**  
 10 **Q** Okay. Well we will --  
 11 **A -- and stuff.**  
 12 **Q** -- work through it.  
 13 I don't want you to guess. This is not  
 14 an interrogation. If you need to use the restroom,  
 15 get a drink of water, just let us know. As long as  
 16 there is not a question pending, shouldn't be a  
 17 problem. Some of the questions I ask are personal.  
 18 I need some personal information for this  
 19 investigation, but I'm not going to dive into your  
 20 personal life, okay?  
 21 You're not under the influence of any  
 22 medication or anything that affects your ability to  
 23 testify?  
 24 **A No, sir.**  
 25 **Q** All right. Any questions before we get started?

1 **A No, sir.**  
 2 **Q** All right. This deposition is being taken for all  
 3 reasons allowed under the Court Rule.  
 4 Can you please state your name and spell  
 5 it for the record?  
 6 **A Scott Monroe Neal, S-c-o-t-t M-o-n-r-o-e N-e-a-l.**  
 7 **Q** Okay. And previously, I mentioned two motor  
 8 vehicle accidents, July 17th, 2019 and  
 9 May 7th, 2020.  
 10 **A It's May 27th.**  
 11 **Q** I am sorry. Let me do one thing really quick.  
 12 Yeah. I apologize. I forgot to put the two in  
 13 there.  
 14 Okay. At the time of the July 2019 motor  
 15 vehicle accident, what was your address?  
 16 **A I'm split resident between Ohio and Michigan, sir.**  
 17 **Q** Okay.  
 18 **A I -- I -- I was staying at 1515 Ridge Road, lot**  
 19 **186, Ypsilanti.**  
 20 **Q** Okay. And were you still at that address at the  
 21 time of the 2020 accident?  
 22 **A Yes. I bounce back and forth from Ohio to**  
 23 **Michigan.**  
 24 **Q** Okay.  
 25 **A I have places in both.**

Page 13

1 **Q** At the time of the second accident, how often were  
 2 you in Ohio versus Michigan?  
 3 **A I split my time between both states.**  
 4 **Q** I mean, would it be like 70/30 or 50/50?  
 5 **A It's 60/40. Between 50/50 and 60/40.**  
 6 **Q** Okay. And the 60/40, is 60 Michigan or 60 Ohio?  
 7 **A Ohio.**  
 8 **Q** Okay.  
 9 **A My driver's license and insurance and everything is**  
 10 **in Ohio. That's my primary residence.**  
 11 **Q** Okay. And what is the address in Ohio?  
 12 **A It's 56505 Adams Township Road 172, Fresno, Ohio**  
 13 **43824.**  
 14 **Q** Okay. At the Michigan address in Ypsilanti, at the  
 15 time of the first or second accident, were you  
 16 living with anybody?  
 17 **A My girlfriend stays with me.**  
 18 **Q** Okay. And does she go to Ohio with you when you go  
 19 to Ohio, or does she stay in Ypsi?  
 20 **A She goes to Ohio with me at times.**  
 21 **Q** Okay. What's her name?  
 22 **A Shayna Lawson.**  
 23 **Q** How do you spell her first name?  
 24 **A S-h-a-y-n-a, last name Lawson, L-a-w-s-o-n.**  
 25 **Q** Okay. And just your girlfriend? You're not



1 engaged or married or anything like that?

2 **A No. We've been talking about it, but it hasn't**

3 **gotten to that point.**

4 Q Got you.

5 And then when you go to the -- the home

6 in Ohio, who stays there, or who do you live with

7 there?

8 **A My sister is -- is the nearest to the residence**

9 **down there. I -- I stay with my sister at times**

10 **when I go down there.**

11 Q Okay. Is that your sister's address on

12 Adams Township --

13 **A Yeah.**

14 Q -- Road?

15 **A Yeah. We actually share a mailbox down there.**

16 Q Okay. I mean, is it like one house that you go and

17 stay with your sister down there?

18 **A Well I've got a mobile home down there, but it --**

19 **it's in -- it's -- it's mine, but it's my sister's,**

20 **if that makes any sense.**

21 Q Okay. So you guys -- so when you go to Ohio, you

22 live with your sister?

23 **A Pretty much.**

24 Q Okay. And what is her name?

25 **A Pearl Gonzalez.**

1 Q Okay. And that's the same at the time of the first

2 accident as well as the second accident?

3 **A Yes.**

4 Q Okay. Nothing has changed between those two?

5 **A No.**

6 Q Has anybody moved in or out?

7 **A No.**

8 Q Okay. And do you still have the address in

9 Ypsilanti and Ohio today?

10 **A Yes.**

11 Q Okay. Why two -- why a home in Ohio and one in

12 Michigan?

13 **A I originally came to Michigan to work.**

14 Q Okay. And that's when you got the place in

15 Ypsilanti?

16 **A Yes.**

17 Q Okay. How long have you been there?

18 **A I've had the place at -- here in -- in Michigan. I**

19 **bought it in 2011.**

20 Q Okay. And do you own it outright?

21 **A Yes.**

22 Q And you just have to pay like lot rent or whatever

23 it is?

24 **A Lot rent, yes.**

25 Q Got you.

1 And then the one in Ohio, you said it's

2 in your sister's name, or your sister and your

3 name?

4 **A It's in mine -- mine and my sister's name -- or**

5 **mine and my mom's name.**

6 Q And how long have you had that place?

7 **A Pretty much had it since '93.**

8 Q Okay. And if I misstate something, sir, please

9 correct me, okay? Because I'm learning about this

10 as we talk.

11 So until 2011, you are in Ohio. After

12 2011, you bought a place in Michigan. So you'd

13 come up here and stay for work, but you were still

14 back and forth between Michigan and Ohio?

15 **A Yes, sir.**

16 Q Okay. Fair enough.

17 And are they both like manufactured

18 homes?

19 **A Yes.**

20 Q Okay. And just so you know, I'm writing this down

21 because I will never remember all this.

22 **A Hey, don't feel bad, sir. I -- sometimes I find it**

23 **hard to remember my own name.**

24 Q Fair enough.

25 All right. In the last five years, have

1 you filed income tax returns?

2 **A Yes, I have.**

3 Q And would you use the Michigan address or the Ohio

4 address?

5 **A Ohio.**

6 Q Okay. And do you know the last year you filed tax

7 returns?

8 **A Last year.**

9 Q Okay. And then are you going to file any this year

10 for 2020?

11 **A Yes.**

12 Q Okay. And you said you had an Ohio driver's

13 license?

14 **A Yes, I do. Class A CDL.**

15 Q Okay. Just for the record, what does that mean?

16 What can you drive?

17 **A It's a commercial driver's license, class A. I can**

18 **drive anything. I have the rear brake endorsement.**

19 **I drive tractor trailers. Anything with wheels.**

20 Q Okay. What about hazardous material?

21 **A No.**

22 Q Okay.

23 **A I gave -- at one point, I was authorized for**

24 **hazardous, but I gave it up.**

25 Q All right. Let me -- I am going to --

1 A As a matter of fact, I think it was in 2008 when I  
 2 gave up my hazmat.  
 3 Q All right. I am going to try to show you something  
 4 here on the screen.  
 5 Can you see this document on your screen?  
 6 A Yes.  
 7 Q I am going to try to make it a little bit bigger.  
 8 Okay. Is the -- hold on. There we go.  
 9 Is the date of birth correct?  
 10 A I can't see it.  
 11 Q Okay. Your Ohio driver's license, is it --  
 12 MR. MARKO: Mark.  
 13 MR. NAWROCKI: Yeah.  
 14 MR. MARKO: Can you identify the  
 15 document, and please provide a copy to the court  
 16 reporter following the deposition?  
 17 MR. NAWROCKI: I can. I was going to use  
 18 it as an exhibit later. I just wanted to get the  
 19 initial stuff out.  
 20 BY MR. NAWROCKI:  
 21 Q So this is an Application for Benefits filed with  
 22 the Michigan Automobile Insurance Placement  
 23 Facility.  
 24 Well if you can't see it is, it's not  
 25 going to help looking at it.

1 Is your Ohio driver's license RQ419486?  
 2 A RQ419486.  
 3 Q Okay. And it was valid at the time of the  
 4 accident?  
 5 A Yes, sir.  
 6 Q Okay. Your date of birth is November 14th, 1969?  
 7 A Yes.  
 8 Q And the next question I don't want placed on the  
 9 record. It's regarding your Social Security  
 10 number.  
 11 (Whereupon a brief off-the-record  
 12 discussion was held.)  
 13 BY MR. NAWROCKI:  
 14 Q Back on the record.  
 15 Mr. Neal was kind enough to confirm his  
 16 Social Security number off the record.  
 17 And do you have a Michigan license or  
 18 just the Ohio one?  
 19 A Just the Ohio. Under -- with a commercial driver's  
 20 license, you're not allowed to have multiple.  
 21 Q Oh, okay. I didn't know if it was -- I didn't know  
 22 how that worked, so thank you. The --  
 23 A They -- they changed that whenever they went to the  
 24 class -- the commercial driver's license, they went  
 25 to that because truck drivers go from one state

1 to -- getting their license suspended, then go to  
 2 another, get -- and start the process all over  
 3 again.  
 4 Q All right.  
 5 A It stops drivers driving illegally.  
 6 Q Got you.  
 7 Okay. Have you ever been married?  
 8 A Yes.  
 9 Q How many times?  
 10 A Twice.  
 11 Q And at the time of either of these accidents, were  
 12 you married?  
 13 A No.  
 14 Q When did the second marriage end?  
 15 A '99.  
 16 Q Okay. So you were -- so that marriage ended 20 --  
 17 almost 20 years before this accident?  
 18 A Yeah.  
 19 Q Okay. Do you have any children?  
 20 A Yes, I do.  
 21 Q How old are they?  
 22 A Eleven and twelve.  
 23 Q And what are their names?  
 24 A Emmanuel and Sophia.  
 25 Q Which one is 11 and which one is 12?

1 A Emmanuel is the 12 year old. Sophia is 11.  
 2 Q Okay. And do they live with you?  
 3 A No, they do not.  
 4 Q All right. Now, some of these questions I go  
 5 through, they may seem odd while I am asking them  
 6 but I have to go through them, okay? So bear with  
 7 me.  
 8 Your two children, Emmanuel and Sophia,  
 9 they're 11 and 12. They don't own a car, do they?  
 10 A No.  
 11 Q They don't have auto insurance, do they?  
 12 A No.  
 13 Q Okay. At the time of the accident, you were living  
 14 with -- partially with your sister in Ohio?  
 15 A Yeah.  
 16 Q And her name -- what was her name? I -- if you --  
 17 A Pearl.  
 18 Q Pearl. That's right.  
 19 Did Pearl have a motor vehicle  
 20 accident[sic] at the time of the first accident?  
 21 A She has always had a vehicle.  
 22 Q Okay. And did she have the same one at the time of  
 23 the second accident?  
 24 A Yes.  
 25 Q Okay. Do you know what type of vehicle?

1 A No. I couldn't tell you right now.  
 2 Q Like a car, a pickup, SUV?  
 3 A It's an SUV. Like a minivan. I -- I think it was  
 4 an -- like a Caravan, but I am not sure.  
 5 Q Fair enough. Fair enough.  
 6 Do you know if that vehicle was insured  
 7 at the time of the first or second accident?  
 8 A Yeah.  
 9 Q Do you know what company?  
 10 A No, I do not.  
 11 Q Okay. And then at the time of the first or second  
 12 accident, did you have a motor vehicle?  
 13 A The first accident, I had a vehicle that had blown  
 14 up and -- but at the time of the second accident, I  
 15 did not.  
 16 Q Okay. What did you have at the time of the first  
 17 one? Do you remember what type of car?  
 18 A I had a 2002 Chevy Cavalier. The motor blew up on  
 19 it, and it was sitting at NSS' construction site --  
 20 Q Okay.  
 21 A -- at the facility.  
 22 Q Was it insured at the time of the first accident?  
 23 A No. I had to drop the insurance off of it.  
 24 Q Okay. And then at the time of the second accident,  
 25 you didn't have a vehicle?

Page 23

1 A No, I did not.  
 2 Q Okay. Do you remember ever owning a 1998  
 3 Plymouth Breeze?  
 4 A Yes, sir.  
 5 Q When did you own that?  
 6 A Huh?  
 7 Q When did you own it?  
 8 A I believe I acquired it last August.  
 9 Q Are you --  
 10 A I have -- I can't remember exactly when. I know  
 11 whenever I first got it, it was a gift. Didn't  
 12 even run.  
 13 Q Okay. Do you still have it, or no?  
 14 A Yes, I do.  
 15 Q Is it running and operating now?  
 16 A Barely, but yeah.  
 17 Q Gets you from point A to point B?  
 18 A Yes, sir.  
 19 Q All right. And you got that the summer of 2020?  
 20 A Like I said, you couldn't -- I don't remember  
 21 exactly when I got it.  
 22 Q Okay.  
 23 A I -- it was a gift.  
 24 Q Okay. Do you know if you had it at the time of the  
 25 second accident on May 27th?

1 A Not -- I -- I don't believe I had it at that point.  
 2 I think I had just acquired it after that fact.  
 3 Q Okay. And then did you ever have insurance on that  
 4 vehicle?  
 5 A Not until recently.  
 6 Q Okay. When did you recently put insurance on it?  
 7 A January.  
 8 Q Okay. Of 2021?  
 9 A Yes.  
 10 Q Okay. And who is it insured with?  
 11 A Progressive.  
 12 Q Okay. At the time of the first accident, July of  
 13 2019, did you have any auto insurance?  
 14 A No, I did not.  
 15 Q Okay. At the time of the second accident in May of  
 16 2020, did you have any accident -- I am sorry. Did  
 17 you have any auto insurance?  
 18 A No.  
 19 Q All right. And you are living in -- between  
 20 Michigan and Ohio. How were you getting back and  
 21 forth between Michigan and Ohio?  
 22 A My sister would come and get me every once in a  
 23 while. And whenever I had my -- a running vehicle,  
 24 I drove it down there.  
 25 Q Okay. Did your girlfriend ever drive back and

Page 25

1 forth?  
 2 A No. She is -- doesn't have a license.  
 3 Q Okay. All right. And then your two children that  
 4 you have, do you have to pay any child support for  
 5 them?  
 6 A Yes, sir.  
 7 Q Okay. And do you have like court-ordered parenting  
 8 time?  
 9 A No, I do not have -- the only thing that has been  
 10 set up through court has been my child support.  
 11 Q Okay. And, again, I am not trying to pry into your  
 12 personal life.  
 13 How often do you see your children?  
 14 A Honestly, I haven't had a chance to see them in  
 15 almost two years. Me and my girlfriend had split  
 16 up, and she took the kids and disappeared on me.  
 17 Q Okay.  
 18 A But she -- yeah. No matter what, she wants her  
 19 child support.  
 20 Q Okay. And that's Shayna?  
 21 A No.  
 22 Q Oh, I am sorry.  
 23 Okay. All right. And then just so I  
 24 understand this, so Emmanuel and Sophia, you were  
 25 not married to their biological mom?

1 A No, sir.  
 2 Q Okay. All right. Again, I am not trying to pry.  
 3 I am just trying to see how all these pieces fit  
 4 together.  
 5 A **Their mother's name is Rhonda.**  
 6 Q Okay. Do you know if she is in Michigan or Ohio?  
 7 A **She is in Ohio.**  
 8 Q Okay. All right. Little bit about your  
 9 background. How far did you go in school?  
 10 A **I'm a high school graduate.**  
 11 Q Where did you do go? What school?  
 12 A **I graduated from Southeast Michigan in Ravenna,**  
 13 **Ohio.**  
 14 Q And how do you spell that city?  
 15 A **S-o-u-t-h-e-a-s-t, Southeast.**  
 16 Q Oh. Oh. I meant the city in Ohio.  
 17 A **Oh. The city?**  
 18 Q Yeah.  
 19 A **Ravenna, R-a-v-e-n-a.**  
 20 Q Okay. And then after that, I know you have your  
 21 CDL license, but did you have any further education  
 22 or trade or apprenticeship, on-the-job training,  
 23 license, certificate, anything?  
 24 A **When I was in the Navy, I was trained as a**  
 25 **heavy-equipment operator, including truck driving.**

Page 27

1 Q Okay. Then honorably --  
 2 A **I officially -- I officially got my class A CDL in**  
 3 **June of '05. I attended C1 Truck Driving School in**  
 4 **Indianapolis, Indiana.**  
 5 Q Okay. And then from that time forward, were you  
 6 employed as a truck driver?  
 7 A **Yes, sir.**  
 8 Q I don't know the correct terminology, but is it  
 9 like over the road, where you would go --  
 10 A **Yes.**  
 11 Q -- several nights on the road before you come back?  
 12 A **I was over the road until roughly 2014.**  
 13 Q Okay. All right. And then the Navy, you were  
 14 honorably discharged?  
 15 A **I was discharged -- other than honorable or -- it**  
 16 **was a general discharge under honorable conditions.**  
 17 Q Okay. Was there like a medical issue then, or --  
 18 A **Back at that point, I -- I got married my second**  
 19 **time, and she had gotten -- gotten pregnant, which**  
 20 **is why I got -- doing the right thing. I went**  
 21 **ahead and I married her. Well she miscarried the**  
 22 **child. I was stationed in Japan at the time, and**  
 23 **she was calling me threatening suicide and**  
 24 **everything while I was stationed overseas.**  
 25 Q Okay.

1 A And it had got to the point where, you know, it was  
 2 creating mental issues for me at the time trying to  
 3 deal with everything with her, and I had started  
 4 drinking. And basically what had happened is, I  
 5 went out one night. I got teetotaling drunk, first  
 6 time I ever drank Long Island Ice Tea.  
 7 Q That will do it.  
 8 A And I won't ever do it again. But if it wouldn't  
 9 have been for three Marines that night, I would  
 10 have never made it back to base.  
 11 Q Damn. Okay.  
 12 A And they -- I had PT the following day, and I  
 13 was -- I was so drunk I couldn't get out of bed,  
 14 and one of my bunkmates turned me in. So I ended  
 15 up getting charged with being unfit for duty and  
 16 unauthorized absence.  
 17 Q Okay.  
 18 A And as a -- as a result, they -- they tried to tell  
 19 me -- just because I had the one offense with  
 20 drinking, they was trying to tell me I had a  
 21 drinking problem and, which I -- I did not have a  
 22 drinking problem. So I refused the drug and  
 23 alcohol treatment, and they discharged me because  
 24 of it.  
 25 Q Okay. Then you came back to the States?

Page 29

1 A Yes, sir.  
 2 Q All right. Okay. Because of that, did you ever  
 3 have to receive any treatment, like with a  
 4 psychiatrist or psychologist or therapist or  
 5 counselor or anything yourself?  
 6 A **No. I -- I -- after my wife had had the**  
 7 **miscarriage, they, you know -- and -- and all the**  
 8 **phone calls, they had me going to -- to see a**  
 9 **command counselor.**  
 10 Q Okay.  
 11 A And he had diagnosed me as being codependent or  
 12 having codependency issues.  
 13 Q Okay. All right. Thank you for that.  
 14 Have you ever been convicted of any  
 15 crimes?  
 16 A **No. The only thing I've ever had any trouble with**  
 17 **or any issues with has been traffic violations.**  
 18 Q Okay. And those just being tickets? No like  
 19 vehicular homicide or anything like that?  
 20 A **Yeah. It was just speeding tickets -- speeding,**  
 21 **seatbelt, traffic lights.**  
 22 Q How many -- when you were driving, how many miles a  
 23 year would you drive, ballpark?  
 24 A **125 to 150,000 miles, or more.**  
 25 Q So you drive in one year what I drive in probably

1 six or seven. All right.  
 2 **A Well just think. It's 3,500 miles, roughly, from**  
 3 **LA to -- oh, darn. I can't even think of the name.**  
 4 **Not New York, but -- Connecticut -- in Connecticut.**  
 5 **It's like 3,500 miles from one side -- one side of**  
 6 **the country to the other.**  
 7 Q Okay.  
 8 **A And I used to go back and forth.**  
 9 Q All right. So before the accident on -- in July of  
 10 2019, where were you working?  
 11 **A Prior to the accident, I was working with NSS**  
 12 **Construction as a driver. I had hired in there in**  
 13 **March of 2019.**  
 14 Q Okay. And was that a local -- where you would  
 15 drive around Michigan locally?  
 16 **A Yes, sir.**  
 17 Q Okay.  
 18 **A It was a construction company. I hauled material**  
 19 **as well as equipment for -- for Nick, the owner of**  
 20 **NSS.**  
 21 Q Okay. And you would use their vehicles?  
 22 **A Yes, sir.**  
 23 Q Their trailers and everything?  
 24 **A Yes, sir.**  
 25 Q Okay. And --

Page 31

1 **A I was --**  
 2 Q -- what --  
 3 **A I was responsible for loading and unloading their**  
 4 **equipment as well. From track hoes, to dozers,**  
 5 **front-end loaders.**  
 6 Q Okay. And did they have to teach you how to drive  
 7 any of that, or did you have the experience from  
 8 the Navy?  
 9 **A I had experience from the Navy on that.**  
 10 Q Got you.  
 11 When you were working for NSS, was it 40  
 12 hours a week?  
 13 **A It's more like 80 hours a week.**  
 14 Q Did you get -- was it salary, or was it  
 15 time-and-a-half or hourly, or how were you  
 16 getting --  
 17 **A I was getting \$22 an hour, and I never got paid any**  
 18 **overtime.**  
 19 Q Okay. What --  
 20 **A It was all straight time. I fill -- whenever I**  
 21 **hired on with Nick, I filled out all the**  
 22 **paperworks, tax -- tax papers, you know, and**  
 23 **everything. And even though I -- I filled**  
 24 **everything out, Nick preferred to pay me cash.**  
 25 Q Okay. Did he ever give you -- I mean, did he hand

1 you cash, or did he ever write you a check or  
 2 anything, or --  
 3 **A He always gave me cash.**  
 4 Q Okay. At of the end of the year, did he give you  
 5 like a W9 or a W2 or anything like that?  
 6 **A I have yet to receive anything.**  
 7 Q Okay. Well -- okay.  
 8 **A The last two weeks that I worked for Nick, I -- I**  
 9 **haven't even gotten -- gotten that -- that pay.**  
 10 **I'm still waiting on it -- to receive that pay.**  
 11 Q Okay. Do you know approximately how much you would  
 12 take home a week?  
 13 **A Anywhere from 1,500 to \$2,000 a week.**  
 14 Q Okay. And then do you have any paper trail of  
 15 this? Did you ever take that money and deposit it  
 16 directly into a bank account --  
 17 **A No, sir.**  
 18 Q -- or anything like that?  
 19 **A No, sir.**  
 20 Q Okay. And then you worked up until the time of  
 21 the -- the July accident, correct?  
 22 **A I worked with Nick up until July 25th of '19.**  
 23 Q Okay. So a couple days after the accident?  
 24 **A Yes, sir. And at that point, he put me on**  
 25 **indefinite layoff.**

Page 33

1 Q Okay. When you were working there, besides being  
 2 paid cash, did you get any benefits, health  
 3 insurance --  
 4 **A No.**  
 5 Q -- disability, short-term, anything like that?  
 6 **A No. He -- he didn't give me nothing.**  
 7 Q Vacation time, anything you could take a day off  
 8 here or there?  
 9 **A He always needed -- it was my responsibility to**  
 10 **make sure that they had their equipment where it**  
 11 **needed to be and that they had the material they**  
 12 **needed.**  
 13 Q Got it.  
 14 So you were running seven days a week?  
 15 **A Yes, sir.**  
 16 Q Okay. Would you -- at that time, were you staying  
 17 up in Michigan?  
 18 **A Yes.**  
 19 Q How far is NSS Construction from your house? I am  
 20 assuming there's a yard you would have to go to to  
 21 pick up the machinery, right?  
 22 **A Yeah. It's an Gavel. It was on Gavel Road or**  
 23 **Gavel Avenue, whatever it was.**  
 24 Q Where is that at? What city?  
 25 **A It was -- it's basically one block from where the**



1 accident took place.  
 2 Q Okay. How far from your house?  
 3 A It was about twenty miles, roughly.  
 4 Q Okay. And how would you get back and forth to  
 5 work?  
 6 A Oh. Like I said, at that point in time, I had a --  
 7 my Cavalier.  
 8 Q Okay. All right. And that?  
 9 A And like I said, my Cavalier, I -- whenever I first  
 10 started with him, I -- my Cav -- I had a vehicle  
 11 for about two weeks, which was my Cavalier. Then  
 12 it broke down, and I had -- Nick was nice enough to  
 13 loan me his -- his personal pickup truck to be able  
 14 to get back and forth to work.  
 15 Q Okay. Was it like a company-owned truck or  
 16 something?  
 17 A Yes.  
 18 Q All right. And then was -- when had your Cavalier,  
 19 was that insured?  
 20 A Yes, it was. It was insured through Allstate.  
 21 Q Okay. And do you know when that policy ended?  
 22 A No, I -- I don't remember.  
 23 Q Before the accident, after the accident?  
 24 A Like I said, I -- I don't remember.  
 25 Q Okay. Because of the accident in July of '19, did

Page 35

1 Allstate ever provide you any benefits?  
 2 A No.  
 3 Q Okay. Okay. So I want to talk about the accident  
 4 here in just a little bit. I just want to know a  
 5 little bit more about you.  
 6 Before these accidents happened, before  
 7 the accident in 2019 and 2020, how was your health?  
 8 A Fair to good. I was -- wasn't sick or nothing.  
 9 Q Okay. Were you treating with any doctor for any  
 10 illness or injury or anything like that?  
 11 A No. I mean, I've got asthma.  
 12 Q Okay. But is that controlled with an inhaler?  
 13 A Yeah. Albuterol.  
 14 Q Okay.  
 15 A But then I am also a heavy smoker, too, so --  
 16 Q Okay. Did you have a -- like a family doctor,  
 17 primary care doctor, you would normally see?  
 18 A When I can get in to see her. Her name is Dr. Kahn  
 19 in Canton, Michigan.  
 20 Q Is it K-a-h-n?  
 21 A Yes.  
 22 Q And do you know the name of her doctor's office?  
 23 A Not right off the top of my head. She is part of  
 24 Beaumont.  
 25 Q Okay. Do you know what street she is on, or her

1 office?  
 2 A Yeah. It's off of Haggerty Road.  
 3 Q Okay. Fair enough.  
 4 And then before either of these  
 5 accidents, the one in '19 or the one in '20, did  
 6 you ever treat with a psychiatrist or psychologist  
 7 or therapist or counselor?  
 8 A No, sir.  
 9 Q Before these accidents, have you ever been  
 10 hospitalized for any injuries?  
 11 A Back in 19 -- I believe it was '97 or '98, I was  
 12 involved in an auto accident where my girlfriend at  
 13 the time was driving my car. She went left of  
 14 center, totaled out my car, and I had a lacerated  
 15 spleen.  
 16 Q Oh.  
 17 A As a result, I spent almost a week in -- in the  
 18 hospital.  
 19 Q Do you remember which hospital?  
 20 A I believe it was Coshocton General.  
 21 Q Is that in Ohio?  
 22 A Yes, sir.  
 23 Q How do you spell that, Coshocton?  
 24 A C-o-s-h-o-c-t-o-n.  
 25 Q Okay. Is that the name of the city?

Page 37

1 A Yeah.  
 2 Q Okay. And then your spleen healed, everything okay  
 3 with that?  
 4 A Yes, sir.  
 5 Q All right. Any other time you can remember where  
 6 you had to be hospitalized for injuries?  
 7 A Only other time I was ever in the hospital is when  
 8 I had my sinuses -- I had sinus surgery and had my  
 9 tonsils taken out.  
 10 Q Okay.  
 11 A I mean, other than that --  
 12 Q Was that at like -- was that as a teenager or a  
 13 younger --  
 14 A Yeah, yeah. I was -- that was back when I was 18.  
 15 Q Okay.  
 16 A When I was 17, I was in -- I was in a motorcycle  
 17 accident, and I was -- I was in the hospital for a  
 18 couple, you know -- for a few hours.  
 19 Q Did you just get like road rash on you?  
 20 A Well I almost lost my leg.  
 21 Q Oh. Guess it was a little bit more serious.  
 22 Did that resolve?  
 23 A Yeah.  
 24 Q Okay. All right. And then at the time of the 2019  
 25 accident, did you have any health insurance?

1 A I had -- was it Medicaid or Medicare, whatever it  
2 is.

3 Q Okay.

4 A Through the state.

5 Q Through Michigan or Ohio?

6 A Through Michigan.

7 Q And did you have that at the time of the second  
8 accident as well?

9 A Well that's when I had it, was at the second --  
10 second accident.

11 Q Well --

12 A First one, I didn't have anything.

13 Q Okay. And do you know which company that is  
14 through? Like Molina --

15 A Blue Cross Blue Shield Complete.

16 Q Okay. And you don't happen to have your card with  
17 you, by chance, to you?

18 MR. NAWROCKI: Or Majed, can we get a  
19 copy of his Blue Cross card?

20 MS. DIVINEY: Yeah, you sure can.

21 MR. NAWROCKI: Okay. Okay. We will take  
22 care of it after the dep, Mr. Neal. You don't have  
23 to dig it out.

24 BY MR. NAWROCKI:

25 Q Okay. So I know you're in the accident in 2019. I

Page 39

1 know you're in the accident in 2020. You mentioned  
2 one in '97, '98, somewhere around there.

3 Do you remember any other car accidents?

4 A Nothing where I was ever in the hospital or  
5 anything. I mean, I -- of course I had fender  
6 benders here and there. There was never anything,  
7 you know -- it was always settled outside of  
8 whatever.

9 Q Okay. So none -- nothing -- no other accident  
10 where you recall going to the hospital or any  
11 injury or anything like that?

12 A No, sir.

13 Q Okay. All right. So from the time of the '19  
14 accident until now, have you -- let me --

15 Let me rephrase this: I know you are in  
16 the 2020 accident. Besides the 2020 accident, have  
17 you injured yourself since the '19 accident, like  
18 slip and fall, altercation, another car accident,  
19 struck with something, anything like --

20 A No, sir.

21 Q All right. And then obviously, you're here because  
22 of a -- a civil lawsuit that -- these two cases  
23 have been combined.

24 Have you ever been a party to any other  
25 lawsuits?

1 A No, sir.

2 Q Ever filed bankruptcy?

3 A Yes.

4 Q What year?

5 A I believe it was 2014.

6 Q And was that in Michigan or Ohio?

7 A Ohio.

8 Q Okay. And have you ever filed a worker's comp  
9 claim where you were injured on the job?

10 A Yes, I have.

11 Q Was that the 2019 accident, or a different one?

12 A No. This was back whenever I was in my teens --  
13 late teens, early twenties.

14 Q Okay. What injury did have you have?

15 A I had strained my -- strained some muscles in my  
16 back, my low back.

17 Q Okay. Did those -- did that injury resolve itself?

18 A Yes.

19 Q Okay. All right. So that brings us up to the 2019  
20 accident. Can you tell me in your own words like  
21 what led up to the accident and how the accident  
22 happened, and what you remember? Like starting  
23 with -- a couple hours beforehand.

24 A Honestly, sir, I don't remember much of what --  
25 what had actually happened on that day, you know.

Page 41

1 Whenever it comes to -- at the accident --

2 Q Okay.

3 A I -- I got to work. I did my pre-trip inspection.  
4 My lights, horn, brakes, everything worked. Nick  
5 had ended up calling me, telling me that he wanted  
6 me to go and pick up a load of gravel and bring it  
7 to him in Detroit, in downtown Detroit. If I  
8 remember right, he was still working on the  
9 Piston's facility.

10 Q Okay.

11 A So I had to go over to the gravel place, which  
12 is -- which was right over on Meyers, pick up a  
13 load of crushed concrete, and bring it to him.

14 Q And what --

15 A All right.

16 Q Were you driving --

17 A So I --

18 Q -- with two -- two -- was there just one container  
19 or two containers that you were hauling?

20 A It was just a dump truck.

21 Q Oh, okay. Okay.

22 A It's a tri axle dump truck.

23 Q Got it.

24 So you pick up the gravel --

25 A I can't remember the names of the streets on the

1 side streets that -- that I was traveling down  
 2 through there.  
 3 Q Okay.  
 4 A But the way that the -- Gavel is, which -- the shop  
 5 was right there on Gavel.  
 6 Q Okay.  
 7 A You -- you could not make a hard left-hand turn out  
 8 of the driveway or -- out of the fence onto Gavel.  
 9 It was too sharp of a turn. So whenever we left  
 10 out of the -- out of the shop area, we'd have to go  
 11 down the one -- one road that was right straight in  
 12 front of our driveway. We go down one or two --  
 13 two streets, make a left, which would take us back  
 14 out to Meyers. Okay.  
 15 Q Okay.  
 16 A And then at Meyers, I'd have to make a left-hand  
 17 turn. And the gravel facility, or the crushed  
 18 concrete facility, would be on the right-hand side  
 19 just before the railroad tracks.  
 20 Q Okay.  
 21 A But like I said, I -- I -- I don't know where this  
 22 guy had actually came from or anything else. I  
 23 know that whenever I slowed down --  
 24 MR. MARKO: All right. What -- hold on  
 25 one second. I just want the record to reflect that

Page 43

1 the witness is referring to a witness statement in  
 2 front of him while he is answering this --  
 3 **THE WITNESS: It doesn't matter if that's**  
 4 **right or not. It's the same thing I am telling**  
 5 **him.**  
 6 MR. MARKO: I just want the record to be  
 7 clear.  
 8 **THE WITNESS: Okay. That's fine.**  
 9 MS. DIVINEY: Let the record reflect that  
 10 he has turned the witness statement over. He is  
 11 not looking at it.  
 12 MR. MARKO: Now, he isn't.  
 13 MS. DIVINEY: Yes.  
 14 **THE WITNESS: I wasn't looking at it to**  
 15 **begin with. That's okay.**  
 16 BY MR. NAWROCKI:  
 17 Q Okay. Well let me interrupt you right there for a  
 18 second, Mr. Neal, just so I can get some  
 19 clarification.  
 20 A Yes, sir.  
 21 Q Gavel Street is the yard where all your machinery  
 22 is kept, correct?  
 23 A Yes, sir.  
 24 Q And what city is that?  
 25 A Detroit.

1 Q Okay. How far is it from the -- from Gavel Street  
 2 to where you had to go to get the gravel?  
 3 A Two blocks roughly.  
 4 Q Okay. So it's really close?  
 5 A Yes.  
 6 Q And then how far is it from there to where you are  
 7 going to deliver it at the -- the Piston's  
 8 facility?  
 9 A I don't know what the mileage is. I know I -- I --  
 10 all I remember is where the -- the facility was at  
 11 was off of the Lodge.  
 12 Q Okay. So like within 15, 20 minute drive?  
 13 A Yes, sir.  
 14 Q Okay. Okay. And, again, just so I am -- put all  
 15 these pieces together so I understand it.  
 16 So you turned left onto Meyers, correct?  
 17 A Yes, sir.  
 18 Q And then you are driving down, you said  
 19 something -- there was some train tracks, and then  
 20 the gravel yard that you were going to get the  
 21 travel at?  
 22 A The gravel facility was before the train tracks.  
 23 Q Okay.  
 24 A Whenever I, you know -- I -- I slowed way down to a  
 25 creep. I was in first gear. I had my right-hand

Page 45

1 signal on, and I was turning into the facility.  
 2 Q Okay. And that street that you are on, Meyers, was  
 3 it one lane going each direction or two lanes going  
 4 each direction?  
 5 A It's one lane going each direction with a parking  
 6 lane on each side.  
 7 Q Okay. And were there cars like parallel parked  
 8 along the side?  
 9 A Yes.  
 10 Q Okay.  
 11 A They -- that -- they were on the opposite side of  
 12 what -- what I was at the time -- at that point,  
 13 but --  
 14 Q Got it.  
 15 Okay. And then what happens, sir?  
 16 A As I was making my right-hand turn, I heard a loud  
 17 bang and the truck jumped.  
 18 Now, in the past whenever my tarp would  
 19 end up letting loose, it would -- it's  
 20 spring-loaded, the arm on the tarp.  
 21 Q Okay.  
 22 A So whenever it would release, it would -- it would  
 23 come down with a really loud bang.  
 24 Q Okay.  
 25 A All right.

1 Q Is that the tarp that covers the load --  
 2 A Yes, sir.  
 3 Q -- where the gravel is?  
 4 A Yes, sir.  
 5 Q Got it.  
 6 A So whenever the, you know -- the -- I heard the  
 7 loud bang, you know. I -- I came to a stop. I had  
 8 originally thought it might have been my tarp come  
 9 loose and come down crashing closed. Whenever I  
 10 looked out my mirrors, all I seen was a -- a blur  
 11 of white, and then the truck jumped.  
 12 Q Okay.  
 13 A And --  
 14 Q And is -- we will --  
 15 A Huh?  
 16 Q I am sorry. The truck was unloaded, there was no  
 17 gravel in it --  
 18 A No.  
 19 Q -- at this time?  
 20 A No, no. There was no load in it.  
 21 Q Okay.  
 22 A I had gotten -- I -- I came to a stop. I got out  
 23 of the truck. I walked around to the back of the  
 24 truck. I seen the car flipped over. There was --  
 25 if I remember right, there was another guy. He

Page 47

1 ended up seeing a police officer coming down the  
 2 road. He flagged him down. I was trying to take  
 3 care, you know -- trying to see if there was  
 4 anything I could do for the occupant of the car --  
 5 Q Okay.  
 6 A -- which at --  
 7 There was nothing that could be done,  
 8 sir.  
 9 Q Okay.  
 10 A The -- they -- the only thing that was left of  
 11 the -- of the young man's head was from the earlobe  
 12 back. His face was crushed into the concrete. I  
 13 would not wish it -- that sight on anyone.  
 14 Q If you need to take a moment, sir, just let us  
 15 know, okay, if you want to take a break for a  
 16 moment?  
 17 MS. DIVINEY: Do you need a break?  
 18 THE WITNESS: Yeah.  
 19 MS. DIVINEY: He would like to take a  
 20 break.  
 21 MR. NAWROCKI: No problem.  
 22 MS. DIVINEY: Thank you, everyone.  
 23 (Whereupon a recess was taken.  
 24 Off the record at 12:58 p.m. Back  
 25 on the record at 1:10 p.m.)

1 BY MR. NAWROCKI:  
 2 Q Back on the record with Mr. Neal.  
 3 Mr. Neal, before the break, you indicated  
 4 that you went back and you saw the accident --  
 5 A I'm sorry. I can't hear you.  
 6 Q Okay. After -- after the -- after you felt  
 7 something in the truck, you went back and you saw  
 8 the white vehicle in the accident, correct?  
 9 A Yes, sir.  
 10 Q You stated that somebody else flagged down a police  
 11 officer that was in the area?  
 12 A Yes, sir.  
 13 Q Okay. What did you do next?  
 14 A I went to the white car to see if there was  
 15 anything I could do for the person, and that was  
 16 whenever[sic] I noticed that his head had been  
 17 crushed in between the door and the concrete.  
 18 There was nothing that could be done.  
 19 Q Okay. And this was a convertible vehicle?  
 20 A Yes, sir.  
 21 Q Okay. Do you know if the top was up or down?  
 22 A As far as I could tell, it was down.  
 23 Q Okay. After you saw that, what did you do next?  
 24 A I broke down.  
 25 Q I mean, did you go back to your truck? Did you go

Page 49

1 off to the grass?  
 2 A Yes. I -- I did -- I went over and -- I went over  
 3 to the truck, looked at it a little bit. I called  
 4 my boss to let him know about the accident.  
 5 At that point, the officer was there and  
 6 I had an opportunity to speak with him. And he  
 7 ended up having me, basically, "hang loose," as he  
 8 said over towards -- close to the building. And  
 9 there was more officers, and the EMS and firetrucks  
 10 that arrived. And I forget what the female  
 11 officer's name was that took my report.  
 12 Q Okay.  
 13 A But all of them kept telling me it wasn't my fault,  
 14 that I'd done nothing wrong.  
 15 Q Okay. On the -- the truck that you were driving,  
 16 could you see where the white car struck the truck?  
 17 A Yes. I have photos of --  
 18 Q What --  
 19 A -- the accident.  
 20 Q Okay. Was it the -- like the back of your truck or  
 21 the side of your truck, or what part of --  
 22 A You know where -- okay. I am sure you are familiar  
 23 with the way the trucks are built. You got your  
 24 doors and you got your steps. Usually the fuel  
 25 tanks or battery box on one side.



1 The white car had struck me in the -- in  
2 the -- right below the -- the passenger door in  
3 the -- the steps going up, which is also my battery  
4 box. They -- he -- he initially struck me there.  
5 And it hit -- and his car had hit the front axle.  
6 And it snapped the U-bolt that holds the front axle  
7 in place, in turn pushing the axle forward enough  
8 to where it -- it came in contact with the front  
9 bumper and bent the front bumper up.

10 Q Okay.

11 A The truck was -- had to be towed away from the  
12 scene. There was -- there was no driving it away.

13 Q Okay. And you gave a statement to the officers.

14 Did you receive any tickets or anything because of  
15 the accident?

16 A No, sir. The officers had told me that I had done  
17 nothing wrong, that it wasn't my fault.

18 Q Okay. So your truck gets towed from the scene.

19 Did your boss come to the scene, or --

20 A Yes. Nick, which is the owner of the company, my  
21 boss, as well as two other coworkers came with him  
22 to the scene.

23 Q Okay. And then did they take you back to the yard  
24 or wherever after the accident?

25 A Yes, sir.

1 Q Okay. How -- after the initial, I guess, impact,  
2 how long before you left? A couple hours?

3 A Yes.

4 Q Okay.

5 A I -- I couldn't tell you a timeframe because it --  
6 it just all blurred.

7 Q And then because of that accident, did you sustain  
8 any injuries?

9 A No -- no physical injuries, no.

10 Q Okay. What about -- you say no physical injury --  
11 injuries. What about like mental health issues?

12 A I haven't been able to bring myself to get back  
13 into another truck since.

14 Q Okay. So your boss takes you back to the -- I  
15 guess, the office or the yard. Did you fill out a  
16 report at that time, like a --

17 A He did not have me do anything except go to  
18 Concentra in order to have a drug screen done --

19 Q Okay.

20 A -- which is normal practice when it comes to CDL.

21 Q And that was clean?

22 A Yes, sir.

23 Q Okay. And then you mentioned earlier you worked a  
24 few days after the accident. What were you doing?

25 A Initially, he had me driving a five-ton dump truck.

1 Q Is that big or small?

2 A Huh?

3 Q Is that a big one or a small one?

4 A That's a little -- little one. It's basically like  
5 a one-ton pickup --

6 Q Okay.

7 A -- you know, with a dump bed on it.

8 Q Okay.

9 A During the whole time, I -- I kept questioning  
10 everything I done[sic]. The -- it was like I -- I  
11 couldn't do anything right. And eventually he had  
12 put me on an indefinite layoff because there really  
13 wasn't anything for me to do. I was hired to drive  
14 and -- and operate equipment. And I had gotten to  
15 the point to where I was second guessing myself and  
16 I -- I -- I was just par -- I -- I was paranoid  
17 quite a bit.

18 Q Okay. After the accident and before the one in  
19 2020, did you go talk to anybody, like a counselor  
20 or a therapist or anybody like that?

21 A No, sir. I -- I -- I did acquire a best friend  
22 that I never thought I would ever have in my life.

23 Q Okay.

24 A And he is -- he is a retired military chaplain, and  
25 he has helped me quite a bit through a lot of the

1 tough times.

2 Q Okay. All right.

3 A He is -- he is actually a Vietnam vet, so he has  
4 seen -- seen his share of things, and he has been  
5 help -- able to help me cope with a lot of -- lot  
6 of the issues that I deal with.

7 Q Okay. And then your boss put you on indefinite  
8 layoff. At that time, could you -- could you file  
9 for unemployment?

10 A Because of the way I was being paid, I don't  
11 believe I was able to.

12 Q Okay. Did you receive any -- so this happened the  
13 summer before COVID. Once COVID hit, did you  
14 receive any of the stimulus checks or anything like  
15 that?

16 A Yes, sir. I have. That's how I have been  
17 surviving.

18 Q Okay. That was my next question, is, you know, if  
19 you really haven't worked since that time, how have  
20 you been making ends meet?

21 A I am sorry. What?

22 Q You haven't worked from the time -- or shortly  
23 after the accident, right?

24 A I -- I had just started working in February at a  
25 tour bus company cleaning buses part-time.



1 Q February of 2021?  
 2 A Yes, sir. February --  
 3 Q Okay.  
 4 A -- of 2020.  
 5 Q Oh, last -- okay.  
 6 A And when COVID had hit, the company had went out --  
 7 they -- they closed their doors. They had shut  
 8 down. And because of that, I became eligible for  
 9 the -- the PUA.  
 10 Q What is that?  
 11 A The pandemic --  
 12 Q Okay.  
 13 A -- unemployment.  
 14 Q And you are still getting that today?  
 15 A Yes.  
 16 Q Okay. Have you worked anywhere else, besides  
 17 the -- the tour bus place, between then and now?  
 18 Then, the first accident, and now.  
 19 A No. I -- I help out at different places in order  
 20 to, you know -- to cover for my cigarettes or --  
 21 or -- or, you know, whatever I am falling short on.  
 22 In order to help me pay on my child support and  
 23 things, I -- I do odd jobs.  
 24 Q Okay. I was looking through something. It said  
 25 you were working at a Happy's Pizza for a little

Page 55

1 bit?  
 2 A I -- I'm -- I am friends with the owner.  
 3 Q Okay.  
 4 A And he won't hire me, but -- yet he -- he helps me  
 5 with the little odds and ends that I need. So all  
 6 I basically do is, I pick up the -- the grounds.  
 7 I -- I take out trash once in a while. I help out  
 8 inside, but I -- it's -- it's hit and miss. It's  
 9 just at, you know -- whenever he needs something  
 10 and he doesn't have nobody else to take care of it,  
 11 you know, and I'm available, then I'm able to help  
 12 him out, and he helps me.  
 13 Q Okay. Then does he pay you cash?  
 14 A Yes, sir.  
 15 Q Okay. And is that every day, or every couple days,  
 16 or how often are you doing that?  
 17 A He -- he just gives it to me as I do the jobs.  
 18 Q I mean, are you -- are you working -- I mean, I am  
 19 saying working.  
 20 Are you helping out there daily or just  
 21 every couple days on and off?  
 22 A Some -- sometimes I might help him a couple of days  
 23 in a row. Sometimes it might go a week or so and  
 24 then go, you know -- then it might, you know --  
 25 Q Okay.

1 A It's not consistent.  
 2 Q Okay. It's sporadic.  
 3 Okay. All right. And then -- oh. Going  
 4 back to that accident for a second, what time of  
 5 the day did it occur?  
 6 A Which one, sir?  
 7 Q The -- I am sorry. The one in 2019, the first one.  
 8 Morning or afternoon, evening?  
 9 A I think it was -- if I remember right, it was  
 10 between -- somewhere around 11 -- between 10 and --  
 11 10 and 12.  
 12 Q Okay.  
 13 A I -- I -- like I said, I don't know the times.  
 14 Q I understand.  
 15 And what was the weather like? Was the  
 16 weather dry, rainy?  
 17 A It was beautiful. That much, I do remember. It  
 18 was a beautiful day. Nice, warm, sunny.  
 19 Q Okay. All right. And then we come forward to the  
 20 accident that happened on May 27th of 2020. What  
 21 happened there? Like what happened before the  
 22 accident, leading up to the accident, how did the  
 23 accident occur?  
 24 A Sir, I was panhandling on -- on the street corner.  
 25 Q Okay. What city?

Page 57

1 A In Ypsilanti.  
 2 Q Okay.  
 3 A I don't know if you are familiar with Ypsi at all  
 4 or --  
 5 Q I --  
 6 A -- Michigan Avenue.  
 7 Q A little bit. I know where the water tower is.  
 8 A Okay. Well that's not that far in.  
 9 Do you know where Denton Road is?  
 10 Q I -- I -- I don't. But where did this one happen?  
 11 A All right. Well anyhow, I was standing at a  
 12 corner -- at a corner at a light. This happened  
 13 whenever the Black Lives Matter rally was taking  
 14 place in Ypsilanti.  
 15 Q Okay.  
 16 A There was two black guys that pulled up in a black  
 17 pickup truck, and they had offered me a dollar. I  
 18 walked out in the street in order to grab the  
 19 dollar. Whenever[sic] I reached into the cab of  
 20 the truck to get the dollar bill, the -- the driver  
 21 grabbed my arm and then stomped on the gas.  
 22 Q Okay.  
 23 A And whenever they ended up jackrabbiting off, it  
 24 slung me into the side of his truck. I busted two  
 25 ribs. I fractured two ribs, and then I fell to the

1 ground and they drove over the top of my left foot,  
 2 in turn, breaking -- doing a butterfly fracture in  
 3 my left foot.  
 4 Q Okay. Was this intersection -- was there like a  
 5 traffic light controlling this intersection?  
 6 A **There was traffic lights, but the -- as far as**  
 7 **controls, I don't know where they would be.**  
 8 Q Okay. I mean, did they stop at a red light?  
 9 A **Yes.**  
 10 Q Okay. Was it one of -- like the first car in line,  
 11 or was it like several cars back, or --  
 12 A **It was the only -- only vehicle there at the time.**  
 13 Q Okay. And you said they grabbed your arm and took  
 14 off?  
 15 A **Yes, sir.**  
 16 Q How far did they go before they let go, or before  
 17 you --  
 18 A **As -- whenever I fell, I, you know -- they couldn't**  
 19 **hold me up, so I -- they let go. And they went**  
 20 **right over top of me.**  
 21 Q I mean, I guess what I am saying is, did they drag  
 22 you for a while? Did they --  
 23 A **No.**  
 24 Q -- just kind of let go?  
 25 A **No.**

1 Q Okay. And do you have any idea who it was or the  
 2 license plate or witnesses or anything like that?  
 3 A **No, I don't. Van Buren Township Police has been**  
 4 **watching for -- to try and figure out the truck.**  
 5 **But nobody has seen the truck prior or after.**  
 6 Q Okay. It was like a pickup truck?  
 7 A **Yes, sir. It was a black four-wheel drive Dodge.**  
 8 Q All right. Well -- okay. So what happened next?  
 9 Were you laying in like the lane of traffic? Were  
 10 you on the shoulder?  
 11 A **I was -- I was laying on the traffic -- on the road**  
 12 **for a few minutes until I was able to compose**  
 13 **myself to get -- and pull myself back off the side**  
 14 **of the street.**  
 15 Q Okay. Were other vehicles driving around you at  
 16 this time, or did anybody stop to help you?  
 17 A **Nobody stopped to help.**  
 18 Q Okay. What did do you next? So you get over to  
 19 the shoulder of the street.  
 20 A **I got over to the shoulder. I took my boot off. I**  
 21 **had steel-toe boots on. And I was checking myself**  
 22 **out. I was hurting. And all I can say is thank**  
 23 **God for steel-toed boots.**  
 24 Q It didn't crush the boot or anything, did it?  
 25 A **No, no. It didn't crush the boot. From what the**

1 hospital told me -- when I got to the hospital,  
 2 they said the only thing that saved my foot was --  
 3 was the steel-toed boots.  
 4 Q Okay. So backing up just a little bit, so you are  
 5 on the side of the street. What happened next?  
 6 Did you go -- do the police stop by to make a  
 7 report? Did you go to the hospital? Did you go  
 8 home?  
 9 A **I went to the hospital. I -- I managed to walk**  
 10 **home, and I ended up getting a ride up to the**  
 11 **hospital.**  
 12 Q Okay. How far was your house from where the  
 13 accident happened?  
 14 A **About two miles.**  
 15 Q Damn. Okay.  
 16 So you walked two miles with some broken  
 17 ribs and a shattered foot?  
 18 A **I didn't have no choice.**  
 19 Q I get it. I get it. I just --  
 20 Okay. And then you -- you got home. Did  
 21 you call a friend to take you to the hospital?  
 22 A **I had a neighbor take me.**  
 23 Q Okay. And which hospital?  
 24 A **It was Beaumont, right off of -- well it was**  
 25 **Canton Center where it crosses Michigan Avenue. I**

1 **think it's still Canton Center when it crosses**  
 2 **Ford. But it was the emergency room just north of**  
 3 **Ford Road.**  
 4 Q Okay.  
 5 A **I am not sure exactly what the address is. It**  
 6 **would be in the paperwork.**  
 7 Q Okay. Fair enough.  
 8 And then when you got to the hospital --  
 9 Oh. Let me back up for a second. What  
 10 time of the day did this happen? Like morning,  
 11 afternoon, night?  
 12 A **It was in the afternoon.**  
 13 Q Okay. And what was the weather like?  
 14 A **Dreary.**  
 15 Q Okay. Rainy? What was -- we will just --  
 16 A **It was overcast.**  
 17 Q Okay. Do you think those people did it on purpose?  
 18 A **Yes, sir, I do.**  
 19 Q All right. Okay.  
 20 A **I mean, why else -- why else would you grab**  
 21 **somebody's arm and then -- then punch the gas?**  
 22 Q I don't know. I have no -- I don't know, sir.  
 23 So you get to the hospital. You told  
 24 them about your ribs and your foot. Did they do  
 25 any imaging, or what did they do there?

1 A They took X-rays, ended up putting me in a soft  
 2 cast, and sent me home.  
 3 Q Soft cast for your foot?  
 4 A Yes.  
 5 Q Did he do anything for your ribs?  
 6 A No. They didn't do much of anything for my ribs.  
 7 Q Okay. Did they tell you that they were fractured?  
 8 A Yes.  
 9 Q Okay. Were you there just a couple of hours, or  
 10 were you admitted?  
 11 A I was just there a couple of hours.  
 12 Q Okay. So you are --  
 13 A Whenever they released me, they told me I needed to  
 14 go see my family physician. And whenever I did --  
 15 went to see my family physician, that's whenever  
 16 she referred me over to the Canton Foot Specialist  
 17 on Ford Road, and that's where -- the doctor that  
 18 ended up taking care of my foot.  
 19 Q Okay. I will get there in just one second.  
 20 So after the hospital, you go home. The  
 21 next place you treated, was that with your primary  
 22 care doctor?  
 23 A Yes, sir.  
 24 Q Okay. Did she do -- did she just do a quick  
 25 evaluation, or did she do any imaging or anything?

1 A She just did an evaluation and referred me over to  
 2 the -- the foot specialist.  
 3 Q Okay. Is it called Canton Foot Specialist, like  
 4 the name of the facility?  
 5 A I believe so.  
 6 Q Okay. Then how long after the accident did you  
 7 first go to the foot specialist?  
 8 A As soon as I was referred. I -- I went -- it was  
 9 like within -- within a week I was --  
 10 Q Okay.  
 11 A -- able to get into him.  
 12 Q Okay.  
 13 A And he put me in a boot cast for the next two  
 14 months.  
 15 Q Okay. Did anybody do anything about your ribs, or  
 16 did they just tell you that they had to heal on  
 17 their own?  
 18 A They just told me I -- they had to heal on their  
 19 own.  
 20 Q Okay. So you went to the hospital, you went to  
 21 your primary care physician. Then you went to the  
 22 foot specialist. Where else did you go?  
 23 A Those are the only places.  
 24 Q Okay. You went to the foot specialist. He put you  
 25 in a boot cast for two months. What did he do

1 after the -- after that came off? Did anybody have  
 2 to do surgery or anything?  
 3 A No, no. There was no surgeries.  
 4 Q Okay. No pins --  
 5 A I was very -- I was very fortunate.  
 6 Q No pins or rods or anything?  
 7 A No.  
 8 Q Okay. So the boot comes off. What was the next  
 9 treatment?  
 10 A The doctor, he wanted to see me a couple of times  
 11 afterwards. He'd take X-rays just to make sure  
 12 that my foot had healed right. And he told me  
 13 that, for the next two years, I'd still be having  
 14 issues with my foot with pain and discomfort.  
 15 Q Okay. I just want to make sure I've got everybody.  
 16 There's the hospital. There's the primary care  
 17 facility, and there's the foot specialist. And  
 18 have you ever treated with anybody else?  
 19 A Dr. Tarabishy.  
 20 Q And who is that?  
 21 A He is a pain doctor. Pain management doctor.  
 22 Q Okay.  
 23 A That's who I am treating with now.  
 24 Q All right. And do you still see the foot doctor?  
 25 A No, sir.

1 Q Do you know when -- the last time you saw the foot  
 2 doctor?  
 3 A I don't remember.  
 4 Q All right. Like a couple weeks, a couple months --  
 5 A It was last year.  
 6 Q Okay. And then Dr. Tarabishy is your pain doctor.  
 7 Do you know when you first saw him?  
 8 A I can't remember if it was August or September when  
 9 I first started seeing him.  
 10 Q Okay. 2020?  
 11 A Yeah. It was 2020, though.  
 12 Q Okay. And you're still seeing him today?  
 13 A Yes, sir.  
 14 Q And how often do you go?  
 15 A I roughly see him once a month. And I go to  
 16 physical therapy three times a week for my  
 17 shoulder, low back, and foot.  
 18 Q Okay. And when you do physical therapy, is that at  
 19 Dr. Tarabishy's office?  
 20 A No. They found me a rehab center that was located  
 21 right in Ypsilanti.  
 22 Q Do you know the name of it?  
 23 A US Rehab.  
 24 Q Okay. And do you know when you started physical  
 25 therapy?

1 A Dr. -- whenever I first started seeing  
 2 Dr. Tarabishy. It was like within a couple of  
 3 weeks.  
 4 Q Okay. So --  
 5 A So I started last -- in 2020.  
 6 Q So like maybe late summer, early fall, somewhere  
 7 around there?  
 8 A Yes, sir.  
 9 Q Okay. How do you get to physical therapy? Do you  
 10 drive yourself? Is there a transportation company?  
 11 A I do have a vehicle right now. Like I said, I did  
 12 manage to get that Plymouth Breeze up and going.  
 13 Q Okay.  
 14 A Even though it's on its last legs, you know. I  
 15 mean, it -- it ain't much. But, you know, for what  
 16 I use it for, it -- it -- it serves its purpose.  
 17 Q Understood.  
 18 A I mean, I just got liability insurance on it. I  
 19 mean, I -- to be honest, I mean, the insurance --  
 20 the way insurance is in Ohio and the way insurance  
 21 is in Michigan, it's -- they're totally different.  
 22 I've noticed that.  
 23 Q Sure.  
 24 A But I don't even have -- I don't have -- I -- I've  
 25 got state minimum insurance on -- on the

Page 67

1 Plymouth Breeze.  
 2 Q Fair enough.  
 3 Have you ever had a transportation  
 4 company drive you back and forth?  
 5 A There was one that was supposed to have given me  
 6 transportation for a -- a psych eval a couple weeks  
 7 ago, but I was able to have a friend of mine take  
 8 me.  
 9 Q Okay. And then besides you driving yourself, have  
 10 you kept track of mileage back and forth?  
 11 A No, I haven't been.  
 12 Q Okay. Or when friends would drive you back and  
 13 forth, would you track that mileage?  
 14 A I would just give them a few dollars for gas.  
 15 Q Okay. And your -- are you still going to US Rehab  
 16 three times a week?  
 17 A Yes, sir. I -- actually, I've been going roughly  
 18 twice. But, yeah, I try to make it there the three  
 19 times that I am supposed to.  
 20 Q And did they tell you any idea, when you'd be  
 21 discharged?  
 22 A They haven't given me an idea as yet.  
 23 Q Okay. And you said they're working on your  
 24 shoulder, back, and feet --  
 25 A Yes.

1 Q -- foot?  
 2 How did you mess up your shoulder? Or  
 3 which shoulder?  
 4 A It's my left shoulder. It's -- it's the one that  
 5 they grabbed onto during the accident.  
 6 Q Okay. And your back, like your upper back,  
 7 mid-back, lower back?  
 8 A Low back.  
 9 Q Okay. So before this accident, did you ever have  
 10 problems with your left shoulder?  
 11 A No, sir.  
 12 Q Or have to treat with a doctor or any medical  
 13 people for your left shoulder?  
 14 A No, sir.  
 15 Q And what about your lower back? Did you ever have  
 16 to have a -- to see a doctor for your lower back  
 17 before this accident?  
 18 A Like I said, back when -- my twenties, I ended up  
 19 having a -- a worker's comp claim where I slipped  
 20 and fell at -- in a carpet factory.  
 21 Q Okay. But since that time, your back has been  
 22 fine?  
 23 A Yes.  
 24 Q You didn't have to treat with any doctors or  
 25 anything?

Page 69

1 A No, sir.  
 2 Q Okay. So you are still going to physical therapy  
 3 now. Is that the only place -- and -- and  
 4 you're --  
 5 Are you still seeing Dr. Tarabishy?  
 6 A Yes.  
 7 Q And is he prescribing you like pain meds or muscle  
 8 relaxers or something?  
 9 A He prescribed me a -- a very mild muscle relaxer,  
 10 and a -- I think one of them -- Flexeril is one.  
 11 Q Okay.  
 12 A And I forget what the other one is, but he said it  
 13 was like Motrin. It was just a slight -- slightly  
 14 stronger Motrin.  
 15 Q And do you fill those at his office, or do you have  
 16 to go to a pharmacy?  
 17 A I have to go to a pharmacy.  
 18 Q Which one?  
 19 A Meijers in Belleville.  
 20 Q Okay. All right. Okay. Give me one second here.  
 21 Because of the -- the accident, May of  
 22 2020, did you have any cuts or scrapes or scars or  
 23 anything like that?  
 24 A I had some scrapes and stuff on my arm and -- and  
 25 down my side a little bit. Nothing major.



1 Q Did those resolve?  
 2 A Yes.  
 3 Q Okay. And your foot -- you're done treating with  
 4 the foot doctor. How is your foot today?  
 5 A **It still gives me issues, but I am -- I am a lot**  
 6 **better. I'm healed up for the most part.**  
 7 Q Okay. And do you -- you don't walk with a limp or  
 8 anything?  
 9 A **I have got a -- a little bit of a limp.**  
 10 Q Does it get worse depending on the weather?  
 11 A Yes, sir.  
 12 Q Okay. All right. And then you mentioned at the  
 13 very beginning you had to go to a Beaumont Hospital  
 14 right after this happened. Did you have to go back  
 15 to the hospital for follow up or no?  
 16 A **No, no. I did my follow up with my family**  
 17 **physician.**  
 18 Q Okay. And when you fell, you said they held onto  
 19 your arm and let go when you fell, and they ran  
 20 over your foot. Do you -- did you hit your head or  
 21 your shoulder or anything on the cement?  
 22 A **My -- I ended up hitting on my shoulder.**  
 23 Q Okay. And then a few minutes ago, you mentioned  
 24 you had a -- an appointment with a -- a psych eval.  
 25 A **I believe that's -- that's what it was.**

Page 71

1 Q Okay. What was that for? Was that for the first  
 2 accident?  
 3 A **Honestly, I'm not even exactly sure. Majed will be**  
 4 **able to tell you more on that one.**  
 5 Q Okay.  
 6 MR. MOUGHNI: Mark, I think that was the  
 7 worker's comp, I think, that was sent over to you.  
 8 MR. NAWROCKI: Oh. Like an IME?  
 9 MR. MOUGHNI: Yes.  
 10 MR. NAWROCKI: Okay. Got it.  
 11 BY MR. NAWROCKI:  
 12 Q All right. So during this entire time, so since  
 13 May of 2020 until present, are you still 50/50  
 14 between Ohio and Michigan?  
 15 A **Yes. Pretty much.**  
 16 Q Okay. And when you're at the house in Ypsilanti,  
 17 is there anything, like after the accident, you  
 18 needed to have -- have help doing around the house?  
 19 A **I haven't for a while.**  
 20 Q Okay. What about right after the accident? What  
 21 did you need help with?  
 22 A **Right after -- after the 2020 accident, I needed**  
 23 **help bathing myself and getting dressed and things,**  
 24 **which my girlfriend was there and -- and she helped**  
 25 **me out quite a bit.**

1 Q Okay.  
 2 A **I couldn't do -- I mean, it's -- when it came to**  
 3 **house cleaning, she, you know -- she was a**  
 4 **blessing.**  
 5 Q Okay. And she is still there?  
 6 A Yes.  
 7 Q Okay. How long after the accident in -- the one in  
 8 May 2020, did she help you out with chores and  
 9 stuff like that?  
 10 A **She helped me out all the way up until the end**  
 11 **of -- end of June. And then she had to take care**  
 12 **of some issues that she had.**  
 13 Q Okay. That's June of 2020?  
 14 A Yes, sir.  
 15 Q Okay. Did anybody else then come and help out, or  
 16 not really?  
 17 A **Not really. I -- I mean, there was a couple of**  
 18 **people came in once in a while and helped me out,**  
 19 **you know, friends. But nobody, you know, on a**  
 20 **regular --**  
 21 Q Fair enough.  
 22 A **I just had -- I had to go and just adjust and -- to**  
 23 **be able to take care of myself.**  
 24 Q And it -- when she stopped helping you out with the  
 25 chores, did you still have the foot boot on?

Page 73

1 A **Excuse me?**  
 2 Q When she stopped -- you said at the end of June she  
 3 stopped helping you. Did you still have the -- the  
 4 boot on your foot?  
 5 A Yes, sir.  
 6 Q Okay.  
 7 A **I was -- at that point, I was pretty proficient on**  
 8 **being able to maneuver around.**  
 9 Q Okay. And then when you would go to Ohio, was it  
 10 about the same time that you didn't need help in  
 11 Ohio either?  
 12 A Yes, sir.  
 13 Q Okay. And for your girlfriend helping you out with  
 14 chores around the house, did you ever agree to pay  
 15 her?  
 16 A **Well she doesn't -- doesn't expect too much because**  
 17 **she lives with me, but I am -- you know how women**  
 18 **are.**  
 19 Q I do. I do, but I --  
 20 MS. CHRISTENSEN: What does that mean?  
 21 BY MR. NAWROCKI:  
 22 Q -- I need an answer from you.  
 23 Do you know if she is expecting payment?  
 24 A **More than like likely. She is expecting, you**  
 25 **know -- I mean, she -- I'm sure she is looking**



1 forward to getting something.  
 2 Q Okay. And then you mentioned she also helped you  
 3 with bathing and getting dressed?  
 4 A Yes, sir. Because I -- at -- up until the time  
 5 that I got the boot cast, and I had the soft cast  
 6 on, I would -- I -- I needed help to be able to  
 7 bathe and everything because I wasn't allowed to  
 8 get my -- get that cast yet.  
 9 Q Okay.  
 10 A Whenever I -- whenever they finally ended up being  
 11 able to get the boot cast for me, that made things  
 12 so much easier on me.  
 13 Q Approximately when did that happen after the  
 14 accident? Like a month --  
 15 A It was like the -- like the middle of June.  
 16 Q Okay. And that's when you got the hard cast?  
 17 A Yes, sir. The boot cast.  
 18 Q Okay. But then after you got that, did she still  
 19 have to bathe and help you get dressed?  
 20 A She helped me a little bit, but not like -- not  
 21 like I needed it before.  
 22 Q Okay. Before that, how often -- would she help you  
 23 out every day?  
 24 A Yes, sir.  
 25 Q And how long would it take to -- to bathe and dress

Page 75

1 you? Hour?  
 2 A Give or take. Half an hour, 45 minutes.  
 3 Q Okay. And, again, I am not trying to put words in  
 4 your mouth.  
 5 She helped you with bathing and dressing  
 6 until the middle of June when you got your hard  
 7 cast. And then after that, she helped you  
 8 sporadically?  
 9 A She was doing -- doing the chores, yeah. Helping  
 10 clean the house, you know, all that stuff.  
 11 Q Right, right. I get that.  
 12 So chores aside, I mean, just like  
 13 attending to --  
 14 A Yeah. I -- I didn't need as much help or anything  
 15 after I got my -- that boot cast. I was able to  
 16 walk and put weight on my foot at that point.  
 17 Q I got it. Okay. Give me one second here.  
 18 A Yeah. The foot doctor said once I got that cast, I  
 19 was able to go -- and be on my foot. Just -- I had  
 20 to limit myself.  
 21 Q And then up until then, did you have crutches or --  
 22 A Yes, sir.  
 23 Q -- a wheelchair?  
 24 Crutches?  
 25 A Yes.

1 Q So you had crutches until you got the boot cast?  
 2 A Yes.  
 3 Q I got it.  
 4 And then besides crutches, did you get  
 5 any other medical devices from any other doctors?  
 6 A neck brace, back brace, anything --  
 7 A No, sir.  
 8 Q All right. Did any of the doctors give you  
 9 disability slips, where they don't want you working  
 10 or driving or anything like that?  
 11 A Dr. Tarabishy has.  
 12 Q Okay. Do you know if he still -- are those like  
 13 still in effect, or --  
 14 A I don't know.  
 15 Q Okay. Do you know what he wanted you -- like  
 16 prevented you from doing, like lifting weights or  
 17 lifting --  
 18 A At one point -- at one point, I wasn't even allowed  
 19 to lift a dish.  
 20 Q Okay. All right. So now you -- now you have a  
 21 car. Well you have the Plymouth Breeze that you're  
 22 driving back and forth?  
 23 A Yes, sir.  
 24 Q Do you know when you got that like fixed and back  
 25 on the road, or what season?

Page 77

1 A Oh, I've been -- I -- I've been working on it off  
 2 and on all -- all along. So I think it was  
 3 about -- just before Christmas I got it going.  
 4 Q Okay. And this -- can you take that back and forth  
 5 between Ohio and Michigan?  
 6 A I can. I don't like to, but I can.  
 7 Q Okay. Fair enough. Fair enough.  
 8 A I mean, it -- the car has got almost 250,000 miles.  
 9 Q Quarter million. It's getting up there.  
 10 A Yeah. Now, if it was a diesel, then it would be  
 11 just getting broke in.  
 12 Q Sure.  
 13 And you still have Medicaid, correct,  
 14 through --  
 15 A Yes, sir.  
 16 Q -- the state.  
 17 All right. When you'd go to your  
 18 doctor's appointments, would you give them your  
 19 Medicaid card?  
 20 A I give them my Blue Cross Blue Shield, yes.  
 21 Q Okay. And then currently, what medications are you  
 22 taking?  
 23 A Like I said, I take the albuterol when I need it  
 24 for my asthma, Flexeril, and basically Motrin.  
 25 Q Okay. And when you -- you were talking about your

1 lower back pain. Is it like a stabbing pain, or  
 2 just an achy pain, or does it shoot up into your  
 3 arms or anything like that?  
 4 **A It's -- it's a dull ache.**  
 5 Q Okay. Are some days better than others?  
 6 **A Yes, sir.**  
 7 Q Okay. Then what about your shoulder?  
 8 **A My shoulder is -- sometimes I wish it would be just**  
 9 **cut off.**  
 10 Q And what do you?  
 11 **A And the worst part is, I'm left-handed.**  
 12 Q Oh. Has anybody talked to you about surgery?  
 13 **A There's not been a mention on it yet. They're --**  
 14 **they just scheduled -- or well they are, or they**  
 15 **are in the process of, scheduling an MRI for my**  
 16 **shoulder.**  
 17 Q Okay. And have you received any injections in your  
 18 shoulder or your back or any part of your body?  
 19 **A I've had injections in my shoulder.**  
 20 Q Do they help?  
 21 **A Actually, it made it worse.**  
 22 Q Oh. I'm sorry.  
 23 Was that Dr. Tarabishy?  
 24 **A Yes, sir.**  
 25 Q And when he gave you the injections, did he do that

Page 79

1 like in -- in an office room, or did you have to go  
 2 to like a surgical center?  
 3 **A It was in his office.**  
 4 Q Okay. Like a regular exam room?  
 5 **A Yeah. I believe they called it trigger point.**  
 6 Q Okay. Do you know how many you have had?  
 7 **A Just the one.**  
 8 Q And then after that, you are like, "It's not  
 9 working. I don't want anymore"?  
 10 **A Man, I tell you what, it about killed me.**  
 11 Q Okay. Have you seen a chiropractor or anything?  
 12 **A Yeah. I have. I have a chiropractor that I've**  
 13 **been seeing for a long time in Belleville. I --**  
 14 Q What --  
 15 **A -- go to him on occasion.**  
 16 Q What is his name?  
 17 **A Gable.**  
 18 Q And do you know --  
 19 **A I --**  
 20 Q -- the name of the facility?  
 21 **A It's Gable's Chiropractic.**  
 22 Q In Belleville?  
 23 **A Yes, sir.**  
 24 Q Okay.  
 25 **A They only charge me \$15 a visit.**

1 Q Wow. That's not bad.  
 2 You ever applied for Social Security  
 3 disability?  
 4 **A No, I haven't.**  
 5 Q Okay. I know you wear glasses. Were your glasses  
 6 damaged in the May accident?  
 7 **A Fortunately, they weren't.**  
 8 Q Okay. Has your prescription changed at all since  
 9 the accident or --  
 10 **A Actually, my glasses seem like they're a little bit**  
 11 **weak.**  
 12 Q Okay.  
 13 **A I've been having more issues on being able to read**  
 14 **and stuff since it --**  
 15 Q Do you have bifocals, or no?  
 16 **A Yes, sir.**  
 17 Q Okay. All right. So right now, you are seeing  
 18 Tarabishy, a chiropractor, and physical therapy?  
 19 **A Yes, sir.**  
 20 Q All right. Any -- anything else?  
 21 **A No.**  
 22 Q Do you get medical bills at your house?  
 23 **A No.**  
 24 Q All right. If you do, can you send them over to  
 25 your attorney?

Page 81

1 **A Yes, sir.**  
 2 Q All right. And give me one second.  
 3 When you pick up prescriptions or attend  
 4 medical appointments, do you have to make a copay?  
 5 **A Yes.**  
 6 Q Okay.  
 7 **A I mean, it depends on what it is. But with the**  
 8 **Blue Cross Blue Shield, I do have a copay, yes.**  
 9 Q Okay.  
 10 **A Fortunately, you know, I have yet to see a copay,**  
 11 **but --**  
 12 Q Is there --  
 13 **A -- I wouldn't say I won't have to pay one.**  
 14 Q And then I'm almost done, sir.  
 15 Your girlfriend, what was her name, that  
 16 was --  
 17 **A Shayna.**  
 18 Q -- helping you --  
 19 Oh, that's right. Lawson?  
 20 **A Yes, sir.**  
 21 Q Did she ever write down like what chores she would  
 22 help you out with on a specific day, like on a  
 23 calendar or anything like that?  
 24 **A No.**  
 25 Q Okay.

1 A Honestly, it was -- she -- we didn't keep track of  
2 anything like that. I mean, she just did the best  
3 she could in order to help do whatever, you know.  
4 I mean --

5 MR. NAWROCKI: Got you.  
6 All right. Sir, I don't have any  
7 questions right now. I'm sure some of the other  
8 attorneys have some questions, okay?

9 THE WITNESS: Yes, sir.

10 MR. NAWROCKI: Thank you.

11 MR. MARKO: Hi, sir. How are you? Let's  
12 just take a quick breath and break before I ask  
13 questions, okay? We will take a couple minutes.

14 MS. DIVINEY: Sounds good. Thank you.

15 (Whereupon a recess was taken.

16 Off the record at 1:52 p.m. Back

17 on the record at 2:04 p.m.)

18 (Whereupon Mr. Gumtow arrived and

19 Mr. Nawrocki left.)

20 \* \* \* \*

21 EXAMINATION

22 BY MR. MARKO:

23 Q Mr. Neal, my name is Jon Marko. I represent  
24 Mr. McDuffie-Connor and his family, and I am going  
25 to -- I have some questions for you.

1 What did -- does your DD-214 say about  
2 your discharge? I wasn't quite clear.

3 A It says other than --

4 (Whereupon there was a  
5 videoconference delay.)

6 THE WITNESS: It says --

7 As a matter of fact, I'll read it to you.

8 "General discharge under honorable conditions."

9 BY MR. MARKO:

10 Q Okay. And, sir, just so I understand, your --  
11 the -- Marine Corps believed -- I'm sorry.

12 The Navy believed that you had a drinking  
13 problem, you did not want to seek treatment for  
14 that; is that correct?

15 A Yes, sir.

16 Q And have you ever been to an alcoholic anonymous  
17 meeting?

18 A No, sir.

19 Q Have you ever had any treatment or counseling for  
20 alcohol?

21 A No.

22 Q Have you ever had an alcohol-related offense?

23 A When I was 18 years old, I had a DUI.

24 Q Have you had any -- any others?

25 A No.

1 Q How old are you today?

2 A I am 51.

3 Q What did you do to prepare for your deposition  
4 today?

5 A I talked with the attorney, and just did my best to  
6 remember everything.

7 Q Okay. What attorney?

8 A Amy.

9 Q Okay. You got here at 10:00 a.m. today?

10 A Yes, sir.

11 Q So you prepared for about two hours before you gave  
12 testimony?

13 A Well we talked here -- here in -- about everything.

14 Q Okay.

15 A Yeah.

16 Q Right? Is that correct?

17 A Yes.

18 Q And I understand you have had -- when you started  
19 you -- you -- deposition, you had some papers in  
20 front of you?

21 A Yes.

22 Q Okay. What were those papers?

23 A That was my statement to the police, and the --  
24 that was basically -- basically, just the  
25 statement.

1 MR. MARKO: Okay. Yeah. Can we mark  
2 that?

3 MS. DIVINEY: Yep, we sure can.

4 Do you want to look at it?

5 MR. MARKO: Yeah. Thank you so much.

6 MS. DIVINEY: You are welcome.

7 MR. MARKO: This one too.

8 MS. DIVINEY: When we're done, I will  
9 scan it in and send it to everyone.

10 (Marked for identification,  
11 Deposition Exhibit No. 1.)

12 BY MR. MARKO:

13 Q Okay. And, sir, did you -- was there anything  
14 inaccurate in this statement form that you read?

15 A No, not that I know of.

16 MR. MARKO: Okay. And thank you so much,  
17 Counsel.

18 BY MR. MARKO:

19 Q And I saw you had some photos on the phone. You  
20 mentioned that you had taken photos; is that --

21 A Yes, sir.

22 Q Okay.

23 A Whenever I started driving a truck, part of my  
24 training was, if there was ever an accident, you  
25 could never have too many pictures. Documentation

1 is -- is, you know -- cover -- all cover your butt.  
 2 Q Okay. Who -- so how many photos did you take?  
 3 A I have got like six, five. Six to look at.  
 4 Q Okay. Who have you given those photos to so far?  
 5 A My attorney.  
 6 Q Okay. Did you give them to your boss?  
 7 A No.  
 8 Q Did he ever ask for them?  
 9 A No.  
 10 Q Can I see those photos as well?  
 11 A Yes.  
 12 THE WITNESS: Could you hand me my phone,  
 13 please?  
 14 (Whereupon a brief off-the-record  
 15 discussion was held.)  
 16 THE WITNESS: As far as I know, the only  
 17 ones[sic] that has photos of the accident is me,  
 18 the police, and my attorney.  
 19 BY MR. MARKO:  
 20 Q Okay. Thank you, so you gave all those photos to  
 21 your attorney that you just showed me?  
 22 A Yes.  
 23 MR. MARKO: Okay. So obviously I am  
 24 requesting those photos.  
 25 MS. DIVINEY: Yep.

Page 87

1 MR. MARKO: And we will mark those as an  
 2 exhibit as well.  
 3 MS. DIVINEY: Okay.  
 4 (Marked for identification,  
 5 Deposition Exhibit 2.)  
 6 BY MR. MARKO:  
 7 Q Okay. So did you review anything else to prepare  
 8 for your deposition?  
 9 A No.  
 10 Q Okay. When was the last time you talked to your  
 11 boss at NSS?  
 12 A Last year.  
 13 Q Okay. You gave -- didn't talk to him to prepare  
 14 for today --  
 15 A No.  
 16 Q -- at all?  
 17 Okay. Well -- your education, you said  
 18 you graduated high school. Do you have any  
 19 specialized certificates or training, other than  
 20 your CDL license?  
 21 A The United States Navy. I don't know if I still  
 22 have my certificate of training for -- from -- to  
 23 get my CDL or not. I have my joint forces training  
 24 certificate under on heavy equipment.  
 25 Q Okay. So you were in the Navy. When did you enter

1 the Navy?  
 2 A September 18th of '96.  
 3 Q And when were you generally discharged from the  
 4 Navy?  
 5 A September 17th, '97.  
 6 Q Okay. So approximately one year?  
 7 A Yes, sir.  
 8 Q In getting your CDL, did you take any truck driving  
 9 training classes or go to a truck driver's school?  
 10 A I went to C1 Truck Driving School in Indianapolis,  
 11 Indiana.  
 12 Q And how long was that training?  
 13 A It was about three, four weeks.  
 14 Q Okay. And do you have any other training in truck  
 15 driving other than that school?  
 16 A Just the military.  
 17 Q Okay. And what training did the military give you  
 18 for truck driving?  
 19 A They put me through how to drive a truck, basics,  
 20 maneuverability and safety on it, as well as combat  
 21 training.  
 22 Q Sure.  
 23 The -- do you have any other training,  
 24 other than from the Navy and this truck driving  
 25 school?

Page 89

1 A No.  
 2 Q Is it -- am I fair to say that NSS provided you no  
 3 specific training?  
 4 A No, they did not.  
 5 Q We will talk about that a little more later, but  
 6 let's go over your employment history.  
 7 So you are currently employed --  
 8 unemployed; is that true?  
 9 A Yes.  
 10 Q And your last job was with NSS?  
 11 A It was with Getaway Tours.  
 12 Q That was --  
 13 A I worked there for roughly two months at ten hours  
 14 a week. I was cleaning buses.  
 15 Q And why did you leave?  
 16 A Because of COVID. They shut their doors.  
 17 Q Okay. Prior to Getaway Tours, were you unemployed  
 18 NSS?  
 19 A Yes.  
 20 Q And -- well when did you -- when was your first day  
 21 with NSS?  
 22 A It was in -- in March -- at the end of March. I  
 23 don't know what the date was.  
 24 Q And that was of 2019, correct?  
 25 A Yes.

1 Q And so that was shortly before this crash. This  
 2 was a few months before this crash?  
 3 A Yes, sir.  
 4 Q And you said that your last day with NSS was --  
 5 A Was July 25th whenever he put me on an indefinite  
 6 layoff?  
 7 Q All right. And when you say he, you are talking  
 8 about your boss --  
 9 A Nick.  
 10 Q -- Nick, right?  
 11 What is Nick's last name?  
 12 A I believe it's Shumaker.  
 13 Q All right. Prior to working for NSS, where were  
 14 you employed?  
 15 A From February to March, I was working at the  
 16 Home Depot part-time in the freight department.  
 17 Q Which Home Depot?  
 18 A In Canton. South Canton Store off of  
 19 Michigan Avenue.  
 20 Q And why did you leave Home Depot?  
 21 A For NSS.  
 22 Q Were you terminated?  
 23 A No.  
 24 Q And prior to Home Depot, where did you work?  
 25 A I was working at Happy -- Hungry Howie's from

1 January until the middle of February.  
 2 Q And what was your job?  
 3 A I was a delivery driver.  
 4 Q And why did you leave Hungry Howie's?  
 5 A Because I was tired of driving. I wanted to go  
 6 and -- and actually try something different.  
 7 Q Okay. Well you went back to driving, right, when  
 8 you went to NSS?  
 9 A Yes, I did.  
 10 Q So were you terminated from Hungry Howie's?  
 11 A No.  
 12 Q Did you quit?  
 13 A Yes.  
 14 Q Okay. And prior to Hungry Howie's, where did you  
 15 work?  
 16 A I drove Lyft from roughly December -- or November  
 17 to January -- or from -- I take that back. From  
 18 September or -- no. October until December 7th  
 19 because then --  
 20 Q 2018?  
 21 A 2018.  
 22 Q And why did you leave Lyft?  
 23 A I was involved in an accident where my car got  
 24 totaled. The Detroit Police Department was chasing  
 25 an assailant that was involved in a shooting. And

1 the assailant had ran a stop sign, and I ended up  
 2 hitting the assailant's car. The assailant's car  
 3 came to a stop. He got out, and took off on foot.  
 4 Q When was that crash?  
 5 A That was December 6th. I believe it was  
 6 December 6th of 2018.  
 7 Q And did Lyft terminate you as a result of that  
 8 crash?  
 9 A No.  
 10 Q Did you have a passenger --  
 11 A No.  
 12 Q -- in the vehicle?  
 13 A It was -- well it was me and my girlfriend.  
 14 Q What vehicle were you driving?  
 15 A I had a 2008 -- I believe it was a 2008  
 16 Ford Fusion.  
 17 Q Okay. So why --  
 18 A I had just bought the car. I had it six days.  
 19 Q Okay. So you -- so why did you quit living Lyft?  
 20 A Because I have not been able to afford a car, a new  
 21 one, up until the -- maintain their guidelines.  
 22 Q Well did you have insurance on the Fusion?  
 23 A Yes, I did.  
 24 Q And so did they give you a buyout or payment?  
 25 A I still owed \$2,000 on that Ford Fusion.

1 Q When --  
 2 A And the insurance companies didn't want to go and  
 3 pay it off.  
 4 Q Okay. So prior to working for Lyft, where did you  
 5 work?  
 6 A I worked for Haggerty -- Haggerty Logistics out of  
 7 New Boston. I drove a truck.  
 8 Q And what was your job title?  
 9 A I was a truck driver.  
 10 Q And what -- when did -- what was the dates of  
 11 employment with Haggerty Logistics?  
 12 A I believe it was April of 2016 to 2018. May 20 --  
 13 26th. I think May 26th, 2018.  
 14 Q Okay. Truck driver. How much money did you make  
 15 at Haggerty Logistics?  
 16 A I was getting, I believe, \$19 an hour.  
 17 Q Okay. What is that -- that was probably better  
 18 than Lyft, right, or no?  
 19 A Lyft was just something to get by.  
 20 Q So why did you leave Haggerty Logistics?  
 21 A I had three accidents in 2018, one -- one of which  
 22 was -- it -- in a snowstorm where a truck tried  
 23 passing me on I-75 and he clipped my mirror.  
 24 Because of insurance, I had to go and -- and do a  
 25 report.



1 Q Okay. So you were terminated as a result of those  
2 three incidents --  
3 A **Yes, sir.**  
4 Q -- is that what you are telling me?  
5 And that was, at that time, Haggerty  
6 Logistics. And where are they?  
7 A **Out of New Boston.**  
8 Q Okay. And so --  
9 A **2018 was a very bad year for me.**  
10 Q And then prior to Haggerty Logistics, where did you  
11 work?  
12 A **Load 1 out of Romulus.**  
13 Q And when did you work at Load 1?  
14 A **April -- I -- I think it was May 2014 to 2016.**  
15 Q And what was your job title with --  
16 A **I was a truck driver.**  
17 Q -- Load 1?  
18 Why were you terminated?  
19 Were you terminated from Load 1?  
20 A **No, I was not.**  
21 Q Okay. Why did you leave Load 1?  
22 A **I left there for more money.**  
23 Q Okay. And did you have any accidents while driving  
24 for Load 1?  
25 A **No.**

Page 95

1 Q Did you have any traffic citations while driving  
2 for Load 1?  
3 A **No.**  
4 Q Did you have any discipline at Load 1?  
5 A **No.**  
6 Q After Load 1, or prior to Load 1, where did you  
7 work?  
8 A **I was working for AD Transport out of Belleville.**  
9 Q And what was your position?  
10 A **I was an over-the-road truck driver.**  
11 Q And when did you work there?  
12 A **I worked there from 2011 until 2014.**  
13 Q Okay. And why did you leave there?  
14 A **Difference in opinions.**  
15 Q Well what does that mean? Were you terminated?  
16 A **I resigned.**  
17 Q You were told that if you didn't resign, you would  
18 be fired?  
19 A **No. I was -- I resigned. It was a difference in**  
20 **opinions. Me and the safety person did not see eye**  
21 **to eye.**  
22 Q What was the dispute with the safety person?  
23 A **I got into it with a DOT officer in Wisconsin. And**  
24 **as a result, me and -- my safety personnel had a**  
25 **few words. And rather than confrontation, I walked**

1 out.  
2 Q Okay. So what was -- what happened with the DOT  
3 officer in Wisconsin?  
4 A **DOT officer in -- in Wisconsin was trying --**  
5 **going -- telling me that my log -- I had falsified**  
6 **my logs, which I had not. And even though I had**  
7 **told the officer I could get GPS records to prove**  
8 **it, he refused to go and acknowledge that, and put**  
9 **me out -- out of service for ten -- for hours.**  
10 And --  
11 Q Okay.  
12 A **Which made me late on my load. As a result from**  
13 **being -- being late on my road, I got pulled**  
14 **directly back here to Michigan. And me and --**  
15 **and -- I forget what her name was, but she was in**  
16 **safety -- ended up getting into a big dispute about**  
17 **it. And she took --**  
18 Ended up telling me, "Don't ever file for  
19 GPS records to DOT or anything else. That's my  
20 place."  
21 I said, "I not going to take a God damn  
22 ticket" -- pardon my language. "I am not going to  
23 take a ticket for something I didn't do."  
24 So it was either, you know -- I -- I  
25 left.

Page 97

1 Q Okay. So -- were you written up by the DOT officer  
2 in Wisconsin?  
3 A **Yes, they did.**  
4 Q And what was the writeup?  
5 A **It was --**  
6 Q Citation.  
7 A **It was -- the citation was falsification of logs,**  
8 **even though I did not get -- it was a warning. It**  
9 **was not an actual ticket.**  
10 Q Okay. So the -- the DOT, Department of  
11 Transportation, officer in Wisconsin wrote that you  
12 falsified trucking logs and wrote you a warning  
13 citation?  
14 A **And put me out of service for ten hours.**  
15 Q Okay. And then you had an issue with your boss  
16 because of it?  
17 A **Yes, sir.**  
18 Q And so you left? And so --  
19 A **Well actually I didn't really have -- I mean, the**  
20 **superintendent or -- or however you want to call**  
21 **him wanted one of the higher-ups over at -- at AD**  
22 **Transport was the one that got me the job over at**  
23 **Load 1, so I didn't leave on bad terms.**  
24 Q Okay.  
25 A **In fact, he -- he talked to AD Transport, and they**

1 said if I could get through this, they -- they  
 2 would welcome me back with open arms.  
 3 Q Get through what?  
 4 A Being -- if I am able to get on -- and bring myself  
 5 to get back into another truck.  
 6 Q You mean right now?  
 7 A If I was able to and I was cleared to go back to  
 8 work, yeah. I would go back to Load 1 -- or I mean  
 9 AD Transport.  
 10 Q Okay. So while you are at AD Transport, other than  
 11 this issue for falsification of logs, were you ever  
 12 given any other citations?  
 13 A I think I might have had one for not being able to  
 14 stop at a red light. I don't know -- a stop  
 15 sign -- I -- something like that.  
 16 Q Okay. What else?  
 17 A And when you got 80,000, it's hard to stop on a  
 18 dime, you know.  
 19 Q What else?  
 20 A I don't think I had anything else.  
 21 Q Prior to -- oh.  
 22 Did you get in any car crashes --  
 23 A I was rear ended while I was at AD Transport in  
 24 Cincinnati, Ohio.  
 25 Q What year?

1 A I don't remember.  
 2 Q In Cincinnati. Were you given a ticket?  
 3 A No.  
 4 Q Was somebody hurt?  
 5 A I -- I ended up suffering from whiplash.  
 6 Q You did?  
 7 A Yes, sir.  
 8 Q What about the person that hit you?  
 9 A (Shaking head.)  
 10 Q Were you ever part of a lawsuit before?  
 11 A No.  
 12 Q Ever a plaintiff or a defendant?  
 13 A No, not that I recall.  
 14 Q Ever sued anybody?  
 15 A No.  
 16 Q Ever been sued before?  
 17 A I've been sued, from what I understand, for  
 18 nonpayment of bills, where I hadn't had the money  
 19 to pay them. Other than that, I don't, you know --  
 20 Q Okay. What kind of bills?  
 21 A Doctor bills, credit cards.  
 22 Q Okay.  
 23 A Which I filed bankruptcy in 2014 was to clear --  
 24 cleared all that off.  
 25 Q When did you file bankruptcy?

1 A 2014.  
 2 Q Why did you do that?  
 3 A In order to go on -- restart my credit.  
 4 Q I know. Why did you need to restart your credit?  
 5 You were employed, right?  
 6 A I was employed, yes.  
 7 Q What happened?  
 8 A I had bad credit. I wanted to be able to go on and  
 9 better myself. I wanted to be able to have -- have  
 10 decent cars. You can't do that with bad credit.  
 11 Q Okay. So I -- I am -- what I am asking is you --  
 12 how did you get bad credit? What happened? Like  
 13 what life decisions did you make that led to bad  
 14 credit?  
 15 MS. DIVINEY: I am just going to put an  
 16 objection relevancy on the record.  
 17 Go ahead.  
 18 THE WITNESS: I -- I -- really don't see  
 19 what that has anything to do with this.  
 20 MR. MARKO: Well you --  
 21 THE WITNESS: I mean, I've always -- I've  
 22 never made the best decisions when it came to  
 23 money.  
 24 BY MR. MARKO:  
 25 Q Well what decisions did you make in 2014 that led

1 to bankruptcy?  
 2 A It was a buildup. I just ended up seeing a point  
 3 where I was able to afford to go and pay for a  
 4 bankruptcy, and I took advantage of it in order to  
 5 go ahead and straighten out my history.  
 6 Q Did you have a lawyer?  
 7 A Yes, I did.  
 8 Q How many times have you had to hire a lawyer in  
 9 your life, or hired one?  
 10 A Maybe twice.  
 11 Q What was the other time?  
 12 A Back in 1999 -- I believe it was '99. '98 or '99,  
 13 I ended up getting hit, you know -- I -- it's --  
 14 it's -- got thrown out. But they said I discharged  
 15 a firearm under the influence.  
 16 Q Okay. So where was that?  
 17 A That was in Coshocton, Ohio, on my own property.  
 18 Q And what happened with that?  
 19 A I -- it got dropped down to drunk and disorderly.  
 20 Q Okay. And what year was that?  
 21 A It was either '98 or '99.  
 22 Q Okay. And any other time you've ever had a lawyer,  
 23 sir, for anything?  
 24 A No.  
 25 Q The -- prior to AD Transportation, where did you

1 work?  
 2 A I was an owner-operator at Ameristate  
 3 Transportation.  
 4 Q What was it called?  
 5 A Ameristate Transportation. I was an  
 6 owner-operator.  
 7 Q Okay. And from which time period to which time  
 8 period?  
 9 A From 2008 to 2011.  
 10 Q And did you have your own semi truck?  
 11 A Yes. I was leasing that one.  
 12 Q Okay. You were leasing to own.  
 13 Okay. And that's where you have your own  
 14 truck, but you go and you do calls for other  
 15 people?  
 16 A Yes.  
 17 Q Okay. And why did you stop doing that? What  
 18 happened?  
 19 A Ameristate was not very reputable. At the end, I  
 20 had four more payments and the truck would have  
 21 been mine. They turned around and sold it out from  
 22 underneath me.  
 23 Q Okay. Well did you go see a lawyer about that?  
 24 A I couldn't do that because they -- they made it a  
 25 point to where I had to keep my lease paperwork in

Page 103

1 the truck. And I -- being a dummy, I didn't have  
 2 any copies. So when they came and took the truck,  
 3 they got all my paperwork and everything, and was  
 4 able to go on -- I had no leg to stand on.  
 5 Q So you just -- are you saying they just stole your  
 6 truck --  
 7 A Pretty much.  
 8 Q -- is that --  
 9 And you were an owner-operator for -- of  
 10 your own truck. Is that true? What kind of truck  
 11 was it?  
 12 A It was a 2000 Frieghtliner.  
 13 Q Okay. And did you get in any accidents during that  
 14 time period?  
 15 A In 2008, 2009, down in North Carolina, I was  
 16 involved in an accident where a girl had ended up  
 17 running a stop sign. And it was either go and  
 18 ditch my truck, or go and -- and run over the top  
 19 of her.  
 20 Q So what did you do?  
 21 A I ditched my truck and she still hit me.  
 22 Q And what happened to her?  
 23 A She was fine.  
 24 Q Did you get a ticket?  
 25 A No.

1 Q Did -- was anybody hurt?  
 2 A No.  
 3 Q Did the police come?  
 4 A Yes.  
 5 Q Did you get any other citation -- did you get any  
 6 citations while you were with Ameristate  
 7 Transportation?  
 8 A No.  
 9 Q Where did you work practice that?  
 10 A USA Truck.  
 11 Q And from what year to what year?  
 12 A From 2005 until 2008.  
 13 Q And what was your position for USA --  
 14 A Over-the-road truck driver.  
 15 Q And why did you leave USA Truck?  
 16 A In 2008, I had an 80-year-old man come to a dead  
 17 stop in rush hour traffic down in West Memphis,  
 18 Tennessee.  
 19 Q Okay.  
 20 A Four car was able to stop behind him. I had 80,000  
 21 of the great big roll of paper in my box. I  
 22 couldn't stop.  
 23 Q So what happened?  
 24 A I pulled my brakes. I couldn't stop. I ended up  
 25 hitting the end car, which was a Volkswagen Jetta.

Page 105

1 Thank God there was nobody in the backseat. Made  
 2 an accordion out of it.  
 3 Q Okay. Were you given a ticket?  
 4 A Originally, I was. And then whenever it was -- it  
 5 came down to it, they retracted the ticket and  
 6 ended up citing the -- the old man that --  
 7 Q What was your original ticket?  
 8 A Just where I was unable to stop, assured clear  
 9 distance.  
 10 Q Assured -- okay.  
 11 A It scared me so bad. I wanted out of the truck.  
 12 Q All right. And --  
 13 A And I managed to get out of the truck for about six  
 14 months, and then went back to Ameristate.  
 15 Q And did -- were you terminated as a result of that  
 16 crash?  
 17 A No.  
 18 Q Okay.  
 19 A I resigned.  
 20 Q Were you given the ultimatum --  
 21 A No.  
 22 Q How long after you were in a car crash did you  
 23 resign?  
 24 A It was within three months.  
 25 Q So pretty close in time?

1 A Uh-huh.  
 2 Q Is that a yes?  
 3 A Yes, sir.  
 4 Q And so why did you resign? Because you had the  
 5 crash?  
 6 A I was second-guessing myself. I was scared.  
 7 Q Okay.  
 8 A And at the end, what finally ended up making my  
 9 decision to leave so much easier is, I used to be  
 10 able to go and park my tractor and my trailer at  
 11 the yard, which was in Vandalia, Ohio, and I could  
 12 bobtail to the house. Well this time, they was  
 13 basically going to make me walk home from the yard.  
 14 It was a different dispatcher. Since I wasn't able  
 15 to take the truck home anymore, or at least at that  
 16 point in time, I resigned.  
 17 Q Okay. So explain to me why you weren't allowed by  
 18 the dispatch to take your truck with you.  
 19 A I don't know what it was. Like I said, I -- I  
 20 don't know.  
 21 Q What is the name of the company?  
 22 A USA Truck.  
 23 Q And where are they located?  
 24 A They have a terminal in Van Buren -- or Vandalia,  
 25 Ohio.

1 Q And that's where you were working out of?  
 2 A Yes. That was my home terminal. Their main office  
 3 is in Arkansas.  
 4 Q Okay. Did you get in any other car accidents while  
 5 you worked for USA Truck?  
 6 A No.  
 7 Q Did you receive any other citations while you were  
 8 at USA Truck?  
 9 A None that I remember.  
 10 Q And prior to USA Truck, where did you work?  
 11 A Odd jobs.  
 12 Q What does that mean?  
 13 A I was a mechanic. I -- I used to run a brick and  
 14 tire shop in West Lafayette, Ohio.  
 15 Q Okay. Why did you stop doing that?  
 16 A Wasn't that much work.  
 17 Q So had you ever -- so you were at -- you were  
 18 discharged from the military, you said, when?  
 19 A In '97.  
 20 Q '97. And did you ever drive a truck prior to being  
 21 discharged from the military?  
 22 A No.  
 23 Q Did you ever have any -- from 1997 to 2005, did you  
 24 ever work as a truck driver anywhere else?  
 25 A No.

1 Q No. When did you first get your commercial truck  
 2 driver's license?  
 3 A 2005.  
 4 Q Now, you currently have a Ohio's driver license; is  
 5 that correct?  
 6 A Yes.  
 7 Q Have you ever been licensed in another state? Have  
 8 you ever had a driver's license issued by a state,  
 9 other than Ohio?  
 10 A I had a temporary driver's license in Indianapolis.  
 11 I -- yeah. Illinois.  
 12 Q When?  
 13 A Not -- Indiana. I am sorry. Yeah. Indiana.  
 14 In 2005 during my truck driving training.  
 15 Q Okay. Other than that, did you ever have a  
 16 driver's license issued by another state, other  
 17 than Ohio?  
 18 A No.  
 19 Q Have you ever had your driver's license suspended  
 20 or revoked?  
 21 A I had my license us suspended for child support in  
 22 '19.  
 23 Q In 2019?  
 24 A Yeah. It was in March.  
 25 Q Right. Let's back up.

1 I have -- all right. I was going to say  
 2 I have a lot of documents here, but --  
 3 A That was the only time I ever had a -- had a  
 4 suspension.  
 5 Q And so that was due to non-payment of child  
 6 support, correct?  
 7 A Yes.  
 8 Q And so how long was your license suspended for?  
 9 A Maybe 30 days.  
 10 Q Okay. And that was what month?  
 11 A I can't remember. Like I said, it's -- it might  
 12 have been March --  
 13 Q Are you guessing?  
 14 A -- of '19. It might have been March of '19.  
 15 I am guessing because I don't know. I  
 16 don't have the paperwork in front of me.  
 17 Q And that was during the time period that you were  
 18 working for NSS, correct?  
 19 A No.  
 20 Q When were -- you told me you were working for NSS  
 21 in March of 2019 until July of 2019. So assuming  
 22 that your --  
 23 A I can't --  
 24 Q -- license was suspended?  
 25 A No. My license wasn't suspended while I was

1 work -- working for Nick.  
 2 Q If I need --  
 3 A I'd have to go and pull --  
 4 Huh? Well I have got documentation at  
 5 home that proves it.  
 6 Q Well where is it? Because I've never been given a  
 7 driver's license form or for the applicable time  
 8 period.  
 9 A Really?  
 10 Q Yes.  
 11 A Well I would have to go in and give you the DMV  
 12 report.  
 13 Q Do you have that?  
 14 A I have it at home.  
 15 Q Can you give it to your lawyer?  
 16 A Yes.  
 17 Q I would ask that you do that.  
 18 A Okay.  
 19 Q Because the driver's license I was given was from  
 20 after the crash. Do you understand that?  
 21 A Uh-huh.  
 22 Q Your driving record that I was given is from after  
 23 the crash. The medical reports I was given were  
 24 after the crash. Are all those documents in  
 25 existence for prior to the crash?

Page 111

1 A I've got to try and find them, but yes.  
 2 Q Okay. Have you ever -- so other than this --  
 3 A And my driver's license was renewed in 2016 the  
 4 first time. And I just renewed them in 2020, so --  
 5 Q Okay. And did you -- did you have a -- had your  
 6 driver's license ever been suspended, or did you  
 7 ever not have a driver's license? Was there any  
 8 lapse in your driver's license for any time period  
 9 ever?  
 10 A No.  
 11 Q Did you ever not have --  
 12 When did you get your Class A CDL?  
 13 A 2005.  
 14 Q Okay. Was there ever a time when you did not have  
 15 a Class A CDL?  
 16 A No.  
 17 (Whereupon a brief off-the-record  
 18 discussion was held.)  
 19 BY MR. MARKO:  
 20 Q So are you sure that at the time of this crash, you  
 21 had a valid Class A CDL endorsement?  
 22 A Yes.  
 23 Q Have you ever had any restrictions on your license?  
 24 A No.  
 25 Q I see you have eyeglasses on.

1 A Uh-huh.  
 2 Q And you said that your --  
 3 Is that a yes?  
 4 A Yes, I have glasses on.  
 5 Q Yeah. You have to answer because the court  
 6 reporter --  
 7 A I am sorry.  
 8 Q -- will write that you said "uh-huh," and then we  
 9 don't know what you said.  
 10 A Okay.  
 11 Q And then --  
 12 A Yes, I have glasses on.  
 13 Q Later on when we are trying to figure it out, I  
 14 could say something that's different than what you  
 15 meant. You could --  
 16 A I only need my glasses to read.  
 17 Q Okay. The -- well you said today, earlier, that  
 18 your vision has been getting worse.  
 19 A It has been.  
 20 Q Okay.  
 21 A But I still -- I still can walk, talk, and see. I  
 22 just can't read small print.  
 23 Q Okay. So what --  
 24 A I can't see close up.  
 25 Q How long have you had eyeglasses?

Page 113

1 A About three years.  
 2 Q Okay. And do you have contact lenses as well?  
 3 A No.  
 4 Q And what is the prescription strength of your  
 5 eyeglasses?  
 6 A I think it's two and a quarter.  
 7 Q Okay. For each -- each eye is the same?  
 8 A I -- I don't remember.  
 9 Q Well where do you get your eyeglasses from?  
 10 A SVS.  
 11 Q Where?  
 12 A In Belleville. It's where I got them the last  
 13 time.  
 14 Q When was the last time you got -- went --  
 15 When did you get those eyeglasses?  
 16 A Last year.  
 17 Q Okay. What -- did you have eyeglasses at the time  
 18 of the crash?  
 19 A Yes.  
 20 Q Were you wearing them at the time of the crash?  
 21 A Yes.  
 22 Q Were they on your -- so you know there's a video of  
 23 this incident, do you know that?  
 24 A No.  
 25 Q Did you see it?



1 A Yes.  
 2 Q When is the last time you saw it?  
 3 A **Right before all this. She had showed me -- showed**  
 4 **it to me when I got here at 10:00.**  
 5 Q Okay. Did you see the one where -- that it zooms  
 6 in that I had made?  
 7 A No.  
 8 Q Okay. Were you wearing eyeglasses at the time of  
 9 the crash?  
 10 A **As far as I know.**  
 11 Q Okay. The --  
 12 A **I am not required to -- to wear glasses when I**  
 13 **drive.**  
 14 Q Okay. The -- let's talk now about your driving  
 15 record a little bit, okay? So you told me kind of  
 16 in parts here, but let's go through this.  
 17 So as I understand it, you have a -- an  
 18 offense date of 8/3/2019. Tell me about that  
 19 offense in Michigan on M-14.  
 20 A **I don't remember.**  
 21 Q FTO SIGN/TCD.  
 22 A **Stop sign.**  
 23 Q Okay. So you failed to stop at a sign. You don't  
 24 remember being convicted of that in --  
 25 A **I waived[sic] it, but yeah. I remember it**

1 **because I did stop at the stop sign. The officer**  
 2 **seen that I had out-of-state license plates, and he**  
 3 **just still pulled me over --**  
 4 Q Well --  
 5 A **-- just to have -- he gave me a ticket to hassle**  
 6 **me.**  
 7 Q What do you mean you waived[sic] it?  
 8 A **I paid the ticket.**  
 9 Q Well you admitted responsibility, right?  
 10 A **Yeah.**  
 11 Q Okay. In a court, right?  
 12 A **No. I never went to court.**  
 13 Q But you sent the paperwork to the court, correct?  
 14 A **Yeah.**  
 15 Q Okay. So why would you admit and pay something if  
 16 you didn't do it?  
 17 A **Whenever it comes to traffic, I've already found**  
 18 **out it doesn't matter if you done it or not. I go**  
 19 **to court, you still get hit with a fine no matter**  
 20 **what.**  
 21 Q Okay. You didn't get hit with a fine in the crash  
 22 that killed my client, did you?  
 23 A **I didn't do anything wrong.**  
 24 Q Okay. That wasn't my question, sir.  
 25 A **No. I was not cited. I did not do anything wrong.**

1 **Your client came flying --**  
 2 Q Sir --  
 3 A **-- up at --**  
 4 Q I didn't ask a question.  
 5 A **-- excessive speed --**  
 6 Q I've got a lot of questions. I've got a lot of  
 7 stuff, so I promise you we will get to the crash.  
 8 But before we do, I have a lot of other questions.  
 9 (Whereupon a brief off-the-record  
 10 discussion was held.)  
 11 BY MR. MARKO:  
 12 Q Do you have any citations from 2021?  
 13 A **Yes.**  
 14 Q What is it?  
 15 A **Impeding traffic.**  
 16 Q When did you get an impeding traffic?  
 17 A **A couple of weeks ago.**  
 18 Q What was the original charge?  
 19 A **I was going 5 miles an hour over the speed limit.**  
 20 Q Where?  
 21 A **In Westland.**  
 22 Q And you went to court and plead it down to  
 23 impeding?  
 24 A **No. That's what they wrote the ticket for.**  
 25 Q Okay. In 2020, did you have any citations?

1 A **Not that I know of.**  
 2 Q 2019, failed to -- the citation was for failing to  
 3 stop at a stop sign, and you plead guilty to that,  
 4 correct? In fact, your conviction was August of --  
 5 19th of 2019. Does that sound accurate to you?  
 6 A **Might be.**  
 7 Q In 2018, 9/12/2018, you were cited for inattentive  
 8 driving. Do you remember that?  
 9 A **No.**  
 10 Q Would which would be September 12th, 2018. What  
 11 happened there?  
 12 A **I don't remember.**  
 13 Q Okay. Do you remember going to Franklin Municipal  
 14 Court in May of 2018 for driving in marked lanes?  
 15 A **Yes. That was on the two -- three accidents that I**  
 16 **said that got me fired over at Haggerty Logistics.**  
 17 Q Okay.  
 18 A **Yeah. Two of which was in one night. I had a**  
 19 **four-wheeler go and run me into a concrete barrier**  
 20 **and take off, which I got -- I got cited for**  
 21 **failure to maintain control, which if I would have**  
 22 **made -- would not have been able to maintain**  
 23 **control, I would have killed somebody. I would**  
 24 **have run him over. It was either the barrier or**  
 25 **run over a four-wheeler. I chose the barrier.**

1 Then -- that was the first accident that night.  
 2 That was on my way down to Cincinnati.  
 3 On my way back from Cincinnati, I had a  
 4 UPS truck merging onto I-75 with multiple trailers.  
 5 He actually came into my lane just a little bit.  
 6 His trailer connected to mine, and he drug me off  
 7 the interstate. That's what that improper lane  
 8 thing is.  
 9 Q Okay. So just so I understand, you had two  
 10 separate traffic convictions on the same day while  
 11 you were acting in the course and scope of your  
 12 employment at a truck driver; is that true?  
 13 A Yes.  
 14 Q And you were convicted of both of them, correct?  
 15 A I just paid them.  
 16 Q But you admitted responsibility. When you say --  
 17 A I plead no contest.  
 18 Q Just so we are clear, when you say "I just paid  
 19 them," that means you admitted responsibility and  
 20 were convicted, right?  
 21 A Yeah.  
 22 Q Okay. Now, did your boss know about these? Were  
 23 you honest with him when you applied for a job at  
 24 NSS?  
 25 A Yes.

1 Q You knew about all this stuff, didn't he?  
 2 A Yes.  
 3 Q And he didn't care, did he?  
 4 A No.  
 5 MS. DIVINEY: Objection. He doesn't know  
 6 what --  
 7 THE WITNESS: I -- I don't know what --  
 8 MS. DIVINEY: -- his boss would care --  
 9 BY MR. MARKO:  
 10 Q He put you behind the wheel. How much did that  
 11 truck weigh, sir, that hit my client and killed  
 12 him?  
 13 A I don't know.  
 14 Q You don't know how much the --  
 15 MS. DIVINEY: Objection, because he --  
 16 you are stating that the dump truck hit -- hit your  
 17 client. I think the video --  
 18 MR. MARKO: Well we can watch the video.  
 19 BY MR. MARKO:  
 20 Q But, sir, how much did that truck weigh?  
 21 A I don't --  
 22 Q You don't know? You drove the equipment, and you  
 23 don't know how much it weighed?  
 24 A Every truck weighs differently.  
 25 Q Well, sir, you were driving it, right?

1 A I never weighed it.  
 2 Q Okay. So in addition to the --  
 3 A And I didn't hit your client. Your client hit me.  
 4 Q Okay. We are going to get to that, sir.  
 5 But in addition to --  
 6 THE WITNESS: I need a break.  
 7 MS. DIVINEY: Can we take a quick break?  
 8 MR. MARKO: Sure.  
 9 MS. DIVINEY: Thank you.  
 10 (Whereupon a recess was taken.  
 11 Off the record at 2:45 p.m. Back  
 12 on the record at 3:00 p.m.)  
 13 BY MR. MARKO:  
 14 Q We just got done talking about May 18th, 2018. You  
 15 were in two separate accidents on the same day.  
 16 I now want to turn to  
 17 February 20th, 2015. According to my records, you  
 18 received a -- you had a guilty plea in the Wood  
 19 County Municipal Court for a violation of equipment  
 20 regulation, and this also went against the -- this  
 21 was a CDL conviction. What does that mean?  
 22 A Commercial driver's license.  
 23 Q I understand, sir. But what was -- what happened?  
 24 This is the seventh citation that we are now  
 25 discussing.

1 What happened on February 20th, 2015?  
 2 A I can't remember.  
 3 Q In Wood County.  
 4 A I don't remember.  
 5 Q Okay. And then the eighth conviction is on  
 6 March 27th, 2014 in Indiana. What happened there?  
 7 A I don't remember.  
 8 Q Was that the -- what --  
 9 Who were you working for in 2014?  
 10 A Up until April of 2014, I was with AD Transport.  
 11 Q Then in -- the ninth conviction that I have a  
 12 record of is in Virginia in September of 2013.  
 13 What happened there?  
 14 A I don't remember.  
 15 Q The tenth conviction I have for -- on your driving  
 16 record is a speeding conviction in Madison on  
 17 8/2/2011. What happened there?  
 18 A I don't remember.  
 19 Q You don't remember getting stopped by police  
 20 officers, getting tickets, going through the court  
 21 system --  
 22 A I don't remember the specifics, no.  
 23 Q Well do you remember the generalities?  
 24 A With as much driving as I've done, I can't remember  
 25 every place I've been, how many times I've been

1 there, or what I done while I was there. I can't  
 2 remember everything.  
 3 Q Okay. And then your eleventh conviction is on  
 4 10/11/2011, and that was --  
 5 Oh, no. I am sorry. That was the  
 6 conviction date.  
 7 Your eleventh conviction was on  
 8 May 29th, 2011 for speeding, and that was in  
 9 Stark County. Do you remember that?  
 10 A If I remember right, that was in my personal  
 11 vehicle.  
 12 Q That's correct.  
 13 And so were you speeding?  
 14 A I can't remember if I was or not.  
 15 Q Okay. And then your twelfth conviction was on  
 16 4/19/2011, and this was in Kentucky. Do you  
 17 remember that?  
 18 A I can't remember that far back.  
 19 Q Okay. And your 13th driving conviction was on  
 20 3/2/2019 -- or 2009. I am sorry. 3/2/2009 in  
 21 Stark County. What happened there?  
 22 A I don't know.  
 23 MS. DIVINEY: Is Stark -- sorry. Is  
 24 Stark County, Ohio?  
 25 THE WITNESS: Stark County is in Ohio.

1 BY MR. MARKO:  
 2 Q And your fourteenth driving conviction was  
 3 February 12th of 2009, and that was in Jefferson  
 4 County. Where is Jefferson County so you --  
 5 A Ohio.  
 6 Q And that says, "equipment misuse." What happened  
 7 there?  
 8 A I don't remember.  
 9 Q Now, your fifteenth driving conviction was in  
 10 July -- on July 16th of 2008. What happened there?  
 11 And that was in Tennessee?  
 12 A I don't remember.  
 13 Q Your sixteenth driving conviction was in  
 14 Muskingum County. Where is that?  
 15 A Ohio.  
 16 MS. DIVINEY: Can you spell that?  
 17 THE WITNESS: Muskingum.  
 18 BY MR. MARKO:  
 19 Q M-u-s-k-i-n-g-u-m.  
 20 And that was on November 6th, 2007, and  
 21 this was a commercial -- speeding in a commercial  
 22 vehicle. Do you remember that?  
 23 A No, I don't.  
 24 Q Your seventeenth conviction was June 23rd of 2006,  
 25 and that was against your CDL, and that was in

1 Trumbull Municipal Court in Trumbull County. Where  
 2 is Trumbull County, sir?  
 3 A Ohio.  
 4 Q What happened there?  
 5 A I don't remember.  
 6 Q And you understand that when you get a CDL  
 7 conviction, that's different than a normal  
 8 conviction? That goes against your CDL, correct?  
 9 A Yes.  
 10 Q So tell us the difference between just --  
 11 A I'm held to a different set of rules than you are.  
 12 Q Okay.  
 13 A It's just like when it comes to drinking. For you,  
 14 it might be 1.0. For me, it's -- it's half that.  
 15 Q Okay. Your eighteenth?  
 16 A Does that give you an idea on -- on the difference?  
 17 Q Yes. And we will talk about that. The eighteenth  
 18 conviction that you had on your driving record was  
 19 on June 13th, 2005. That's in Coshocton.  
 20 A Coshocton.  
 21 Q Where is Coshocton?  
 22 A That's where my house in Ohio is at.  
 23 Q Okay. And this is -- again, this is a speeding  
 24 ticket that you plead guilty to. Do you remember  
 25 that in June of 2005?

1 A Nope.  
 2 Q Okay. Now, sir, your nineteenth driving conviction  
 3 was in August 9th of 2004 in Licking County. Where  
 4 is Licking?  
 5 A Ohio.  
 6 Q Okay. And you were, again, convicted of speeding.  
 7 Do you remember that?  
 8 A No, I don't.  
 9 MS. DIVINEY: So now this -- just --  
 10 sorry to interrupt.  
 11 THE WITNESS: That's over twenty years --  
 12 MS. DIVINEY: In 2004, that was before  
 13 his -- he got his CDL, so are we -- are we now  
 14 talking about convictions with respect to his  
 15 personal driver's license?  
 16 MR. MARKO: Yeah. I am going to talk  
 17 about all the convictions as a driver. Okay.  
 18 MS. DIVINEY: And --  
 19 BY MR. MARKO:  
 20 Q Then, sir, your twentieth driving conviction was  
 21 4/9/2004 in Holmes County. Where is --  
 22 A Ohio.  
 23 Q -- Holmes County?  
 24 Okay. Do you remember that conviction?  
 25 A No.

1 And prior to 2005, I never left Ohio, so  
 2 everything will end up being in Ohio --  
 3 MS. DIVINEY: Just --  
 4 THE WITNESS: -- prior to those --  
 5 MS. DIVINEY: Just to --  
 6 MR. MARKO: Okay.  
 7 MS. DIVINEY: -- clarify, when you are  
 8 saying "conviction," he has like -- he has paid  
 9 these tickets? Is that what --  
 10 MR. MARKO: It's a guilty. He is  
 11 pleading guilty, accepting responsibility, and  
 12 going through a legal process --  
 13 THE WITNESS: Yeah. Regardless of  
 14 whether you're guilty or not --  
 15 (Multiple simultaneous voices.)  
 16 MR. MARKO: -- a judge to have committed  
 17 a driving offense.  
 18 MS. DIVINEY: Well there is a difference  
 19 when you pay the ticket and, you know --  
 20 MR. MARKO: It's guilty.  
 21 MS. DIVINEY: So -- well I am asking,  
 22 were these just paid tickets, or did he actually --  
 23 MR. MARKO: No.  
 24 MS. DIVINEY: -- have a hearing --  
 25 MR. MARKO: It's guilty. He is guilty.

1 It says guilty. So the --  
 2 MS. DIVINEY: But we don't know what that  
 3 means, with respect to --  
 4 MR. MARKO: Well there's -- okay.  
 5 There's --  
 6 MS. DIVINEY: So I am just --  
 7 MR. MARKO: I mean, what are we going to  
 8 do? Argue the case here?  
 9 MS. DIVINEY: No. I'm just trying to  
 10 understand what you're reading from because I don't  
 11 know what you're referring to.  
 12 MR. MARKO: I am looking at the Ohio  
 13 driver's license records.  
 14 MS. DIVINEY: Okay.  
 15 BY MR. MARKO:  
 16 Q Okay. So the -- your twenty-first conviction was  
 17 3/18/2004, and that was in Richland County. Where  
 18 is Richland?  
 19 A Ohio.  
 20 Q Okay. This one was for driving on the wrong side  
 21 of -- on the wrong side of the roadway. Do you  
 22 remember that?  
 23 A No.  
 24 Q Okay. Your twenty-second driving conviction was in  
 25 June of 2003 in Richland. Do you remember that?

1 A No.  
 2 Q Your twenty-third driving offense was in February  
 3 of 2003, February 7th of 2003, in Guernsey.  
 4 Where is Guernsey?  
 5 A Ohio.  
 6 Q Okay. Do you remember that?  
 7 A No.  
 8 Q Your twenty-fourth driving offense -- conviction  
 9 was 3/22/2002 for speeding in Perry County.  
 10 Is Perry County in Ohio?  
 11 A (Nodding head.)  
 12 Q Yes?  
 13 A Yes.  
 14 Q What happened there?  
 15 A I don't remember.  
 16 Q Your twenty-fifth driving offense was just exactly  
 17 one week earlier, on 3/14/2002, and that was for  
 18 speeding again in Harrison County.  
 19 Where is Harrison County?  
 20 A Ohio.  
 21 Q Do you remember that?  
 22 A No.  
 23 Q Your twenty-sixth offense, sir, was May 30th, 2001  
 24 in Tuscarawas County.  
 25 Where is that?

1 A Tuscarawas. It's Ohio.  
 2 Q And that was for speeding again. Do you remember  
 3 that?  
 4 A No.  
 5 Q Your twenty-seventh driving offense was in  
 6 Coshocton for speeding on 4/9/2001.  
 7 Do you remember that?  
 8 A No.  
 9 Q Your twenty-eighth driving offense was in Coshocton  
 10 on 3/31/2000. Do you remember that?  
 11 A No.  
 12 Q Your twenty-ninth driving offense was, again in  
 13 Coshocton on 10/7/1999. What happened there?  
 14 A I don't know.  
 15 Q Your thirtieth driving offense was under a month  
 16 earlier on 9/17/99 in Coshocton for speeding. Do  
 17 you remember that?  
 18 A No.  
 19 Q Your thirty-first driving offense was  
 20 June 26th, 1999 for speeding in Franklin. Do you  
 21 remember that, sir?  
 22 A No.  
 23 Q Your thirty-second driving offense was  
 24 January 26th, of '99 in Holmes County for speeding.  
 25 Do you remember that?



1 A No.  
 2 Q Your thirty-third driving offense was 4/11/98  
 3 again, for speeding in Coshocton County. Do you  
 4 remember that?  
 5 A No.  
 6 Q Your thirty-fourth driving offense was 3/31/1988 in  
 7 Tuscarawas County. Do you remember that, sir?  
 8 A No.  
 9 Q Okay. So I have records of thirty-four driving  
 10 license offenses since --  
 11 When did you get your license?  
 12 A Originally?  
 13 Q Originally.  
 14 A When I was 16 years old.  
 15 Q So what year would that be?  
 16 A What? '86 '87, '85 maybe. I can't remember.  
 17 Q Okay. Are you saying that all thirty-four of those  
 18 driving offenses you were falsely convicted?  
 19 A I don't know. I cannot remember. But I do know  
 20 that I went through a big-time spell getting in a  
 21 lot of trouble when I was younger. And after I  
 22 ended up getting my CDL, I straightened my life  
 23 out.  
 24 Q Okay. Now, the -- you would agree that when you  
 25 apply for a job as a commercial truck driver, that

1 in the normal course of things the employer has  
 2 access to and can request your driving history,  
 3 correct?  
 4 A Yes, they can.  
 5 Q And so certainly NSS had full access to your  
 6 driving record, your thirty-four previous driving  
 7 infractions?  
 8 A More than likely.  
 9 Q Okay. And did they ever, you know, question you  
 10 about it or say that you can't drive because of it?  
 11 A No.  
 12 Q Now, let's talk about your accidents, okay?  
 13 Because we have discussed them earlier.  
 14 So just so I understand, sir, you were in  
 15 two accidents on May 18th of 2018. That was prior  
 16 to going to work for NSS, correct?  
 17 A May 25th.  
 18 Q May 25th. 5/18/2018, correct; is that yes?  
 19 A Yes.  
 20 Q You were also in a crash on March 12th, 2018 in  
 21 Hancock County?  
 22 A Where I was hit.  
 23 Q Okay. And you were also in this North Carolina  
 24 crash in 2008; is that correct?  
 25 A Yes.

1 Q You were also in this crash in Cincinnati that you  
 2 told us about; is that correct?  
 3 A Yes.  
 4 Q You were also in a crash, sir, on 3/12/2018 in  
 5 Ohio; isn't that true?  
 6 A Yes.  
 7 Q You were also --  
 8 A Where I was hit.  
 9 Q -- in a crash on 10/16/2012 in Ohio, correct?  
 10 A I don't remember.  
 11 Q And you were in an accident on 3/18/2004 in Ohio?  
 12 A I don't remember.  
 13 Q You don't remember getting in a car accident that  
 14 required a public record being created -- a police  
 15 response and a public record being created? Is  
 16 that your testimony here today? Is that what  
 17 you're going to tell the jury?  
 18 MS. DIVINEY: If --  
 19 THE WITNESS: What year was that?  
 20 BY MR. MARKO:  
 21 Q 3/18/2004.  
 22 A I don't remember. The only accident I remember  
 23 back at that point in time was whenever my fiancée  
 24 at the time was driving my car and went left of  
 25 center and put me in the hospital for a week.

1 Q Okay. Now, if you were to keep your CDL, you would  
 2 have to take and pass required medical exams,  
 3 correct?  
 4 A Yes, I do.  
 5 Q Okay. Do you currently have a valid Department of  
 6 Transportation medical clearance?  
 7 A Yes, I do.  
 8 Q When was your last medical exam as part of your  
 9 CDL?  
 10 THE WITNESS: Can you hand me that paper  
 11 there, please?  
 12 MS. DIVINEY: Is that okay, Counsel?  
 13 MR. MARKO: That's okay.  
 14 THE WITNESS: 3/5/2020 is when I had  
 15 this -- we -- done, and it's valid to 3/5/22.  
 16 BY MR. MARKO:  
 17 Q Okay. And prior to the crash of July 7th, 2019,  
 18 when was your last medical clearance?  
 19 A It was two years prior to this one.  
 20 Q And did you have a valid medical clearance at the  
 21 time?  
 22 A Yes, I did.  
 23 Q Have you ever failed a medical examination?  
 24 A No.  
 25 Q Have you ever been denied employment for any job



1 because of a medical issue?  
 2 **A No.**  
 3 Q Have you ever failed a drug test?  
 4 **A No.**  
 5 Q Were you drug tested after this crash?  
 6 **A Yes.**  
 7 Q By who?  
 8 **A Concentra.**  
 9 Q And did you -- was there any abnormal --  
 10 abnormalities --  
 11 **A No.**  
 12 Q -- with that?  
 13 Okay. What type of trucks have you  
 14 driven?  
 15 **A I have driven dump trucks, I have driven**  
 16 **conventionals, pickups, box trucks, flat beds.**  
 17 Q What type of truck was involved in this crash?  
 18 **A Dump truck.**  
 19 Q And what kind was it?  
 20 **A It was a tri axle dump truck, 49,000.**  
 21 Q And prior to --  
 22 **A A lot smaller truck than what I used to drive.**  
 23 Q Prior to the -- driving the dump truck for NSS, did  
 24 you drive other dump trucks?  
 25 **A Been a while, but yes.**

1 Q Okay. Where?  
 2 **A I drove a tractor trailer dump truck for a company**  
 3 **down in Ohio. It was called a coal bucket.**  
 4 Q Okay.  
 5 **A I forget the name. I stepped in for another driver**  
 6 **for the month to drive it, drove it for about two**  
 7 **weeks. Prior to that, I -- I drove them while I**  
 8 **was in the service.**  
 9 Q Okay. And have -- had you ever driven a particular  
 10 model of dump truck at any previous time in your  
 11 life, other than at -- working for NSS?  
 12 **A You talking about the one that was in the accident?**  
 13 Q Yeah.  
 14 **A No.**  
 15 Q Okay. And you said you have driven all kinds of  
 16 other trucks; is that fair?  
 17 **A Yes.**  
 18 Q Okay. And do you consider yourself a professional  
 19 driver?  
 20 **A Yes.**  
 21 Q Okay. And you hold your CDL. You said you have  
 22 been trained. You said you did that in the Navy,  
 23 right?  
 24 **A Yes.**  
 25 Q Okay. You told us earlier that being a commercial

1 truck driver is not like me driving my car when I  
 2 leave this deposition today to go home, right?  
 3 There's different rules of the road that apply to  
 4 commercial truck drivers?  
 5 **A That's right.**  
 6 Q Okay. There's a higher standard of care for  
 7 commercial truck drivers; you would agree?  
 8 **A Yes, there is.**  
 9 Q Okay. You have to -- you have to -- because you  
 10 are driving a large truck that has the potential to  
 11 cause more damage than a normal passenger vehicle,  
 12 correct?  
 13 **A Yes.**  
 14 Q And there's special rules that apply, right?  
 15 **A Yes.**  
 16 Q But you would agree that a dump truck, like the  
 17 dump truck in this case, if not driven properly,  
 18 poses a danger to other people on the road?  
 19 **A Yes, it does.**  
 20 Q And that you can kill people?  
 21 **A Yes. Just like your car.**  
 22 Q Well it's not just like the car because it's built  
 23 different, isn't it? It weighs a lot more?  
 24 **A Yeah. It weighs more.**  
 25 Q Okay.

1 **A That's really the only difference. The size.**  
 2 Q What about braking? Is the brake -- is it your  
 3 testimony that the braking of the -- the dump truck  
 4 that you were driving on the date of the incident  
 5 is the same type of breaking that I have on my car?  
 6 **A No.**  
 7 Q What --  
 8 **A It's a different system.**  
 9 Q What kind of system is it?  
 10 **A It's got air brakes. Yours has fluid.**  
 11 Q It takes longer to brake?  
 12 **A Depending how much you got up -- how much of a load**  
 13 **you have, yes.**  
 14 Q Okay. What about turning? Does it turn different  
 15 than my car?  
 16 **A Yes. It turns wider.**  
 17 Q Okay. And so how long have you been driving  
 18 trucks? How many years?  
 19 **A Since '05.**  
 20 Q So how else is driving a dump truck on a public  
 21 road different than someone driving their  
 22 Honda Civic?  
 23 **A You got to pay a lot closer attention because**  
 24 **nobody wants to go and pay attention to what you**  
 25 **are doing, so you are -- you have to watch what**

1 everybody else is doing more closer.  
 2 Q Okay. What else?  
 3 A Because the weight, yes, it takes longer to stop.  
 4 Q So --  
 5 A And because of the size, the length of the  
 6 wheelbase, it takes wider turns.  
 7 Q Okay. And you know that it's important to make  
 8 sure that all the equipment is working, right?  
 9 A That's right.  
 10 Q And how is -- how is your -- your side-view on  
 11 this? I know you have those side mirrors on this  
 12 dump truck that you were driving, right?  
 13 A Yes.  
 14 Q You do -- do you have blind spots on the dump  
 15 truck?  
 16 A Yes. There is blind spots on the -- on a dump  
 17 truck, on a semi, on a pickup truck, as well as on  
 18 cars.  
 19 Q Right. So how does the blind spot on this  
 20 particular pickup truck compare to the blind spot  
 21 on a semi?  
 22 A It averages about the same.  
 23 Q Okay. And how does this -- how does the blind spot  
 24 on this truck compare to an average passenger  
 25 vehicle?

1 A Blind spot is actually bigger than it would be on a  
 2 passenger vehicle.  
 3 Q Okay. How much bigger?  
 4 A It just depends. The mirrors are all set right and  
 5 everything, it's not -- not that much of a  
 6 difference.  
 7 Q So because you have this blind spot and because  
 8 you're driving this big truck and because you have  
 9 all these other things that we talked about, you  
 10 would agree that you need to be extra careful when  
 11 you're making turns to make sure that somebody is  
 12 not there, correct?  
 13 A Yeah.  
 14 Q And because you have the -- the driving this large  
 15 vehicle with these blind spots, you need to be  
 16 extra cautious, right?  
 17 A Yes.  
 18 Q And, in fact, there's warnings all over trucks,  
 19 right, on the back that say beware of the blind  
 20 spots because people might not know that they are  
 21 in a behind spot?  
 22 A That's true. But you can't go and accuse the  
 23 driver of -- of negligence because someone doesn't  
 24 want to pay attention and -- and care for their own  
 25 life, let alone someone else's.

1 Q I don't know what you mean by that.  
 2 A Your client came flying up in a parking lane --  
 3 Q Okay.  
 4 A -- and smacked me in the side.  
 5 Q I didn't ask that question, so --  
 6 A Yeah. Well you want to keep portraying me as being  
 7 the bad guy, and I didn't do nothing wrong.  
 8 Q You understand that there's all kinds of hazards as  
 9 a truck driver on the road --  
 10 A Yes.  
 11 Q -- that you have to pay attention for, right?  
 12 A Yes.  
 13 Q That other people might not always act as  
 14 responsibly or follow rules, and you have to be  
 15 prepared for that as a truck driver, don't you?  
 16 A Yes.  
 17 Q You have to be prepared for cars that are losing  
 18 control around you, right?  
 19 A Yes.  
 20 Q You have to be prepared for inclement weather and  
 21 icy conditions, right?  
 22 A Yes.  
 23 Q You have to be prepared in case a little boy drops  
 24 a ball and it rolls out in front of your vehicle,  
 25 don't you?

1 A Yes.  
 2 Q You have to be prepared in case an animal darts out  
 3 in front of your vehicle because you could lose  
 4 control, right?  
 5 A Yes.  
 6 Q You lose control of these trucks, it can cause  
 7 serious damage to property and people around the  
 8 trucks, right?  
 9 A Yes, it can.  
 10 Q It can jackknife, it can fall over, all things --  
 11 kind of bad things can happen, right?  
 12 A Yes.  
 13 Q Okay. So you have to be extra, super careful,  
 14 don't you?  
 15 A Yes.  
 16 Q So let's talk about beginning your employment with  
 17 NSS, okay? So how did you find out that there was  
 18 a position for you at NSS?  
 19 A He called me.  
 20 Q Okay. When you say he, who?  
 21 A Nick.  
 22 Q Okay. Nick what?  
 23 A Shumaker.  
 24 Q Okay. Who is Nick Shumaker?  
 25 A He is the owner of NSS.

1 Q Okay. And how big is NSS?  
 2 A **It's not that big.**  
 3 Q What does that mean?  
 4 A **It's a small -- it's a small company. It had**  
 5 **one -- two dump trucks and multiple pieces of**  
 6 **equipment.**  
 7 Q How many employees does it have?  
 8 A **Maybe five or six. I -- I am -- that's all I know**  
 9 **of.**  
 10 Q Okay. Does it have a physical office location?  
 11 A **Yes.**  
 12 Q Where is it?  
 13 A **It's on Gavel -- Gavel Street.**  
 14 Q Okay. Were you -- have you been in the office?  
 15 A **Yeah.**  
 16 Q Okay. And so Nick -- did you -- how did Nick know  
 17 to call you?  
 18 A **I placed an ad for a job on Craigslist.**  
 19 Q Okay. You placed like -- you wanted a job --  
 20 A **Uh-huh.**  
 21 Q -- type ad?  
 22 A **Yeah.**  
 23 Q Had you ever met -- met or known Nick before this?  
 24 A **No.**  
 25 Q So he cold calls you?

Page 143

1 A **Yes.**  
 2 Q And what does he say to you?  
 3 A **Asked me if I would be interested in a job.**  
 4 Q And what do you say?  
 5 A **I say sure.**  
 6 Q Okay. And so --  
 7 A **And he invited me out to look at -- to talk to him,**  
 8 **and I went out and talked.**  
 9 Q Where did you meet him?  
 10 A **At his office.**  
 11 Q On --  
 12 A **On Gavel or Gavel Street.**  
 13 Q Okay. And what did he tell you about the position?  
 14 A **Told me I get paid hourly, fill out the paperwork.**  
 15 **I'd be paid \$22 an hour.**  
 16 Q Okay. And did that sound good to you?  
 17 A **Yeah.**  
 18 Q And what was your position?  
 19 A **I was a driver and an equipment operator.**  
 20 Q Okay. And what does that mean?  
 21 A **That meant I drove a dump truck as well as I**  
 22 **operated heavy equipment --**  
 23 Q Okay.  
 24 A **-- as-needed.**  
 25 Q Okay. And what type of work does NSS do?

1 A **Excavation.**  
 2 Q What does that mean?  
 3 A **Playing in dirt.**  
 4 Q Okay. And in the short time that you were working  
 5 for NSS, what type of things from March to July of  
 6 2019 -- like what type of things would you do?  
 7 A **I would haul material, sand, gravel, concrete. I'd**  
 8 **pull a trailer with heavy equipment on it, which --**  
 9 **part of my job was loading and unloading the**  
 10 **equipment, binding it down for transport. I had to**  
 11 **make sure that their equipment was on-site for the**  
 12 **operators to be able to start on time and be able**  
 13 **to do their jobs.**  
 14 Q You -- sir, you understand that part of your job  
 15 is -- in holding a CDL -- Class A CDL is to know  
 16 the Federal Motor Carrier Safety Regulations; you  
 17 would agree with that?  
 18 A **Yes.**  
 19 Q And you would agree that those regulations apply to  
 20 this dump truck you were driving on the day of the  
 21 crash, don't you?  
 22 A **Yes.**  
 23 Q If someone said that the Federal Motor Carrier  
 24 Safety Act does not apply to this particular dump  
 25 truck, that would wrong. You --

Page 145

1 MS. DIVINEY: Objection. He may not know  
 2 all the --  
 3 **THE WITNESS: I don't know all the rules.**  
 4 BY MR. MARKO:  
 5 Q Well I didn't ask you if you know all the rules.  
 6 Do you know that those rules apply to  
 7 rating this type of machine on a public road, don't  
 8 they?  
 9 A **Yeah.**  
 10 Q That's why they hired you, didn't they?  
 11 A **Yes.**  
 12 Q Okay. So --  
 13 MS. DIVINEY: Objection, he doesn't know  
 14 why Nick Shumaker hired him.  
 15 BY MR. MARKO:  
 16 Q So let's talk about this interview. So tell me  
 17 about this hiring process. You get a call from  
 18 Craigslist, and this guy wants you to drive this  
 19 huge dump truck. And tell me about the interview  
 20 process.  
 21 A **It really wasn't much.**  
 22 Q Okay. Did -- you said you had to submit some  
 23 application materials. Tell me everything that you  
 24 had to submit to them.  
 25 A **I filled out an application. I filled out the tax**

1 papers.  
 2 Q Okay. What was that --  
 3 A **I filled out a W4 for him. I filled out the**  
 4 **application, and he still paid me cash.**  
 5 Q Okay. So did he tell you, "Hey, I am going to pay  
 6 you cash"?  
 7 A **At first, no.**  
 8 Q And so what happened?  
 9 A **I don't know. That, I really couldn't tell you.**  
 10 **He -- all I could say is he preferred to pay me**  
 11 **cash.**  
 12 Q Okay. Well, I mean, would he give it to you in  
 13 like a duffel bag or an envelope, or how would you  
 14 get paid?  
 15 A **It would be in an envelope.**  
 16 Q Okay. When would he give it to you?  
 17 A **On Fridays.**  
 18 Q Okay. Did -- what type of application materials --  
 19 you said you had to fill out an application. What  
 20 does that mean?  
 21 A **Basic information. Same thing you would for any**  
 22 **job, an application.**  
 23 Q Well did you have --  
 24 A **Name, address, you know, driver's license number,**  
 25 **Social Security number, all that.**

Page 147

1 Q Do you have a copy of the application?  
 2 A **No, I don't.**  
 3 Q Do you know if -- where it is?  
 4 A **That, I couldn't tell you. I don't know what Nick**  
 5 **did with paperwork.**  
 6 Q Did have you to give him normal things --  
 7 So when you like apply, for example, to  
 8 all these other jobs, right, okay, with these like  
 9 big -- like Haggerty Logistics, what --  
 10 A **I had to fill out a stack of paperwork about two**  
 11 **inches thick for every single one of those.**  
 12 Q For all your other trucking jobs --  
 13 A **Yes.**  
 14 Q -- right?  
 15 Was this notably different than those  
 16 other --  
 17 A **Yes.**  
 18 Q What -- why do you say that?  
 19 A **Like I said, I went and I filled out W4 for taxes,**  
 20 **but yet he still goes and pays me cash. You tell**  
 21 **me on that one. I don't know what the hell was**  
 22 **going through his head.**  
 23 Q Well did he ask you for past normal CDL paperwork?  
 24 A **Like what?**  
 25 Q Well you said -- what -- you said that when you

1 apply --  
 2 A **Yeah. I had to fill out paperwork.**  
 3 Q There's like --  
 4 A **He didn't have any paperwork for me to fill out.**  
 5 Q Okay.  
 6 A **Just a regular application, just like I would --**  
 7 **I'd fill one out for McDonalds or Burger King or**  
 8 **something. Same kind of application.**  
 9 Q And that was it?  
 10 A **Yeah.**  
 11 Q Did he ever give you any sort of driver  
 12 orientation?  
 13 A **No.**  
 14 Q Did he ever give you any type of written test about  
 15 your driving skills?  
 16 A **No.**  
 17 Q Did he ever give you any oral tests about your  
 18 driving tests -- skills?  
 19 A **No.**  
 20 Q Did he ever -- and when I say he, I mean him or  
 21 anyone at NSS. Do you understand that?  
 22 A **Yes.**  
 23 Q Did anyone at NSS ever give you any type of road  
 24 test?  
 25 A **No.**

Page 149

1 Q Did anybody at NSS require you to submit to a  
 2 preemployment drug or alcohol test?  
 3 A **No.**  
 4 Q Did anyone at NSS ever give you any type of  
 5 retraining?  
 6 A **No.**  
 7 Q Did anyone at NSS ever give you an employee  
 8 handbook?  
 9 A **No.**  
 10 Q Did anyone at NSS give you an employment manual?  
 11 A **No.**  
 12 Q Did anyone at NSS ever give you any training on  
 13 company policies and procedures?  
 14 A **No.**  
 15 Q Did they conduct any reviews of your work? So, for  
 16 example, like performance reviews.  
 17 A **No.**  
 18 Q Did -- did you -- were you provided incentives for  
 19 working faster, in other words, delivering loads --  
 20 A **No.**  
 21 Q -- faster?  
 22 Who was your immediate supervisor?  
 23 A **Nick.**  
 24 Q Was he your only supervisor?  
 25 A **Yes.**

1 Q Okay. Let's -- let me -- I am going to show you,  
 2 sir, the NSS Construction employment manual, which  
 3 has been marked Bates stamps Defendant's 1.  
 4 Were you ever given this employment  
 5 manual?  
 6 A No.  
 7 Q Did anyone ever go over the content of this  
 8 employment manual with you?  
 9 A No.  
 10 Q Did you ever have to submit a copy of your driving  
 11 record to NSS?  
 12 A No.  
 13 Q Did anyone ask you to submit a copy of your driving  
 14 record?  
 15 A No.  
 16 Q Did anyone at NSS ever give you any discipline?  
 17 A No.  
 18 Q Were you even aware of the any disciplinary  
 19 procedure at NSS?  
 20 A No.  
 21 Q Did anyone at NSS go over their policy statement  
 22 with you?  
 23 A No.  
 24 Q According to NSS, the management of NSS --  
 25 First of all, who is the management, as

1 you understand it, at NSS?  
 2 A Nick Shumaker.  
 3 Q It's one person?  
 4 A Yeah.  
 5 Q Did anyone at NSS ever have you sign any type of  
 6 employment handbook?  
 7 A No.  
 8 Q Did anyone -- according to the NSS policy, which is  
 9 Defendant's Bates stamps 27, "The management of NSS  
 10 is committed to providing a safe work environment  
 11 at all of our operating locations. We are  
 12 dedicated to identifying, correcting, and  
 13 preventing safety, health, and environmental  
 14 hazards that could adversely affect our employees,  
 15 customers, or the general public."  
 16 Were you aware that that was the  
 17 purported policy statement of NSS?  
 18 A No.  
 19 Q Do they do that?  
 20 A I haven't seen it.  
 21 Q Why do you say that?  
 22 A Just everybody felt -- would come in, do their job,  
 23 and go home. There was never any issue on  
 24 anything.  
 25 Q Did -- to your knowledge, was there ever a safety

1 department of NSS, a health and safety department?  
 2 A No.  
 3 Q After the crash, did you report the incident to  
 4 your -- anyone at NSS?  
 5 A Yes.  
 6 Q Okay. Who did you report it to?  
 7 A Nick. He was --  
 8 Q Okay.  
 9 A -- on the scene as well.  
 10 Q He physically came to the scene?  
 11 A Yes.  
 12 Q How did he get there?  
 13 A Drove, I guess. That was the only way he could get  
 14 around.  
 15 Q Well --  
 16 A Him and two other employees showed up at the scene  
 17 of the accident.  
 18 Q Who were the two other employees?  
 19 A I don't remember their names.  
 20 Q To your knowledge, did NSS have an established  
 21 workplace safety program that trained -- provided  
 22 periodic workplace safety training?  
 23 A No.  
 24 Q Did you receive any type of formal training  
 25 whatsoever at NSS?

1 A No.  
 2 Q According to the NSS accident and -- and incident  
 3 investigation paperwork, which is Defendant's Bates  
 4 stamp 40, "A cornerstone of NSS' goal is the belief  
 5 that all accidents are preventable."  
 6 Do you believe in that statement?  
 7 A Yes, I do. But like I said, I've never seen  
 8 anything -- any of this that you're reading from.  
 9 Q According to the investigation method established  
 10 by NSS on Bates stamp 41, one of the primary goals  
 11 is to preserve evidence after an incident.  
 12 Was anything done to preserve evidence in  
 13 this case?  
 14 A No.  
 15 Q Where is --  
 16 MS. DIVINEY: Objection --  
 17 BY MR. MARKO:  
 18 Q Where is the truck?  
 19 A As far as I know, it's still in impound. I have no  
 20 clue.  
 21 Q Let's talk about this. Okay. The -- according to  
 22 Bates stamp 47, there's supposed to be a new  
 23 employee orientation.  
 24 Were you ever given a new employee  
 25 orientation?



1 A No.

2 Q According to Bates stamp 48, NSS is supposed to

3 have safety meetings every week.

4 Did you have weekly --

5 A No.

6 Q -- safety meetings?

7 According to NSS, anytime there's an

8 accident, a -- an investigation report must be

9 submitted to the safety director. Were you even

10 aware that there was an accident safety report?

11 A No.

12 Q Were you ever given one?

13 A No.

14 Q And, sir, let me show you Bates stamp 115. This is

15 the employee acknowledgment form for training that

16 was supposed to be provided.

17 Have you ever -- did you ever sign or

18 were you ever given any employee acknowledgment of

19 training?

20 A No.

21 Q Have you ever seen that form in your life?

22 A No, I have not.

23 Q There's a safety meeting report, which is Bates

24 stamp 117, that you're supposed to print your name

25 and then sign. Were you -- did you ever see a form

Page 155

1 like this --

2 A No.

3 Q -- in your whole life?

4 Did you ever sign a safety meeting report

5 form?

6 A No.

7 Q Sir, according to Bates stamp 121, there's a

8 training record. Did you -- were you ever -- see

9 this -- this --

10 A No.

11 Q -- at all?

12 Were you ever -- did you ever attend any

13 type of training roster?

14 A No.

15 Q Sir, according to Bates stamp 122, anytime there's

16 an automobile accident, this form is supposed to be

17 filled out, which is Bates stamp 122.

18 Did you ever fill out this form?

19 A No.

20 Q Were you ever given this form?

21 A No.

22 Q Were you ever told that you need to fill out this

23 form?

24 A No.

25 Q Were you ever made aware that this form ever

1 existed?

2 A No.

3 Q Before I showed you this form, Bates stamp 122

4 today, did you even know this form existed?

5 A No.

6 Q Sir, according to Bates stamp 123, there's supposed

7 to be a supervisor's accident report form.

8 Did you ever note -- see any of these

9 filled out?

10 A No.

11 Q To your knowledge, was one filled out to -- related

12 to the crash involving my client?

13 A No.

14 Q Sir, according to this, this is a -- this is Bates

15 stamp 126. There's supposed to be a field safety

16 inspection -- inspection report that is filled out

17 regarding vehicles and mobile equipment.

18 Did you ever see a form like this?

19 A No.

20 Q Were you ever required to fill out a form like

21 this?

22 A No, I was not.

23 Q Did you ever fill out any type of inspection form

24 before taking out vehicles?

25 A No.

Page 157

1 Q At all your other jobs, did you have to fill out

2 all of those types of forms?

3 A No.

4 Q How would you describe the --

5 A I mean, whenever it was -- I was driving a tractor

6 trailer, we did our vehicle inspection report.

7 And, yes, we had to like check off --

8 Q At your previous jobs?

9 A Yes.

10 Q So you --

11 A On our log books.

12 Q So -- okay. Did you even have log books at NSS?

13 A No.

14 Q You had no log books. You had no pre-vehicle

15 inspection reports, correct --

16 A Uh-huh.

17 Q -- is that a yes?

18 A Yes.

19 Q So is there any type of form or document that we

20 can look at, any type of written document, to see

21 the condition of this dump truck prior to the

22 trash?

23 A Not that I know of.

24 Q How would you describe the safety protocol taken at

25 NSS compared to the other trucking companies?

1 A Very lax.  
 2 Q Well describe why? What does that mean?  
 3 A If we had issues with anything, at AD for example,  
 4 they would bring their -- the equipment in once a  
 5 week if it's on the yard and inspect -- take it on  
 6 themselves to inspect the vehicles. If anything  
 7 was out of whack in any way, shape, or form, in the  
 8 slightest, it was repaired. It didn't matter if it  
 9 was a cracked taillight, headlight, to an air -- a  
 10 leaky airline. I mean, it didn't matter. They  
 11 would go through and make sure everything was done,  
 12 as long as they had time.  
 13 Now, Nick, on the other hand, he did not  
 14 require any paperwork. If I had issues, I was to  
 15 tell them and they would take care of it while I  
 16 wasn't there. So I don't know what was what. All  
 17 I know is that I would let the mechanic know what  
 18 was wrong. They would do their best to repair it  
 19 before I ended up coming in and needing the truck  
 20 the next day -- the following day.  
 21 Q How do you know that it was actually done, other  
 22 than visual inspection?  
 23 A That's all I can do is go by a visual inspection.  
 24 I'm not a qualified or certified brake technician  
 25 with rear brakes.

1 Q Are you --  
 2 A Because there was numerous times that I did have  
 3 issues with the brakes.  
 4 Q On that particular --  
 5 A On that particular vehicle, and I had to have them  
 6 adjusted.  
 7 Q Sir, did you see the inspection of the vehicle by  
 8 the Michigan State Police Officer Ryan Wilson?  
 9 A No.  
 10 Q Are you aware that Mr. Wilson found that there was  
 11 problems on the braking of that vehicle?  
 12 A No, I did not.  
 13 Q In fact, he found that the -- that the number of  
 14 defective -- let me show you Defendant's 169, which  
 15 is a vehicle examination report taken after the  
 16 crash. Now, according to this, if you look at the  
 17 bottom --  
 18 First of all, let me show you this:  
 19 Okay. So this is Bates stamp 169, okay? This is a  
 20 violations of the vehicle inspection. Do you see  
 21 that?  
 22 A Okay.  
 23 Q Okay. Under this column, the violation is  
 24 discovered. Under this column is the Michigan  
 25 state accident reconstructionist determination of

1 whether that problem was caused by the crash, or  
 2 whether it existed before the crash. Do you see  
 3 that?  
 4 A Uh-huh.  
 5 Q Okay. So do you see this, the bottom one,  
 6 according to the Michigan State Police, that the  
 7 vehicle had a number of defective brakes that  
 8 required it being taken out of service until they  
 9 were fixed. Did you see that?  
 10 A No, I did not.  
 11 Q Well do you see it now?  
 12 A I see it now.  
 13 Q And that it was in existence before the crash. Do  
 14 you see that?  
 15 A According to this, it says that.  
 16 Q Okay. So how were the brakes on that vehicle?  
 17 A The brakes felt fine. I -- like I said, I am not  
 18 a -- I am not a certified technician on it, and I  
 19 could not tell you. Well, I mean, anytime there  
 20 was an issue, I notified Nick, and I notified the  
 21 mechanic.  
 22 Q Can you explain why the -- the air -- automatic air  
 23 brake adjustment system had issues prior to the  
 24 crash?  
 25 A You are asking me things that I cannot answer, sir.

1 Q Okay. Let's look at the other --  
 2 A Some of this -- some of this stuff, you know, that  
 3 you -- I got -- compensation, whatever, I am sorry.  
 4 I am, you know -- that has nothing to do with the  
 5 driver.  
 6 Q Well --  
 7 A That -- that has to do with the mechanic's side.  
 8 Q I am not blaming you, sir. But I'm suggesting that  
 9 this vehicle may not have been properly maintained  
 10 by NSS Construction.  
 11 Do you leave room for that possibility?  
 12 A There's always that assumption.  
 13 MS. DIVINEY: Can we take a break real  
 14 quick because my -- I need to go get the cord for  
 15 my battery for my computer.  
 16 MR. MARKO: Okay.  
 17 (Whereupon a recess was taken.  
 18 Off the record at 3:46 p.m. Back  
 19 on the record at 4:07 p.m.)  
 20 BY MR. MARKO:  
 21 Q Did NSS ever give you a driving manual of any kind?  
 22 A No.  
 23 Q When you drove a tractor trailer, did you have a  
 24 nickname or handle that you used?  
 25 A Yes.

1 Q What was it?  
 2 A **Blazer.**  
 3 Q What does that mean? Like blaze the weed?  
 4 A **No, no. I used to drive a lot of Blazers whenever**  
 5 **I was younger.**  
 6 Q Okay.  
 7 A **I liked the Chevy Blazer. I just --**  
 8 Q Okay.  
 9 A **The guy trained me to drive a truck --**  
 10 Q Okay. So now --  
 11 A **-- that's --**  
 12 Q -- let's talk --  
 13 A **-- multiple --**  
 14 Q Let's talk about this particular vehicle. How many  
 15 times had you driven this dump truck that was  
 16 involved in this crash?  
 17 A **Every day.**  
 18 Q For -- for how long?  
 19 A **For over a month.**  
 20 Q Okay.  
 21 A **About three months.**  
 22 Q Okay. And when you say every day, every single  
 23 day, or every workday, or were those the same  
 24 thing?  
 25 A **Same thing.**

1 Q Okay. And what would you do with this truck? Like  
 2 what was the purpose for NSS with this vehicle?  
 3 A **Hauling equipment and material.**  
 4 Q What type of equipment and materials?  
 5 A **Material could be anything from sand and gravel, to**  
 6 **concrete pipe, culverts, equipment, anything from a**  
 7 **front-end loader to a bulldozer.**  
 8 Q Okay. And so let's just go back to this exhibit,  
 9 which is Bates stamped 169. I want to go over some  
 10 things.  
 11 According to the Michigan State Police,  
 12 the front-left turn signal would light up on the  
 13 vehicle, but would not blink. Do you see that?  
 14 A **Yes. But it did blink on --**  
 15 Q It -- sir, hold on. I didn't ask you a question.  
 16 And that was not due to the crash. That  
 17 existed prior to the crash. Do you see that? It  
 18 says, "No."  
 19 A **I see what it says.**  
 20 Q Okay. And do you have any reason to disagree with  
 21 that?  
 22 A **All I can say is it worked before the crash.**  
 23 Q Was it blinking?  
 24 A **Yes, it was.**  
 25 Q And how do you know that?

1 A **When I do my pre-trip, I go through all the lights.**  
 2 Q Okay. So where is the document that we can look at  
 3 that proves --  
 4 A **There is no documents[sic].**  
 5 Q Well that makes it tough, doesn't it?  
 6 Okay. According to the Michigan State  
 7 Police, the right-front turn signal didn't work  
 8 either. Do you see that?  
 9 A **They did prior to the accident.**  
 10 Q Well do you see what the Michigan State Police say?  
 11 A **I see what it says.**  
 12 Q Are you saying that the Michigan State Police is  
 13 lying or falsifying records?  
 14 A **No, I am not saying that.**  
 15 Q Okay. And then do you see that it -- according to  
 16 the Michigan State Police, both the right-rear turn  
 17 signal and the left-rear turn signal were defective  
 18 because they did not blink. Do you see that?  
 19 A **I see what it says.**  
 20 Q Okay. And did you have the turn signal on at the  
 21 time of the crash?  
 22 A **Yes, I did.**  
 23 Q You would agree that, if the turn signal was not  
 24 properly working and it was not blinking, as stated  
 25 by the Michigan State Police, that someone would

1 not be able to know that you were making a  
 2 right-hand turn, correct?  
 3 A **If that was the case. But it did work.**  
 4 Q And --  
 5 A **And even by the video of this accident, if -- if**  
 6 **the -- my signals and -- and brake lights did not**  
 7 **work, the gentleman that ended up coming to a stop**  
 8 **behind me, which stated -- which is one of the**  
 9 **witness, he would not have stated it in his report**  
 10 **at the time of the accident, nor would he have been**  
 11 **able to stop in time without hitting me.**  
 12 Q Okay. And, sir, do you see that all the axles --  
 13 brakes on all the axles were out of adjustment? Do  
 14 you see --  
 15 A **I can't -- I can't say either way. I am not a -- a**  
 16 **truck mechanic.**  
 17 Q Okay. And --  
 18 A **I am not -- I am not authorized to be able to go**  
 19 **and -- and even give my input on that because I**  
 20 **don't have any knowledge of air brakes, on their**  
 21 **adjustments, or -- or their components.**  
 22 Q And would you -- do you agree with the Michigan  
 23 State Police that the brakes were defective?  
 24 A **No. They worked.**  
 25 Q Well --

1 A All I can tell you is they worked.  
 2 Q How well did they work?  
 3 A They worked fine.  
 4 Q Okay. And --  
 5 A I was able to stop. I didn't have no issues.  
 6 Q Now --  
 7 A Now, you know, is -- I can't tell you if they were  
 8 out of -- out of sync or out -- out of adjustment  
 9 or what. I can't tell you that.  
 10 Q Now, at the time of the crash, had you been driving  
 11 the vehicle earlier that day?  
 12 A No.  
 13 Q This was the first trip?  
 14 A Yes.  
 15 Q And what time did you do this pre-trip inspection  
 16 that you claim that you --  
 17 A I don't remember what time I got there.  
 18 Q And is there any document that we can look at --  
 19 A No.  
 20 Q -- to show --  
 21 What did you normally do on a proper  
 22 pre-trip inspection?  
 23 A Proper pre-trip is checking all your lights,  
 24 checking your brakes, making sure that they --  
 25 they're going to air up and they're going to end up

Page 167

1 releasing, they're going to end up grabbing. You  
 2 check your belts, your fluids, your tires.  
 3 Q What did you do the night before the collision?  
 4 A I got out of work, went home, went to bed, got back  
 5 up, come back into work.  
 6 Q Well what time did you get home the night before?  
 7 A I don't know. It was after dark.  
 8 Q What time would you normally get home?  
 9 A At dark --  
 10 Q What does that --  
 11 A -- or a little after. Whatever time it was. I  
 12 didn't -- I didn't have a set schedule.  
 13 Q Did you have anything to drink the night before?  
 14 A No.  
 15 Q Did you take any drugs?  
 16 A No.  
 17 Q Any medicine?  
 18 A No.  
 19 Q Were you on any prescribed medications at the time  
 20 of the --  
 21 A No.  
 22 Q Did this particular truck have a GPS system?  
 23 A No.  
 24 Q So when -- what time did you get to work on that  
 25 day?

1 A I don't remember.  
 2 Q And is there any records that show what time you  
 3 got to work? Did you --  
 4 A No.  
 5 Q -- have to clock in?  
 6 A No.  
 7 Q So how would you get paid?  
 8 A I had to make sure the equipment was there on time  
 9 and picked up on time. I would -- I had to be  
 10 there whatever time Nick would tell me to be there.  
 11 He would call me the day before, tell me what time  
 12 I had to be in to work.  
 13 Q What time did you get to work that morning?  
 14 A I don't remember.  
 15 Q Was it an hour before the crash? Was it a half an  
 16 hour before --  
 17 A About an hour, hour and a half.  
 18 Q Okay. And what did you do before you took the  
 19 truck out?  
 20 A I did my inspection on it, made sure everything  
 21 worked.  
 22 Q What else did you do?  
 23 A Went to the bathroom.  
 24 Q Okay.  
 25 A And then I ended up getting ready to leave to go

Page 169

1 get the load.  
 2 Q And how did you know where you needed to go?  
 3 A The place where I was picking up was right  
 4 across -- two blocks away.  
 5 Q Okay. So what was the address of the --  
 6 A I don't know the address. All I know is, it's on  
 7 Meyers right straight out in front of Gavel  
 8 Street --  
 9 Q And --  
 10 A -- which is -- which is the street that my -- the  
 11 NSS was located on.  
 12 Q And how would you describe Gavel Street?  
 13 A Narrow and rough.  
 14 Q What -- kind of disheveled?  
 15 A What? I don't -- don't understand that word.  
 16 Q Well let me show you --  
 17 MR. MARKO: What is the meeting password?  
 18 MS. DIVINEY: Oh. Here?  
 19 THE WITNESS: I already told you it was  
 20 too narrow to make a right-hand turn -- a  
 21 right-hand or left-hand turn with the truck out  
 22 of -- out of the facility.  
 23 MS. DIVINEY: 216027.  
 24 MR. MARKO: I have limited battery life,  
 25 so I am going to --

1 BY MR. MARKO:

2 Q All right. Let me -- what you this? Do you see  
3 that?

4 A Okay.

5 Q Wait.

6 MS. DIVINEY: Do you know approximately  
7 when this picture was taken? Does it show --  
8 It's a Google Map picture, correct?

9 MR. MARKO: Correct.

10 MS. DIVINEY: I know sometimes they show  
11 when it's taken.

12 Sorry. Sorry, everyone --

13 **THE WITNESS: I know --**

14 MS. DIVINEY: -- for the background.

15 **THE WITNESS: I know the intersection.**

16 **The left -- to my left, it would have been Gavel  
17 Street.**

18 MR. MARKO: All right.

19 **THE WITNESS: Right across -- to the --**

20 **to my right was the concrete place --**

21 MR. MARKO: Okay.

22 **THE WITNESS: -- where the accident**

23 **took -- that's -- that's -- that's where the**

24 **accident took place.**

25

1 BY MR. MARKO:

2 Q Now, the -- so let's talk about this road, okay,  
3 Meyers Street, right? You were -- you were driving  
4 the truck down Meyers Street, correct?

5 A Yes.

6 Q And which way were you headed?

7 A **Same way your arrow is going.**

8 Q Okay. Is that north?

9 A **Towards the railroad tracks.**

10 Q Is that north?

11 A **I believe so.**

12 Q Okay. And Gavel Street is right here, right?

13 A Yes.

14 Q So you know you have potential traffic merging in  
15 and out of here, correct?

16 A **Uh-huh.**

17 Q Is that a yes?

18 A Yes.

19 Q And there's -- what is back here? What is -- what  
20 is in this --

21 A **That's the concrete facility --**

22 Q Okay.

23 A **-- where I was picking up the load at.**

24 Q Okay. Okay -- and there's cars coming in and out  
25 of -- in and out of the concrete facility, right --

1 A Yes.

2 Q -- on a general day, right?

3 A Yes.

4 Q And what else is around this neighborhood?

5 A **It looks like there's -- there's a motorcycle  
6 clubhouse down the street. There's a bunch of  
7 prostitutes all around.**

8 Q Okay.

9 A **There's a bunch of stores down -- down at -- or  
10 there's -- I think there's two stores down on  
11 Schoolcraft and Meyers.**

12 Q Okay. So we got stores, we got prostitutes,  
13 pedestrians --

14 A Yeah.

15 Q -- who are out. We have vehicles merging in and  
16 out of Meyers Street. That's fair?

17 A Yes.

18 Q We have vehicles going in and out of the driveway  
19 to the -- what is it called?

20 A **To the gravel -- the concrete -- the crushed  
21 concrete place.**

22 Q The crushed concrete place that you were trying to  
23 turn into, right?

24 A **Uh-huh.**

25 Q Is that a yes?

1 A Yes.

2 Q And this road is a five-lane road, correct?

3 A No.

4 Q One, two, three, four, five. Do you see --

5 A **If you count the parking lanes, correct.**

6 Q If you count the parking lanes, it's five lanes,  
7 right? I am talking about without the markings.

8 A Okay.

9 Q Is that true?

10 A Yes.

11 Q Okay. There is a middle turn-lane that goes up and  
12 down the road, correct?

13 A Yes.

14 Q And then there's two lanes on each northbound and  
15 southbound lane of travel, correct?

16 A Yes.

17 Q And sometimes people park, and there's actually  
18 vehicles in the lanes closest to the curb, right?

19 A Yes.

20 Q So you have to be aware -- given the fact that  
21 there's pedestrians, there's stores, there's people  
22 driving around, you have to be aware of your  
23 surroundings when you are driving a big, old dump  
24 truck, don't you?

25 A Yes.



1 Q Okay. And you have to be especially aware of all  
2 your surroundings, right?  
3 A Yes.  
4 Q And you know, just as a general rule, even when  
5 you're not on an area with pedestrians and cars  
6 coming in and out, that you have to be very careful  
7 making turns, right?  
8 A Yes.  
9 Q Because, as we talked earlier, there's blind spots,  
10 correct?  
11 A Uh-huh.  
12 Q Is that a yes?  
13 A Yes.  
14 Q There could be people crossing the street or coming  
15 out from behind you, correct?  
16 A Yes.  
17 Q And so just because this is a parking lane, and  
18 you -- you -- you can see the -- it's not  
19 demarcated by -- where you turn into the travel  
20 pit, is it? There's no markings that would  
21 designate this is a parking lane right there where  
22 you turn in, is there?  
23 A No.  
24 Q And we see, in this Google Map image, there's  
25 somebody actually pulling in from the right-most

1 lane going northbound. Don't --  
2 MS. DIVINEY: Counsel, I don't think you  
3 can have a parking lane by a driveway because  
4 people can't park in --  
5 MR. MARKO: Okay. Let's not make  
6 speaking objections, so --  
7 MS. DIVINEY: Well --  
8 BY MR. MARKO:  
9 Q And as you see on the left -- do you -- do you see  
10 that there's no marcation there?  
11 A Yeah. Because it's a driveway.  
12 Q Okay. So people are using that area to go in and  
13 out, right? Sir?  
14 A Yes.  
15 Q And then even as you go down farther, there's  
16 people traveling in both lanes of travel going  
17 north; isn't that true?  
18 A Does that make it -- make it safe or right to be  
19 driving in a non-driving lane?  
20 Q Wasn't my question. I didn't ask you if it was  
21 safe or right. I asked you if it happens.  
22 A Oh, it happens. But it doesn't make it legal.  
23 Q Did it --  
24 A Doesn't make it right.  
25 Q Right. So you --

1 A Just like the -- the -- the drivers go up and down  
2 that street going 60 and 70 mile an hour in a  
3 25-mile an hour zone. That ain't legal. Is not  
4 right.  
5 Q Doesn't sound like it is the safest street to drive  
6 on, is it?  
7 A No, it's not.  
8 Q And so a --  
9 A That's why you pay extra, extra close attention --  
10 Q Exactly.  
11 A -- which I did.  
12 Q Okay. So as a truck driver, familiar with the  
13 area, familiar with the standards required of you  
14 under the Federal Motor Carriers Act, familiar with  
15 the fact that there's pedestrians and other  
16 vehicles moving in and out, familiar with the fact  
17 that cars do use those right lanes to travel, you  
18 have to be extremely careful when you are turning  
19 the gravel hauler into that lane; isn't that true?  
20 A Yes.  
21 Q Okay. Now, why didn't you see, sir -- did you look  
22 in your mirror before you turned right --  
23 A Yes.  
24 Q -- on the date of the incident?  
25 A Yes, I did.

1 Q Well why is it that you didn't see my client?  
2 A That's a good question. Because I seen the car  
3 the -- that ended up coming to a stop behind me.  
4 Q Well can you explain why you didn't see my client?  
5 A All I can go on and say is he came flying up behind  
6 the guy that was stopped behind me and zipped  
7 around him. I didn't see him.  
8 Q Is that your -- that's your testimony? Are you  
9 guessing that he did that?  
10 A I have no clue. I didn't see it.  
11 Q Did you see him down the road before you --  
12 A No, I did not.  
13 Q When you passed him, did you see him?  
14 A I didn't pass him.  
15 Q You never passed him?  
16 A No. I came out on the street before him.  
17 Q Did --  
18 MS. DIVINEY: I think he is confusing  
19 like passing -- like they're traveling passing, as  
20 opposed to --  
21 BY MR. MARKO:  
22 Q Okay. Did you -- when was the first time you ever  
23 saw my client's vehicle?  
24 A After I got hit. I seen the glimpse of white in --  
25 in my mirror, I got out of the truck, went around

1 to find out what was going on, and I tried to help.

2 Q How fast were you going down the street?

3 A Maybe 20 mile[sic] an hour, if that.

4 Q Okay. And at the time of the impact, how fast were you going?

6 A Maybe 5 mile[sic] an hour.

7 Q Okay. So your testimony is that you were driving at 5 miles per hour at the time that your vehicle and my client's vehicle made initial contact?

10 A Yes.

11 Q Now, let's take a look. Okay. Have you seen this video, sir; which is the enhanced video?

13 A No.

14 Q Do you see my client's vehicle that you just passed?

16 A That's a -- that's down at Schoolcraft and Meyers, if I'm not mistaken.

18 Q Okay. So let's -- so let's look at this. This --

19 A I never seen it.

20 Q Okay.

21 A I said --

22 Q I know. You already testified under oath that, sir. But, sir, now that you see the video, do you see that you were wrong, that you did, in fact, pass my client, who was on the side of the road?

1 A Okay.

2 Q Do you see that, sir?

3 A Yes.

4 Q And that's his vehicle, and you drove right past it. And he was in the right-hand lane, correct?

6 A Yeah. He was parked, and you see the car is coming up behind me right now.

8 Q Right. So did you see my client in the vehicle?

9 A No, I did not.

10 Q Okay. So why didn't you do that? Why didn't you -- why didn't you see -- why did you drive past my client's vehicle on the right-hand of the road and not see him in the vehicle?

14 A First off, whenever a car is parked on the shoulder, that's -- it's -- what they are doing is none of my concern.

17 Q Okay.

18 A It's my concern whenever they are moving.

19 Q No, sir. Can -- do you see that your turn signal is on in the video?

21 A I can't tell either -- anything in the video.

22 Q Well you would agree that my client was in the right-hand lane of travel, correct?

24 A Yes.

25 Q And that you were in the second-to-right-hand --

1 A I was in my correct lane.

2 Q You were in the second-to-right-hand lane of travel, correct?

4 A I was in my correct lane.

5 MS. DIVINEY: You -- Counselor, I am going to object to the way that you are phrasing the question. You are -- describing as both lanes as being lanes of travel, and --

9 BY MR. MARKO:

10 Q You were next to the left-hand turn lane, correct?

11 A I was next to the center lane, yes.

12 Q And you turned through the lane closer to --

13 A Which is a parking lane.

14 Q -- for the -- thing --

15 But, sir, as an experienced truck driver, who knows this area and told me you had to be extra careful, and who had just passed the vehicle, can you explain why you didn't see if you were checking --

20 Excuse me. I didn't finish the question.

21 Can you explain to me, if you were looking in your rearview mirror and you were looking in your side-view mirrors, you are -- you know that you are trained to do that, correct?

25 A Number one --

1 MS. DIVINEY: Objection --

2 THE WITNESS: -- there is no --

3 MR. MARKO: Excuse me --

4 THE WITNESS: -- rearview mirror.

5 BY MR. MARKO:

6 Q Where is the rearview mirror?

7 A There is none.

8 Q What about the side --

9 A There's side mirrors.

10 Q You are trained to look in it, correct?

11 A Yes.

12 Q You are trained to -- to scan those as you are driving, correct?

14 A Yes.

15 Q You are trained to know if there's vehicles behind you and where they are located, correct?

17 A Yeah.

18 Q You are trained to know if they are approaching your vehicle, correct?

20 A Yes.

21 Q And you are certainly trained, before you make a right-hand turn through -- even if it's a parking lane, to make sure that that lane is clear, correct?

25 A Yes.

1 Q So --  
 2 A **And it was.**  
 3 Q Sir, it was clear?  
 4 A **According to my mirrors and -- and that I seen that**  
 5 **day, yes, it was clear.**  
 6 Q So how do you explain how you never saw my client  
 7 when you drove right past him and when he drove  
 8 from behind your vehicle, you never saw --  
 9 A **I never seen him.**  
 10 Q Why not?  
 11 A **I never seen him.**  
 12 Q Why not? You drove right past him.  
 13 A **Yeah. You pay attention to every -- every car that**  
 14 **you pass on the shoulder, right?**  
 15 Q I don't drive a 10,000 --  
 16 A **It doesn't matter what you are driving.**  
 17 Q -- dump truck, and I don't have a CDL.  
 18 A **It doesn't matter what kind of license you got or**  
 19 **what you are driving. You telling me you going to**  
 20 **look down at every car you pass?**  
 21 Q Sir --  
 22 A **That is not my job. My job is making sure that I**  
 23 **take care of myself and the ones around me. I**  
 24 **don't look on -- pay attention to what is inside**  
 25 **these cars.**

1 Q Do you --  
 2 A **I mean, it -- if he was fucking somebody, that**  
 3 **would be on him. That would be none of my**  
 4 **business.**  
 5 Q Sir --  
 6 A **Pardon my language.**  
 7 Q Now that you've seen this video that has clarified  
 8 the moment of what happened --  
 9 A **Yes.**  
 10 Q -- let me show you --  
 11 A **Yeah. It shows he almost hit the guy that was --**  
 12 **that was directly behind me.**  
 13 Q Okay. Looking back, sir, would you do anything  
 14 differently?  
 15 A **There's nothing I could have done any different.**  
 16 Q As you sit here today, even on seeing this video,  
 17 it's your testimony that you wouldn't do anything  
 18 different?  
 19 A **I would have left the yard ten minutes later --**  
 20 Q Okay.  
 21 A **-- if I would have known something was going to**  
 22 **happen.**  
 23 Q Okay. Now --  
 24 A **Sorry.**  
 25 Q Would you -- do you, sir, take any responsibility

1 at all as a truck driver who has been trained on  
 2 this, who knows the area? Do you take one -- any  
 3 iota of responsibility in this crash?  
 4 A **No, I do not.**  
 5 Q And you are going to entirely blame other people  
 6 for what happened?  
 7 A **I didn't do anything wrong.**  
 8 Q And you're going to tell the jury, "I don't accept  
 9 a single percentage of responsibility"? That's the  
 10 position that you are --  
 11 A **Yep.**  
 12 Q -- taking?  
 13 Do you believe that -- do you believe  
 14 that NSS is responsible, has any share or  
 15 responsibility for this -- this incident?  
 16 A **Neither one of us do.**  
 17 Q And so after the crash, what did you do?  
 18 A **I spoke to the police. And I left after --**  
 19 Q Who called the police?  
 20 A **There was an officer who was coming down Meyers and**  
 21 **we flagged him down.**  
 22 Q Who flagged them down?  
 23 A **One of the witnesses.**  
 24 Q Did you ever call the police?  
 25 A **I called the police. I also called Nick, my boss.**

1 Q Who did you call first?  
 2 A **The police.**  
 3 Q And when did you call the police?  
 4 A **I don't remember.**  
 5 Q What did you say?  
 6 A **That there was an accident.**  
 7 Q The -- did you dial 911?  
 8 A **I believe so.**  
 9 Q Did you do it on your cell phone?  
 10 A **I didn't have a cell phone at the moment. I was**  
 11 **using somebody else's.**  
 12 Q Whose phone?  
 13 A **I had my girlfriend's phone at the time, which I**  
 14 **don't have access to anymore.**  
 15 Q Is she your current girlfriend?  
 16 A **Yeah. She don't have the phone no more.**  
 17 Q What happened to it?  
 18 A **I don't remember.**  
 19 Q What is her name?  
 20 A **Shayna.**  
 21 Q Shayna what?  
 22 A **Lawson.**  
 23 Q How do you spell it?  
 24 A **Does it matter?**  
 25 Q Yes.

1 MS. DIVINEY: He answered this earlier.  
 2 Go ahead and --  
 3 **THE WITNESS: S-h-a-y-n-a L-a-w-s-o-n.**  
 4 BY MR. MARKO:  
 5 Q What's her phone number?  
 6 **A She doesn't have a phone right at the moment.**  
 7 Q What did it -- what was it at the time that you  
 8 used it --  
 9 **A I don't --**  
 10 Q -- to call the police?  
 11 **A -- remember.**  
 12 Q What do you mean you don't remember? You don't  
 13 have it stored in your phone?  
 14 **A That was over a year ago. She has went through**  
 15 **three numbers since.**  
 16 Q I just want to know the phone number that you used  
 17 to call the police.  
 18 **A I don't remember.**  
 19 Q And what was her carrier?  
 20 **A T-Mobile.**  
 21 Q And can you get the phone number?  
 22 **A I don't know if you can or not.**  
 23 Q Have you heard the 911 recordings?  
 24 **A No.**  
 25 Q The -- you said that you then called your boss; is

1 that correct?  
 2 **A Yes.**  
 3 Q What did you say?  
 4 **A I told him that I was in an accident.**  
 5 Q What did he say to you?  
 6 **A He said he would end up being there as soon as he**  
 7 **could.**  
 8 Q How long did it take him to get there?  
 9 **A I don't know.**  
 10 Q Well give me an estimate.  
 11 **A I don't know, sir.**  
 12 Q Prior to the crash, did you ever hit your brakes?  
 13 **A Yes.**  
 14 Q How hard?  
 15 **A I didn't need to hit them hard. I slowed down, and**  
 16 **I was getting ready to make my turn.**  
 17 Q Did you have any skid -- did your truck create any  
 18 skid marks?  
 19 **A I don't believe so. I wasn't going fast enough.**  
 20 Q When did you tell -- when did your -- you said  
 21 that --  
 22 You said that you went over the -- my  
 23 client's vehicle?  
 24 **A Yes.**  
 25 Q And was he moving?

1 **A No.**  
 2 Q What did you see?  
 3 **A I seen where his head was crushed into the concrete**  
 4 **between the door and -- and the road. The only**  
 5 **thing that was left of his head was from his ear**  
 6 **back.**  
 7 Q What does -- what does that mean, the only thing  
 8 that was left of his head, sir?  
 9 **A That means his whole face was crushed into his**  
 10 **skull. There was no way somebody could survive**  
 11 **that. He was dead.**  
 12 Q You would agree that -- so then it was, based  
 13 object your opinions, that he died after his car  
 14 flipped over and smashed his head into the  
 15 pavement?  
 16 MS. DIVINEY: Objection --  
 17 **THE WITNESS: I don't know. I just know**  
 18 **he was dead on the scene.**  
 19 MR. MARKO: Well --  
 20 **THE WITNESS: There was nothing left of**  
 21 **his head, all right?**  
 22 BY MR. MARKO:  
 23 Q But didn't you say that his head was crushed in  
 24 between the car and the pavement?  
 25 **A Yes.**

1 Q So, obviously, he didn't die before his car flipped  
 2 over, correct?  
 3 **A I don't know. I doubt it.**  
 4 MS. DIVINEY: Do you need a break?  
 5 **THE WITNESS: Yeah.**  
 6 (Whereupon a recess was taken.  
 7 Off the record at 4:35 p.m. Back  
 8 on the record at 4:42 p.m.)  
 9 BY MR. MARKO:  
 10 Q Okay. Sir, so now that I -- I just want to know.  
 11 You said that you didn't suffer any physical  
 12 injuries as it relates to the automobile accident  
 13 with my client, correct?  
 14 **A No physical.**  
 15 Q Okay.  
 16 **A It did bring up issues that I had from the past**  
 17 **with my dad's death.**  
 18 Q Okay. I understand that.  
 19 So -- but there's no physical -- like you  
 20 didn't suffer any like bruises, bumps, scrapes?  
 21 **A No.**  
 22 Q You didn't seek any medical treatment, right?  
 23 **A No, I did not.**  
 24 Q Okay. So if there's no physical injuries, do you  
 25 understand that you, then, sued my client? You

1 understand that?

2 A Yeah.

3 Q Do you know why you did that?

4 A Because the mental[sic] that I've been going

5 through.

6 Q Okay. So --

7 A Have you ever been involved in someone's death?

8 Q So --

9 A Have -- have you?

10 Q What is it that you're seeking --

11 A I -- I am asking you --

12 Q -- from the --

13 A -- a question.

14 Q What is it that --

15 Sir, you, unfortunately, don't get me ask

16 me any questions.

17 A Well --

18 MS. DIVINEY: Well just let it -- let

19 him -- ask your question, and then you can answer.

20 BY MR. MARKO:

21 Q So what is it that you are seeking from the estate

22 of my dead client?

23 A I don't know.

24 Q What do you mean you don't know?

25 A Just what I said.

1 Q Do you want money? From his estate?

2 A I know I haven't been able to get back into a truck

3 because of this issue -- this accident.

4 Q Okay. So are you seeking money?

5 A My career may possibly be over because I can't

6 bring myself to get back into a truck.

7 Q Are you blaming that on my client?

8 A For him being an idiot and not paying attention,

9 and not -- not obeying the laws? Yeah, I am.

10 MR. MARKO: Okay. Sir, I don't have any

11 other questions for you. Thank you.

12 MR. SAPICK: I can go next, if anyone --

13 no objections there from anyone, or does anyone --

14 itching to go? No.

15 \* \* \* \*

16 EXAMINATION

17 BY MR. SAPICK:

18 Q All right. Mr. Neal, my name is Michael Sapick.

19 Me and Mr. Marko actually represent the same

20 person, that is Chandra McDuffie, the personal

21 representative of the estate of the decedent. I

22 represent Ms. McDuffie -- in the capacity -- in

23 respect to your suit against her in and the estate,

24 and Mr. Marko represents her in regards to her suit

25 against you.

1 A lot of questions have been asked today.

2 I am going to try and be as brief as possible, and

3 my questioning may jump around a bit, but we will

4 get through this.

5 A I am sorry, Michael, if I -- if I am -- I am

6 agitated, okay? I don't mean to come off on you

7 the wrong way. But this, you know -- try living

8 with somebody's death.

9 Q All right. Mr. Neal. And, like I said --

10 (Multiple simultaneous voices.)

11 THE WITNESS: -- up constantly.

12 BY MR. SAPICK:

13 Q I am going to try and be very brief with you.

14 Earlier, you talked about some prior

15 charges. I believe you said you were pre --

16 previously charge with a drunk and disorderly,

17 correct?

18 A That was over twenty years ago.

19 Q Okay. Here is my question for you: Have you ever

20 been charged with any felonies at any point in your

21 life?

22 A No, sir.

23 Q Okay. Ever been convicted of a crime involving an

24 element of theft, dishonesty, or false statement?

25 A No, sir.

1 Q Okay. Prior to the July 2019 accident, I know you

2 talked about, I believe, receiving treatment with a

3 command counselor, who diagnosed you with

4 codependency. Does that sound accurate?

5 A Yes, sir.

6 Q Okay. Other than that, had you ever received any

7 other treatments, psychological treatment, prior to

8 the July 2019 accident?

9 A I had seen a counselor a couple of times, whenever

10 my dad died in 1998. He committed suicide on

11 Father's Day after he and I had had an argument.

12 Q Okay. So that was back in 1998, you said?

13 A Yes, sir.

14 Q Do you know the name of the counselor you saw?

15 A No, I don't.

16 Q What state did you see the counselor?

17 A Ohio. It was in Coshocton County.

18 Q How long did you treat with a counselor?

19 A I only went and seen him a couple of times. I

20 didn't feel that they were doing any good.

21 Q Did the counselor work at a particular facility

22 that you could recall the name of?

23 A I can't remember.

24 Q Okay. Do you know if that counselor ever issued

25 any diagnoses of what they believed, or he or she



1 believed, was wrong with you?  
 2 A No.  
 3 Q Okay. Other than that, any other treatment for any  
 4 psychological conditions?  
 5 A No, sir.  
 6 Q Did you ever complain of any psychological  
 7 conditions while treating with Dr. Kahn, prior to  
 8 the July 2019 accident?  
 9 A No.  
 10 Q Did you ever undergo any surgeries before the  
 11 July 2019 accident?  
 12 A The only surgeries I've ever had is sinus surgery,  
 13 and I've had my tonsils taken out.  
 14 Q You know, Mr. Neal, and correct me if I am wrong,  
 15 I -- I recall you talking about an accident prior  
 16 involving an old gentleman that had some impact on  
 17 you on wanting to drive; is that correct?  
 18 A Yes, sir. Back in 2008, I had -- I would -- was  
 19 heading west on, I believe it was I-240, in  
 20 Memphis, Arkansas --  
 21 Q Okay.  
 22 A -- or West Memphis, Tennessee.  
 23 Q And --  
 24 A And there was --  
 25 Q -- what --

1 A -- an 80 year old gentleman -- this was in rush  
 2 hour traffic. All right. 80 year old gentleman  
 3 come to a dead stop in rush hour traffic. There  
 4 was four cars that was able to stop behind him,  
 5 okay? I didn't have that ability. I was too  
 6 heavy. I pulled my emergency brakes. I did  
 7 everything I could possibly do, and I still slid  
 8 into the -- into the last car in the line and  
 9 totaled that car. It, in turn, slid into a -- the  
 10 one in front of it. There was -- it -- by the time  
 11 it -- I came to a stop, there was about three cars  
 12 that was involved.  
 13 Q Was there --  
 14 A They had originally cited me for -- for not  
 15 maintaining my distance. And then by the time it  
 16 was all turned around and it was all -- all done,  
 17 they removed me from -- the citation from me, and  
 18 ended up citing the older -- the old gentleman.  
 19 Q Okay. Am I correct that you earlier testified that  
 20 there was some emotional or psychological impact  
 21 that that accident left on you?  
 22 A Yes, there was.  
 23 Q How long did that last?  
 24 A My just -- I was just going through a -- a, you  
 25 know -- dealing with a dispatcher at that point in

1 time, okay? So they were used to me running hard,  
 2 you know, doing what I had to do to get the loads  
 3 there, get, you know --  
 4 Well after this accident, I slowed down.  
 5 I kept second-guessing myself. I kept, you know --  
 6 I -- like what should have been an eight-hour trip  
 7 turned into -- turned into being a ten or  
 8 twelve-hour trip. I, you know -- whenever it came  
 9 time to come home, you know, I -- I seen it as an  
 10 opportunity to where I could -- I could get out of  
 11 the truck for a while. Honestly, I wanted out,  
 12 didn't want to get back in.  
 13 Q Okay. Were you still having those feelings at the  
 14 time of the July 2019 accident, or had you  
 15 recovered from those feelings?  
 16 A I had recovered from those.  
 17 Q Okay. And, based on your earlier testimony, about,  
 18 you know, not seeking any other psychological  
 19 treatment, am I correct that following the -- the  
 20 accident with the old man, you did not seek any  
 21 psychological treatment?  
 22 A No, sir.  
 23 Q Okay. Have you ever been prescribed any  
 24 medications for any psychological condition, prior  
 25 to the July 2019 accident?

1 A No, sir.  
 2 Q Okay. And Mr. Marko just went through it with you.  
 3 I am correct that you don't allege any physical  
 4 injuries as a result of the July 2019 accident,  
 5 correct?  
 6 A No, sir.  
 7 Q What is the condition that you are alleging as a  
 8 result of the July 2019 accident?  
 9 A I'm just dealing with PTSD.  
 10 Q Okay. When you used the word PTSD, has that ever  
 11 been diagnosed by a medical professional, whether  
 12 it be a psychologist, a psychiatrist, a doctor,  
 13 anyone that you know of?  
 14 A I don't know. Like I said, I -- I -- I deal with  
 15 nightmares and night terrors, you know, going  
 16 through this all the time. Every time I --  
 17 whenever I am trying to sleep, I have nightmares  
 18 and I relive this accident, as well as my dad's  
 19 death, you know, in my sleep. I -- I can't get no  
 20 peace from it. Like I -- like I said, I, you  
 21 know -- I was asking, you know, Marko --  
 22 Lawyer Marko --  
 23 Q Yeah.  
 24 A -- have -- have -- you don't know what it's like  
 25 until you have been involved in -- in someone

1 else's death.

2 Q Let me ask you this: Mr. Neal, In between -- so  
3 after the July 2019 accident, but before your  
4 accident that I believe occurred in May of 2020,  
5 did you ever seek treatment of any kind in  
6 connection with the July 2019 accident?

7 A No, sir.

8 Q As we sit here today, have you ever received any  
9 treatment of any kind in connection with the  
10 July 2019 accident?

11 A I have talked to my family physician about it, and  
12 I talked to a military chaplain about it, too.

13 Q You --

14 A I -- I do a lot of -- lot of things with the  
15 military chaplain.

16 Q And -- the chaplain is the friend you talked about  
17 earlier, correct?

18 A Yes, sir.

19 Q Going back to your doctor that you said you've  
20 talked to, did she ever issue any diagnoses that  
21 you're aware of in relation to the July 2019  
22 accident?

23 A She diagnosed me with depression.

24 Q And you -- it's your understanding, or am I  
25 correct, that she --

Page 199

1 Well to your knowledge, she only  
2 diagnosed you with that after July 2019, but not  
3 before?

4 A I believe so, yes.

5 Q Okay. Did one thing that -- during your prior  
6 testimony that I was unsure about, and I believe  
7 Mr. Marko asked you about this, was medical  
8 clearance in regards to a CDL license. And the --  
9 am I correct that you obtained medical clearance  
10 for your CDL license in March of 2020?

11 A Yes. That was when I renewed them.

12 Q So that would be not a year, but a -- a good amount  
13 of months after the July 2019 accident, correct?

14 A Yes. The prior -- my prior clearance had expired,  
15 I believe, it was January.

16 Q Talk to me a little bit about what is -- what does  
17 a medical clearance for a CDL license -- what does  
18 that entail?

19 A It's basically, your blood pressure. They -- they  
20 check you for sugar, your eyesight, and your  
21 hearing.

22 Q Is there some sort of cycle -- a psychological  
23 aspect that is --

24 A No.

25 Q -- assessed as a result of that?

1 A No.

2 Q Did you complain of any psychological conditions  
3 when you were -- when you -- well when the medical  
4 clearance was obtained?

5 A No.

6 Q Did you -- were you medically cleared for your CDL  
7 back in March of 2020?

8 A Yes.

9 Q Okay. At any point following the July 2019  
10 accident, have you operated a truck at all?

11 A I'm sorry. What was that?

12 Q At any point following the July 2019 accident, have  
13 you operated a truck?

14 MS. DIVINEY: Can you define "truck"?

15 Like do you mean --

16 BY MR. SAPICK:

17 Q Something similar to what you were operating at the  
18 time of the July 2019 accident.

19 A The last time I was in a truck prior to the  
20 July 17th, was May 25th of '18.

21 Q No, no, no. Let me rephrase my question.  
22 After the July 2019 accident --

23 A Oh.

24 Q -- have you ever gotten --

25 A Oh.

Page 201

1 Q -- behind the wheel of a truck?

2 A No.

3 Q So the last time you drove a truck was on the day  
4 of the July 2019 accident; does that sound  
5 accurate?

6 A Yes.

7 Q Okay.

8 A I mean, Nick had a small -- a real small dump  
9 truck. I think it was like a five ton --

10 Q Yeah.

11 A -- or -- where I was basically, a pickup truck with  
12 a dump bed on it. I drove that a couple of times  
13 before he put me on -- on the layoff, if that is  
14 what you were meaning.

15 Q When was that? That was prior to your layoff,  
16 obviously, correct?

17 A Yeah. I was --

18 Q How many times did you drive that?

19 A The accident happened on the 17th, and I was put on  
20 a layoff the 25th.

21 Q So in that short amount of time, you -- you did  
22 drive a -- I am -- from my understanding, a smaller  
23 truck; is that right?

24 A Yes.

25 Q Okay.

1 A Like a -- maybe -- maybe twice.  
 2 Q Okay. Did you have --  
 3 A Two times.  
 4 Q Did have you some sort of emotional response when  
 5 you drove that vehicle?  
 6 A Yes, sir. I -- I was -- I was second-guessing  
 7 myself. I -- I -- I mean, I -- I was paranoid of  
 8 everything.  
 9 Q Okay. And I am correct that as we sit here today,  
 10 you do continue to drive normal vehicles? I  
 11 believe you talked about -- is it a -- is it a  
 12 Plymouth Breeze? Is that what it is?  
 13 A Yeah. I've got a '98 Plymouth Breeze. It's --  
 14 it's a smaller sedan.  
 15 Q Okay. And that's something that you continue to  
 16 drive on a daily basis; is that correct?  
 17 A I drive whenever I need to.  
 18 Q Okay. I understand.  
 19 A If I don't have to drive, I don't.  
 20 Q You know, it -- this -- my final for you, Mr. Neal,  
 21 is there any activities that you can think of that  
 22 you engaged in prior to the July 2019 accident that  
 23 you haven't engaged in following the accident as a  
 24 result of the accident itself? I know you've  
 25 talked about already getting behind the wheel of a

1 truck. But is there anything other than that?  
 2 A I used to love to drive, Michael. I really did. I  
 3 used to love to. I mean, I -- at -- I used to like  
 4 being around people. I -- I -- I was a social  
 5 butterfly, you know. Ever since this, I have  
 6 gotten to the point where I am withdrawn. I --  
 7 I -- very -- very seldomly do I ever leave my  
 8 house, unless I have to do something. I -- I -- I  
 9 don't even associate with anybody anymore. I mean,  
 10 unless somebody comes -- comes to visit me, I, you  
 11 know -- I -- it -- I -- that's -- that's a rare  
 12 occasion. Then it's like I can't wait until they  
 13 leave, you know.  
 14 Q So these feelings of being withdrawn, these  
 15 feelings of not wanting to be around people, your  
 16 testimony is that you did not have these feelings  
 17 prior to the July 2019 accident, correct?  
 18 A Correct.  
 19 Q Okay. And it's also your testimony that, you know,  
 20 the emotional or psychological conditions you  
 21 sustained as a result of the accident is now  
 22 causing you to feel withdrawn and not want to be  
 23 with people; is that right?  
 24 A Yes, sir.  
 25 Q Okay. Is there anything else that -- is there

1 anything else that you can identify that, you know,  
 2 activities that you engaged in beforehand that you  
 3 don't engage in now?  
 4 A Oh. I used to enjoy hunting, fishing, anything and  
 5 everything outdoors, being around people.  
 6 Q Have you done any hunting or fishing following the  
 7 July 2019 accident?  
 8 A No, I haven't.  
 9 Q And why is that?  
 10 A Like I said, I -- I don't even leave my house,  
 11 unless I absolutely have to.  
 12 MR. SAPICK: Okay. I don't think I have  
 13 any other questions for you, Mr. Neal. I  
 14 appreciate it.

15 THE WITNESS: Thank you, Michael.

16 MR. GUMTOW: I can go next.

17 (Whereupon there was a

18 videoconference interruption.)

19 \* \* \* \*

20 EXAMINATION

21 BY MR. GUMTOW:

22 Q Hello, Mr. Neal. My name is Dan Gumtow. I  
 23 represent the Michigan Insurance Placement  
 24 Familiarity. I work with Mark, the gentleman that  
 25 questioned you first.

1 A Okay.  
 2 He keeps freezing.  
 3 Q Okay. Oh. I believe you -- you testified earlier  
 4 that --  
 5 I am going to do this without my video  
 6 because then it doesn't freeze, Mr. Neal.  
 7 A Okay.  
 8 Q Okay. All right. I believe you testified earlier  
 9 that you made a worker's compensation claim in the  
 10 past; is that correct?  
 11 A Yeah. It was over twenty years ago.  
 12 Q Okay.  
 13 A Over thirty years ago.  
 14 Q Do you remember which --  
 15 A Approximately.  
 16 Q I am sorry. What was that?  
 17 A I said that was over thirty years ago.  
 18 Q Okay. Do you remember what insurance company you  
 19 made the claim with?  
 20 A No, I don't. It was in Ohio.  
 21 MR. GUMTOW: All right. Thank you very  
 22 much, Mr. Neal. I appreciate your time. That's  
 23 the only question I have for you today.  
 24 THE WITNESS: Okay.  
 25 MR. MOUGHNI: If you guys are okay, I can

1 go next.  
2 \* \* \* \*  
3 EXAMINATION  
4 BY MR. MOUGHNI:  
5 Q Scott, I've got a few questions for you.  
6 You were asked about your --  
7 **A I need you to speak up.**  
8 Q You were asked about your citations that you --  
9 you've had in the past, and I think there's about  
10 34 citations that were read off to you; is that  
11 correct?  
12 **A Yeah. I -- dating back over 25 years.**  
13 Q How many citations have you had in the last ten  
14 years?  
15 MR. MARKO: Objection, foundation.  
16 **THE WITNESS: I --**  
17 MR. MARKO: He doesn't even remember the  
18 ones that he --  
19 **THE WITNESS: I don't know. Maybe six,**  
20 **seven.**  
21 BY MR. MOUGHNI:  
22 Q How many citations did you get for the -- on the  
23 date of this accident?  
24 **A None.**  
25 Q Were you found responsible for the accident?

Page 207

1 **A No.**  
2 Q Did you get a speeding ticket?  
3 **A No.**  
4 Q Did you get a careless driving ticket?  
5 **A No.**  
6 Q Do you know if anyone got a ticket?  
7 **A Not that I know of.**  
8 Q If the police report says careless driving as to  
9 the other driver, the deceased driver, would you  
10 have any reason to deny that?  
11 **A No.**  
12 Q Did you drive carelessly that day?  
13 **A No, I did not.**  
14 Q As far as how this accident has impacted your  
15 ability to lead a normal life, you did have --  
16 you've read off -- or you've told us a few things.  
17 You can't go hunting like you used to. You can't  
18 go fishing like you used to. You can't do outdoor  
19 activities like you did. You loved to be around  
20 people. You loved to -- you were a social  
21 butterfly. You loved to drive.  
22 Is there any other things that you can't  
23 do because of the impact of that accident?  
24 **A I -- I've gotten to the point where I don't leave**  
25 **the house unless I absolutely have to. I mean, you**

1 know whenever you end up wanting me to come to your  
2 office, I mainly call you and talk to you on the  
3 phone rather than come to your office.  
4 Q You just don't want to be around people, do you?  
5 **A No, sir. I don't.**  
6 MR. MOUGHNI: I have no other questions.  
7 Thank you.  
8 MS. DIVINEY: I have no questions.  
9 MS. CHRISTENSEN: I have no questions.  
10 MS. DIVINEY: I guess we're all done.  
11 MR. MARKO: Okay. Thank you. Etrans,  
12 please.  
13 COURT REPORTER: Anyone else?  
14 MR. SAPICK: I'll take a copy, please.  
15 MR. GUMTOW: Could I have an etrans also,  
16 please? Thank you.  
17 MS. CHRISTENSEN: Yeah. Ravin, I already  
18 emailed you. I'll take a copy.  
19 MS. DIVINEY: I'll do an etrans or  
20 whatever our standing order is.  
21 (Whereupon the deposition was  
22 concluded at 5:03 p.m.)  
23 \* \* \* \*  
24  
25

Page 209

1 CERTIFICATE  
2  
3 STATE OF MICHIGAN  
4 COUNTY OF OAKLAND  
5  
6 I, RAVIN NEAL a Notary Public in and for the  
7 County of Oakland, do hereby certify that I reported  
8 stenographically the foregoing proceedings at the time  
9 and place hereinbefore set forth; that after, the same  
10 was reduced to computer transcription, and that this is  
11 the full, true, complete and correct transcription of  
12 said proceedings.  
13 I further certify that I am not a  
14 relative or employee of counsel/attorney for any of the  
15 parties, nor a relative or employee of such parties, nor  
16 am I financially interested in the outcome of the action.  
17  
18  
19  
20  
21  
22  
23 RAVIN NEAL, Notary  
24 Certified Shorthand Reporter  
25 Commission Expires 6/21/2023

**A0126**

# **EXHIBIT 8**





1 OF 1 RECORD(S)

## Driver License Records

## Ohio Driver License Records

## Driver Information

Name: NEAL, SCOTT MONROE  
Address: 56505 TR 172  
FRESNO, OH 43824-9711  
COSHOCOTON COUNTY  
Data source: Governmental: OH

## Personal Information

SSN: 299-58-XXXX  
Date of Birth: 11/1969  
Gender: Male  
Height: 5'04"  
Weight: 160 lbs.  
Hair: Brown  
Eyes: Blue

## Current License Information

License Class: Class A - Commercial  
Issue Date: 10/16/2020  
Expiration Date: 11/14/2024  
Original Issue Date: 10/16/2020  
Restrictions: None  
Endorsements: Motorcycle

21 Impaired

## Conviction Information

Type: CONVICTION  
Court Name: MICHIGAN - UNKNOWN COURT  
Violation Date: 08/03/2019  
Conviction Date: 08/19/2019  
Court Type: UNKNOWN  
Offense/Conviction: OUT OF STATE CONVICTION  
Sentence: NO POINTS  
Points: 0  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Court Case Number: UNKNOWN  
Create Date: 09/05/2019  
Conviction/Withdrawal Offense: 2500  
State of Origin: MI

2

Type: OUT OF STATE CONVICTION  
Violation Date: 09/12/2018  
Conviction Date: 09/21/2018  
Court Type: UNKNOWN  
Sentence: NO POINTS  
Points: 00  
Hazardous Materials: NO - HAZARDOUS MATERIALS NOT PRESENT  
Court Case Number: UNKNOWN  
Number of Vehicles: 2  
Create Date: 10/12/2018  
Jurisdiction: MI  
Conviction/Withdrawal Offense: M82

3

## Ohio Driver License Records

Type: CONVICTION  
Court Name: MICHIGAN - UNKNOWN COURT  
Violation Date: 09/12/2018  
Conviction Date: 09/21/2018  
Court Type: UNKNOWN  
Offense/Conviction: OUT OF STATE CONVICTION  
Sentence: NO POINTS  
Points: 0  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Court Case Number: UNKNOWN  
Create Date: 10/12/2018  
Conviction/Withdrawal Offense: M82  
State of Origin: MI

4

Type: CONVICTION  
Court Name: WARREN MUNI  
Violation Date: 05/18/2018  
Conviction Date: 06/07/2018  
County: WARREN  
Court Type: MUNICIPAL COURT  
Offense/Conviction: VIOLATION TRAFFIC LANES / LINES  
Sentence: CONVICTED  
Points: 02  
Hazardous Materials: NO - HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: 183840  
Number of Vehicles: 2  
Create Date: 06/07/2018  
Proof of Filing Date: 06/07/2018

5

Type: CDL CONVICTION  
Court Name: MIAMI MUNI  
Violation Date: 05/18/2018  
Conviction Date: 06/07/2018  
County: MIAMI  
Court Type: MUNICIPAL COURT  
Offense/Conviction: FAILURE - CONT 4511.202  
Sentence: CONVICTED  
Points: 02  
Hazardous Materials: NO - HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: 1804402A  
Number of Vehicles: 1  
Create Date: 06/08/2018  
Proof of Filing Date: 06/07/2018

6

Type: CONVICTION  
Court Name: MIAMI MUNI  
Violation Date: 05/18/2018  
Conviction Date: 06/07/2018  
County: MIAMI  
Court Type: MUNICIPAL COURT  
Offense/Conviction: CDL CONVICTION  
Sentence: CONVICTED  
Points: 2  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: 1804402A  
Create Date: 06/08/2018

## Ohio Driver License Records

Type: CONVICTION  
Court Name: WARREN MUNI  
Violation Date: 05/18/2018  
Conviction Date: 06/07/2018  
County: WARREN  
Court Type: MUNICIPAL COURT  
Offense/Conviction: NON CMV CONVICTION  
Sentence: CONVICTED  
Points: 2  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: 183840  
Create Date: 06/07/2018

Type: CDL CONVICTION  
Court Name: WOOD MUNI  
Violation Date: 02/20/2015  
Plate Number: SG6999  
Conviction Date: 03/30/2015  
County: WOOD  
Court Type: MUNICIPAL COURT  
Offense/Conviction: VIOLATION- EQUIPMENT REGULATION  
Sentence: CONVICTED  
Points: 00  
Hazardous Materials: NO - HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: 15D00968  
Number of Vehicles: 1  
Create Date: 04/06/2015

Type: CONVICTION  
Court Name: WOOD MUNI  
Violation Date: 02/20/2015  
Plate Number: SG6999  
Conviction Date: 03/30/2015  
County: WOOD  
Court Type: MUNICIPAL COURT  
Offense/Conviction: CDL CONVICTION  
Sentence: CONVICTED  
Points: 0  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: 15D00968  
Create Date: 04/06/2015

Type: OUT OF STATE CONVICTION  
Violation Date: 03/27/2014  
Conviction Date: 04/28/2014  
Sentence: CONVICTED  
Points: 00  
Hazardous Materials: NO - HAZARDOUS MATERIALS NOT PRESENT  
Court Case Number: 92D011404IF00072  
Number of Vehicles: 1  
Create Date: 04/29/2014  
Jurisdiction: IN  
Conviction/Withdrawal Offense: 036

Type: CONVICTION

**Ohio Driver License Records**

**Court Name:** INDIANA - UNKNOWN COURT  
**Violation Date:** 03/27/2014  
**Conviction Date:** 04/28/2014  
**Court Type:** SUPERIOR COURT  
**Offense/Conviction:** OUT OF STATE CONVICTION  
**Sentence:** CONVICTED  
**Points:** 0  
**Hazardous Materials:** HAZARDOUS MATERIALS NOT PRESENT  
**Court Case Number:** 92D011404IF00072  
**Create Date:** 04/29/2014  
**Conviction/Withdrawal Offense:** 036  
**State of Origin:** IN

**Type:** OUT OF STATE CONVICTION  
**Violation Date:** 09/28/2013  
**Conviction Date:** 11/19/2013  
**Sentence:** CONVICTED  
**Points:** 00  
**Hazardous Materials:** NO - HAZARDOUS MATERIALS NOT PRESENT  
**Court Case Number:** D50001172524001  
**Number of Vehicles:** 1  
**Create Date:** 12/04/2013  
**Jurisdiction:** VA  
**Conviction/Withdrawal Offense:** 46.2-833

**Type:** CONVICTION  
**Court Name:** VIRGINIA - UNKNOWN COURT  
**Violation Date:** 09/28/2013  
**Conviction Date:** 11/19/2013  
**Court Type:** DISTRICT COURT  
**Offense/Conviction:** OUT OF STATE CONVICTION  
**Sentence:** CONVICTED  
**Points:** 0  
**Hazardous Materials:** HAZARDOUS MATERIALS NOT PRESENT  
**Court Case Number:** D50001172524001  
**Create Date:** 12/04/2013  
**Conviction/Withdrawal Offense:** 46.2-833  
**State of Origin:** VA

**Type:** CDL CONVICTION  
**Court Name:** MADISON MUNI  
**Violation Date:** 08/02/2011  
**Plate Number:** FRTL  
**Conviction Date:** 10/11/2011  
**County:** MADISON  
**Court Type:** MUNICIPAL COURT  
**Offense/Conviction:** SPEED COMMERCIAL  
**Sentence:** CONVICTED  
**Points:** 00  
**Hazardous Materials:** NO - HAZARDOUS MATERIALS NOT PRESENT  
**Plea:** GUILTY  
**Court Case Number:** TRD1108343  
**Number of Vehicles:** 1  
**Create Date:** 10/21/2011  
**Proof of Filing Date:** 10/11/2011

**Type:** CONVICTION  
**Court Name:** MADISON MUNI  
**Violation Date:** 08/02/2011  
**Plate Number:** FRTL



**Ohio Driver License Records**

Conviction Date: 10/11/2011  
County: MADISON  
Court Type: MUNICIPAL COURT  
Offense/Conviction: CDL CONVICTION  
Sentence: CONVICTED  
Points: 0  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: TRD1108343  
Create Date: 10/21/2011

Type: CONVICTION  
Court Name: STARK MUNI  
Violation Date: 05/29/2011  
Plate Number: 749YGU  
Conviction Date: 07/15/2011  
County: STARK  
Court Type: MUNICIPAL COURT  
Offense/Conviction: SPEED  
Sentence: CONVICTED  
Points: 00  
Hazardous Materials: NO - HAZARDOUS MATERIALS NOT PRESENT  
Plea: NO CONTEST  
Court Case Number: 2011TRD04422  
Number of Vehicles: 2  
Create Date: 07/18/2011  
Proof of Filing Date: 07/15/2011

Type: CONVICTION  
Court Name: STARK MUNI  
Violation Date: 05/29/2011  
Plate Number: 749YGU  
Conviction Date: 07/15/2011  
County: STARK  
Court Type: MUNICIPAL COURT  
Offense/Conviction: NON CMV CONVICTION  
Sentence: CONVICTED  
Points: 0  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Plea: NO CONTEST  
Court Case Number: 2011TRD04422  
Create Date: 07/18/2011

Type: OUT OF STATE CONVICTION  
Violation Date: 04/19/2011  
Conviction Date: 05/31/2011  
Sentence: CONVICTED  
Points: 00  
Hazardous Materials: NO - HAZARDOUS MATERIALS NOT PRESENT  
Court Case Number: KY1051AV1566711  
Number of Vehicles: 1  
Create Date: 06/02/2011  
Jurisdiction: KY  
Conviction/Withdrawal Offense: 010

Type: CONVICTION  
Court Name: KENTUCKY - UNKNOWN COURT  
Violation Date: 04/19/2011  
Conviction Date: 05/31/2011  
Court Type: OUT OF STATE COURT



**Ohio Driver License Records**

Offense/Conviction: OUT OF STATE CONVICTION  
Sentence: CONVICTED  
Points: 0  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Court Case Number: KY1051AV1566711  
Create Date: 06/02/2011  
Conviction/Withdrawal Offense: 010  
State of Origin: KY

Type: CONVICTION  
Court Name: STARK MUNI  
Violation Date: 03/02/2009  
Plate Number: EKA4143  
Conviction Date: 03/25/2009  
County: STARK  
Court Type: MUNICIPAL COURT  
Offense/Conviction: MISCELLANEOUS  
Sentence: CONVICTED  
Points: 00  
Hazardous Materials: NO - HAZARDOUS MATERIALS NOT PRESENT  
Plea: NO CONTEST  
Court Case Number: 2009TRD00438  
Number of Vehicles: 2  
Create Date: 04/03/2009  
Proof of Filing Date: 03/25/2009

13

Type: CONVICTION  
Court Name: STARK MUNI  
Violation Date: 03/02/2009  
Plate Number: EKA4143  
Conviction Date: 03/25/2009  
County: STARK  
Court Type: MUNICIPAL COURT  
Offense/Conviction: NON CMV CONVICTION  
Sentence: CONVICTED  
Points: 0  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Plea: NO CONTEST  
Court Case Number: 2009TRD00438  
Create Date: 04/03/2009

Type: CONVICTION  
Court Name: JEFFERSON COUNTY  
Violation Date: 02/12/2009  
Conviction Date: 03/11/2009  
County: JEFFERSON  
Court Type: COUNTY COURT  
Offense/Conviction: EQUIPMENT MISUSE  
Sentence: CONVICTED  
Points: 00  
Hazardous Materials: NO - HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: 2009TRD00150  
Number of Vehicles: 2  
Create Date: 04/02/2009  
Proof of Filing Date: 03/11/2009

14

Type: CONVICTION  
Court Name: JEFFERSON COUNTY  
Violation Date: 02/12/2009

**Ohio Driver License Records**

Conviction Date: 03/11/2009  
County: JEFFERSON  
Court Type: COUNTY COURT  
Offense/Conviction: NON CMV CONVICTION  
Sentence: CONVICTED  
Points: 0  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: 2009TRD00150  
Create Date: 04/02/2009

Type: OUT OF STATE CONVICTION  
Violation Date: 07/16/2008  
Conviction Date: 09/26/2008  
Points: 00  
Hazardous Materials: NO - HAZARDOUS MATERIALS NOT PRESENT  
Number of Vehicles: 1  
Create Date: 01/16/2009  
Jurisdiction: TN  
Conviction/Withdrawal Offense: 501

Type: CONVICTION  
Violation Date: 07/16/2008  
Conviction Date: 09/26/2008  
Court Type: OUT OF STATE COURT  
Offense/Conviction: OUT OF STATE CONVICTION  
Points: 0  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Create Date: 01/16/2009  
Conviction/Withdrawal Offense: 501  
State of Origin: TN

Type: CDL CONVICTION  
Court Name: MUSKINGUM COUNTY  
Violation Date: 11/06/2007  
Conviction Date: 01/30/2008  
County: MUSKINGUM  
Court Type: COUNTY COURT  
Offense/Conviction: SPEED COMMERCIAL  
Sentence: CONVICTED  
Points: 02  
Hazardous Materials: NO - HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: TRD0706461  
Number of Vehicles: 1  
Create Date: 02/05/2008  
Proof of Filing Date: 01/30/2008

Type: CONVICTION  
Court Name: MUSKINGUM COUNTY  
Violation Date: 11/06/2007  
Conviction Date: 01/30/2008  
County: MUSKINGUM  
Court Type: COUNTY COURT  
Offense/Conviction: CDL CONVICTION  
Sentence: CONVICTED  
Points: 2  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: TRD0706461

15

16

**Ohio Driver License Records**

Create Date: 02/05/2008

Type: CDL CONVICTION  
Court Name: TRUMBUL MUNI  
Violation Date: 06/23/2006  
Plate Number: P561325  
Conviction Date: 10/10/2006  
County: TRUMBUL  
Court Type: MUNICIPAL COURT  
Offense/Conviction: VIOLATION- EQUIPMENT REGULATION  
Sentence: CONVICTED  
Points: 00  
Hazardous Materials: NO - HAZARDOUS MATERIALS NOT PRESENT  
Plea: NO CONTEST  
Court Case Number: 6D03772  
Number of Vehicles: 1  
Create Date: 10/27/2006

Type: CONVICTION  
Court Name: TRUMBUL MUNI  
Violation Date: 06/23/2006  
Plate Number: P561325  
Conviction Date: 10/10/2006  
County: TRUMBUL  
Court Type: MUNICIPAL COURT  
Offense/Conviction: CDL CONVICTION  
Sentence: CONVICTED  
Points: 0  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Plea: NO CONTEST  
Court Case Number: 6D03772  
Create Date: 10/27/2006

Type: CONVICTION  
Court Name: COSHOCTON MUNI  
Violation Date: 06/13/2005  
Plate Number: 13HVM  
Conviction Date: 06/17/2005  
County: COSHOCTON  
Court Type: MUNICIPAL COURT  
Offense/Conviction: SPEED 4511.21D  
Sentence: CONVICTED  
Points: 02  
Hazardous Materials: NO - HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: 5D00896  
Number of Vehicles: 2  
Create Date: 07/08/2005  
Proof of Filing Date: 06/17/2005

Type: CONVICTION  
Court Name: COSHOCTON MUNI  
Violation Date: 06/13/2005  
Plate Number: 13HVM  
Conviction Date: 06/17/2005  
County: COSHOCTON  
Court Type: MUNICIPAL COURT  
Offense/Conviction: NON CMV CONVICTION  
Sentence: CONVICTED  
Points: 2

17

18

**Ohio Driver License Records**

Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: 5D00896  
Create Date: 07/08/2005

Type: CONVICTION  
Court Name: LICKING MUNI  
Violation Date: 08/09/2004  
Plate Number: CTM269  
Conviction Date: 08/26/2004  
County: LICKING  
Court Type: MUNICIPAL COURT  
Offense/Conviction: SPEED  
Sentence: CONVICTED  
Points: 02  
Hazardous Materials: NO - HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: 4D08890  
Number of Vehicles: 2  
Create Date: 09/10/2004  
Proof of Filing Date: 08/26/2004

Type: CONVICTION  
Court Name: LICKING MUNI  
Violation Date: 08/09/2004  
Plate Number: CTM269  
Conviction Date: 08/26/2004  
County: LICKING  
Court Type: MUNICIPAL COURT  
Offense/Conviction: NON CMV CONVICTION  
Sentence: CONVICTED  
Points: 2  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: 4D08890  
Create Date: 09/10/2004

Type: CONVICTION  
Court Name: HOLMES COUNTY  
Violation Date: 04/09/2004  
Plate Number: 207XDV  
Conviction Date: 04/16/2004  
County: HOLMES  
Court Type: COUNTY COURT  
Offense/Conviction: VIOLATION SELT BELT LAW  
Sentence: NO POINTS  
Points: 00  
Hazardous Materials: NO - HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: 4D00891  
Number of Vehicles: 2  
Create Date: 04/23/2004  
Proof of Filing Date: 04/16/2004

Type: CONVICTION  
Court Name: HOLMES COUNTY  
Violation Date: 04/09/2004  
Plate Number: 207XDV  
Conviction Date: 04/16/2004  
County: HOLMES

19

20



**Ohio Driver License Records**

**Court Type:** COUNTY COURT  
**Offense/Conviction:** NON CMV CONVICTION  
**Sentence:** NO POINTS  
**Points:** 0  
**Hazardous Materials:** HAZARDOUS MATERIALS NOT PRESENT  
**Plea:** GUILTY  
**Court Case Number:** 4D00891  
**Create Date:** 04/23/2004

**Type:** CONVICTION  
**Court Name:** RICHLAND MUNI  
**Violation Date:** 03/18/2004  
**Plate Number:** CTM2691  
**Conviction Date:** 03/26/2004  
**County:** RICHLAND  
**Court Type:** MUNICIPAL COURT  
**Offense/Conviction:** RIGHT SIDE OF ROADWAY  
**Sentence:** CONVICTED  
**Points:** 02  
**Hazardous Materials:** NO - HAZARDOUS MATERIALS NOT PRESENT  
**Plea:** GUILTY  
**Court Case Number:** 2004TRD02286  
**Number of Vehicles:** 2  
**Create Date:** 03/31/2004  
**Proof of Filing Date:** 03/26/2004

**Type:** CONVICTION  
**Court Name:** RICHLAND MUNI  
**Violation Date:** 03/18/2004  
**Plate Number:** CTM2691  
**Conviction Date:** 03/26/2004  
**County:** RICHLAND  
**Court Type:** MUNICIPAL COURT  
**Offense/Conviction:** NON CMV CONVICTION  
**Sentence:** CONVICTED  
**Points:** 2  
**Hazardous Materials:** HAZARDOUS MATERIALS NOT PRESENT  
**Plea:** GUILTY  
**Court Case Number:** 2004TRD02286  
**Create Date:** 03/31/2004

**Type:** CONVICTION  
**Court Name:** RICHLAND MUNI  
**Violation Date:** 06/13/2003  
**Plate Number:** DE95LM  
**Conviction Date:** 06/26/2003  
**County:** RICHLAND  
**Court Type:** MUNICIPAL COURT  
**Offense/Conviction:** VIOLATION SELT BELT LAW  
**Sentence:** CONVICTED  
**Points:** 00  
**Hazardous Materials:** NO - HAZARDOUS MATERIALS NOT PRESENT  
**Plea:** GUILTY  
**Court Case Number:** 3T08191  
**Number of Vehicles:** 2  
**Create Date:** 07/03/2003  
**Proof of Filing Date:** 06/26/2003

**Type:** CONVICTION  
**Court Name:** RICHLAND MUNI

21

22



**Ohio Driver License Records**

Violation Date: 06/13/2003  
Plate Number: DE95LM  
Conviction Date: 06/26/2003  
County: RICHLAND  
Court Type: MUNICIPAL COURT  
Offense/Conviction: NON CMV CONVICTION  
Sentence: CONVICTED  
Points: 0  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: 3T08191  
Create Date: 07/03/2003

Type: CONVICTION  
Court Name: GUERNSEY MUNI  
Violation Date: 02/07/2003  
Plate Number: DE95CM  
Conviction Date: 02/20/2003  
County: GUERNSEY  
Court Type: MUNICIPAL COURT  
Offense/Conviction: VIOLATION SELT BELT LAW  
Sentence: FORFEITURE  
Points: 00  
Hazardous Materials: NO - HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: 3D01623  
Number of Vehicles: 2  
Create Date: 03/03/2003  
Proof of Filing Date: 02/20/2003

Type: CONVICTION  
Court Name: GUERNSEY MUNI  
Violation Date: 02/07/2003  
Plate Number: DE95CM  
Conviction Date: 02/20/2003  
County: GUERNSEY  
Court Type: MUNICIPAL COURT  
Offense/Conviction: NON CMV CONVICTION  
Sentence: FORFEITURE  
Points: 0  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: 3D01623  
Create Date: 03/03/2003

Type: CONVICTION  
Court Name: PERRY COUNTY  
Violation Date: 03/22/2002  
Plate Number: PCG3465  
Conviction Date: 04/05/2002  
County: PERRY  
Court Type: COUNTY COURT  
Offense/Conviction: SPEED  
Sentence: CONVICTED  
Points: 02  
Hazardous Materials: NO - HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: 2D00897  
Number of Vehicles: 2  
Create Date: 05/03/2002

23

24

**Ohio Driver License Records**

Proof of Filing Date: 04/05/2002

Type: CONVICTION  
Court Name: PERRY COUNTY  
Violation Date: 03/22/2002  
Plate Number: PCG3465  
Conviction Date: 04/05/2002  
County: PERRY  
Court Type: COUNTY COURT  
Offense/Conviction: NON CMV CONVICTION  
Sentence: CONVICTED  
Points: 2  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: 2D00897  
Create Date: 05/03/2002

Type: CDL CONVICTION  
Court Name: HARRISON COUNTY  
Violation Date: 03/14/2002  
Plate Number: PCG3465  
Conviction Date: 03/21/2002  
County: HARRISON  
Court Type: COUNTY COURT  
Offense/Conviction: SPEED 4511.21D  
Sentence: CONVICTED  
Points: 00  
Hazardous Materials: NO - HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: 2D00648  
Number of Vehicles: 1  
Create Date: 03/22/2002  
Proof of Filing Date: 03/21/2002

Type: CONVICTION  
Court Name: HARRISON COUNTY  
Violation Date: 03/14/2002  
Plate Number: PCG3465  
Conviction Date: 03/21/2002  
County: HARRISON  
Court Type: COUNTY COURT  
Offense/Conviction: CDL CONVICTION  
Sentence: CONVICTED  
Points: 0  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: 2D00648  
Create Date: 03/22/2002

Type: CONVICTION  
Court Name: TUSCARAWAS COUNTY  
Violation Date: 05/30/2001  
Plate Number: BCF1424  
Conviction Date: 06/11/2001  
County: TUSCARAWAS  
Court Type: MUNICIPAL COURT  
Offense/Conviction: SPEED  
Sentence: CONVICTED  
Points: 02  
Hazardous Materials: NO - HAZARDOUS MATERIALS NOT PRESENT

25

26th

**Ohio Driver License Records**

Plea: GUILTY  
Court Case Number: 1D01161  
Number of Vehicles: 2  
Create Date: 08/09/2001  
Proof of Filing Date: 06/11/2001

Type: CONVICTION  
Court Name: TUSCARAWAS COUNTY  
Violation Date: 05/30/2001  
Plate Number: BCF1424  
Conviction Date: 06/11/2001  
County: TUSCARAWAS  
Court Type: MUNICIPAL COURT  
Offense/Conviction: NON CMV CONVICTION  
Sentence: CONVICTED  
Points: 2  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: 1D01161  
Create Date: 08/09/2001

Type: CONVICTION  
Court Name: COSHOCTON MUNI  
Violation Date: 04/02/2001  
Plate Number: BCF1424  
Conviction Date: 04/09/2001  
County: COSHOCTON  
Court Type: MUNICIPAL COURT  
Offense/Conviction: SPEED 4511.21D  
Sentence: CONVICTED  
Points: 02  
Hazardous Materials: NO - HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: 1D00884  
Number of Vehicles: 2  
Create Date: 04/27/2001  
Proof of Filing Date: 04/09/2001

Type: CONVICTION  
Court Name: COSHOCTON MUNI  
Violation Date: 04/02/2001  
Plate Number: BCF1424  
Conviction Date: 04/09/2001  
County: COSHOCTON  
Court Type: MUNICIPAL COURT  
Offense/Conviction: NON CMV CONVICTION  
Sentence: CONVICTED  
Points: 2  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: 1D00884  
Create Date: 04/27/2001

Type: CONVICTION  
Court Name: COSHOCTON MUNI  
Violation Date: 03/31/2000  
Conviction Date: 04/03/2000  
County: COSHOCTON  
Offense/Conviction: VIOLATION SELT BELT LAW  
Sentence: NO POINTS

27

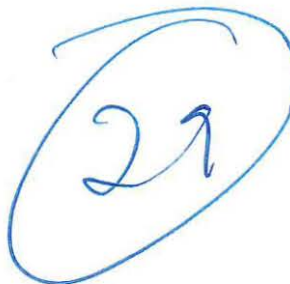
28

**Ohio Driver License Records**

Points: 00  
Hazardous Materials: UNKNOWN  
Plea: GUILTY  
Court Case Number: D00836  
Number of Vehicles: 2  
Create Date: 05/05/2000

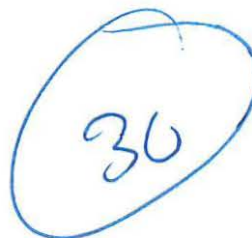
Type: CONVICTION  
Court Name: COSHOCTON MUNI  
Violation Date: 03/31/2000  
Conviction Date: 04/03/2000  
County: COSHOCTON  
Court Type: OUT OF STATE COURT  
Offense/Conviction: NON CMV CONVICTION  
Sentence: NO POINTS  
Points: 0  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: D00836  
Create Date: 05/05/2000

Type: CONVICTION  
Court Name: COSHOCTON MUNI  
Violation Date: 10/07/1999  
Conviction Date: 10/21/1999  
County: COSHOCTON  
Offense/Conviction: MISCELLANEOUS  
Sentence: NO POINTS  
Points: 00  
Hazardous Materials: UNKNOWN  
Plea: GUILTY  
Court Case Number: 99D03194  
Number of Vehicles: 2  
Create Date: 11/16/1999

21

Type: CONVICTION  
Court Name: COSHOCTON MUNI  
Violation Date: 10/07/1999  
Conviction Date: 10/21/1999  
County: COSHOCTON  
Court Type: OUT OF STATE COURT  
Offense/Conviction: NON CMV CONVICTION  
Sentence: NO POINTS  
Points: 0  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: 99D03194  
Create Date: 11/16/1999

Type: CONVICTION  
Court Name: COSHOCTON MUNI  
Violation Date: 09/17/1999  
Conviction Date: 09/20/1999  
County: COSHOCTON  
Offense/Conviction: SPEED 4511.21D  
Sentence: NO POINTS  
Points: 00  
Hazardous Materials: UNKNOWN  
Plea: GUILTY  
Court Case Number: 99D02869

30



**Ohio Driver License Records**


Number of Vehicles: 2  
Create Date: 10/27/1999

Type: CONVICTION  
Court Name: COSHOCTON MUNI  
Violation Date: 09/17/1999  
Conviction Date: 09/20/1999  
County: COSHOCTON  
Offense/Conviction: VIOLATION SELT BELT LAW  
Sentence: NO POINTS  
Points: 00  
Hazardous Materials: UNKNOWN  
Plea: GUILTY  
Court Case Number: 99D02869  
Number of Vehicles: 2  
Create Date: 10/27/1999

Type: CONVICTION  
Court Name: COSHOCTON MUNI  
Violation Date: 09/17/1999  
Conviction Date: 09/20/1999  
County: COSHOCTON  
Court Type: OUT OF STATE COURT  
Offense/Conviction: NON CMV CONVICTION  
Sentence: NO POINTS  
Points: 0  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: 99D02869  
Create Date: 10/27/1999

Type: CONVICTION  
Court Name: FRANKLIN MUNI  
Violation Date: 06/26/1999  
Conviction Date: 07/02/1999  
County: FRANKLIN  
Offense/Conviction: SPEED 4511.21D  
Sentence: CONVICTED  
Points: 02  
Hazardous Materials: UNKNOWN  
Plea: GUILTY  
Court Case Number: 99154121  
Number of Vehicles: 2  
Create Date: 07/26/1999

Type: CONVICTION  
Court Name: FRANKLIN MUNI  
Violation Date: 06/26/1999  
Conviction Date: 07/02/1999  
County: FRANKLIN  
Court Type: OUT OF STATE COURT  
Offense/Conviction: NON CMV CONVICTION  
Sentence: CONVICTED  
Points: 2  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: 99154121  
Create Date: 07/26/1999





## Ohio Driver License Records

Type: CONVICTION  
Court Name: HOLMES COUNTY  
Violation Date: 01/26/1999  
Conviction Date: 01/27/1999  
County: HOLMES  
Offense/Conviction: SPEED  
Sentence: CONVICTED  
Points: 02  
Hazardous Materials: UNKNOWN  
Plea: GUILTY  
Court Case Number: 99D00050  
Number of Vehicles: 2  
Create Date: 02/06/1999

32

Type: CONVICTION  
Court Name: HOLMES COUNTY  
Violation Date: 01/26/1999  
Conviction Date: 01/27/1999  
County: HOLMES  
Court Type: OUT OF STATE COURT  
Offense/Conviction: NON CMV CONVICTION  
Sentence: CONVICTED  
Points: 2  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: 99D00050  
Create Date: 02/06/1999

Type: CONVICTION  
Court Name: COSHOCTON MUNI  
Violation Date: 04/11/1998  
Conviction Date: 04/16/1998  
County: COSHOCTON  
Offense/Conviction: SPEED  
Sentence: CONVICTED  
Points: 02  
Hazardous Materials: UNKNOWN  
Plea: GUILTY  
Court Case Number: 98D00899  
Number of Vehicles: 2  
Create Date: 05/12/1998

38

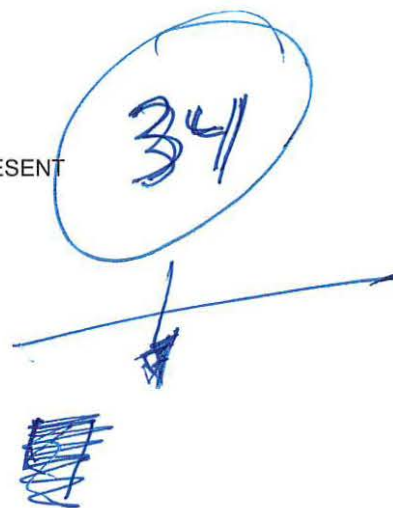
Type: CONVICTION  
Court Name: COSHOCTON MUNI  
Violation Date: 04/11/1998  
Conviction Date: 04/16/1998  
County: COSHOCTON  
Court Type: OUT OF STATE COURT  
Offense/Conviction: NON CMV CONVICTION  
Sentence: CONVICTED  
Points: 2  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Plea: GUILTY  
Court Case Number: 98D00899  
Create Date: 05/12/1998

Type: CONVICTION  
Court Name: TUSCARAWAS MUNI  
Violation Date: 11/28/1987  
Plate Number: 608REF

**Ohio Driver License Records**

Conviction Date: 03/31/1988  
County: TUSCARAWAS  
Court Type: UNKNOWN  
Sentence: CONVICTED  
Points: 06  
Hazardous Materials: NO - HAZARDOUS MATERIALS NOT PRESENT  
Plea: NO CONTEST  
Court Case Number: 87C11268  
Number of Vehicles: 2  
Create Date: 05/18/1988

Type: CONVICTION  
Court Name: TUSCARAWAS MUNI  
Violation Date: 11/28/1987  
Plate Number: 608REF  
Conviction Date: 03/31/1988  
County: TUSCARAWAS  
Court Type: UNKNOWN  
Offense/Conviction: NON CMV CONVICTION  
Sentence: CONVICTED  
Points: 6  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Plea: NO CONTEST  
Court Case Number: 87C11268  
Create Date: 05/18/1988

**Accident Information**

Detail: ACCIDENT  
Jurisdiction: OH  
Accident Severity: NON-INCAPACITATING EVIDENT INJURY  
Accident Date: 05/18/2018  
Number of Vehicles: 1  
Hazardous Materials: NO - HAZARDOUS MATERIALS NOT PRESENT  
Create Date: 05/25/2018  
BMV Case Number: 86080716

Detail: ACCIDENT  
Jurisdiction: OH  
Accident Severity: NON-INCAPACITATING EVIDENT INJURY  
Accident Date: 05/18/2018  
Number of Vehicles: Y  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Create Date: 05/25/2018

Detail: ACCIDENT  
Jurisdiction: OH  
Accident Severity: NON-INJURY (PROPERTY-DAMAGE-ONLY)  
Accident Date: 05/18/2018  
Number of Vehicles: 1  
Hazardous Materials: NO - HAZARDOUS MATERIALS NOT PRESENT  
Create Date: 05/23/2018  
BMV Case Number: 86079527

Detail: ACCIDENT  
Jurisdiction: OH  
Accident Severity: NON-INJURY (PROPERTY-DAMAGE-ONLY)  
Accident Date: 05/18/2018  
Number of Vehicles: Y  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT

**Ohio Driver License Records**

Create Date: 05/23/2018

Detail: ACCIDENT  
Jurisdiction: OH  
Accident Severity: NON-INJURY (PROPERTY-DAMAGE-ONLY)  
Accident Date: 03/12/2018  
Number of Vehicles: 1  
Hazardous Materials: NO - HAZARDOUS MATERIALS NOT PRESENT  
Create Date: 03/16/2018  
BMV Case Number: 86043053

Detail: ACCIDENT  
Jurisdiction: OH  
Accident Severity: NON-INJURY (PROPERTY-DAMAGE-ONLY)  
Accident Date: 03/12/2018  
Number of Vehicles: Y  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Create Date: 03/16/2018

Detail: ACCIDENT  
Jurisdiction: OH  
Accident Severity: NON-INJURY (PROPERTY-DAMAGE-ONLY)  
Accident Date: 10/16/2012  
Number of Vehicles: 1  
Hazardous Materials: NO - HAZARDOUS MATERIALS NOT PRESENT  
Create Date: 01/23/2013  
BMV Case Number: 28130849

Detail: ACCIDENT  
Jurisdiction: OH  
Accident Severity: NON-INJURY (PROPERTY-DAMAGE-ONLY)  
Accident Date: 10/16/2012  
Number of Vehicles: Y  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Create Date: 01/23/2013

Detail: ACCIDENT  
Jurisdiction: OH  
Accident Severity: NON-INJURY (PROPERTY-DAMAGE-ONLY)  
Accident Date: 03/18/2004  
Number of Vehicles: 2  
Hazardous Materials: UNKNOWN  
Create Date: 08/20/2004  
BMV Case Number: 48061655

Detail: ACCIDENT  
Jurisdiction: OH  
Accident Severity: NON-INJURY (PROPERTY-DAMAGE-ONLY)  
Accident Date: 03/18/2004  
Number of Vehicles: N  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Create Date: 08/20/2004

**Insurance Information**

Proof of Ins Cancel Posted Date: 05/18/2004  
Create Date: 02/21/2004  
Proof of Ins Cancel Date: 05/08/2004  
Drivers Insurance Policy Number: 51705858  
Drivers Insurance Company: PROGRESSIVE

**Ohio Driver License Records**

Latest Proof of Filing Start Date: 02/20/2004  
Proof of Ins Filing Start Date: 02/20/2004

Proof of Ins Cancel Posted Date: 05/18/2004  
Create Date: 02/21/2004  
Proof of Ins Cancel Date: 05/08/2004  
Drivers Insurance Policy Number: 51705858  
Latest Proof of Filing Start Date: 02/20/2004  
Proof of Ins Filing Start Date: 02/20/2004

Proof of Ins Cancel Posted Date: 05/18/2004  
Proof of Ins Filing Date: 02/21/2004  
Proof of Ins Cancel Date: 05/08/2004  
Drivers Insurance Policy Number: 51705858  
Latest Proof of Filing Start Date: 02/20/2004  
Proof of Ins Filing Start Date: 02/20/2004

**Suspension Information**

Type: SUSPENSION  
Violation Date: 02/12/2019  
Clear Date: 03/22/2019  
Start Date: 02/12/2019  
BMV Case Number: KS19003473  
Commercial Vehicle: NO -S NOT COMMERCIAL VEHICLE  
Hazardous Materials: HAZARDOUS MATERIALS NOT PRESENT  
Fee Paid Date: 03/22/2019  
Record Create Date: 02/12/2019  
Fee Required: Y  
Vehicle Owner: N  
Appeal Suspension Stay: N  
Fine Paid Date: 03/22/2019  
Child Support Enforcement Agency: 68  
Child Support Enforcement Case  
Number: 7079849027  
Child Support Enforcement Order  
Number: ADM2732010 OH670  
Child Support Enf Participant Number: 305306970888

Type: CHILD SUPPORT SUSPENSION  
Clear Date: 03/22/2019  
Action Date: 02/12/2019  
Start Date: 02/12/2019  
BMV Case Number: KS19003473  
Fee Paid Date: 03/22/2019  
Withdrawal Status: CLOSED  
Record Create Date: 02/12/2019  
Fee Required: Y  
Fine Paid Date: 03/22/2019  
Child Support Enforcement Agency: 6700  
Child Support Enforcement Case  
Number: 7079849027  
Child Support Enforcement Order  
Number: ADM2732010 OH670  
Child Support Enf Participant Number: 305306970888

Type: CHILD SUPPORT SUSPENSION  
Action Date: 02/12/2019  
Start Date: 02/12/2019  
BMV Case Number: KS19003473

**Ohio Driver License Records****Withdrawal Status:** OPEN**Record Create Date:** 02/12/2019**Fee Required:** Y**Child Support Enforcement Agency:** 6700**Child Support Enforcement Case****Number:** 7079849027**Child Support Enforcement Order****Number:** ADM2732010 OH670**Child Support Enf Participant Number:** 305306970888

**Important:** The Public Records and commercially available data sources used on reports have errors. Data is sometimes entered poorly, processed incorrectly and is generally not free from defect. This system should not be relied upon as definitively accurate. Before relying on any data this system supplies, it should be independently verified. For Secretary of State documents, the following data is for information purposes only and is not an official record. Certified copies may be obtained from that individual state's Department of State.

Your DPPA Permissible Use: Litigation

Your GLBA Permissible Use: Persons with a Legal or Beneficial Interest Regarding a Consumer

Your DMF Permissible Use: Legitimate Business Purpose

Copyright© 2021 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.

---

End of Document



## Florida Court Report

### Offender Information

**Name:** NEAL, SCOTT M  
**Address:** FL  
**Case Number:** 2011-TR-007141-A-O  
**Case Filing Date:** 01/18/2011  
**Case Type:** INFRACTION  
**County:** ORANGE  
**DOB:** 11/1969

### Offenses

**Case Filing Date:** 01/18/2011  
**Number Counts:** 1  
**Offense Date:** 01/12/2011  
**Court Description:** ORANGE COUNTY CLERK OFS  
**Court Case Number:** 2011-TR-007141-A-O  
**Court Offense:** TAG OBSCURED-DEFACED-OR IMPROP DISPLAYED  
**Court Statute:** 316.605  
**Court Disposition:** PAY CIVIL PENALTY GUILTY Status:CLOSED  
**Court Disposition Date:** 08/08/2011  
**Court Level/Degree:** INFRACTION

### Court Activity

[NONE FOUND]

**Important:** The Public Records and commercially available data sources used on reports have errors. Data is sometimes entered poorly, processed incorrectly and is generally not free from defect. This system should not be relied upon as definitively accurate. Before relying on any data this system supplies, it should be independently verified. For Secretary of State documents, the following data is for information purposes only and is not an official record. Certified copies may be obtained from that individual state's Department of State.

Your DPPA Permissible Use: Litigation

Your GLBA Permissible Use: Persons with a Legal or Beneficial Interest Regarding a Consumer

Your DMF Permissible Use: Legitimate Business Purpose

Copyright © 2021 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.

## Ohio Court Report

### Offender Information

**Name:** NEAL, SCOTT M  
**Address:** 390 MASSILLON RD  
AKRON, OH 44312-2019  
SUMMIT COUNTY  
**Case Number:** 2009 TRD 00438  
**Case Filing Date:** 2009  
**Case Type:** TRAFFIC  
**County:** STARK  
**DOB:** 11/1969  
**SSN:** 299-58-XXXX

### Offenses

**Case Filing Date:** 2009  
**Number Counts:** 1  
**Arresting Agency:** ALLIANCE  
**Court Case Number:** 2009 TRD 00438  
**Court Offense:** MAXIMUM SPEED LIMITS (SPEEDING) REDUCED TO 337.02 MM-LIGHTED  
LIGHTS  
**Court Statute:** 333.03B  
**Court Level/Degree:** MISDEMEANOR MINOR

### Court Activity

[NONE FOUND]

**Important:** The Public Records and commercially available data sources used on reports have errors. Data is sometimes entered poorly, processed incorrectly and is generally not free from defect. This system should not be relied upon as definitively accurate. Before relying on any data this system supplies, it should be independently verified. For Secretary of State documents, the following data is for information purposes only and is not an official record. Certified copies may be obtained from that individual state's Department of State.

Your DPPA Permissible Use: Litigation

Your GLBA Permissible Use: Persons with a Legal or Beneficial Interest Regarding a Consumer

Your DMF Permissible Use: Legitimate Business Purpose

Copyright © 2021 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.



1 OF 1 RECORD(S)

## Ohio Court Report

### Offender Information

**Name:** NEAL, SCOTT M  
**Address:** 56505 TOWNSHIP ROAD 172  
FRESNO, OH 43824-9711  
COSHOCOTON COUNTY  
**Case Number:** 94-TR-23522  
**Case Filing Date:** 10/22/1994  
**Case Type:** MINOR MISDEMEANOR  
**County:** SUMMIT  
**DOB:** 11/1969  
**SSN:** 299-58-XXXX

### Offenses

#### Offense #1

**Case Filing Date:** 10/22/1994  
**Offense Date:** 10/21/1994  
**Court Description:** AKRON MUNICIPAL  
**Court Case Number:** 94-TR-23522  
**Court Offense:** HEAD LIGHTS  
**Court Statute:** 74.06  
**Court Disposition:** GUILTY WAIVER CLOSED; STATUS DATE: 11/03/1994  
**Court Disposition Date:** 11/03/1994  
**Court Fine:** \$74  
**Court Level/Degree:** MISDEMEANOR MINOR  
**Court Costs:** \$74

#### Offense #2

**Case Filing Date:** 10/22/1994  
**Offense Date:** 10/21/1994  
**Court Description:** AKRON MUNICIPAL  
**Court Case Number:** 94-TR-23522  
**Court Offense:** MUFFLER  
**Court Statute:** 74.56  
**Court Disposition:** GUILTY WAIVER CLOSED; STATUS DATE: 11/03/1994  
**Court Disposition Date:** 11/03/1994  
**Court Fine:** \$74  
**Court Level/Degree:** MISDEMEANOR MINOR  
**Court Costs:** \$74

### Court Activity

[NONE FOUND]

**Important:** The Public Records and commercially available data sources used on reports have errors. Data is sometimes entered poorly, processed incorrectly and is generally not free from defect. This system should not be relied upon as definitively accurate. Before relying on any data this system supplies, it should be independently verified. For Secretary of State documents, the following data is for information purposes only and is not an official record. Certified copies may be obtained from that individual state's Department of State.

Your DPPA Permissible Use: Litigation

Your GLBA Permissible Use: Persons with a Legal or Beneficial Interest Regarding a Consumer

Your DMF Permissible Use: Legitimate Business Purpose

Copyright © 2021 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.

---

End of Document

RECEIVED by MSC 11/4/2024 7:59:14 AM

**A0151**

# **EXHIBIT 9**



Date: 4/16/2021 Time: 2:54:25 PM

S642 ACCIDENTS 1 XCR ACT  
COMMAND ==> L4 14:22  
NEAL, SCOTT ACCIDENT NBR 0000066676  
BIRTH DATE CLOSE DATE  
ANNIV DATE 07-21-2005 USER ID  
FRESNO OH STUDENT N TRAINER  
FLEET 34 TRACTOR 008779 TRAILER 053025 REPORT PRINTED N PT 00  
DESCRIPTION USA TRAVELING WB IN LANE 3 OF 4 LANES. TRAFFIC BACKED UP. USA WAS UN  
ABLE TO STOP BEFORE COMING IN CONTACT WITH ADV IN FRONT OF HIM. ADV1 WAS PUSHE  
INTO 3 OTHER VEHICLES. NO ONE TRANSPORTED, 2ADV VEHICLES TOWED, POLICE NOTIFIED  
CARGO DESC PAPER  
DOT REPORTABLE Y REASON TOWING > PADAT Y INCIDENT N PREV P  
COSTS USA 48715.65  
HAZMAT HAZ N UN SPILL CLEANUP COMPANY  
ACCIDENT LOCATION MEMPHIS TN DATE 09 25 2008 THURSDAY TIME 16 30  
OBJECT INVOLVED ADVERSE INVOLVED Y  
EMPLOYEE CALLED FROM MEMPHIS TN PH  
TYPE RE > REAREND GENERAL LOCATION IS > INTERSTATE  
WEATHER COND 01 > CLEAR SURFACE COND 01 > DRY  
RECEIVED BY DATE 09 25 2008 TIME 16 35

PF 1-HELP 3-EXIT 5- 7- 9- 11-ACI3 PA1-PREV  
PF 2-NAME 4-ACCIDAT 6-EXPAND 8- 10-ACI2 12-ACSM PA2-NEXT

# **EXHIBIT 10**

FRM-004  
Created 4/18/18

### Phone Accident Report

Person Taking Report: Dawn Hawley Date: 5/18 Time: 428

Driver: SCOTT W Truck: 153 Trailer: 5118

City and State: 1-75 mm 35 Time of Accident: 425

#### Brief description of Accident:

HEADING NB AND UPS TRUCK CAME UP ON RIGHT AND UPS  
DRIVER HIT SCOTT IN MIDDLE LANE TRUCKS ARE STILL LOCKED  
TOGETHER OUR TRUCK IS STUCK IN UPS TRAILER

2ND ACCIDENT IN 5 HRS!!!

Were police called?

☒ Y ☐ N

Post-Accident Drug Alcohol Testing?

☐ Y ☐ N

Truck Damage?

☒ Y ☐ N

Trailer Damage? UNKNOWN

☐ Y ☐ N

Cargo Damage? UNKNOWN

☐ Y ☐ N

8-D Necessary (Safety Coordinator will determine)

☐ Y ☐ N

**Driver is to complete Accident Reporting Kit in Truck!!**

**If accident happened on private property we can subrogate for damages to our equipment!!**

[Type text]

# **EXHIBIT 11**

1 STATE OF MICHIGAN  
2 IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE  
3  
4 SCOTT M. NEAL,  
5 Plaintiff,  
6 vs. Case No. 20-012305-NF  
7 Hon. Sheila Ann Gibson  
8 CHANDRA McDUFFIE, Personal Representative  
9 of the Estate of WILLIAM HOWARD  
10 McDUFFIE-CONNOR, Deceased; and  
11 FARM BUREAU MUTUAL INSURANCE  
12 COMPANY,  
13 Defendants.  
14 Consolidated with:  
15 CHANDRA McDUFFIE, Personal Representative  
16 of the Estate of WILLIAM HOWARD  
17 McDUFFIE-CONNOR, Deceased,  
18 Plaintiff,  
19 Hon. Sheila Ann Gibson  
20 vs.  
21 SCOTT M. NEAL; N.S.S. CONSTRUCTION,  
22 INC.; and MEMBERSELECT INSURANCE  
23 COMPANY,  
24 Defendants.  
25 \_\_\_\_\_



<p style="text-align: right;">Page 2</p> <p>1 The Deposition of TIMOTHY ABBO,  2 Taken at 1300 Broadway, Fifth Floor,  3 Detroit, Michigan,  4 Commencing at 9:58 a.m.,  5 Monday, September 13, 2021,  6 Before Susan L. Lowry, CSR-2636.  7 Job No. CS4740028  8 APPEARANCES:  9  10 DANIEL GUMTOW (Via Zoom Video)  11 Anselmi, Mierzejewski, Ruth &amp; Sowle  12 1750 South Telegraph Road, Suite 306  13 Bloomfield Hills, Michigan 48302-0179  14 (248) 338-2290  15 dgumtow@a-mlaw.com  16 Appearing on behalf of the Defendant Farm Bureau.  17  18 ALEXANDER R. BAUM (Via Zoom Video)  19 Kopka Pinkus Dolin, PC  20 32605 West 12 Mile Road, Suite 300  21 Farmington Hills, Michigan 48334  22 (248) 324-2620  23 arbaum@kopkalaw.com  24 Appearing on behalf of the Defendant McDuffie.  25</p>	<p style="text-align: right;">Page 4</p> <p>1 TABLE OF CONTENTS  2  3 WITNESS PAGE  4 TIMOTHY ABBO  5  6 EXAMINATION  7 BY MS. DIVINEY 7  8 EXAMINATION (continued)  9 BY MS. DIVINEY 79  10  11 EXHIBITS  12  13 EXHIBIT PAGE  14 (Exhibits 1-3 attached to transcript.  15 Exhibit 4 retained.)  16  17 DEPOSITION EXHIBIT 1 16  18 Incomplete Report  19 DEPOSITION EXHIBIT 2 17  20 Complete Report  21 DEPOSITION EXHIBIT 3 25  22 Police Report  23 DEPOSITION EXHIBIT 4 82  24 Video  25</p>
<p style="text-align: right;">Page 3</p> <p>1 JONATHAN R. MARKO  2 Marko Law, PLLC  3 1300 Broadway Avenue, Fifth Floor  4 Detroit, Michigan 48226  5 (313) 241-8924  6 JonathanMarko@markolaw.com  7 Appearing on behalf of the Plaintiff McDuffie.  8  9 SARAH B. GALE-BARBANTINI (via Zoom Video)  10 Kramer, Corbett, Harding &amp; Dombrowski  11 150 West Jefferson Avenue, Suite 1500  12 Detroit, Michigan 48226  13 (313) 237-5733  14 Sbgale-barbantini@acg.aaa.com  15 Appearing on behalf of the Defendant MemberSelect.  16  17 AMY LOUISE DIVINEY  18 Merry, Farnen &amp; Ryan, P.C.  19 300 Maple Park Boulevard, Suite 301  20 St. Clair Shores, Michigan 48081  21 (586) 776-6700  22 adiviney@mfr-law.com  23 Appearing on behalf of the Defendants Scott Neal and  24 N.S.S. Construction.  25</p>	<p style="text-align: right;">Page 5</p> <p>1 Detroit, Michigan  2 Monday, September13, 2021  3 9:58 a.m.  4  5 TIMOTHY ABBO,  6 was thereupon called as a witness herein, and after  7 having first been duly sworn to testify to the truth,  8 the whole truth and nothing but the truth, was  9 examined and testified as follows:  10 MS. DIVINEY: Let the record reflect that  11 this is the date and time set for the deposition of  12 Timothy Abbo in the matter in which it's proceeding in  13 Wayne County. The deposition is being taken pursuant  14 to notice and for all allowable purposes under the  15 law.  16 (Off the record at 10:01 a.m.)  17 (Back on the record at 10:01 a.m.)  18 MS. DIVINEY: Just so all the attorneys  19 know, we had sent a subpoena to the Champlain  20 Construction Company located in Vermont. As I was  21 leaving the office, their response to our subpoena had  22 arrived. I gave a copy of the response to Mr. Marko.  23 I'll e-mail everyone a copy of the response as soon as  24 I return to the office. But I just wanted to let  25 everyone know that we received that response.</p>

<p style="text-align: right;">Page 6</p> <p>1 MR. MARKO: And I have it. Thank you for 2 that, Counsel. I would just also note that Judge 3 Gibson issued an order sanctioning the defendants. We 4 still haven't received our fee for the sanctions. 5 And also pursuant to that order the 6 defendant is not allowed to present any mitigating 7 evidence to contest liability, so conceivably that 8 would include today's deposition. But in the spirit 9 of cooperation I'm going to allow the deposition, the 10 discovery-only deposition of Mr. Abbo to go forward, 11 but we're reserving our objection in that matter. And 12 certainly at trial the defendants' ability to 13 cross-examine Mr. Abbo will have to be done in 14 accordance with the court's sanction order. So with 15 those objections, continued objections, Counsel, you 16 can go ahead. 17 MS. DIVINEY: Just to keep the record 18 straight, the order that was entered with respect to 19 spoliation only applies to N.S.S. Construction, it 20 doesn't apply to the driver Scott Neal. 21 With respect to any payment that was 22 requested by the court as part of those sanctions to 23 plaintiff's counsel, there's still time remaining when 24 that payment must be made and there's also a motion 25 for reconsideration that has been filed with the court</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. And do you have any type of engineering training? 2 A. Well, the whole purpose of accident reconstruction has 3 engineering principles behind it, but I have not taken 4 any formal engineering classes if that's what you're 5 asking. 6 Q. Yeah, that's what I'm going to ask. 7 I do have your CV that was provided by 8 plaintiff's counsel with their answers to 9 interrogatories. I'm going to hand you a copy, I'm 10 not going to mark it as an exhibit, but if you could 11 review and let me know if anything needs to be changed 12 or updated on that CV. 13 A. No, this is my most current CV. 14 Q. No changes are needed, nothing needs to be updated? 15 A. Not as of today. 16 Q. So as of today are you still with the Bloomfield 17 Township Police Department? 18 A. Yes, ma'am. 19 Q. But you're not giving testimony today in your capacity 20 as an employee of the Bloomfield Township Police 21 Department, correct? 22 A. That is correct. 23 Q. You're giving your testimony today as part of your 24 business called Caliber Consulting, LLC? 25 A. Yes, ma'am.</p>
<p style="text-align: right;">Page 7</p> <p>1 that is still pending. 2 EXAMINATION 3 BY MS. DIVINEY: 4 Q. So, Mr. Abbo, with all of that stated let's begin your 5 deposition. 6 So I understand that you've been retained 7 by plaintiff's counsel in this matter as an expert, 8 correct? 9 A. Yes, ma'am. 10 Q. And what is your capacity? What's your expertise in 11 this matter? 12 A. As an expert reconstructionist. 13 Q. Accident reconstructionist. So you're not a medical 14 expert at all, right? 15 A. No, ma'am. 16 Q. And you're not any type of psychiatrist or anything 17 like that, correct? 18 A. No, ma'am. 19 Q. And you're not a human factors expert, correct? 20 A. I'm not a human factors expert, but I am trained in 21 using human factors in the area of accident 22 reconstruction. 23 Q. Okay. And then you're also not a biomedical engineer 24 of any sort, correct? 25 A. That is correct.</p>	<p style="text-align: right;">Page 9</p> <p>1 Q. Is that just your sole business? 2 A. It is. 3 Q. Are there any other members? 4 A. No. 5 Q. So you're the sole member of Caliber Consulting, LLC? 6 A. Yes, ma'am. 7 Q. Do you have any employees as part of -- does Caliber 8 Consulting have any employees? 9 A. No, ma'am. 10 Q. And it looks like from your resume you started with 11 the Bloomfield Township Police Department in 1997, 12 would that be correct? 13 A. Yes, ma'am. 14 Q. And you're still there presently? 15 A. That is correct. 16 Q. It looks like here that you received your bachelor of 17 science in criminal justice from Eastern Michigan 18 University in 1993? 19 A. Yes, ma'am. 20 Q. What was your overall GPA? 21 A. God, I don't remember. I'm sorry. 22 Q. You don't remember what your GPA was? 23 A. No, ma'am. 24 Q. Did you graduate with honors? 25 A. No, I didn't.</p>

<p style="text-align: right;">Page 10</p> <p>1 Q. And then it looks like in 1994 you went to the police 2 academy in New Hampshire. Is there a reason why you 3 went to the police academy in New Hampshire and not 4 here in the state of Michigan?</p> <p>5 A. Because I actually lived in Vermont at the time and 6 got my first employment in the state of New Hampshire.</p> <p>7 Q. I'm going to try to do this as quick as I can. With 8 respect to this advanced training, 2020 Crash Safety 9 Solutions, Interactive Driver Response Research, what 10 response was that training for?</p> <p>11 A. That's a human factors class and the class was put on 12 to learn how to use the program. It was created by 13 Dr. Jeffrey Muttart who's a human factors expert.</p> <p>14 Q. And do you have that program? Is that program part of 15 Caliber Consulting?</p> <p>16 A. It's a program that I utilize, yes.</p> <p>17 Q. And how long was that class?</p> <p>18 A. That was a four-week.</p> <p>19 Q. And did you have to use that program with respect to 20 the accident we're going to talk about today?</p> <p>21 A. No, ma'am.</p> <p>22 Q. In here it says 2019 you were at Schoolcraft College 23 for a Federal Aviation Administration Part 107 exam 24 prep for the Remote Pilot. That's just to get your 25 pilot's license?</p>	<p style="text-align: right;">Page 12</p> <p>1 A. Learning how to download and interpret the black box 2 data in heavy trucks.</p> <p>3 Q. And how long was that course?</p> <p>4 A. One week as well.</p> <p>5 Q. And the same thing, five days, eight hours a day?</p> <p>6 A. Yes. Is it easier to refer to it in hours?</p> <p>7 Q. However is best for you. Can you look on page 4 of 8 your resume? I see that you have a copy in front of 9 you.</p> <p>10 A. Yes, ma'am.</p> <p>11 Q. In 2001 you took the AI-1 Accident Investigation 12 Initial Investigation. How long is that course?</p> <p>13 A. The initial investigation course is 40 hours long.</p> <p>14 Q. So for one week, as you said before, five days a week?</p> <p>15 A. Yes, ma'am.</p> <p>16 Q. What are the objectives of the AI-1 accident 17 investigation course?</p> <p>18 A. The very basics of accident investigation, how to look 19 at the overall scene, what are you looking at, 20 identifying skid marks, yaw marks, different types of 21 roadway evidence.</p> <p>22 Q. Does it also involve drawing, making a schematic of a 23 drawing of the accident scene or taking photos of the 24 accident scene?</p> <p>25 A. I don't believe that was in AI-1, no. I think that</p>
<p style="text-align: right;">Page 11</p> <p>1 A. Yes, for drone operations.</p> <p>2 Q. Did you use any drones with respect to the accident 3 that we're going to talk about today?</p> <p>4 A. No, ma'am.</p> <p>5 Q. With respect to the 2019 Michigan State Police 6 Training Academy, Advanced Crash Reconstruction with 7 Crash Data Retrieval Applications, how long was that 8 course?</p> <p>9 A. That was a one-week course as well.</p> <p>10 Q. When you say a one-week course, does that mean five 11 days a week, eight hours a day?</p> <p>12 A. That would be correct.</p> <p>13 Q. What were the objectives for the Advanced Crash 14 Reconstruction with Crash Data Retrieval Applications?</p> <p>15 A. Using EDR reports or event data recorders and using 16 the information in crash reconstructions, basically to 17 send around if you have an EDR report from one vehicle 18 you can then get the information from the second 19 vehicle if it does not have an EDR report.</p> <p>20 Q. And in 2019 the University of Tulsa, but it looks like 21 the class location was actually here in Farmington 22 Hills as opposed to Tulsa?</p> <p>23 A. That's correct. The instructors came out here.</p> <p>24 Q. Okay. Digital Forensics of Heavy Vehicle Event Data 25 Recorders, what was the objective in that class?</p>	<p style="text-align: right;">Page 13</p> <p>1 might have been more in AI-2.</p> <p>2 Q. And then for all of these, AI-1, AI-2, all the way up 3 through, it looks like you have 6, 7, 8, 9, I don't 4 see 10, but I see 11 and then I see 14, are those all 5 40 hours a week training classes if you can recall?</p> <p>6 A. Generally for the most part, yes.</p> <p>7 Q. Okay. With respect to your work as a police officer 8 with the Bloomfield Township police office, tell me 9 about that. It looks like you started off as a patrol 10 officer and then it looks like you moved up to traffic 11 investigation. As of today, do you still do traffic 12 investigation?</p> <p>13 A. No. I currently hold the rank of lieutenant. I'm a 14 platoon commander, meaning I'm in charge of a platoon. 15 And although I am not assigned to traffic 16 investigations I still assist the traffic unit. I do 17 their downloads for their crashes because I have the 18 download equipment and I interpret their data. And 19 then if there's a complex case that their younger 20 officers need help with, then I assist at that point.</p> <p>21 Q. When you say you do the downloads for the crashes 22 because you have the equipment, is that because 23 Caliber Consulting has the equipment?</p> <p>24 A. Yes.</p> <p>25 Q. Do you do downloads for crashes for other communities?</p>

<p style="text-align: right;">Page 14</p> <p>1 A. No.</p> <p>2 Q. Does the Bloomfield Township Police Department pay</p> <p>3 Caliber Consulting for those downloads?</p> <p>4 A. They do not. The agreement was if they sent me to the</p> <p>5 training I would download all of their vehicles at no</p> <p>6 charge.</p> <p>7 Q. When is the last time, in your capacity as police</p> <p>8 officer, that you investigated a traffic accident?</p> <p>9 A. Well, it depends on what capacity. I make the scene</p> <p>10 of just about every accident that takes place on my</p> <p>11 shift. As far as having my name on a report, last</p> <p>12 year, where I would have done a download and a</p> <p>13 supplemental report.</p> <p>14 Q. And how many fatalities have you investigated in your</p> <p>15 capacity as a Bloomfield Township police officer?</p> <p>16 A. My name is listed as the officer in charge in 21 cases</p> <p>17 with the department.</p> <p>18 Q. Are those 21 cases all fatalities?</p> <p>19 A. Not necessarily, no.</p> <p>20 Q. Do you know how many fatalities?</p> <p>21 A. No, I don't know the exact number of fatalities.</p> <p>22 Q. And the 21 cases, that's the time that you've been --</p> <p>23 since you've been with the Bloomfield Township Police</p> <p>24 Department since 1993?</p> <p>25 A. Those 21 times were when I was within the unit and I</p>	<p style="text-align: right;">Page 16</p> <p>1 to hand it to you for review. We'll mark this as</p> <p>2 Exhibit 1. Is there anything that's different in this</p> <p>3 report as opposed to the report that's before you?</p> <p>4 A. Yes.</p> <p>5 MR. MARKO: Let the record reflect this</p> <p>6 says incomplete report. I believe this is not the</p> <p>7 report that was given. I don't know where you got</p> <p>8 that, but --</p> <p>9 MS. DIVINEY: That was provided with your</p> <p>10 discovery responses.</p> <p>11 MR. MARKO: Okay. Then that was probably</p> <p>12 done in error as the complete report is --</p> <p>13 THE WITNESS: Dated August 2nd.</p> <p>14 MR. MARKO: Yeah, dated August 2nd.</p> <p>15 MS. DIVINEY: I don't have a copy of the</p> <p>16 complete report then.</p> <p>17 MR. MARKO: Here you go.</p> <p>18 MS. DIVINEY: So we're going to mark the</p> <p>19 incomplete report as Exhibit 1 and then we'll mark the</p> <p>20 complete report, which is dated August 2nd, 2021, as</p> <p>21 Exhibit 2.</p> <p>22 MARKED FOR IDENTIFICATION:</p> <p>23 DEPOSITION EXHIBIT 1</p> <p>24 10:17 a.m.</p> <p>25 MARKED FOR IDENTIFICATION:</p>
<p style="text-align: right;">Page 15</p> <p>1 was listed as the officer in charge. Now, I need to</p> <p>2 put that in context. When the unit investigates, you</p> <p>3 have one officer who's in charge and the rest of the</p> <p>4 unit does other duties and tasks. So those are 21</p> <p>5 times that I was listed as the officer in charge,</p> <p>6 although I may have helped out on dozens more.</p> <p>7 Q. Can you recall the number of fatalities that you've</p> <p>8 been involved in as a Bloomfield Township Police</p> <p>9 Department? Fatalities with respect to a traffic</p> <p>10 accident.</p> <p>11 A. I would have to say a majority of those 21 cases were</p> <p>12 fatalities.</p> <p>13 Q. And it looks like you brought some information before</p> <p>14 you. Can you tell me what you brought with you today?</p> <p>15 A. I brought a copy of my CV, a copy of the report and</p> <p>16 then I put all my file materials on a disc for you.</p> <p>17 This is your copy.</p> <p>18 Q. Okay. Thank you. Anything else?</p> <p>19 A. No, that's it.</p> <p>20 Q. When were you retained as an expert in this matter?</p> <p>21 A. May 7th, 2020.</p> <p>22 Q. And you said you have a copy of your report with you?</p> <p>23 A. Yes, ma'am.</p> <p>24 Q. I was provided a copy of the report as well, which</p> <p>25 we're going to mark as an exhibit here, but I'm going</p>	<p style="text-align: right;">Page 17</p> <p>1 DEPOSITION EXHIBIT 2</p> <p>2 10:17 a.m.</p> <p>3 BY MS. DIVINEY:</p> <p>4 Q. I'm just comparing the two reports. It looks here</p> <p>5 that the following materials that you reviewed</p> <p>6 includes the Vinlink data for the 2000 Chrysler, the</p> <p>7 Sebring. Tell me what Vinlink data is, please.</p> <p>8 A. Vinlink is a website you can go to where you insert</p> <p>9 the vehicle identification number and it breaks down</p> <p>10 the specifics of the vehicle for you.</p> <p>11 Q. What do you mean by it breaks down the specifics of</p> <p>12 the vehicle?</p> <p>13 A. Like what motor it has, its weight rating, model,</p> <p>14 two-wheel drive, four-wheel drive, all-wheel drive.</p> <p>15 Things of that nature.</p> <p>16 Q. Does it also tell you anything, like if there's any</p> <p>17 recalls on this specific vehicle, anything like that?</p> <p>18 A. No. No, that part doesn't, no.</p> <p>19 Q. Does it give you any information as to whether -- as</p> <p>20 to repairs to the vehicle, maintenance to the vehicle?</p> <p>21 A. No.</p> <p>22 Q. This Vinlink data, is that basically the data from the</p> <p>23 manufacturer?</p> <p>24 A. That's correct.</p> <p>25 Q. Does this Vinlink data also let you know if there's</p>

<p style="text-align: right;">Page 18</p> <p>1 any EDR, if there would be any EDR or --</p> <p>2 A. No, Vinlink would not tell you that.</p> <p>3 Q. Did you ever inspect the 2000 Chrysler Sebring at</p> <p>4 issue in this case?</p> <p>5 A. No, ma'am.</p> <p>6 Q. Did you ever try to locate the 2000 Chrysler Sebring?</p> <p>7 A. No, I believe I was told it was totaled.</p> <p>8 Q. Even though it's totaled, don't you think that it</p> <p>9 would have been important to inspect the vehicle?</p> <p>10 A. It would have been nice. I would have loved the</p> <p>11 opportunity to inspect it.</p> <p>12 Q. So why didn't you try to locate it?</p> <p>13 A. That's not my job to locate vehicles.</p> <p>14 Q. Whose job is it to locate vehicles if you're retained</p> <p>15 as the accident reconstructionist to investigate the</p> <p>16 vehicles that are involved in a collision?</p> <p>17 A. I rely on the firm, the law firm that hires me to</p> <p>18 locate the vehicle and set up inspection dates in</p> <p>19 accordance with defense counsel.</p> <p>20 Q. And when you asked the law firm to, about the location</p> <p>21 of the vehicle, what were you told?</p> <p>22 A. I believe I was told it was totaled, it wasn't</p> <p>23 available for inspection.</p> <p>24 Q. Just because a vehicle is totaled doesn't mean that</p> <p>25 it's not available for inspection, true?</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. The Vinlink data for the 1997 Ford LT9000 dump truck,</p> <p>2 that would also just give you the breakdown of the</p> <p>3 specifics of the dump truck, correct?</p> <p>4 A. Yes, ma'am.</p> <p>5 Q. And that would be the information, the data from the</p> <p>6 manufacturer of the dump truck, correct?</p> <p>7 A. That is correct.</p> <p>8 Q. You also have on here that you reviewed vehicle</p> <p>9 specific specifications for the 2000 Chrysler Sebring.</p> <p>10 What do you mean by that?</p> <p>11 A. When you do a vehicle specifications report it gives</p> <p>12 you things like the length, the width, curb weight,</p> <p>13 certain measurements within the vehicle, like from</p> <p>14 front bumper to windshield, height, things like that.</p> <p>15 Q. And why is that important in your investigation?</p> <p>16 A. It's nice to have all that information at my disposal</p> <p>17 during the investigation.</p> <p>18 Q. I understand that it's nice to have at your disposal,</p> <p>19 but the question is why.</p> <p>20 A. In case I need to match up damage with other vehicles.</p> <p>21 It's nice to know the curb weight for speed</p> <p>22 calculations.</p> <p>23 Q. Did you do any speed calculations in this as part of</p> <p>24 your investigation?</p> <p>25 A. Yes, ma'am, I did.</p>
<p style="text-align: right;">Page 19</p> <p>1 MR. MARKO: Well, speculation. Foundation.</p> <p>2 A. Not necessarily, no.</p> <p>3 BY MS. DIVINEY:</p> <p>4 Q. And why is that?</p> <p>5 A. Well, because the vehicle may be held at a place like</p> <p>6 Copart pending some lawsuit, but usually if they're</p> <p>7 totaled out they're usually junked out and crushed.</p> <p>8 Q. And how soon after an accident are they totaled out</p> <p>9 and crushed?</p> <p>10 A. I don't know. It depends.</p> <p>11 Q. And what is Copart?</p> <p>12 A. I'm sorry. Copart is a place where damaged vehicles</p> <p>13 go after the insurance company pays off the owner and</p> <p>14 then they're held there until they're either auctioned</p> <p>15 off, scrapped out or resold.</p> <p>16 Q. Where is Copart located, if you know?</p> <p>17 A. All over the country.</p> <p>18 Q. Do you know if the insurance company paid off</p> <p>19 Mr. McDuffie's vehicle?</p> <p>20 A. No, ma'am.</p> <p>21 Q. You do not know that?</p> <p>22 A. I don't know that.</p> <p>23 Q. So you don't know if Chrysler's vehicle went to Copart</p> <p>24 or not, true?</p> <p>25 A. That's correct, I don't know.</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. And are those contained in this report dated August</p> <p>2 2nd, 2021?</p> <p>3 A. No, they're not contained within the report.</p> <p>4 Q. And why is that?</p> <p>5 A. Because speed is not a factor in this matter.</p> <p>6 Q. You don't believe speed was a factor in this matter?</p> <p>7 A. No, ma'am, I do not.</p> <p>8 Q. But you did speed calculations?</p> <p>9 A. I did.</p> <p>10 Q. Tell me about those speed calculations. What</p> <p>11 specifically did you do?</p> <p>12 A. I looked at the videotape of speed calculations.</p> <p>13 Actually, no, I take that back. Part of the videotape</p> <p>14 was part of the investigation, but I got them from the</p> <p>15 police measurements from where -- for the Chrysler,</p> <p>16 the distances I used was from the first impact with</p> <p>17 the curb, they call it the scuff, to where the</p> <p>18 vehicle's final rest was. I used that distance to</p> <p>19 calculate the post-impact speed for the Chrysler.</p> <p>20 And for the dump truck it was from the</p> <p>21 first impact point to its controlled stop and that's a</p> <p>22 distance I used to come up with the speed for the</p> <p>23 truck, or range of speeds I should say.</p> <p>24 Q. Okay. So let me make sure I understand you correctly</p> <p>25 because, you know, you're the expert here and I don't</p>



<p style="text-align: right;">Page 22</p> <p>1 want to misunderstand what you're trying to tell me</p> <p>2 here.</p> <p>3 So you took the first impact, so you said</p> <p>4 with the curb. So did the Chrysler, it impacted -- it</p> <p>5 hit the curb first?</p> <p>6 A. Yes. The police department noted a scuff mark on the</p> <p>7 curb, which probably would have been where the car</p> <p>8 would have been laterally pushed into the curb before</p> <p>9 it started rolling over.</p> <p>10 Q. So did the Sebring first impact the curb or first</p> <p>11 impact something else?</p> <p>12 A. I'm just telling you what the police department noted</p> <p>13 in their notes. And it shows the first mark in the</p> <p>14 roadway was a scuff along the curb.</p> <p>15 Q. So with your expertise, and I'm asking for what you</p> <p>16 know or what you understand here, did the Sebring hit</p> <p>17 the curb first?</p> <p>18 A. I can't answer that question.</p> <p>19 Q. Okay. And why can't you answer that question?</p> <p>20 A. Because I don't know if it hit the curb first.</p> <p>21 Q. And the video doesn't indicate to you whether or not</p> <p>22 it hit the curb first, true?</p> <p>23 A. That's true.</p> <p>24 Q. Okay. But nonetheless you still used the first impact</p> <p>25 with the curb to determine the velocity of the</p>	<p style="text-align: right;">Page 24</p> <p>1 only.</p> <p>2 Q. Did you ever go to the accident scene yourself?</p> <p>3 A. Yes, ma'am.</p> <p>4 Q. How many times did you go to the accident scene?</p> <p>5 A. Once.</p> <p>6 Q. When did you go?</p> <p>7 A. I went on May 30th, 2021.</p> <p>8 Q. Let me make sure I have my dates right. Were you</p> <p>9 retained May 7th, 2020, or May 7th, 2021?</p> <p>10 A. May 7th, 2020.</p> <p>11 Q. 2020?</p> <p>12 A. Yes.</p> <p>13 Q. And you went to the accident scene a year later?</p> <p>14 A. Yes.</p> <p>15 Q. Did you take any photos or video while you were at the</p> <p>16 accident scene on May 30th, 2021?</p> <p>17 A. Yes, I did.</p> <p>18 Q. And are those part of your file?</p> <p>19 A. Yes, ma'am, they are.</p> <p>20 Q. Is it just photos or photos and video?</p> <p>21 A. Photos and video.</p> <p>22 Q. Did you do any measurements when you went to the</p> <p>23 accident scene on May 30th, 2021?</p> <p>24 A. Yes, I measured the lane widths.</p> <p>25 Q. Your measurement of the lane widths, are they</p>
<p style="text-align: right;">Page 23</p> <p>1 Sebring?</p> <p>2 A. I did.</p> <p>3 Q. Okay. And why is that?</p> <p>4 A. Because that's the first mark in the roadway in</p> <p>5 regards to the collision that the police noted.</p> <p>6 Q. Okay. And then you used that and you took</p> <p>7 measurements. How did you take the measurements?</p> <p>8 A. I didn't take the measurements. I just told you that</p> <p>9 I took all the measurements from the police</p> <p>10 department. I used their measurements.</p> <p>11 Q. So you relied on the police department's report? The</p> <p>12 measurements in the police department's report.</p> <p>13 A. Yes.</p> <p>14 Q. Let me phrase it better. I apologize. That was a bad</p> <p>15 phrased question. I do apologize.</p> <p>16 Do you have any reason to dispute those</p> <p>17 measurements?</p> <p>18 A. No, not necessarily dispute them. I don't think they</p> <p>19 were done properly, but I have no reason to dispute</p> <p>20 the measurements themselves.</p> <p>21 Q. Why don't you think that they were done properly?</p> <p>22 A. Because generally when you do baseline measurements</p> <p>23 you do one measurement that goes from north to south</p> <p>24 and another measurement that goes from east to west.</p> <p>25 The police department did a north to south measurement</p>	<p style="text-align: right;">Page 25</p> <p>1 consistent with those in the Detroit Police</p> <p>2 Department's report?</p> <p>3 A. Fairly, yes. The Detroit Police Department just</p> <p>4 measured the whole roadway, they didn't break it down</p> <p>5 lane by lane. That's why I had to go back out there</p> <p>6 and break it down lane by lane.</p> <p>7 Q. When you say break it down lane by lane, do you mean</p> <p>8 all the lanes across the Meyers Avenue -- I mean</p> <p>9 Meyers Road where the accident took place?</p> <p>10 A. Yes, ma'am.</p> <p>11 MARKED FOR IDENTIFICATION:</p> <p>12 DEPOSITION EXHIBIT 3</p> <p>13 10:28 a.m.</p> <p>14 BY MS. DIVINEY:</p> <p>15 Q. I'm going to mark as Exhibit 3, this is the police</p> <p>16 report that was provided. Is it okay if I turn yours</p> <p>17 to this?</p> <p>18 A. Sure.</p> <p>19 Q. It's like about halfway through.</p> <p>20 A. I got it.</p> <p>21 Q. We're turning to the field drawing.</p> <p>22 A. Yes.</p> <p>23 Q. So when you say the police department didn't measure</p> <p>24 all of the roadways, it looks like they had the</p> <p>25 parking lane measured at six foot ten inches.</p>

<p style="text-align: right;">Page 26</p> <p>1 A. That's correct.</p> <p>2 Q. Is that what you measured as well?</p> <p>3 A. Yes, ma'am.</p> <p>4 Q. And then it looks like they have the travel lane on</p> <p>5 the side where the accident occurred as 11 feet one</p> <p>6 inch?</p> <p>7 A. Yes, ma'am.</p> <p>8 Q. Was that consistent with your measurement?</p> <p>9 A. It was.</p> <p>10 Q. And then when you say they didn't measure all the</p> <p>11 other roads, are you talking about the middle turn</p> <p>12 lane and then the other side of Meyers?</p> <p>13 A. The southbound side, yes.</p> <p>14 Q. The southbound side. Thank you. So did you also</p> <p>15 measure those lanes in yours?</p> <p>16 A. Yes, ma'am.</p> <p>17 Q. Is there a field drawing that I'll be able to see as</p> <p>18 part of -- on the discs that you provided me today?</p> <p>19 A. No, ma'am, it's all listed in the report and the</p> <p>20 scenario.</p> <p>21 Q. It's all listed in the report. Okay. In your updated</p> <p>22 report, though.</p> <p>23 A. Both reports have locations.</p> <p>24 Q. Okay. And when you said that they only made</p> <p>25 measurements going north to south, I'm confused by</p>	<p style="text-align: right;">Page 28</p> <p>1 A. Sure. Can I go back to the sketch?</p> <p>2 Q. Sure.</p> <p>3 A. So if you noticed here, the RPs are on the corners of</p> <p>4 the intersection, RP-1 and RP-2, they're measuring</p> <p>5 just north and south, but we know the vehicle here</p> <p>6 would have been -- oh, what's that considered?</p> <p>7 Q. Can I ask you real quick just so we can have the</p> <p>8 record clear? RP-1, RP-2, does that mean like resting</p> <p>9 position or what is RP?</p> <p>10 A. Reference point.</p> <p>11 Q. Reference point. Thank you.</p> <p>12 A. So that's the reference point. So we know that the</p> <p>13 vehicle, the Sebring in this case, was east of the</p> <p>14 roadway. So what I expected to see would be that --</p> <p>15 let's use .7 here. Okay. That .7 would be so many</p> <p>16 feet north and then so many feet east. That's how you</p> <p>17 properly do a baseline measurement.</p> <p>18 Q. Okay.</p> <p>19 A. They just took a measurement north and south. Now,</p> <p>20 whether they're -- I don't know if they're trying to</p> <p>21 triangulate and the two measurements they gave were to</p> <p>22 each pole and they know the distance of the pole, no</p> <p>23 one has been deposed that can tell me that, but I do</p> <p>24 know they weren't doing baseline measurements. So</p> <p>25 that's the one question I had. Because if they did do</p>
<p style="text-align: right;">Page 27</p> <p>1 what you mean by that, what you meant by that.</p> <p>2 A. Sure. If you see here, these are their measurements</p> <p>3 regarding where the vehicles were. They measured, if</p> <p>4 you look at their log, which will be the next two</p> <p>5 pages --</p> <p>6 Q. Yeah, where they have the measurements and it says</p> <p>7 scuff, scuff, scuff, gouge, gouge?</p> <p>8 A. Yes. So measurements from RP to, you'll notice that</p> <p>9 in the first line, and then you'll notice that all</p> <p>10 those measurements were just south of. And if you go</p> <p>11 to the next page -- I don't want to flip the page --</p> <p>12 then you'll notice that they're just all north of.</p> <p>13 Q. Okay. So you went back out there to do the eastbound</p> <p>14 and the westbound.</p> <p>15 A. No, I couldn't do that because that's measuring</p> <p>16 temporary evidence that was no longer there when I</p> <p>17 went there.</p> <p>18 Q. Okay. So when you went out there in 2021 you couldn't</p> <p>19 see any scuff marks anymore or any type of gouges;</p> <p>20 would that be fair to say?</p> <p>21 A. I didn't make any note of any scuff marks or gouges,</p> <p>22 no.</p> <p>23 Q. And why would it have been important to your accident</p> <p>24 investigation to have the measurements for the east</p> <p>25 and the west?</p>	<p style="text-align: right;">Page 29</p> <p>1 triangulation with the, let's say the base of the</p> <p>2 triangles between the two poles and then the two legs</p> <p>3 go to each point, they never listed the distance</p> <p>4 between the two poles. So you can't complete the</p> <p>5 triangle, if that's what they were trying to do.</p> <p>6 Once again, nobody has testified that</p> <p>7 that's what they were doing when they took the</p> <p>8 measurements. So that confused me a little bit, but</p> <p>9 it gave me a rough estimate of where the vehicle may</p> <p>10 have been located to do the speed estimates.</p> <p>11 Q. Did you talk to anyone at the Detroit Police</p> <p>12 Department?</p> <p>13 A. No, ma'am.</p> <p>14 Q. Besides that one criticism with respect to the east</p> <p>15 and west measurement, any other criticisms with</p> <p>16 respect to the Detroit Police Department's</p> <p>17 investigation of this accident scene?</p> <p>18 A. Not that I can think of at this time.</p> <p>19 Q. Okay. And then you said you did do some calculations</p> <p>20 with respect to speed?</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. Is there a difference in your head between speed and</p> <p>23 velocity?</p> <p>24 A. Yes, velocity is feet per second and speed is in miles</p> <p>25 per hour.</p>

<p style="text-align: right;">Page 30</p> <p>1 Q. Okay. So speed to you is miles per hour, velocity is 2 feet per second just to make sure I wrote it down 3 right? 4 A. Yes, ma'am. 5 Q. So what did you determine was the -- and feel free to 6 correct me or to answer the best way you can -- what 7 was the velocity to give the Sebring right before the 8 accident, if you did that calculation? 9 A. I did a speed calculation. 10 Q. Yes. 11 A. So for the Sebring, after the impact with the truck to 12 final rest I calculated it to be between 17 and 13 25 miles per hour. 14 Q. Okay. So right before the impact, though, we don't 15 know how fast the Sebring was going, true? 16 A. That is true. 17 Q. Okay. But after it hit -- and are you going by the 18 first, where it contacted the curb, between the time 19 it contacted the curb and the time it rested? 20 A. The distance, not the time. But, yes, the distance 21 from the first notable scuff mark by the police 22 department to the final rest of the vehicle, that is 23 correct. 24 Q. So between that scuff mark and the final rest of the 25 vehicle, you estimate the speed of the Sebring between</p>	<p style="text-align: right;">Page 32</p> <p>1 Once again, these are estimates, I'm not going to say 2 they're absolutes, but those are the points I used. 3 Q. But you just testified earlier that you didn't know if 4 the Sebring hit the curb first or the dump truck first 5 because you didn't see that on the video. 6 A. You're right, I couldn't see that on the video. Those 7 are -- 8 MR. MARKO: Let him finish. 9 A. Those are an assumption on my part. 10 BY MS. DIVINEY: 11 Q. Okay. When you say you looked at aerial photographs 12 of the crash location, are those your aerial 13 photographs or someone else's? 14 A. No, Google Maps. 15 Q. Google Maps. Okay. 16 And the Michigan Motor Vehicle Code, you 17 looked at that, you know, just as part of your police 18 officer background? 19 A. Yes, ma'am. 20 Q. Any other reason why you looked at the Michigan 21 Vehicle Code? 22 A. When I'm determining liability, I always reference the 23 vehicle code. 24 Q. And when you say dash cam video taken by Caliber 25 Consulting, did you -- go ahead.</p>
<p style="text-align: right;">Page 31</p> <p>1 17 and 25? 2 A. Yes, ma'am. 3 Q. Okay. And then with respect to the dump truck -- 4 A. The way the dump truck, I calculated the dump truck 5 was by the measurements where the truck, once again, 6 from the first impact to how long the distance was for 7 the truck to come to what we call a controlled stop, 8 meaning that the driver applied the brakes and brought 9 his vehicle to a stop. That range I had between 15 10 and 21 miles an hour. 11 Q. Now, correct me if I'm wrong, but on the video does 12 the dump truck stop, if you can remember, and we can 13 pull up the video, does the dump truck stop after the 14 driveway or in the middle of the driveway? 15 A. After. 16 Q. After the driveway. So explain for me one more time, 17 you calculated from the time of the first impact till 18 when it stopped? 19 A. The first piece of evidence, the scuff would occur, to 20 where the truck came to a stop. 21 Q. But the truck didn't scuff the curb, correct? 22 A. Correct. But we know that the truck's right front 23 tire was what made contact with the Sebring and, 24 therefore, theoretically would have pushed the Sebring 25 into the curb. So I'm using that as the first point.</p>	<p style="text-align: right;">Page 33</p> <p>1 A. Yes, that's dash cam video I took of driving down 2 northbound on Meyers, the same positions as the 3 vehicles which will also be included in your disc 4 there. 5 MS. DIVINEY: I'm going to reserve the 6 right to continue this dep after I get the chance to 7 review the material. 8 MR. MARKO: I object to that. 9 MS. DIVINEY: I understand. 10 MR. MARKO: Excuse me. Can I finish 11 speaking? 12 MS. DIVINEY: Yes, I'm sorry. Go ahead. 13 MR. MARKO: Is it okay? 14 MS. DIVINEY: Yes. 15 MR. MARKO: So you never asked for any of 16 these documents previously and we certainly don't 17 agree to produce Mr. Abbo again and I won't be doing 18 that in the absence of a court order. 19 MS. DIVINEY: Well, I believe that there 20 was a discovery request with respect to the witness. 21 MR. MARKO: There wasn't. 22 MS. DIVINEY: And the expert material. 23 BY MS. DIVINEY: 24 Q. So when you said you did this dash cam video driving 25 down Meyers, you did one with respect to the dump</p>

<p style="text-align: right;">Page 34</p> <p>1 truck?</p> <p>2 A. No, it wasn't meant to be in any particular vehicle,</p> <p>3 just to show an attorney, a jury, anybody who's going</p> <p>4 to look at it, the view going northbound on Meyers,</p> <p>5 probably I think it was a half block down and then</p> <p>6 traversing first northbound and then turn around and</p> <p>7 coming back southbound.</p> <p>8 Q. When you did this dash cam video, did you drive in the</p> <p>9 designated travel lane?</p> <p>10 A. Yes, ma'am.</p> <p>11 Q. Did you drive in the parking lane?</p> <p>12 A. I did not.</p> <p>13 Q. Why did you not drive in the parking lane when you did</p> <p>14 the dash cam video?</p> <p>15 A. The purpose is just to give information to the viewer</p> <p>16 of what the street is made of. It wasn't meant to</p> <p>17 mimic any particular vehicle.</p> <p>18 Q. Is it legal to drive in the parking lane?</p> <p>19 A. A paved lane, yes, if it's unoccupied.</p> <p>20 Q. So if there's markings and it shows that it's supposed</p> <p>21 to be meant for parking, then I can still drive in the</p> <p>22 parking lane?</p> <p>23 A. You can use that lane to overtake, yes.</p> <p>24 Q. But can I use it to travel in?</p> <p>25 A. I don't believe you can use it for traveling, you can</p>	<p style="text-align: right;">Page 36</p> <p>1 of traffic.</p> <p>2 So here is it -- was the width of the</p> <p>3 parking lane sufficient for two or more lines of</p> <p>4 moving vehicles?</p> <p>5 A. Yes.</p> <p>6 Q. And what do you base that on?</p> <p>7 A. The fact that the Sebring was passing the truck just</p> <p>8 fine until he turned right.</p> <p>9 Q. So would that have been a sufficient width for a large</p> <p>10 motor vehicle to be in the parking lane?</p> <p>11 A. Define a large motor vehicle, please.</p> <p>12 Q. The dump truck.</p> <p>13 A. Two dump trucks side by side?</p> <p>14 Q. No, a dump truck.</p> <p>15 A. I don't understand your question.</p> <p>16 Q. So the width of the parking lane is how wide?</p> <p>17 A. Six feet ten inches.</p> <p>18 Q. Okay. Is that a sufficient width for a large</p> <p>19 commercial vehicle such as a dump truck to overtake</p> <p>20 and pass a vehicle on the right?</p> <p>21 A. That's what I'm trying to ask you. So you're giving</p> <p>22 me a scenario.</p> <p>23 Q. Okay, a hypothetical scenario, yes.</p> <p>24 A. Where you have one commercial vehicle in the travel</p> <p>25 lane?</p>
<p style="text-align: right;">Page 35</p> <p>1 only use it to overtake.</p> <p>2 Q. So you can use it only to overtake?</p> <p>3 A. When you're passing on the right, per 257.637.</p> <p>4 Q. What was that statute again?</p> <p>5 A. 257.637.</p> <p>6 Q. And what page on your report did you look at that?</p> <p>7 A. Page 12.</p> <p>8 Q. Page 12. So you're looking at the very last statute,</p> <p>9 MCL 257.637?</p> <p>10 A. Yes, ma'am.</p> <p>11 Q. And are you going to section B that you underlined in</p> <p>12 your report there?</p> <p>13 A. Yes, ma'am.</p> <p>14 Q. Okay. So I'm going to read it into the record. The</p> <p>15 statute is MCL 257.637, overtaking and passing on</p> <p>16 right of another vehicle or bicycle; conditions;</p> <p>17 violation as civil infraction. Subsection 1. The</p> <p>18 driver of the vehicle may overtake and pass upon the</p> <p>19 right of another vehicle only if one or more of the</p> <p>20 following conditions exist. You've underlined</p> <p>21 subsection (b), which reads upon a street or highway</p> <p>22 with unobstructed pavement not occupied by parked</p> <p>23 vehicles of sufficient width for two or more lines of</p> <p>24 moving vehicles in each direction and when the</p> <p>25 vehicles are moving in substantially continuous lanes</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. One commercial vehicle in the parking lane and just</p> <p>2 say a regular motor vehicle such as the Sebring in the</p> <p>3 travel lane.</p> <p>4 A. Yes, it's possible.</p> <p>5 Q. So that's sufficient for a large commercial vehicle to</p> <p>6 pass on the right?</p> <p>7 A. Depending on the vehicle they're passing, yes, ma'am.</p> <p>8 Q. Okay. If you could go for me, stay on page 12 of your</p> <p>9 report, stay with the same statute, MCL 257.637,</p> <p>10 subsection 2. It reads, the driver of the vehicle may</p> <p>11 overtake and pass another vehicle upon the right only</p> <p>12 under conditions permitting the overtaking and passing</p> <p>13 in safety.</p> <p>14 So is it your testimony today that</p> <p>15 Mr. McDuffie was permitted to overtake and pass the</p> <p>16 dump truck because he was doing so while it was safe?</p> <p>17 A. Yes, ma'am.</p> <p>18 Q. And what are your facts that support that it was safe?</p> <p>19 A. Because he was able to, those passing, in the process</p> <p>20 of passing the vehicle just fine until the dump truck</p> <p>21 made a right turn.</p> <p>22 Q. Isn't it true that he was trying to pass and overtake</p> <p>23 the dump truck at a business driveway?</p> <p>24 A. The business driveway was close to where he was</p> <p>25 overtaking, yes.</p>

<p style="text-align: right;">Page 38</p> <p>1 Q. I didn't hear you.</p> <p>2 A. Yes, there was a driveway that was close to where the</p> <p>3 overtaking took place.</p> <p>4 Q. So if we look at the drawing from the Detroit Police</p> <p>5 Department, it looks like -- and I apologize, let me</p> <p>6 go back to that. Did the Sebring attempt to pass the</p> <p>7 dump truck before the business driveway or at the</p> <p>8 business driveway?</p> <p>9 A. Before.</p> <p>10 Q. Okay. And how do you know that?</p> <p>11 A. Well, because we know the truck had initially passed</p> <p>12 the Sebring in the video and then the Sebring would</p> <p>13 have been coming up alongside at a higher rate of</p> <p>14 speed.</p> <p>15 Q. Okay. And that's it, just from the video?</p> <p>16 A. Yes, ma'am.</p> <p>17 Q. Stay with that statute there, I'm going to come back</p> <p>18 to it. I apologize.</p> <p>19 So subsection 2, you're saying that it was</p> <p>20 safe for Mr. McDuffie to pass the vehicle on the</p> <p>21 right?</p> <p>22 A. Yes, ma'am.</p> <p>23 Q. And your opinion is based on what fact?</p> <p>24 A. That there's no proof it was unsafe.</p> <p>25 Q. Okay. Well, isn't part of your opinion as well, and</p>	<p style="text-align: right;">Page 40</p> <p>1 roadway.</p> <p>2 A. Correct.</p> <p>3 Q. Is a parking lane a main traveled portion of the</p> <p>4 roadway?</p> <p>5 A. Once again, I know the statute seems a little</p> <p>6 confusing, but I believe this statute applies. But,</p> <p>7 no, a parking lane -- well, see, it depends. It could</p> <p>8 be.</p> <p>9 Q. Is a parking lane a main traveled portion of the</p> <p>10 roadway? Do people normally drive in the parking</p> <p>11 lane?</p> <p>12 A. It depends on where the parking lane is.</p> <p>13 MR. MARKO: Are you talking about the</p> <p>14 parking lane in this case in particular or just --</p> <p>15 MS. DIVINEY: No, I'm just asking --</p> <p>16 MR. MARKO: Excuse me. You know, it makes</p> <p>17 it really hard when you don't let me finish, so can I</p> <p>18 finish what I was saying?</p> <p>19 MS. DIVINEY: Go right ahead.</p> <p>20 MR. MARKO: I object to the form of the</p> <p>21 question.</p> <p>22 MS. DIVINEY: Okay.</p> <p>23 MR. MARKO: It's ambiguous. It's not clear</p> <p>24 whether you're asking this gentleman about parking</p> <p>25 lanes in general or if you're referring to the</p>
<p style="text-align: right;">Page 39</p> <p>1 correct me if I'm wrong because I only had your</p> <p>2 initial report which was incomplete, but I thought I</p> <p>3 read in there that the dump truck, the turn signal,</p> <p>4 the right-hand turn signal lit up but didn't flash?</p> <p>5 A. That's correct.</p> <p>6 Q. So how would Mr. McDuffie know whether or not the dump</p> <p>7 truck was turning right or left?</p> <p>8 A. Exactly. And probably his impression, which I put in</p> <p>9 my report, is that he probably thought the truck was</p> <p>10 coming to a stop in the middle of the travel lane and,</p> <p>11 therefore, he was making a legal passing maneuver to</p> <p>12 go around him.</p> <p>13 Q. But you don't know what Mr. McDuffie was thinking,</p> <p>14 correct?</p> <p>15 MR. MARKO: Well, objection. That</p> <p>16 mischaracterizes his testimony.</p> <p>17 A. No. I'm giving, based on the evidence that we have, a</p> <p>18 likelihood, but I cannot tell you exactly what he was</p> <p>19 thinking at the time, that is correct.</p> <p>20 BY MS. DIVINEY:</p> <p>21 Q. You don't know one way or another -- well, I'll get to</p> <p>22 that in a second. Let's continue with subsection 2</p> <p>23 here. The driver of the vehicle shall not overtake</p> <p>24 and pass another vehicle upon the right by driving off</p> <p>25 the pavement or the main traveled portion of the</p>	<p style="text-align: right;">Page 41</p> <p>1 specific parking lane in this case.</p> <p>2 BY MS. DIVINEY:</p> <p>3 Q. I'm asking you in general, Mr. Abbo, is a parking lane</p> <p>4 considered the main traveled portion of the roadway?</p> <p>5 A. It can be, yes.</p> <p>6 Q. In what circumstances can it be the main traveled</p> <p>7 portion of the roadway?</p> <p>8 A. I'll give you one like for my example, my experience,</p> <p>9 Seven Mile Road, Seven Mile Road is broken up into two</p> <p>10 lanes in each direction, but one lane is 20 feet wide,</p> <p>11 the curb lane, so you can have street side parking.</p> <p>12 Well, street side parking is illegal from 3:00 a.m. to</p> <p>13 7:00 a.m.; therefore, that makes that lane a travel</p> <p>14 lane. So, therefore, you can use what would be</p> <p>15 considered a parking lane as a travel lane.</p> <p>16 Q. Okay. And when there are no signs that say, you</p> <p>17 know -- when there are no signs posted that say no</p> <p>18 parking between certain times, can you use a parking</p> <p>19 lane to travel in?</p> <p>20 A. Yes.</p> <p>21 Q. Under what circumstances?</p> <p>22 A. If they're not marked.</p> <p>23 Q. Okay. I don't understand.</p> <p>24 A. Like I just said, in a 20-foot wide road, which</p> <p>25 Detroit has all over the place, the curb lane is</p>



<p style="text-align: right;">Page 42</p> <p>1 20 feet wide to allow for street side parking, but</p> <p>2 there's no lines that designate street side parking.</p> <p>3 So if someone wants to drive into that right curb,</p> <p>4 along the curb line they can until there's an</p> <p>5 obstruction there, there's nothing prohibiting them to</p> <p>6 do so.</p> <p>7 Q. Okay.</p> <p>8 A. So that would be technically driving in the parking</p> <p>9 lane.</p> <p>10 Q. What if the curb -- I apologize. If there are lines</p> <p>11 designated for parking on the street then you can't</p> <p>12 drive in the parking lane?</p> <p>13 A. No, you use it to overtake only.</p> <p>14 Q. Okay. But my other question is, is a parking lane</p> <p>15 considered in general the main traveled portion of the</p> <p>16 roadway?</p> <p>17 A. Once again, I'm going to say it can be depending on</p> <p>18 the circumstances.</p> <p>19 Q. And how about in this particular case, is the parking</p> <p>20 lane the main traveled portion of the roadway?</p> <p>21 A. No, it's not the main traveled portion of the roadway,</p> <p>22 but it can be utilized for overtaking on the right.</p> <p>23 Q. But this statute, section 2 says the driver of the</p> <p>24 vehicle shall not overtake and pass another vehicle</p> <p>25 upon the right by driving off the main traveled</p>	<p style="text-align: right;">Page 44</p> <p>1 is not the main traveled portion of the roadway on</p> <p>2 Meyers Street at this business driveway where the</p> <p>3 accident occurred?</p> <p>4 A. Yes.</p> <p>5 Q. Can we go to page 1 of your report real quick, the</p> <p>6 August 2nd, 2021 report?</p> <p>7 A. Yes, ma'am.</p> <p>8 Q. With respect to the photos of the scene taken by</p> <p>9 Caliber Consulting, those would be on your CD or your</p> <p>10 disc that you provided me today, correct?</p> <p>11 A. Yes, ma'am.</p> <p>12 Q. Do you know approximately how many photos you took?</p> <p>13 A. No, I don't.</p> <p>14 Q. And I know you testified earlier that you took videos</p> <p>15 when you were out there as well. Is that just the</p> <p>16 dash cam videos or are there additional videos that</p> <p>17 you took?</p> <p>18 A. Just the dash cam videos.</p> <p>19 Q. Photos of the crash scene at the time of the accident,</p> <p>20 are those --</p> <p>21 A. They're in the police file.</p> <p>22 Q. Those were the photographs in the police file. Did</p> <p>23 you review any of the photographs that Mr. Neal</p> <p>24 provided as well?</p> <p>25 A. I don't recall exactly which ones he provided as</p>
<p style="text-align: right;">Page 43</p> <p>1 portion of the roadway.</p> <p>2 A. I understand what the statute says. To me there seems</p> <p>3 to be a little conflict, but to me the statute applies</p> <p>4 for overtaking a vehicle on the right when there's a</p> <p>5 parking lane.</p> <p>6 Q. So it's your position that a driver can pass then by</p> <p>7 driving off the main traveled portion of the roadway</p> <p>8 to overtake a vehicle on the right?</p> <p>9 A. It's my opinion that the statute applies to this</p> <p>10 particular case, yes. That's my opinion.</p> <p>11 Q. That wasn't my question.</p> <p>12 A. I'm telling you it is my opinion.</p> <p>13 MS. DIVINEY: Can you read back my question</p> <p>14 for him?</p> <p>15 (The requested portion of the record was</p> <p>16 read by the reporter at 10:51 a.m.</p> <p>17 "Q. So it's your position that a driver</p> <p>18 can pass then by driving off the main</p> <p>19 traveled portion of the roadway to overtake</p> <p>20 a vehicle on the right?")</p> <p>21 A. Under certain conditions, yes.</p> <p>22 BY MS. DIVINEY:</p> <p>23 Q. Including this particular circumstance?</p> <p>24 A. Yes.</p> <p>25 Q. Even though you just testified that the parking lane</p>	<p style="text-align: right;">Page 45</p> <p>1 opposed to somebody else.</p> <p>2 Q. Okay. For your collision outline for the UD-10, that</p> <p>3 section of that paragraph, is that just all</p> <p>4 information you gleaned from the UD-10 report?</p> <p>5 A. Yes. It's basically an outline letting the reader</p> <p>6 know the basics of the accident as they head into this</p> <p>7 report.</p> <p>8 Q. Are those just the facts from the UD-10 report? Are</p> <p>9 there any opinions in there?</p> <p>10 A. No. They're generally just supposed to be facts.</p> <p>11 Q. Okay. I want to make sure I'm not missing anything.</p> <p>12 And then location here, the measurements</p> <p>13 that you provide in this part, are those the</p> <p>14 measurements you took or the measurements from the</p> <p>15 Detroit Police Department's report?</p> <p>16 A. Well, I confirmed the Detroit Police Department's</p> <p>17 measurements, then once again took a step above and</p> <p>18 did the rest of the lanes where they just summarized</p> <p>19 the rest of the lanes.</p> <p>20 Q. So in this part where you identify location, which</p> <p>21 goes on to the second page because you included</p> <p>22 photographs, which I believe are Google photographs?</p> <p>23 A. Yes, ma'am.</p> <p>24 Q. Is that any opinions in that part or are those just</p> <p>25 facts?</p>

<p style="text-align: right;">Page 46</p> <p>1 A. Facts.</p> <p>2 Q. Okay. And you would agree with me that the driveway</p> <p>3 that Mr. Neal was turning into for the recycled</p> <p>4 concrete place, that's not an intersection, correct?</p> <p>5 It's just a driveway, a business driveway?</p> <p>6 A. Yes, ma'am.</p> <p>7 Q. On page 3, now you give information about the 2000</p> <p>8 Chrysler Sebring. Are these all just facts? Are</p> <p>9 there any opinions in here?</p> <p>10 A. The top part would be facts and -- well, to me where</p> <p>11 the impact took place seems pretty factual to me, but</p> <p>12 if you want to say because I said it it's an opinion I</p> <p>13 guess it could be considered an opinion based on the</p> <p>14 evidence.</p> <p>15 Q. Okay. And how about on page 4?</p> <p>16 A. The same thing, an opinion based on evidence.</p> <p>17 Q. Okay. Can we stay right there on page 4 for a second?</p> <p>18 A. Sure.</p> <p>19 Q. I just want to ask you real quick. It says -- I'm</p> <p>20 just reading the second sentence on there -- the</p> <p>21 damage appears to be consistent with striking the tire</p> <p>22 of the truck. And that refers to the front-end damage</p> <p>23 on the Sebring; is that what you're referring to --</p> <p>24 A. Yes.</p> <p>25 Q. -- when you say the damage appears?</p>	<p style="text-align: right;">Page 48</p> <p>1 Vinlink program we talked about earlier.</p> <p>2 Q. It says on here that you were unable to inspect the</p> <p>3 truck in person. And I anticipate what your answer is</p> <p>4 going to be, but you've never had the opportunity to</p> <p>5 inspect the dump truck, correct?</p> <p>6 A. That's correct.</p> <p>7 Q. Did you ever try to locate the dump truck --</p> <p>8 A. No.</p> <p>9 Q. -- yourself?</p> <p>10 So the last part of the report here, upon</p> <p>11 reviewing the images it appeared that the Sebring</p> <p>12 collided with the passenger's side of the front tire</p> <p>13 of the truck and as a result the front tire and axle</p> <p>14 assembly was displaced in a forward direction pushing</p> <p>15 the tire into the front fender and bumper.</p> <p>16 Is that your opinion and is that -- that's</p> <p>17 based on your looking at the photos and the video?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Would the Sebring have had to -- let me</p> <p>20 rephrase my question.</p> <p>21 On the tire and axle assembly on a dump</p> <p>22 truck such as the one at issue here, how much force</p> <p>23 would it require to displace that axle assembly?</p> <p>24 A. I don't know.</p> <p>25 Q. If you know.</p>
<p style="text-align: right;">Page 47</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And would that be on the front driver's side of</p> <p>3 the Sebring?</p> <p>4 A. Yes, ma'am.</p> <p>5 Q. I just want to make sure I understand the damage that</p> <p>6 you're looking at here.</p> <p>7 Any other damage that appears to be</p> <p>8 consistent with striking the tire of the truck besides</p> <p>9 the driver's side front corner? Anything else that</p> <p>10 led you to reach that opinion?</p> <p>11 A. No.</p> <p>12 Q. And then you state the remaining damage would have</p> <p>13 resulted from the Sebring rolling over onto its roof.</p> <p>14 That's your opinion as well, correct?</p> <p>15 A. Yes, ma'am.</p> <p>16 Q. And that's based on you looking at the photographs of</p> <p>17 the accident scene, correct?</p> <p>18 A. That is correct.</p> <p>19 Q. As well as the video?</p> <p>20 A. Yes.</p> <p>21 Q. And we get to page 5 of your report and to 6 and part</p> <p>22 of 7. So now we're talking about the 1997 Ford dump</p> <p>23 truck. The first part, is that just facts right above</p> <p>24 the photograph on page 5 of 14?</p> <p>25 A. Yes, those are facts as provided by the link, the</p>	<p style="text-align: right;">Page 49</p> <p>1 A. I do not know.</p> <p>2 Q. Is there a way to calculate that?</p> <p>3 A. Not that I'm aware of. Although it does help that the</p> <p>4 repair records you just provided states that the</p> <p>5 damage is basically from two U bolts shearing off and</p> <p>6 the axle just shifting. So in all practicality I</p> <p>7 guess I would say it was not a ton of force to do that</p> <p>8 because the damage appears to be just two U bolts, but</p> <p>9 once again, I have no way of calculating how much</p> <p>10 exact force would do that.</p> <p>11 Q. And these U bolts, you know, from the information that</p> <p>12 I provided you this morning, you don't know how big</p> <p>13 those U bolts are or anything like that?</p> <p>14 A. No, ma'am.</p> <p>15 Q. And page 6 just shows the photos of the dump truck.</p> <p>16 MR. MARKO: After this question --</p> <p>17 MS. DIVINEY: We can take a break right</p> <p>18 now.</p> <p>19 MR. MARKO: Okay. Thanks a lot.</p> <p>20 (Off the record at 10:59 a.m.)</p> <p>21 (Back on the record at 12:08 p.m.)</p> <p>22 MS. DIVINEY: So we've been off the</p> <p>23 record for about an hour now. We let Mr. Marko take</p> <p>24 care of some other business that he had. We're back</p> <p>25 on the record now continuing the deposition of</p>

<p style="text-align: right;">Page 50</p> <p>1 Mr. Abbo.</p> <p>2 BY MS. DIVINEY:</p> <p>3 Q. Mr. Abbo, we left off on page 6 of your report.</p> <p>4 Before I get back to that page 6 there, I know with</p> <p>5 respect to your CV it indicated -- it didn't have any</p> <p>6 cases on there where you had testified as an expert</p> <p>7 witness, correct?</p> <p>8 A. That's correct.</p> <p>9 Q. How many cases have you testified as an accident</p> <p>10 reconstructionist?</p> <p>11 MR. MARKO: Object. Do you mean in court</p> <p>12 or in deposition or what?</p> <p>13 MS. DIVINEY: Both.</p> <p>14 A. Both.</p> <p>15 BY MS. DIVINEY:</p> <p>16 Q. You can break it up for me, deposition --</p> <p>17 A. I believe I have 23 cases I've testified in court in</p> <p>18 the state of Michigan, Indiana, Ohio and the U.S.</p> <p>19 federal court system and I believe today would be my</p> <p>20 66th deposition.</p> <p>21 Q. And were you testifying or being retained as an expert</p> <p>22 witness before you started your company?</p> <p>23 A. No. No. I would have only been testifying as an</p> <p>24 expert in the capacity as a police officer in a</p> <p>25 criminal matter.</p>	<p style="text-align: right;">Page 52</p> <p>1 inches. Is six foot ten inches a typical lane width</p> <p>2 in the city of Detroit? If you know.</p> <p>3 A. I'm sorry, I don't know, ma'am.</p> <p>4 Q. As part of your investigation of this accident, did</p> <p>5 you run any LEIN on the truck driver, L-E-I-N?</p> <p>6 A. No, ma'am, that would be illegal.</p> <p>7 Q. So you didn't run any on the deceased driver either?</p> <p>8 A. No.</p> <p>9 Q. As part of your investigation of this accident, was</p> <p>10 the truck driver speeding at any time prior to the</p> <p>11 accident, during the accident?</p> <p>12 MR. MARKO: By speeding --</p> <p>13 BY MS. DIVINEY:</p> <p>14 Q. By speeding on the day of the accident while you're</p> <p>15 watching the video.</p> <p>16 MR. MARKO: Let me just object to form.</p> <p>17 MS. DIVINEY: Sure.</p> <p>18 MS. DIVINEY: I can rephrase the question.</p> <p>19 MR. MARKO: As the term speeding, I mean,</p> <p>20 are you saying too fast for conditions or above the</p> <p>21 speed limit?</p> <p>22 MS. DIVINEY: Above the speed limit. Thank</p> <p>23 you.</p> <p>24 A. I would not know if the truck would have been above</p> <p>25 30 miles an hour prior to making the turn. All I know</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. Okay. And the numbers that you gave to me today, the</p> <p>2 23 and the 66 for your deposition, those were just</p> <p>3 with respect to civil litigation, correct?</p> <p>4 A. No, that's not correct. The 23 cases would have been</p> <p>5 a combination of criminal and civil.</p> <p>6 Q. Okay. The same thing for the 66 for your deposition,</p> <p>7 criminal and civil?</p> <p>8 A. Well, I generally didn't give a criminal deposition,</p> <p>9 so the majority were civil, yes.</p> <p>10 Q. I wasn't sure.</p> <p>11 At any time for those court cases that you</p> <p>12 were involved in, at any time did any court strike or</p> <p>13 limit your testimony?</p> <p>14 A. No, ma'am.</p> <p>15 Q. And how many times have you been retained by Marko Law</p> <p>16 to provide accident reconstruction?</p> <p>17 A. I believe this would have been our third case.</p> <p>18 Q. Did you, with respect to this particular action, did</p> <p>19 you create any type of video simulation of the</p> <p>20 accident or anything like that?</p> <p>21 A. No, ma'am.</p> <p>22 Q. And did you have your report peer-reviewed by anyone?</p> <p>23 A. No, ma'am.</p> <p>24 Q. Now, I know in the diagram by the Detroit Police</p> <p>25 Department it shows that the parking is six foot ten</p>	<p style="text-align: right;">Page 53</p> <p>1 is the calculations I came up with post impact were</p> <p>2 once again between 15 and 21 miles an hour.</p> <p>3 BY MS. DIVINEY:</p> <p>4 Q. How about with respect to the Sebring, with your</p> <p>5 observations of the video and inspecting the scene,</p> <p>6 did you reach any conclusion as to whether the driver</p> <p>7 of the Sebring was driving over the speed limit?</p> <p>8 A. Based on the post-collision analysis, without knowing</p> <p>9 the speed change from the collision itself, I don't</p> <p>10 believe so. The whole incident took 11 seconds from</p> <p>11 the moment it started up until impact. So if he would</p> <p>12 have been going any faster than he was, I think it</p> <p>13 would have been -- he would have been able to safely</p> <p>14 overtake the truck before it made its turn, which</p> <p>15 wasn't the case. So at this point, no, ma'am, I don't</p> <p>16 have any reason to believe the Sebring was speeding at</p> <p>17 any time over the speed limit of 30 miles an hour.</p> <p>18 Q. At any time as either a police officer for Bloomfield</p> <p>19 or as an accident reconstructionist expert, have you</p> <p>20 ever encountered a similar accident such as the one</p> <p>21 we're discussing today?</p> <p>22 A. I don't believe I have.</p> <p>23 Q. So if we go back to your report there, look at page 6</p> <p>24 of 14, those are photographs of the subject dump</p> <p>25 truck, correct?</p>

<p style="text-align: right;">Page 54</p> <p>1 A. Yes, ma'am.</p> <p>2 Q. Okay. And in the first photograph there's a yellow</p> <p>3 circle there. That's your yellow circle?</p> <p>4 A. Yes, ma'am.</p> <p>5 Q. And what are you circling there?</p> <p>6 A. Showing the damage to the front fender.</p> <p>7 Q. Okay. And is that where you believe the Sebring</p> <p>8 collided with the dump truck?</p> <p>9 A. Well, it collided we know because of the marks on the</p> <p>10 Sebring, the black rubber marks that had to do mostly</p> <p>11 with the tire. But I see the crack there between</p> <p>12 where the fender is almost in the center of the circle</p> <p>13 and so it led me to believe that that was the damage</p> <p>14 to the fender even though the truck tire wheel</p> <p>15 assembly would have took the brunt of the impact as</p> <p>16 indicated by being laterally displaced forward.</p> <p>17 Q. Could that damage to that fender, could that have</p> <p>18 existed before this accident, if you know?</p> <p>19 A. That is possible, ma'am, yes.</p> <p>20 Q. You have in here that you reviewed the deposition</p> <p>21 testimony of Mr. Neal, correct, the driver of the dump</p> <p>22 truck?</p> <p>23 A. Yes, ma'am.</p> <p>24 Q. And you can correct me if I'm wrong from your memory</p> <p>25 I believe he testified that the Sebring -- he thought</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. Is it an enlargement of any of the photographs, if you</p> <p>2 know?</p> <p>3 A. I don't believe so because it seems to be its own</p> <p>4 photo.</p> <p>5 Q. And then if we go to page 7, at the bottom</p> <p>6 post-collision vehicle inspection, that's where you</p> <p>7 talk about the Michigan State Police, Motor Carrier</p> <p>8 Officer Ryan Wilson inspecting the dump truck?</p> <p>9 A. That is correct.</p> <p>10 Q. Are there any opinions in that last paragraph on</p> <p>11 page 7?</p> <p>12 A. No. These are strictly his -- these would be facts</p> <p>13 pulled from his report.</p> <p>14 Q. Okay. And the same thing at the top of page 8, where</p> <p>15 all the bullet points, those are just facts that you</p> <p>16 pulled out of Officer Wilson's report; is that</p> <p>17 correct.</p> <p>18 A. Yes, ma'am, that's correct.</p> <p>19 Q. Then if we jump down to figure 9, and then the</p> <p>20 paragraph below figure 9 where you talk about figure</p> <p>21 9, again you have circled there at the back of the</p> <p>22 truck it looks like the lamp -- is that the turn</p> <p>23 signal that you have circled or what do you have</p> <p>24 circled in figure 9?</p> <p>25 A. What I mean by lamp configuration, as noted in figure</p>
<p style="text-align: right;">Page 55</p> <p>1 the Sebring hit the steps of the dump truck?</p> <p>2 A. Yes, I do recall that.</p> <p>3 Q. Is there anything on that picture, the top picture on</p> <p>4 page 6 that would indicate to you that maybe the</p> <p>5 Sebring did hit the steps of the dump truck?</p> <p>6 A. It would be the top if you look at figure 7.</p> <p>7 Q. Sure.</p> <p>8 A. No, and I don't see any lateral displacement or any</p> <p>9 displacement of the steps, at least in these photos.</p> <p>10 So once again, because the wheel was pushed forward, I</p> <p>11 believe that is the object on the truck that took most</p> <p>12 of the impact.</p> <p>13 Q. The front passenger wheel?</p> <p>14 A. Yes, ma'am.</p> <p>15 Q. And the front passenger wheel took most of the impact?</p> <p>16 A. In my opinion, yes, ma'am.</p> <p>17 Q. Is your opinion also based on the photograph,</p> <p>18 figure 8?</p> <p>19 A. Yes, ma'am.</p> <p>20 Q. Is that, if you know, is that a photograph from the</p> <p>21 City of Detroit investigation? Is it an enlargement</p> <p>22 of the photograph?</p> <p>23 A. I don't know who took the photo, whether it would have</p> <p>24 been Mr. Neal in his series of photos or if it was the</p> <p>25 Detroit Police Department.</p>	<p style="text-align: right;">Page 57</p> <p>1 9, is that there's a series of three lamps on each</p> <p>2 side of the truck. The inside-most lamp you'll see is</p> <p>3 the white reverse lamp and then there would be two red</p> <p>4 lamps to the right of that. One would be for the</p> <p>5 brake light and the other would be for the turn</p> <p>6 signal.</p> <p>7 Q. You said that there's two red lights to the right of</p> <p>8 that white light?</p> <p>9 A. Yes, ma'am.</p> <p>10 Q. And you can make out those two red lights in that</p> <p>11 photograph?</p> <p>12 A. Yes, ma'am.</p> <p>13 Q. And which one would be the turn signal and which one</p> <p>14 would be the brake? If you know.</p> <p>15 A. The far outside one would be the turn signal. From my</p> <p>16 experience in motor carrier enforcement, the far</p> <p>17 outside ones are the turn signals, the inside red one</p> <p>18 would be the brake lights. Now, they could be wired</p> <p>19 differently, who knows, by a mechanic, but generally</p> <p>20 in my experience that's how it operates.</p> <p>21 Q. Do you have a CDL license yourself?</p> <p>22 A. No, ma'am, I do not.</p> <p>23 Q. Have you ever driven a large dump truck at any time in</p> <p>24 your life such as this one?</p> <p>25 A. Not that big, no.</p>

<p style="text-align: right;">Page 58</p> <p>1 Q. Do you know how the wiring is done in a dump truck 2 such as this? 3 A. I have fairly, what I believe to be decent mechanical 4 skills. I would know how wiring would be to any 5 general taillight. 6 Q. Is there any wiring that is done within the hood of 7 the dump truck, if you know? 8 A. It could be, yes. 9 Q. Do you know if this particular dump truck had any 10 wiring within the hood of the dump truck that would 11 affect the lights in the back? 12 A. It's possible, yes. Because you have the front 13 signals that are mounted to the fenders themselves, 14 which is the hood area, there would be wiring running 15 to the front. And the front ones being in -- if the 16 front ones are defective, that could affect the rear 17 ones, yes, ma'am. 18 Q. And if the front lights were defective, how would they 19 affect the rear ones? Is it because they're on the 20 same wiring circuit? 21 A. All I can tell you is -- well, yes, and because 22 whatever -- because they had power they lit up, so we 23 know they had power, so it wasn't a fuse issue. More 24 than likely in my opinion it would be that there is a 25 relay issue and the relay is what makes the light</p>	<p style="text-align: right;">Page 60</p> <p>1 deposition transcript, true? 2 A. Yes, ma'am. 3 Q. And the same thing with respect to Matthew Pace then, 4 correct? 5 A. Yes, ma'am. 6 Q. The same thing with respect to the next page, 10 of 7 14, Officer Ryan Wilson, these are just a summary of 8 his deposition -- your summary of his deposition 9 testimony, correct? 10 A. Yes, ma'am. 11 Q. And then we go to the video analysis at the bottom of 12 page 10 of 14. You say upon reviewing the video -- 13 this is the second sentence of your video analysis 14 paragraph -- upon reviewing the video, the frame rate 15 was noted as being 15 frames per second. 16 Where did you get that information from? 17 A. By counting the frames per second in the video. 18 Q. Are you a videographer at all? 19 A. No, ma'am, but I've done dozens upon dozens of video 20 analysis in regards to accident investigation. That's 21 how I knew to break down, first establish a frame rate 22 for a video so I know how many frames per second and I 23 can use that in my reconstruction. 24 Q. And why is that important in your reconstruction? 25 A. Because if someone just looks at the video and looks</p>
<p style="text-align: right;">Page 59</p> <p>1 blink on, off, on and off. So whatever the front one 2 -- whatever made the front ones inoperative affected 3 the relay and, therefore, none of them were blinking. 4 Q. But you don't know if there was an issue with the 5 relay, you never saw the relay? 6 A. That is correct. I'm just going based on Officer 7 Ryan's report and his testimony, what he did inspect 8 and did not. And, once again, also knowing the 9 mechanics that in order for a light to light up it has 10 to have power, so that part can be crossed off. The 11 only question becomes now why did it not blink. 12 Q. And it's your assumption they did not blink because 13 there might have been an issue with the relay. 14 A. That is correct, ma'am. 15 Q. And then if we go on to page 9, that looks like you 16 give summaries of statements and you have a summary of 17 Scott Neal at the top of page 9. They're just only 18 facts that you took from his deposition out of there, 19 no opinions? I just want to make sure. 20 A. That is correct. These are just direct statements 21 that they made in their deposition. At times there 22 may be some paraphrasing to shorten the sentence up, 23 but for the most part it's what they're saying in 24 their deposition transcript. 25 Q. And your understanding of what they're saying in their</p>	<p style="text-align: right;">Page 61</p> <p>1 at the hard seconds, they're missing all the time in 2 between. So what may be, let's say a one second, if 3 you're just looking at the second parts, when you look 4 now at the milliseconds beyond that you can have up to 5 maybe 1.9 seconds before the whole number flips over 6 to two. So that is why it's important to break down 7 the video to the lowest frame rate or to the lowest 8 number you can, which would be milliseconds. 9 So by knowing the frame rate of 15 frames 10 per second, the frame -- each frame takes 11 .0666 seconds to accomplish. 12 Q. Okay. And then you can break down what happens by -- 13 within the video by knowing that specific frame rate. 14 A. Yes. Let me give you an example. So if I have 15 something that I'm looking for in a video that takes 16 less than a second, I can count how many frames it was 17 and then multiply that by the frame rate and that 18 tells me, okay, he traveled, and I'm giving you an 19 example here, X amount of feet in eight-tenths of a 20 second and that helps me do speed and time distance 21 calculations. 22 Q. And do you know where the video was obtained from? 23 A. From a surveillance camera on a building north of the 24 collision scene. 25 Q. But you don't know which business or where it was</p>



<p style="text-align: right;">Page 62</p> <p>1 obtained?</p> <p>2 A. I think it was an auto supply store or maybe a salvage</p> <p>3 supply.</p> <p>4 Q. And do you know who obtained the video?</p> <p>5 A. I believe the Detroit Police Department did.</p> <p>6 Q. And when was the first time that you observed the</p> <p>7 video, if you recall?</p> <p>8 A. I cannot recall.</p> <p>9 Q. Would that be back in 2020?</p> <p>10 A. You know, it probably would have been with the initial</p> <p>11 analysis, so, yes, May 7th, 2020.</p> <p>12 Q. And then this paragraph here at the bottom of page 10</p> <p>13 of 14, is that just your observations of what's going</p> <p>14 on in the video, no opinions, correct?</p> <p>15 A. Yeah, correct, it's my observations of the video.</p> <p>16 Q. Okay. As part of your observations of the video, at</p> <p>17 the beginning of the video we see that the Sebring is</p> <p>18 parked or stopped. I don't know which is the best way</p> <p>19 to say it, because in the video we can't hear an</p> <p>20 engine running, correct, so we don't know if he had</p> <p>21 his engine running or not? But it was fully stopped</p> <p>22 in the parking lane, would that be a correct way to</p> <p>23 say it?</p> <p>24 A. I would prefer the term stationary.</p> <p>25 Q. Stationary. Good word. Okay.</p>	<p style="text-align: right;">Page 64</p> <p>1 A. Before it starts to go?</p> <p>2 Q. Yes.</p> <p>3 A. I guess to speed things along, I never made any note</p> <p>4 of him getting into his vehicle. If there's a point</p> <p>5 in the video you'd like to show me that he is, I'd be</p> <p>6 happy to take a look at that and either concur or</p> <p>7 disagree.</p> <p>8 Q. Nope. I want to know if you, in your observations of</p> <p>9 the video, did you ever see Mr. McDuffie exit or enter</p> <p>10 his vehicle.</p> <p>11 A. No, ma'am.</p> <p>12 Q. Okay. So you have no knowledge, no information as to</p> <p>13 why Mr. McDuffie's vehicle was sitting there for two</p> <p>14 minutes?</p> <p>15 A. That is correct.</p> <p>16 Q. Did you ever read Chandra McDuffie's deposition in</p> <p>17 your review of the materials?</p> <p>18 A. I don't believe I did. No, ma'am.</p> <p>19 Q. Were you aware that Mr. McDuffie-Connor, he had worked</p> <p>20 a night shift as a security guard?</p> <p>21 A. No, ma'am, I don't recall that testimony.</p> <p>22 Q. Had you known whether or not Mr. McDuffie-Connor had</p> <p>23 worked all night and had not slept at all, would that</p> <p>24 have played a factor in your analysis?</p> <p>25 A. Not necessarily, no.</p>
<p style="text-align: right;">Page 63</p> <p>1 So at the beginning of the video we see</p> <p>2 that the Sebring was stationary in the parking lane,</p> <p>3 it was not moving, correct?</p> <p>4 A. Yes, ma'am.</p> <p>5 Q. And in the video, and I have it if you want me to play</p> <p>6 it and we can mark it as an exhibit if we need to, in</p> <p>7 the video do you recall whether or not</p> <p>8 Mr. McDuffie-Connor ever exited or entered the Sebring</p> <p>9 while it was there?</p> <p>10 A. Not that I recall, ma'am, no.</p> <p>11 Q. We can play the video for you real quick and we'll</p> <p>12 mark it as an exhibit. I think that's Exhibit 4 that</p> <p>13 we're up to. So I have pulled it up on my computer.</p> <p>14 I don't know if it's too much of a glare from the sun.</p> <p>15 And this is the video. Nothing has been altered, it's</p> <p>16 what was received from the City of Detroit.</p> <p>17 A. Yes, ma'am.</p> <p>18 Q. And as you can see in the video, do you see the white</p> <p>19 car on northbound Meyers?</p> <p>20 A. Yes.</p> <p>21 Q. And also we're looking to see if Mr. McDuffie-Connor</p> <p>22 ever enters or exits his vehicle.</p> <p>23 A. Do you want me to watch it for seven minutes?</p> <p>24 Q. No, I think it's two minutes. Is it two minutes</p> <p>25 before the vehicle starts to go?</p>	<p style="text-align: right;">Page 65</p> <p>1 Q. Do you know when Mr. McDuffie-Connor purchased the</p> <p>2 Sebring?</p> <p>3 A. No, ma'am.</p> <p>4 Q. Do you know what mechanical work was done on the</p> <p>5 Sebring?</p> <p>6 A. No, ma'am.</p> <p>7 Q. Do you know what repairs were done on the Sebring</p> <p>8 before this accident?</p> <p>9 A. Isn't that the same as mechanical work?</p> <p>10 Q. Some people tell me there's a distinction.</p> <p>11 A. I have no records, maintenance records for the vehicle</p> <p>12 whatsoever.</p> <p>13 Q. Okay. So let's move over to page 11 of 14.</p> <p>14 A. Okay.</p> <p>15 Q. Actually, if we could real quick, can we go back to</p> <p>16 page -- and I apologize, I want to go back to your</p> <p>17 Google Maps there.</p> <p>18 A. Which?</p> <p>19 Q. Page 2 of 14.</p> <p>20 A. Okay.</p> <p>21 Q. So do you know, and I just had this quick question</p> <p>22 about your Google Maps here, do you know when Google</p> <p>23 Maps, when Google took this imagery? Was it before</p> <p>24 the accident? After the accident? Do you know when?</p> <p>25 A. No, I'm sorry, I did not make note of when the image</p>

<p style="text-align: right;">Page 66</p> <p>1 was captured.</p> <p>2 Q. Okay. And would you agree with me on your page 2 of</p> <p>3 -- page 2 -- yes, page 2, figure 2, that there's a</p> <p>4 line that delineates between the parking lane and the</p> <p>5 travel lane on northbound Meyers?</p> <p>6 A. Yes, ma'am.</p> <p>7 Q. Okay. And at any time in reviewing the video, and I</p> <p>8 can pull it back up if you need me to, do you recall</p> <p>9 ever seeing Mr. McDuffie-Connor move into the travel</p> <p>10 lane on northbound Meyers?</p> <p>11 A. No, ma'am, I don't believe so.</p> <p>12 Q. Do you recall ever seeing, in your review of the</p> <p>13 video, whether he put on his turn signal to indicate</p> <p>14 that he wanted to enter the travel lane on northbound</p> <p>15 Meyers?</p> <p>16 A. No, ma'am, it's not something that I noted.</p> <p>17 Q. And correct me if I'm wrong, but I think you said</p> <p>18 earlier you don't have any type of psychology degree</p> <p>19 or training to know what a driver might be thinking at</p> <p>20 the time of an accident?</p> <p>21 MR. MARKO: Objection to the form of the</p> <p>22 question. It's based on a false premise.</p> <p>23 A. No, ma'am, I do not have a psychology degree.</p> <p>24 BY MS. DIVINEY:</p> <p>25 Q. And you don't know what another person is thinking,</p>	<p style="text-align: right;">Page 68</p> <p>1 important to note, is that your opinion or is that</p> <p>2 facts in that paragraph?</p> <p>3 A. It would be fact if Neal's statement was true.</p> <p>4 Q. When you write the Michigan State Police determined</p> <p>5 the faulty turn signals were not a result from the</p> <p>6 crash, where did you get that information from?</p> <p>7 A. Officer Ryan's deposition. Or Wilson's deposition.</p> <p>8 And actually the report itself because I believe</p> <p>9 there's a box that says damage from crash or not from</p> <p>10 crash.</p> <p>11 Q. And correct me if I'm wrong, didn't he just have</p> <p>12 someone turn the signal on and turn the signal off to</p> <p>13 see if it would flash?</p> <p>14 MR. MARKO: Objection, that</p> <p>15 mischaracterizes --</p> <p>16 MS. DIVINEY: I'm just asking him what he</p> <p>17 recalls.</p> <p>18 MR. MARKO: My objection, please.</p> <p>19 MS. DIVINEY: Go ahead.</p> <p>20 MR. MARKO: That mischaracterizes the</p> <p>21 testimony at his deposition and it mischaracterizes</p> <p>22 his full analysis of the vehicle documented in the</p> <p>23 materials that he produced.</p> <p>24 BY MS. DIVINEY:</p> <p>25 Q. If you can recall from the deposition of Officer</p>
<p style="text-align: right;">Page 67</p> <p>1 correct? You're not clairvoyant?</p> <p>2 A. No, ma'am.</p> <p>3 Q. Okay. Back to page 11 here. At the top, the very</p> <p>4 first paragraph there, it looks like you're</p> <p>5 summarizing your figure 10 below and the path that</p> <p>6 Mr. Neal took to get over to the recycled concrete</p> <p>7 facility.</p> <p>8 A. Yes, ma'am.</p> <p>9 Q. The very first paragraph, are there any opinions in</p> <p>10 that paragraph or is that just facts?</p> <p>11 A. Facts based upon the testimony.</p> <p>12 Q. And then the approximate 1,920 feet, how did you</p> <p>13 measure that?</p> <p>14 A. By utilizing a CAD program. They take the aerial map</p> <p>15 and it's put to scale, so then the yellow lines are</p> <p>16 measured in the program and it tells you what the</p> <p>17 distances are.</p> <p>18 Q. Okay. Where this accident occurred, are there any</p> <p>19 railroad tracks near there?</p> <p>20 A. Yes, ma'am, to the north.</p> <p>21 Q. Is there any law or any legal requirement, is a</p> <p>22 vehicle allowed to pass another vehicle within a</p> <p>23 hundred feet of a railroad track, if you know?</p> <p>24 A. I don't know that.</p> <p>25 Q. Okay. The next paragraph, where it starts it's</p>	<p style="text-align: right;">Page 69</p> <p>1 Wilson, who was formerly from the Michigan State</p> <p>2 Police, what did he do to test whether the turn</p> <p>3 signals were working or not?</p> <p>4 A. Maybe he had somebody in the cab activating them on or</p> <p>5 off and then he'd be looking at the lamps themselves.</p> <p>6 Q. Did he, if you know, did he do anything with respect</p> <p>7 to the wiring to determine whether there was a wire, a</p> <p>8 shortage in the wiring?</p> <p>9 A. He said he did inspect the wires because that's part</p> <p>10 of the inspection process to see why they were not</p> <p>11 working. He couldn't find any obvious reason why they</p> <p>12 were not working.</p> <p>13 Q. Okay. And that's your recall of his testimony,</p> <p>14 correct?</p> <p>15 A. Yes, ma'am.</p> <p>16 Q. So the very last sentence, it is your opinion that</p> <p>17 scenario is highly unlikely, tell me what scenario you</p> <p>18 mean that is highly unlikely.</p> <p>19 A. The scenario that Mr. Neal pre-inspected the truck,</p> <p>20 saw that the turn signals were working and then</p> <p>21 somehow within 1,920 feet when the accident took place</p> <p>22 they stopped working all of a sudden.</p> <p>23 Q. So it's your opinion, even though Mr. Neal testified</p> <p>24 that he did a preinspection on the dump truck and he</p> <p>25 found that the lights worked, it's your opinion not to</p>

<p style="text-align: right;">Page 70</p> <p>1 believe his testimony.</p> <p>2 A. No, all that statement is saying is that if you</p> <p>3 believe Mr. Neal's statement, and that would mean that</p> <p>4 somehow, which you're driving only 1,920 feet, not</p> <p>5 hitting anything, not doing anything else but just</p> <p>6 simply driving the vehicle, all four turn signals all</p> <p>7 of a sudden went out without explanation I do find</p> <p>8 that highly unlikely, yes, ma'am.</p> <p>9 Q. How do you know that he didn't hit anything on his way</p> <p>10 to the facility?</p> <p>11 A. Because he didn't testify that he did.</p> <p>12 Q. Do you know if he was asked if he did?</p> <p>13 A. I presume if he hit something before the facility he</p> <p>14 would state that, but, no, there's nothing that</p> <p>15 states.</p> <p>16 Q. Do you know the condition of these roads where he'd</p> <p>17 drive? Were they smooth? Were they bumpy?</p> <p>18 A. I don't recall. I didn't notice anything outrageous</p> <p>19 about them that were horrible.</p> <p>20 Q. So your opinion is that it's -- is it highly unlikely</p> <p>21 that Mr. Neal did not do a pretrip inspection? Is</p> <p>22 that part of your opinion? Or is it just your opinion</p> <p>23 that it did not -- the lights would not -- the lights</p> <p>24 would become faulty driving that amount of feet? I'm</p> <p>25 just trying to understand. That's all.</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. But you don't know if the Michigan State trooper</p> <p>2 eliminated everything with respect to the lights as to</p> <p>3 why they were not working, correct?</p> <p>4 A. He said he did not go any further than immediately</p> <p>5 looking at the wiring that was attached to the light</p> <p>6 to make sure they were still plugged in, that is</p> <p>7 correct. He didn't determine why, but that's not his</p> <p>8 job.</p> <p>9 Q. And then on page 12 you just cite to the applications</p> <p>10 of the Motor Vehicle Code, correct?</p> <p>11 A. Yes, ma'am.</p> <p>12 Q. And then your conclusions are on page 13 and 14?</p> <p>13 A. Yes, ma'am.</p> <p>14 Q. And those are all your opinions, correct?</p> <p>15 A. Yes, ma'am, at this point with all the information I</p> <p>16 have as of the report writing, yes.</p> <p>17 Q. As we sit here today, is there anything with respect</p> <p>18 to the facts that you have here or with respect to</p> <p>19 your opinions that you need to alter or change, amend,</p> <p>20 supplement?</p> <p>21 A. Not that I can think of at this time. No, ma'am.</p> <p>22 Q. In a scenario such as this, and this is before the</p> <p>23 accident, before the accident -- let me give you a</p> <p>24 hypothetical. That will probably be easier.</p> <p>25 So there's one lane of travel in each</p>
<p style="text-align: right;">Page 71</p> <p>1 A. On page 11, this sentence is referring to the</p> <p>2 unlikelihood that those turn signals suddenly became</p> <p>3 defective between going -- leaving the yard and the</p> <p>4 crash scene.</p> <p>5 Q. Okay. But is it also your opinion that Mr. Neal did</p> <p>6 not do a pretrip inspection?</p> <p>7 A. That is my ultimate opinion in my summary, yes.</p> <p>8 Q. Okay. So then is it also part of your opinion then</p> <p>9 that the lights were not working when it left the</p> <p>10 yard, when Mr. Neal started his trip, where none of</p> <p>11 the lights were working?</p> <p>12 A. Yes, that is my opinion.</p> <p>13 Q. So that even though the witness Matthew Pace, who was</p> <p>14 driving the dark-colored vehicle behind the dump</p> <p>15 truck, when he said he saw the lights blinking, you're</p> <p>16 discrediting his testimony as well?</p> <p>17 A. His testimony is inconsistent with the physical</p> <p>18 evidence.</p> <p>19 Q. His testimony is what?</p> <p>20 A. Inconsistent with the physical evidence.</p> <p>21 Q. And what is that physical evidence?</p> <p>22 A. That the lights were inspected, they were not working</p> <p>23 and determined by a state trooper, who's trained</p> <p>24 specifically to inspect commercial motor vehicles,</p> <p>25 found it was not as a result from the collision.</p>	<p style="text-align: right;">Page 73</p> <p>1 direction, north and south, there's parking lanes on</p> <p>2 each side, similar to what we have here. So if a</p> <p>3 vehicle, and it doesn't have to be a large vehicle, it</p> <p>4 can just be a regular vehicle, if the vehicle is</p> <p>5 traveling in the designated travel lane and another</p> <p>6 vehicle is in the parking lane, which vehicle is the</p> <p>7 favored vehicle in your opinion?</p> <p>8 A. I don't understand what you mean by the term favored.</p> <p>9 Q. Well, which vehicle has the right-of-way is what I</p> <p>10 mean? I'm sorry. It's a bad question. I'm sorry.</p> <p>11 A. Right-of-way in terms of what? I don't understand</p> <p>12 when you're saying right-of-way. What situation are</p> <p>13 we determining the right-of-way?</p> <p>14 Q. So the situation we're determining the right-of-way,</p> <p>15 who has the right-of-way to be in the travel lane?</p> <p>16 The person that's already there or the person in the</p> <p>17 parking lane? Let me clarify for you because I know.</p> <p>18 The person in the travel lane, do they have</p> <p>19 to yield to someone who's in the parking lane and</p> <p>20 allow them to come into the travel lane?</p> <p>21 MR. MARKO: I'm going to object because</p> <p>22 this is an improper hypothetical.</p> <p>23 A. It's possible. If you're approaching a parked vehicle</p> <p>24 and they pull out in front of you, can establish the</p> <p>25 lane prior to you getting there then, yes, they do get</p>

<p style="text-align: right;">Page 74</p> <p>1 the right-of-way to do that.</p> <p>2 But I'm going to add to your hypothetical</p> <p>3 is you're going alongside this parked vehicle and it</p> <p>4 pulls out and sideswipes you, then no, the person</p> <p>5 going by has the right-of-way. It all depends on when</p> <p>6 the vehicle pulls out.</p> <p>7 BY MS. DIVINEY:</p> <p>8 Q. Okay. So it's a timing issue.</p> <p>9 A. Yes, ma'am.</p> <p>10 Q. So let's say the person in the travel lane has already</p> <p>11 passed the person in the parking lane.</p> <p>12 A. Okay.</p> <p>13 Q. Should that parking lane, the person in the parking</p> <p>14 lane then attempt to get behind the vehicles in the</p> <p>15 travel lane or do they have a right to continue to</p> <p>16 drive in the parking lane?</p> <p>17 MR. MARKO: I'm going to object. It's an</p> <p>18 improper hypothetical. In this case the defendant</p> <p>19 drove directly into the plaintiff, so it's an improper</p> <p>20 hypothetical. But go ahead to the extent that you</p> <p>21 can.</p> <p>22 A. You can use the parking lane to overtake a vehicle in</p> <p>23 the right as stated in my report. You can't use it as</p> <p>24 a lane to continue in the entire time.</p> <p>25 BY MS. DIVINEY:</p>	<p style="text-align: right;">Page 76</p> <p>1 A. No, not as a single motor vehicle. If you look at the</p> <p>2 video, there's a number of tractor-trailer</p> <p>3 combinations that were making turns into there. With</p> <p>4 such a long length you would need to what they call</p> <p>5 button hook it to the right to get into the driveway.</p> <p>6 But a single vehicle, no, it should have been able to,</p> <p>7 once again, obey the law, ride the right curb and make</p> <p>8 the turn into the driveway.</p> <p>9 Q. So is it your opinion then that because Neal failed to</p> <p>10 conduct a proper pretrip inspection that he caused</p> <p>11 this accident?</p> <p>12 A. Yes, ma'am.</p> <p>13 Q. So had Neal done a proper pretrip inspection he would</p> <p>14 have found that the turn signals did not work?</p> <p>15 A. Yes, ma'am.</p> <p>16 Q. Had he found the turn signals did not work, then the</p> <p>17 vehicle would not have been out on the road; is that</p> <p>18 your opinion?</p> <p>19 A. That's a partial answer, yes, he would not been out on</p> <p>20 the road. But because it was on the road, it would</p> <p>21 lead, and I'm agreeing completely with Officer Wilson</p> <p>22 on this one, it would lead someone behind the vehicle</p> <p>23 to think that they're just braking. Because all of</p> <p>24 the lights, lights up solid like a brake light stay</p> <p>25 solid, so that is what contributed to this accident in</p>
<p style="text-align: right;">Page 75</p> <p>1 Q. Isn't it true that you can only use the parking lane</p> <p>2 to overtake a vehicle in the right when it is safe to</p> <p>3 do so?</p> <p>4 A. That's what the statute says.</p> <p>5 Q. Okay. And isn't it also true that you must keep an</p> <p>6 assured clear distance with respect to other vehicles</p> <p>7 that are in front of you?</p> <p>8 A. Yes, that's the rear-end statute of the State of</p> <p>9 Michigan.</p> <p>10 Q. Correct. And isn't it also true that, you know, not</p> <p>11 just one driver but all drivers on the road, they have</p> <p>12 to follow the rules of the road and they also have to</p> <p>13 be aware of the other vehicles around them; would you</p> <p>14 say that that's a fair statement?</p> <p>15 A. Yes, ma'am.</p> <p>16 Q. Do large vehicles, such as the dump truck in this</p> <p>17 case, do they need a greater area to turn right? In</p> <p>18 other words, do they need to make wide right turns as</p> <p>19 opposed to a regular motor vehicle because of their</p> <p>20 size?</p> <p>21 A. They may depending on what they're turning into.</p> <p>22 Q. Okay. So here at this place, and you've been to this</p> <p>23 area yourself, does a motor vehicle, such as the dump</p> <p>24 truck, does it need to make a wide right turn to enter</p> <p>25 into this gated driveway?</p>	<p style="text-align: right;">Page 77</p> <p>1 my opinion.</p> <p>2 Q. Okay. So were you saying that the dump truck was</p> <p>3 coming to a standstill in the travel lane?</p> <p>4 A. I can see a driver, any driver, once again, and this</p> <p>5 is consistent with Officer Wilson's testimony, that</p> <p>6 they're behind the vehicle for a single red light --</p> <p>7 actually, if he's hitting the brake at the same time</p> <p>8 it's going to be three out of the four would light up</p> <p>9 and lead someone to believe that that truck is coming</p> <p>10 to a stop in the roadway.</p> <p>11 Q. Okay. But you don't know one way or another what</p> <p>12 Mr. McDuffie-Connor believed at the time of the</p> <p>13 accident, correct?</p> <p>14 A. No, I cannot crawl into in his head and tell you what</p> <p>15 he believed at the time.</p> <p>16 Q. And I think I read in your other report, and correct</p> <p>17 me if I'm wrong, but you thought that the dump truck</p> <p>18 was going to turn left?</p> <p>19 A. No, it could be -- once again, that's a possibility on</p> <p>20 someone who's behind it, why else would a truck stop</p> <p>21 in the middle of the road. And it's also coming up to</p> <p>22 Gavel Street at that point, they may be thinking that</p> <p>23 the vehicle is going to turn left eventually.</p> <p>24 Q. But the dump truck didn't move into the left turn</p> <p>25 lane.</p>

<p style="text-align: right;">Page 78</p> <p>1 A. No, it did not.</p> <p>2 Q. Was there anything about the brakes with respect to</p> <p>3 the dump truck that were a factor in causing this</p> <p>4 accident?</p> <p>5 A. Not in causing this accident other than the fact they</p> <p>6 were so bad that truck should have never been out on a</p> <p>7 public roadway.</p> <p>8 Q. But the truck did come to a stop after the accident,</p> <p>9 correct?</p> <p>10 A. Yes, it did.</p> <p>11 Q. So it's just your opinion with respect to this turn</p> <p>12 signal lights that play a factor in the causation of</p> <p>13 the accident, correct?</p> <p>14 A. Yes, ma'am.</p> <p>15 Q. Okay. I just want to make sure I understood.</p> <p>16 Do you have any scientific evidence or</p> <p>17 literature or anything that would support your opinion</p> <p>18 that it was unlikely that Mr. Neal did a pretrip</p> <p>19 inspection?</p> <p>20 A. Other than based, once again, on the physical evidence</p> <p>21 that Officer Ryan found, no.</p> <p>22 Q. So no other scientific evidence or peer-reviewed</p> <p>23 articles or anything like that that, you know, where</p> <p>24 something like this had been studied, anything like</p> <p>25 that? I'm just trying to see if there's anything out</p>	<p style="text-align: right;">Page 80</p> <p>1 that he was wearing a seatbelt, so I don't know. He</p> <p>2 wasn't -- well, actually, he may have been, it's</p> <p>3 likely because when it rolled over he wasn't ejected,</p> <p>4 he stayed with the vehicle. So at this point I would</p> <p>5 say it's likely, but I don't have any evidence either</p> <p>6 way that I can think of right now.</p> <p>7 Q. And it's your opinion that Mr. Neal caused this</p> <p>8 accident because --</p> <p>9 A. Yes, ma'am.</p> <p>10 Q. -- of the defective turn signals?</p> <p>11 A. Yes, ma'am.</p> <p>12 Q. Did Mr. McDuffie-Connor do anything to cause this</p> <p>13 accident?</p> <p>14 A. No. I believe that he was making at the time what he</p> <p>15 believed would have been a legal overtaking on the</p> <p>16 right-hand side as we pointed out before and that the</p> <p>17 dump truck, by making such a, one, turn signals not</p> <p>18 working, not letting someone know behind him that it's</p> <p>19 turning, and, two, making a wide turn, because let's</p> <p>20 be honest, had the dump truck occupied at least part</p> <p>21 of this lane to make the right turn the Sebring would</p> <p>22 have never tried to overtake it. So, no, I don't</p> <p>23 believe Mr. McDuffie played any part in this</p> <p>24 collision.</p> <p>25 Q. Did the driver behind Mr. Neal, Mr. Matthew Pace, did</p>
<p style="text-align: right;">Page 79</p> <p>1 there, that's all.</p> <p>2 A. Not that I'm aware of, no.</p> <p>3 Q. I know it seems like an odd question, but sometimes I</p> <p>4 never know what somebody comes up with, so --</p> <p>5 MS. DIVINEY: I don't have any more</p> <p>6 questions at this time. I can pass the witness if</p> <p>7 anybody has any questions.</p> <p>8 MR. MARKO: Does anybody have any</p> <p>9 questions?</p> <p>10 MR. GUMTOW: I have no questions.</p> <p>11 MR. BAUM: No questions.</p> <p>12 MR. MARKO: Sarah?</p> <p>13 MS. GALE-BARBANTINI: I don't have any</p> <p>14 questions.</p> <p>15 MR. MARKO: Okay, we're done. Thank you.</p> <p>16 MS. DIVINEY: I have one more, so sorry. I</p> <p>17 apologize, everybody.</p> <p>18 EXAMINATION (continued)</p> <p>19 BY MS. DIVINEY:</p> <p>20 Q. Do you know if there was any data pulled from the</p> <p>21 Sebring?</p> <p>22 A. No, ma'am, I'm not aware of any.</p> <p>23 Q. Do you know if the decedent was wearing his seatbelt</p> <p>24 at the time of the accident?</p> <p>25 A. I don't recall if there was any testimony from anybody</p>	<p style="text-align: right;">Page 81</p> <p>1 he do anything to cause this accident in your opinion?</p> <p>2 MR. MARKO: I would object to the question.</p> <p>3 There's no non-party at fault filed against Mr. Pace</p> <p>4 and no fault can be apportioned to any other party by</p> <p>5 your client.</p> <p>6 A. No, ma'am, not that I found.</p> <p>7 BY MS. DIVINEY:</p> <p>8 Q. Did Mr. Pace at any time have an obligation to allow</p> <p>9 Mr. McDuffie-Connor to enter into the travel lane on</p> <p>10 northbound Meyers?</p> <p>11 A. An obligation. No, ma'am.</p> <p>12 Q. Not even as you stated earlier when a vehicle, you</p> <p>13 know, you're side by side?</p> <p>14 A. Well, once again, if a car starts to come over, then,</p> <p>15 yes, you would have to back off otherwise you'd have</p> <p>16 that fail to stop in an assured clear distance that we</p> <p>17 just talked about.</p> <p>18 Q. Okay.</p> <p>19 A. But if they start up neck-and-neck, no, I can't think</p> <p>20 of anything off the top of my head. If there is, I'm</p> <p>21 not aware of it.</p> <p>22 Q. And it's your opinion that Mr. McDuffie-Connor had no</p> <p>23 obligation to enter into the travel lane of northbound</p> <p>24 Meyers behind the dump truck and behind Mr. Pace?</p> <p>25 A. No, not at that time because, once again, it's all</p>



<p style="text-align: right;">Page 82</p> <p>1 happening simultaneously where he is starting up --</p> <p>2 this whole thing took 11 seconds from the time the</p> <p>3 truck passed him until the collision. So, once again,</p> <p>4 let's go through the scenario. Mr. McDuffie is</p> <p>5 accelerating, he sees -- I'm going to assume he sees</p> <p>6 the signals on the vehicle not working, thinks this</p> <p>7 truck is coming to a stop. He has a clear lane to</p> <p>8 pass, attempts to pass and the truck makes a wide</p> <p>9 right turn and causes the collision.</p> <p>10 Q. Is a vehicle legally allowed to pass on the right at a</p> <p>11 business driveway?</p> <p>12 A. Yes, ma'am. I just pointed the statute out,</p> <p>13 overtaking on the right.</p> <p>14 MS. DIVINEY: Okay. No more questions.</p> <p>15 MR. MARKO: Okay. We're done. Thank you.</p> <p>16 MARKED FOR IDENTIFICATION:</p> <p>17 DEPOSITION EXHIBIT 4</p> <p>18 12:54 p.m.</p> <p>19 (The deposition was concluded at 12:54 p.m.</p> <p>20 Signature of the witness was not requested by</p> <p>21 counsel for the respective parties hereto.)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	
<p style="text-align: right;">Page 83</p> <p>1 CERTIFICATE</p> <p>2 STATE OF MICHIGAN</p> <p>3 COUNTY OF MACOMB</p> <p>4</p> <p>5 I, SUSAN LOWRY, a Notary Public in and for</p> <p>6 the above county and state, do hereby certify that</p> <p>7 this deposition was taken before me at the time and</p> <p>8 place hereinbefore set forth; that the witness was by</p> <p>9 me first duly sworn to testify to the truth; that this</p> <p>10 is a true, full and correct transcript of my</p> <p>11 stenographic notes so taken; and that I am not</p> <p>12 related, nor of counsel to either party, nor</p> <p>13 interested in the event of this cause.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20 <i>Susan L. Lowry</i></p> <p>21 SUSAN LOWRY, CSR-2636</p> <p>22 Notary Public</p> <p>23 Macomb County, Michigan</p> <p>24 My commission expires December 3, 2022</p> <p>25</p>	

# **EXHIBIT 12**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE  
  
SCOTT M. NEAL,  
Plaintiff,  
vs. Case No. 20-012305-NF  
Hon. Sheila Ann Gibson  
CHANDRA McDUFFIE, Personal Representative  
of the Estate of WILLIAM HOWARD  
McDUFFIE-CONNOR, Deceased; and  
FARM BUREAU MUTUAL INSURANCE  
COMPANY,  
Defendants.  
Consolidated with:  
CHANDRA McDUFFIE, Personal Representative  
of the Estate of WILLIAM HOWARD  
McDUFFIE-CONNOR, Deceased,  
Plaintiff,  
Hon. Sheila Ann Gibson  
vs.  
SCOTT M. NEAL; N.S.S. CONSTRUCTION,  
INC.; and MEMBERSELECT INSURANCE  
COMPANY,  
Defendants.

---

Job No. CS4677504

Page 2	Page 4
<p>1 The Videoconference Deposition of MATTHEW PACE</p> <p>2 Taken via Zoom Video,</p> <p>3 Commencing at 2:11 p.m.,</p> <p>4 Thursday, July 1, 2021,</p> <p>5 Before Susan L. Lowry, CSR-2636.</p> <p>6</p> <p>7 APPEARANCES:</p> <p>8</p> <p>9 MAJED A. MOUGHNI</p> <p>10 Law Offices of Majed A. Moughni, PLLC</p> <p>11 290 Town Center Drive, Suite 322</p> <p>12 Dearborn, Michigan 48126</p> <p>13 (313) 581-0800</p> <p>14 moughni@aol.com</p> <p>15 Appearing on behalf of the Plaintiff Scott Neal.</p> <p>16</p> <p>17 DANIEL GUMTOW</p> <p>18 Anselmi, Mierzejewski, Ruth &amp; Sowle</p> <p>19 1750 South Telegraph Road, Suite 306</p> <p>20 Bloomfield Hills, Michigan 48302-0179</p> <p>21 (248) 338-2290</p> <p>22 dgumtow@a-mlaw.com</p> <p>23 Appearing on behalf of the Defendant Farm Bureau.</p> <p>24</p> <p>25</p>	<p>1 AMY LOUISE DIVINEY</p> <p>2 Merry, Farnen &amp; Ryan, P.C.</p> <p>3 300 Maple Park Boulevard, Suite 301</p> <p>4 St. Clair Shores, Michigan 48081</p> <p>5 (586) 776-6700</p> <p>6 adiviney@mfr-law.com</p> <p>7 Appearing on behalf of the Defendants Scott Neal and</p> <p>8 N.S.S. Construction.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 3	Page 5
<p>1 ALEXANDER R. BAUM</p> <p>2 Kopka Pinkus Dolin, PC</p> <p>3 32605 West 12 Mile Road, Suite 300</p> <p>4 Farmington Hills, Michigan 48334</p> <p>5 (248) 324-2620</p> <p>6 arbaum@kopkalaw.com</p> <p>7 Appearing on behalf of the Defendant McDuffie.</p> <p>8</p> <p>9 JONATHAN R. MARKO</p> <p>10 Marko Law, PLLC</p> <p>11 1300 Broadway Avenue, Fifth Floor</p> <p>12 Detroit, Michigan 48226</p> <p>13 (313) 241-8924</p> <p>14 JonathanMarko@markolaw.com</p> <p>15 Appearing on behalf of the Plaintiff McDuffie.</p> <p>16</p> <p>17 SARAH B. GALE-BARBANTINI</p> <p>18 Kramer, Corbett, Harding &amp; Dombrowski</p> <p>19 150 West Jefferson Avenue, Suite 1500</p> <p>20 Detroit, Michigan 48226</p> <p>21 (313) 237-5733</p> <p>22 Sbgale-barbantini@acg.aaa.com</p> <p>23 Appearing on behalf of the Defendant MemberSelect.</p> <p>24</p> <p>25</p>	<p>1 TABLE OF CONTENTS</p> <p>2</p> <p>3 WITNESS PAGE</p> <p>4 MATTHEW PACE</p> <p>5</p> <p>6 EXAMINATION</p> <p>7 BY MS. DIVINEY 7</p> <p>8 EXAMINATION</p> <p>9 BY MR. MARKO 22</p> <p>10 RE-EXAMINATION</p> <p>11 BY MS. DIVINEY 95</p> <p>12 EXAMINATION</p> <p>13 BY MR. BAUM 96</p> <p>14 RE-EXAMINATION</p> <p>15 BY MR. MARKO 111</p> <p>16 RE-EXAMINATION</p> <p>17 BY MR. BAUM 114</p> <p>18 RE-EXAMINATION</p> <p>19 BY MS. DIVINEY 115</p> <p>20 RE-EXAMINATION</p> <p>21 BY MR. MARKO 116</p> <p>22 RE-EXAMINATION</p> <p>23 BY MR. BAUM 118</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 6</p> <p style="text-align: center;">EXHIBITS</p> <p>1 2 3 EXHIBIT PAGE 4 (Exhibits not offered.) 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. Okay. Before we get started with questions, let me 2 give you a few background rules. How many times have 3 you given your deposition before? Because maybe you 4 know some of these rules. 5 A. I think just once or twice. Well, a deposition I 6 don't know. I gave a statement. I don't know if that 7 was considered a deposition or not. 8 Q. A statement regarding this accident? 9 A. Yes. 10 Q. Who did you give that statement to? 11 A. You and a couple other people. I'm not sure. 12 Q. So people have talked to you about the accident, 13 you've discussed what you saw at the accident? 14 A. Yes. 15 Q. Okay. So have you ever given a deposition before in 16 any other cases where there's been a court reporter 17 and they've sworn you in? 18 A. Yes. 19 Q. How many times before? 20 A. Once. 21 Q. One time before. And what type of case was that? 22 Were you a plaintiff or a defendant in that case? 23 A. No, a witness. 24 Q. You were a witness in that case, too? 25 A. Yes.</p>
<p style="text-align: right;">Page 7</p> <p>1 Via Zoom Video 2 Thursday, July 1, 2021 3 2:11 p.m. 4 5 MATTHEW PACE, 6 was thereupon called as a witness herein, and after 7 having first been duly sworn to testify to the truth, 8 the whole truth and nothing but the truth, was 9 examined and testified as follows: 10 MS. DIVINEY: Let the record reflect that 11 this is the date and time set for the deposition of 12 Matthew Pace in the litigation that's been filed in 13 Wayne County, Michigan. This deposition is being 14 taken pursuant to notice and for all allowable 15 purposes under the law. 16 EXAMINATION 17 BY MS. DIVINEY: 18 Q. Good afternoon, Mr. Pace. Thank you for your time 19 today. My name is Amy Diviney. I represent N.S.S. 20 Construction and Scott Neal, their employer in this 21 litigation. We're here today to ask you some 22 questions about an accident that we believe that you 23 witnessed that occurred on July 17th, 2019. 24 Do you recall that accident at all? 25 A. Yes.</p>	<p style="text-align: right;">Page 9</p> <p>1 Q. And what type of case was that? Was that an auto 2 accident as well? 3 A. No, it was a firearm charge. 4 Q. Okay. Real quick. If I ask you a question and you 5 don't understand it, please let me know and I will 6 gladly rephrase it or ask it in a different way. If I 7 ask you a question and you shake your head or you nod 8 your head and the attorneys jump in or the court 9 reporter jumps in and says is that a yes or is that a 10 no, we're not trying to be rude, we just want to make 11 the record clear. 12 If you have to give any type of estimate, 13 please let us know that you're giving us an estimate. 14 And any time you need to take a break, just let us 15 know; but if you're in the middle of answering a 16 question, finish your answer and then we can take a 17 break. Okay? 18 A. Okay. 19 Q. All right. Let's get a little background from you. 20 What is your date of birth? 21 A. June 15th, 1991. 22 Q. And how old does that make you today? 30? 23 A. 30. 24 Q. And where did you graduate from high school? 25 A. Flint/Genesee Job Corps.</p>



<p style="text-align: right;">Page 10</p> <p>1 Q. Can you say that a little slower?</p> <p>2 A. Flint/Genesee Job Corps.</p> <p>3 Q. Where is that at?</p> <p>4 A. Flint, Michigan.</p> <p>5 Q. When did you graduate?</p> <p>6 A. 2011.</p> <p>7 Q. And did you go on to college, university?</p> <p>8 A. No, I go to Dorsey for massage therapy.</p> <p>9 Q. Are you doing that right now?</p> <p>10 A. Yes.</p> <p>11 Q. Have you ever served in the military?</p> <p>12 A. Yes.</p> <p>13 Q. What branch of the military?</p> <p>14 A. Army.</p> <p>15 Q. And what did you do in the Army?</p> <p>16 A. I was a combat infantry soldier.</p> <p>17 Q. Thank you for your service.</p> <p>18 A. Thank you.</p> <p>19 Q. With respect to the accident that we're here to talk</p> <p>20 to you about on July 17, 2019, I'll let you tell me in</p> <p>21 your own words, where were you going on that day on</p> <p>22 the morning of the accident?</p> <p>23 A. To my sister's house.</p> <p>24 Q. Where were you driving from?</p> <p>25 A. Home.</p>	<p style="text-align: right;">Page 12</p> <p>1 get in front of us, but he proceeded on the side of</p> <p>2 us, like listening to music, like bobbing his head.</p> <p>3 As we continued to drive, he like hit</p> <p>4 his -- like hit the gas trying to speed off. When we</p> <p>5 got close to the railroad tracks, close to Linden, as</p> <p>6 the truck driver was turning he hit the front</p> <p>7 passenger's tire area of the truck and flipped his</p> <p>8 car.</p> <p>9 When he flipped his car, I immediately</p> <p>10 parked and I jumped out of the car, me and my brother.</p> <p>11 We ran up to his car to see if we could like help him</p> <p>12 from under his car because the car was upside down.</p> <p>13 When we got to the car, we saw the car was pinning him</p> <p>14 on the ground so we couldn't do anything. We stayed</p> <p>15 there until the police came and gave our statement and</p> <p>16 left.</p> <p>17 Q. Okay. So let me go back through this a little bit</p> <p>18 slower. So you're driving north on Meyers in Detroit,</p> <p>19 correct?</p> <p>20 A. Um-hum.</p> <p>21 Q. And you're following behind a big dump truck?</p> <p>22 A. Yes.</p> <p>23 Q. Were you the car that was directly behind the dump</p> <p>24 truck or was there any vehicles between your vehicle</p> <p>25 and the dump truck?</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. So you were driving from your house to your sister's</p> <p>2 house?</p> <p>3 A. Yes.</p> <p>4 Q. And what type of car were you driving?</p> <p>5 A. A blue Hyundai Sonata.</p> <p>6 Q. Who else was with you in your vehicle?</p> <p>7 A. My three kids and my brother.</p> <p>8 Q. And what is your brother's name?</p> <p>9 A. Andre Pace.</p> <p>10 Q. And how old is Andre?</p> <p>11 A. 32, I believe, 31. I'm not sure.</p> <p>12 Q. That's okay. And you said you had your three kids</p> <p>13 with you as well?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. So tell me what you recall about the accident.</p> <p>16 A. We were driving up Meyers towards Fenkell, so we were</p> <p>17 going north on Meyers and there was a big truck in</p> <p>18 front of us. As we passed, I believe that's Linden --</p> <p>19 no, as we passed Schaefer -- Schoolcraft, as we passed</p> <p>20 Schoolcraft, there's a liquor store, there was a white</p> <p>21 vehicle on the side of the road in the bike lane</p> <p>22 parked.</p> <p>23 As we passed the white vehicle, he began to</p> <p>24 drive. He was driving on the side of us. I slowed</p> <p>25 down to let him so he could get in the front of us, to</p>	<p style="text-align: right;">Page 13</p> <p>1 A. No, it was my car and then there was the dump truck.</p> <p>2 Q. And then as the dump truck passed the white car or as</p> <p>3 your car passed the white car, when did the white car</p> <p>4 proceed to drive in that shoulder area of northbound</p> <p>5 Meyers?</p> <p>6 A. As my car was passing him.</p> <p>7 Q. So the dump truck had already passed the white car</p> <p>8 before he started to drive, correct?</p> <p>9 A. Yes.</p> <p>10 Q. And then correct me if I'm wrong, but you slowed down</p> <p>11 to try to allow this white car to come over into the</p> <p>12 travel lane of northbound Meyers, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Is that because there's only one lane of travel in</p> <p>15 northbound Meyers in that area?</p> <p>16 A. Yes, there's only one lane.</p> <p>17 Q. And did the white car ever put on its turn indicator</p> <p>18 to indicate to you that he was going to try to pull</p> <p>19 over into the travel lane?</p> <p>20 MR. MARKO: Objection. Hold on. Hold on.</p> <p>21 Hi, Mr. Pace, I'm Jon Marko. I represent the man who</p> <p>22 was killed in this crash. And let me lodge just a</p> <p>23 quick objection and then you can go ahead and answer,</p> <p>24 okay?</p> <p>25 I'm going to object to foundation to this</p>

<p style="text-align: right;">Page 14</p> <p>1 question. But to the extent that you have knowledge,</p> <p>2 Mr. Pace, you can answer the question.</p> <p>3 A. No, his blinkers were not on.</p> <p>4 BY MS. DIVINEY:</p> <p>5 Q. Pardon?</p> <p>6 A. No, his blinkers were not on.</p> <p>7 Q. The white car did not put on his turn indicator,</p> <p>8 correct?</p> <p>9 A. No.</p> <p>10 Q. How about with respect to the --</p> <p>11 MS. GALE-BARBANTINI: Actually, Amy, just</p> <p>12 so I'm clear, Mr. Pace, did you say -- when you said</p> <p>13 no, did you mean no, the blinkers weren't on?</p> <p>14 THE WITNESS: No, the blinkers were not on.</p> <p>15 MS. GALE-BARBANTINI: Okay. That was it.</p> <p>16 Sorry. Thanks.</p> <p>17 MR. BAUM: I'm just going to join in Jon</p> <p>18 Marko's objection to the foundation.</p> <p>19 BY MS. DIVINEY:</p> <p>20 Q. Mr. Pace, you were there, you could see the white car,</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. And that white car was driven by the decedent in this</p> <p>24 case. And when you saw that white car you did not see</p> <p>25 any turn indicators blinking or activated that would</p>	<p style="text-align: right;">Page 16</p> <p>1 A. Yes.</p> <p>2 Q. And you saw it blink, correct?</p> <p>3 A. Yeah, it was blinking for a while before he came to a</p> <p>4 stop.</p> <p>5 Q. When you say before he came to a stop, was that before</p> <p>6 he came to a stop after the accident or prior to the</p> <p>7 accident?</p> <p>8 A. Before and after.</p> <p>9 Q. So explain that to me.</p> <p>10 A. As we were coming towards the railroad track and we</p> <p>11 were following behind him, the dump truck, he never</p> <p>12 stopped. When he turned his blinker on, he slowed</p> <p>13 down and he turned his blinker on. As he turned his</p> <p>14 blinker on, that's when he began his turn. But at the</p> <p>15 same time as him turning, the white car -- the guy in</p> <p>16 the white car hit his gas and sped up.</p> <p>17 Q. And is that when the white car and the dump truck</p> <p>18 collided?</p> <p>19 A. Yes.</p> <p>20 Q. Did you see the dump truck's brake lights at all?</p> <p>21 A. I saw his brake lights when he slowed down to turn.</p> <p>22 Q. With respect to the driver of the white vehicle, did</p> <p>23 he ever look over toward your vehicle at you and your</p> <p>24 brother that you can recall?</p> <p>25 A. Yes, he did.</p>
<p style="text-align: right;">Page 15</p> <p>1 indicate that Mr. Pace -- that would indicate to other</p> <p>2 drivers in the area, including you, that the driver of</p> <p>3 the white vehicle, Mr. McDuffie, was trying to get</p> <p>4 into the travel lane, correct?</p> <p>5 MR. MARKO: Objection to form.</p> <p>6 MR. BAUM: I'll join.</p> <p>7 BY MS. DIVINEY:</p> <p>8 Q. Your answer was no, correct?</p> <p>9 A. No.</p> <p>10 Q. No turn signal by the white car driven by</p> <p>11 Mr. McDuffie?</p> <p>12 A. No.</p> <p>13 MR. MARKO: Objection to form and</p> <p>14 foundation.</p> <p>15 BY MS. DIVINEY:</p> <p>16 Q. All right. You're following behind the dump truck,</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. At any point did the dump truck put on its turn</p> <p>20 indicator?</p> <p>21 A. He turned them on as he got closer towards the</p> <p>22 railroad track.</p> <p>23 Q. And was that his right turn indicator that he had on?</p> <p>24 A. Yes.</p> <p>25 Q. And did that right turn indicator blink?</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. And did he indicate like that he wanted to get into</p> <p>2 your travel lane? Did he make any type of hand</p> <p>3 motions toward you?</p> <p>4 A. No. As he was on the side of us, I -- when I slowed</p> <p>5 down, I waited for him to go in front, but he just was</p> <p>6 like -- just like bobbing his head to us, like</p> <p>7 listening to his music. And then as we got closer to</p> <p>8 where the accident happened, he just hit his gas and I</p> <p>9 guess he tried to beat the turn of the truck and he</p> <p>10 hit the truck and flipped.</p> <p>11 Q. If you recall, was the driver of the white vehicle far</p> <p>12 enough behind the dump truck to see the dump truck's</p> <p>13 turn signal?</p> <p>14 MR. MARKO: Objection. Excuse me. Excuse</p> <p>15 me. Excuse me. Wait. Objection, speculation,</p> <p>16 foundation. How does he know what my client was able</p> <p>17 to see where my client was positioned? He doesn't</p> <p>18 have the foundation to speculate as to what my client</p> <p>19 saw or didn't see. That's improper.</p> <p>20 MS. DIVINEY: And I'll rephrase the</p> <p>21 question.</p> <p>22 BY MS. DIVINEY:</p> <p>23 Q. The white car, was it far enough behind the dump truck</p> <p>24 where a driver in the position of that white car would</p> <p>25 have been able to see the turn signal of the dump</p>

<p style="text-align: right;">Page 18</p> <p>1 truck had they been paying attention?</p> <p>2 MR. MARKO: Yeah, that's the same</p> <p>3 objection. Objection.</p> <p>4 MS. DIVINEY: Okay. We got it. You can</p> <p>5 have a standing objection.</p> <p>6 MR. MARKO: No, let me make my objection</p> <p>7 for the record. Excuse me. Okay? Stop talking over</p> <p>8 me. Objection, speculation and foundation. This</p> <p>9 witness is not qualified to offer line of sight</p> <p>10 testimony or accident reconstruction testimony as to</p> <p>11 what my client would have been able to see or not see</p> <p>12 in a different vehicle from a different position.</p> <p>13 A. He was on the side of me, so he was never in a</p> <p>14 different position.</p> <p>15 BY MS. DIVINEY:</p> <p>16 Q. So you can answer my question.</p> <p>17 MR. BAUM: I'll just join with the</p> <p>18 objection.</p> <p>19 A. Yes, being on the side of my vehicle the driver of the</p> <p>20 white vehicle would have been able to see the turn</p> <p>21 signal of the truck.</p> <p>22 BY MS. DIVINEY:</p> <p>23 Q. And would he have been able to see the brakes, the</p> <p>24 brake lights of the dump truck?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 20</p> <p>1 how familiar were you with the area?</p> <p>2 A. I wasn't real familiar with it, but I mean I knew the</p> <p>3 landmarks.</p> <p>4 Q. Do you have any experience or knowledge with respect</p> <p>5 to the operation of large construction equipment such</p> <p>6 as the dump truck that was being operated on the date</p> <p>7 of the accident?</p> <p>8 A. Not that vehicle per se, but I've driven big vehicles</p> <p>9 in the military before.</p> <p>10 Q. Have you driven vehicles in the military that were as</p> <p>11 large as this dump truck or larger?</p> <p>12 A. Yes.</p> <p>13 Q. Based on that knowledge and experience with driving</p> <p>14 large vehicles and based on your knowledge of the</p> <p>15 accident, is there anything that the driver of the</p> <p>16 dump truck could have done to prevent this accident</p> <p>17 from happening?</p> <p>18 MR. MARKO: Okay. Okay. Wait a minute.</p> <p>19 Excuse me. Okay. Objection. Excuse me. Excuse me.</p> <p>20 Objection, foundation. This man is a lay witness. He</p> <p>21 is not an expert witness. He's not been disclosed as</p> <p>22 one under MRE702. He hasn't been listed on any</p> <p>23 witness list as an expert witness. He's limited to</p> <p>24 lay opinions. He is not able to give -- he's not an</p> <p>25 accident reconstructionist. He's not able to give an</p>
<p style="text-align: right;">Page 19</p> <p>1 MR. MARKO: Same objection. Improper</p> <p>2 question.</p> <p>3 BY MS. DIVINEY:</p> <p>4 Q. Was there any sunlight that blocked your view,</p> <p>5 Mr. Pace, of the dump truck's turn signal?</p> <p>6 A. No.</p> <p>7 Q. Was there any sunlight affecting your view of the</p> <p>8 brake lights of the dump truck?</p> <p>9 A. No.</p> <p>10 Q. What was the weather like on that particular day, if</p> <p>11 you remember?</p> <p>12 A. It was warm out. I remember it being warm. But I</p> <p>13 know the sun wasn't in front of me, so I mean it</p> <p>14 wasn't shining in my face or anything, so the sun</p> <p>15 wasn't in front of us.</p> <p>16 Q. Is that because you were driving northbound on Meyers?</p> <p>17 A. Yes.</p> <p>18 Q. It wasn't a rainy overcast day, correct?</p> <p>19 A. No.</p> <p>20 Q. And how familiar are you with this area of northbound</p> <p>21 Meyers near the railroad track that you're speaking</p> <p>22 of?</p> <p>23 A. Right now I'm pretty familiar. I've taken that route</p> <p>24 for a while, so --</p> <p>25 Q. How about at the time of the accident in July 2019,</p>	<p style="text-align: right;">Page 21</p> <p>1 expert opinion regarding fault of the dump truck that</p> <p>2 killed my client. So objection to foundation.</p> <p>3 MS. DIVINEY: Excuse me. Objection in the</p> <p>4 way that you characterized my client and what occurred</p> <p>5 on that day.</p> <p>6 MR. MARKO: Okay. Objection based on</p> <p>7 foundation. He's limited by 701 to opinions that are</p> <p>8 rationally based on the perception that he had at the</p> <p>9 time and not to give expert testimony because he drove</p> <p>10 a couple of dump trucks when he was serving the</p> <p>11 country, our country. So he's not in a position to be</p> <p>12 able to give expert testimony in this case.</p> <p>13 MS. DIVINEY: Under 702 at this time.</p> <p>14 BY MS. DIVINEY:</p> <p>15 Q. So you can go ahead and answer the question, Mr. Pace.</p> <p>16 MR. MARKO: You're moving to qualify</p> <p>17 Mr. Pace?</p> <p>18 MS. DIVINEY: No, I'm not moving to qualify</p> <p>19 him. Your objection was under 702, that's what I'm</p> <p>20 clarifying.</p> <p>21 MR. MARKO: No. My objection was</p> <p>22 foundation under 702, under 701, under Daubert and its</p> <p>23 progeny and that this man was never listed or</p> <p>24 identified as an expert even though we sent expert</p> <p>25 witness interrogatories and Mr. Pace was never</p>

<p style="text-align: right;">Page 22</p> <p>1 identified as an expert witness. He's not allowed or</p> <p>2 permitted to give expert testimony.</p> <p>3 BY MS. DIVINEY:</p> <p>4 Q. Okay. Whenever you're ready, Mr. Pace, you can answer</p> <p>5 the question.</p> <p>6 A. Okay. In my opinion I don't believe it would have</p> <p>7 been anything that the truck driver could have done to</p> <p>8 prevent the accident because as he was turning -- and</p> <p>9 big vehicles like that, they're real hard to stop.</p> <p>10 And as he was turning, the guy hit his gas and tried</p> <p>11 to pass him, so there was no way that he could do</p> <p>12 anything to stop the turn or anything else to stop the</p> <p>13 guy from hitting his truck.</p> <p>14 Q. And that's based on you being present at the accident</p> <p>15 and witnessing the accident, correct?</p> <p>16 A. Yes.</p> <p>17 MS. DIVINEY: No more questions at this</p> <p>18 time.</p> <p>19 EXAMINATION</p> <p>20 BY MR. MARKO:</p> <p>21 Q. Sir, my name is Jon Marko. Like I said earlier, I</p> <p>22 represent the family of Mr. McDuffie who was killed in</p> <p>23 this crash. So I want to make sure that I understand</p> <p>24 your testimony and what you're trying to say here</p> <p>25 today.</p>	<p style="text-align: right;">Page 24</p> <p>1 happened? In other words, was it like within a month</p> <p>2 of the accident?</p> <p>3 A. No.</p> <p>4 Q. When was it?</p> <p>5 A. I don't know. I don't know when the first time I</p> <p>6 talked to somebody. I think it was last year</p> <p>7 sometime.</p> <p>8 Q. Okay. And what did this lawyer tell you?</p> <p>9 A. They asked me to explain to them what happened in the</p> <p>10 accident. They asked me to be completely honest in</p> <p>11 describing to them what happened in the accident.</p> <p>12 Q. Well, that lawyer wasn't me, was it? You've never</p> <p>13 talked to me or the family of Mr. McDuffie about what</p> <p>14 happened; is that right?</p> <p>15 A. I'm not sure. I know I talked to a guy and then I</p> <p>16 know I talked to a lady. I know they were both</p> <p>17 lawyers and I don't remember which one was -- which</p> <p>18 party they said they represented.</p> <p>19 Q. And how many times have you talked to Ms. Diviney</p> <p>20 about this case?</p> <p>21 A. Who's Ms. Diviney, the other lawyer?</p> <p>22 MS. DIVINEY: That's me.</p> <p>23 BY MR. MARKO:</p> <p>24 Q. The lawyer who was just questioning you.</p> <p>25 A. I think two or three times.</p>
<p style="text-align: right;">Page 23</p> <p>1 First of all, how many times have you</p> <p>2 talked to any other lawyers or people from the</p> <p>3 insurance company about this case?</p> <p>4 A. Probably like three or four times.</p> <p>5 Q. All right. Let's talk about those times. When was</p> <p>6 the first time you talked to a lawyer or an insurance</p> <p>7 company person about this case?</p> <p>8 A. I don't remember when the first time was.</p> <p>9 Q. How did you talk to them?</p> <p>10 A. On the phone.</p> <p>11 Q. Did they call you or did you call them?</p> <p>12 A. They called me.</p> <p>13 Q. Was it recorded?</p> <p>14 A. I'm not sure if it was recorded or not.</p> <p>15 Q. And what did they say to you? Who was it?</p> <p>16 A. The first person -- the first person that I talked to,</p> <p>17 I believe it was the insurance from -- I guess from</p> <p>18 the truck company. And they asked me to be honest and</p> <p>19 tell exactly what happened and I told them exactly</p> <p>20 what happened in the course of the accident.</p> <p>21 Q. Okay. When was the next time you talked to somebody?</p> <p>22 A. A couple of weeks after that.</p> <p>23 Q. And who was that?</p> <p>24 A. It was one of the lawyers. It was a guy, I believe.</p> <p>25 Q. And was this close in time to when the accident</p>	<p style="text-align: right;">Page 25</p> <p>1 Q. And did you talk to her -- did you ever meet with her</p> <p>2 in person?</p> <p>3 A. No.</p> <p>4 Q. And did she show you any documents or send you any</p> <p>5 documents about this case?</p> <p>6 A. No.</p> <p>7 MS. DIVINEY: Only his dep notice.</p> <p>8 BY MR. MARKO:</p> <p>9 Q. Did she send you or play your previous statement?</p> <p>10 A. No.</p> <p>11 Q. Did she show you any pictures or videos?</p> <p>12 A. No.</p> <p>13 Q. Are you aware that there's a video that shows this</p> <p>14 crash?</p> <p>15 A. Yes.</p> <p>16 Q. And how are you aware of that, sir?</p> <p>17 A. Because I was told by one of the insurance -- the</p> <p>18 insurance people that they had a video -- that there</p> <p>19 was a video, it just doesn't show the whole ordeal of</p> <p>20 the accident.</p> <p>21 Q. When did they tell you that?</p> <p>22 A. When they first called me.</p> <p>23 Q. Okay. Did anyone threaten you in any way to give</p> <p>24 testimony in this case? Like, for example, if you</p> <p>25 don't testify we'll have to go to court or something</p>

<p style="text-align: right;">Page 26</p> <p>1 like that?</p> <p>2 A. No.</p> <p>3 Q. Did anyone promise you anything to give testimony in</p> <p>4 this case?</p> <p>5 A. No.</p> <p>6 Q. Did you get anything? Did you get any money or</p> <p>7 anything like that?</p> <p>8 A. No.</p> <p>9 Q. Did you get a witness fee by Ms. Diviney?</p> <p>10 A. No.</p> <p>11 Q. She didn't give you your witness fee that you're</p> <p>12 entitled to under the law?</p> <p>13 Excuse me, did she give you the witness fee</p> <p>14 that she was supposed to give you?</p> <p>15 A. No.</p> <p>16 Q. Do you want that witness fee that you're entitled to?</p> <p>17 A. I didn't know that there was such thing as a witness</p> <p>18 fee.</p> <p>19 Q. Yeah, there is. You're supposed to get it before you</p> <p>20 testify. She never told you that?</p> <p>21 A. No.</p> <p>22 Q. Okay.</p> <p>23 MS. DIVINEY: Mr. Pace, my office will take</p> <p>24 care of you. Don't worry.</p> <p>25 BY MR. MARKO:</p>	<p style="text-align: right;">Page 28</p> <p>1 Okay, I understand your objection. Stop making it</p> <p>2 over and over.</p> <p>3 MS. DIVINEY: I can make it as many times</p> <p>4 as I like just like you can make yours. The rules</p> <p>5 apply equally to us so we both can make objections.</p> <p>6 BY MR. MARKO:</p> <p>7 Q. Sir, who is your insurance company?</p> <p>8 A. I'm sorry, but I don't see what my insurance has to do</p> <p>9 with the accident.</p> <p>10 Q. Sir, you're a subpoenaed witness. Okay? Here's</p> <p>11 what's going to happen if you don't answer my</p> <p>12 questions, okay? I go to court, I'll file a motion</p> <p>13 for show cause and then you'll have to go to court and</p> <p>14 then you're going to have to come back and I'll go in</p> <p>15 front of Judge Gibson. So I'm allowed to ask these</p> <p>16 questions. She can argue about them later in front of</p> <p>17 the judge, but nobody can tell you not to answer a</p> <p>18 question like that.</p> <p>19 A. I'm not answering the question, but you're not going</p> <p>20 to -- you can threaten me all you want about the</p> <p>21 insurance on my vehicle. I don't understand why my</p> <p>22 vehicle -- what matters in this case if I wasn't in</p> <p>23 the accident.</p> <p>24 Q. Sir, who was your insurance company -- who was your</p> <p>25 vehicle insured with?</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. Did you --</p> <p>2 MR. MARKO: Excuse me. Is that an</p> <p>3 objection or are you just speaking during my</p> <p>4 questioning?</p> <p>5 MS. DIVINEY: Go ahead, Mr. Marko. I'm</p> <p>6 just letting the witness know that it was probably an</p> <p>7 oversight at our office.</p> <p>8 MR. MARKO: You shouldn't let the witness</p> <p>9 know anything. Lodge an objection. I move to strike</p> <p>10 your comments as inappropriate and not allowed under</p> <p>11 the Michigan Court Rules.</p> <p>12 BY MR. MARKO:</p> <p>13 Q. Did you have insurance on your vehicle on the date of</p> <p>14 the accident?</p> <p>15 A. Me?</p> <p>16 Q. Correct.</p> <p>17 A. I did.</p> <p>18 MS. DIVINEY: Objection, relevancy. It has</p> <p>19 nothing to do with this case whether he had insurance</p> <p>20 or not on his vehicle.</p> <p>21 BY MR. MARKO:</p> <p>22 Q. Who is your insurance company?</p> <p>23 MS. DIVINEY: Objection, relevancy. It has</p> <p>24 nothing to do with this.</p> <p>25 MR. MARKO: Okay, objection, relevance.</p>	<p style="text-align: right;">Page 29</p> <p>1 A. It was through LA. I'm not sure.</p> <p>2 Q. It was through LA Insurance?</p> <p>3 A. Yes.</p> <p>4 Q. And your testimony is that you had a valid insurance</p> <p>5 policy on your vehicle on the date of the crash?</p> <p>6 A. In 2019, yes.</p> <p>7 Q. Under oath. Okay.</p> <p>8 And, sir, have you ever been arrested</p> <p>9 before?</p> <p>10 A. Yes.</p> <p>11 Q. How many times?</p> <p>12 A. One.</p> <p>13 Q. And what was it for?</p> <p>14 A. Disorderly conduct.</p> <p>15 Q. And what year was that?</p> <p>16 A. 2000 -- last year, 2020.</p> <p>17 Q. And where was it?</p> <p>18 A. In Detroit.</p> <p>19 Q. And why were you arrested for disorderly conduct?</p> <p>20 A. Because I asked the officer why he pulled my weapon</p> <p>21 out of my holster.</p> <p>22 Q. Why did you have an encounter with the police officer?</p> <p>23 A. I don't know why -- does that matter?</p> <p>24 MS. DIVINEY: Objection, relevancy. But go</p> <p>25 ahead.</p>



<p style="text-align: right;">Page 30</p> <p>1 BY MR. MARKO:</p> <p>2 Q. Go ahead.</p> <p>3 A. I was coming out of the Coney Island and the officers</p> <p>4 were driving up Seven Mile. They pulled in, they</p> <p>5 pulled around through the alley, they pulled into the</p> <p>6 parking lot. They asked me and my brother if we</p> <p>7 called the police. We told them no. And they pulled</p> <p>8 off and they stopped and they asked me what I had on</p> <p>9 my hip. I told them it was a firearm. And I asked if</p> <p>10 he would like to see my license. As he got out of the</p> <p>11 car and approached me, I gave him my pistol license</p> <p>12 and my driver's license. And he lifted my shirt and</p> <p>13 snatched my weapon out of the holster. I asked him</p> <p>14 what he was doing it for. He jumped out of his</p> <p>15 vehicle -- he jumped back out of his vehicle and</p> <p>16 proceeded to chest butt me with his police gear and I</p> <p>17 got to arguing -- we got to arguing and he handcuffed</p> <p>18 me and took me to the DDC for disorderly conduct. He</p> <p>19 never gave me a ticket and the charges were dropped.</p> <p>20 Q. Have you ever been convicted of any crimes?</p> <p>21 A. No.</p> <p>22 Q. When was your discharge from the military?</p> <p>23 A. 2018.</p> <p>24 Q. And what type of discharge did you have?</p> <p>25 A. Medically discharged. I was injured.</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. Okay. And let's talk about this area. You said that</p> <p>2 you're familiar with this area where this crash</p> <p>3 occurred, correct?</p> <p>4 A. I said I'm kind of familiar with it, with the area.</p> <p>5 Q. Well, there's a lane of travel -- how many lanes are</p> <p>6 there on the road?</p> <p>7 A. One.</p> <p>8 Q. There's only one lane on the entire road?</p> <p>9 A. Yes, but there's a parking lane and a driving lane.</p> <p>10 Q. Is there a turn lane or no turn lane?</p> <p>11 A. The truck can turn from the parking lane. There's</p> <p>12 only one lane. There's no turning lane. I'm not</p> <p>13 sure.</p> <p>14 Q. Okay. Sir, my question is is there a middle turn lane</p> <p>15 or is there not a middle turn lane? That's my</p> <p>16 question.</p> <p>17 A. I'm not sure. There's only one lane.</p> <p>18 Q. I don't understand. Is it your testimony that there's</p> <p>19 a middle turn lane on this road or that there's not a</p> <p>20 middle turning lane?</p> <p>21 A. My testimony is there's only one lane driving up</p> <p>22 Meyers Road, there's only one driving lane.</p> <p>23 Q. Is there a lane in the middle that cars can turn from</p> <p>24 or not?</p> <p>25 A. There's one driving lane. And at certain corners I</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. And was it a general discharge, an honorable discharge</p> <p>2 or a dishonorable?</p> <p>3 A. Honorable.</p> <p>4 Q. Okay. So let me show you this video that I have of</p> <p>5 this --</p> <p>6 MR. MARKO: Madam Court Reporter, it says</p> <p>7 that my screen sharing is disabled.</p> <p>8 THE COURT REPORTER: Go ahead.</p> <p>9 MR. MARKO: Thank you so much.</p> <p>10 BY MR. MARKO:</p> <p>11 Q. So you understand that -- do you see this video? Can</p> <p>12 you see it?</p> <p>13 A. Yeah, I can see that.</p> <p>14 Q. So you understand that there's a video that captured</p> <p>15 this entire event --</p> <p>16 A. Okay.</p> <p>17 Q. -- on video. Okay? And, you know, this event</p> <p>18 happened how many years ago, sir? When did this crash</p> <p>19 occur?</p> <p>20 A. Two years ago.</p> <p>21 Q. Okay. And let me show you some of this video. Do you</p> <p>22 see this dump truck right there?</p> <p>23 A. Yes.</p> <p>24 Q. And do you see my client's vehicle right here?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 33</p> <p>1 believe there are turning lanes. I'm not sure.</p> <p>2 Q. Was there a turning lane at the area where the crash</p> <p>3 occurred?</p> <p>4 MS. DIVINEY: Are you talking about a</p> <p>5 middle turn lane?</p> <p>6 MR. MARKO: A middle turn lane.</p> <p>7 A. The driver turned right where we were. He didn't turn</p> <p>8 left.</p> <p>9 BY MR. MARKO:</p> <p>10 Q. That's not my question. My question to you is where</p> <p>11 the crash occurred was there a middle turn lane?</p> <p>12 A. I'm not sure.</p> <p>13 Q. Yes or no?</p> <p>14 A. I'm not sure. I'm not sure.</p> <p>15 Q. Where the crash occurred, was there a parking lane on</p> <p>16 the side?</p> <p>17 MS. DIVINEY: Which side of the road are</p> <p>18 you talking about?</p> <p>19 MR. MARKO: The side that my client was</p> <p>20 traveling down.</p> <p>21 A. It's either a parking lane or a bike lane. I'm not</p> <p>22 sure what it's called. I just know there's a white</p> <p>23 line there and it's not a dotted line.</p> <p>24 BY MR. MARKO:</p> <p>25 Q. Since you said that you're really familiar with this</p>

<p style="text-align: right;">Page 34</p> <p>1 area, do cars commonly drive down that?</p> <p>2 MS. DIVINEY: Objection.</p> <p>3 A. No, they don't.</p> <p>4 BY MR. MARKO:</p> <p>5 Q. Okay. So it never happens; is that your testimony?</p> <p>6 A. When I'm on the road, it doesn't happen.</p> <p>7 Q. And how many times have you been in this area?</p> <p>8 A. I drive it almost -- well, I'd say four or five times</p> <p>9 a week.</p> <p>10 Q. And you've never seen it ever happen?</p> <p>11 A. I've never seen nobody drive. I've seen cars park on</p> <p>12 the side of the road. I've never seen them drive on</p> <p>13 the side of the road.</p> <p>14 Q. Okay. You said that you had no problems. Is it fair</p> <p>15 to say that you had no problems seeing my client in</p> <p>16 his white convertible?</p> <p>17 A. Yeah, he's right on the side of him.</p> <p>18 Q. Right. I mean, did you see him right away?</p> <p>19 A. Yeah, as we passed him, yeah, we saw him.</p> <p>20 Q. And did you have any trouble seeing him?</p> <p>21 A. What do you mean any trouble seeing him?</p> <p>22 Q. Like did anything block your view of him in his</p> <p>23 vehicle?</p> <p>24 A. No.</p> <p>25 Q. Did the truck -- based on your perceptions, should the</p>	<p style="text-align: right;">Page 36</p> <p>1 saw as we passed him the white car started to move.</p> <p>2 Q. Okay. So my client -- when you first saw my client's</p> <p>3 vehicle, was it moving or not moving?</p> <p>4 A. When I first saw it it wasn't moving.</p> <p>5 Q. And did you see my client inside the vehicle in the</p> <p>6 driver's seat at that time?</p> <p>7 A. Yes.</p> <p>8 Q. Could you clearly see that someone was inside the</p> <p>9 vehicle?</p> <p>10 A. Yes. He had the top down, so he was sitting in the</p> <p>11 car.</p> <p>12 Q. And what type of car were you in?</p> <p>13 A. A blue Hyundai Sonata.</p> <p>14 Q. So you would have had even a lower view than the truck</p> <p>15 because the driver of the truck sits up high, right?</p> <p>16 A. Yes.</p> <p>17 Q. So it was clear to you that there was a man in that</p> <p>18 convertible --</p> <p>19 A. Um-hum.</p> <p>20 Q. -- that was parked at the side of the road, correct?</p> <p>21 A. Yep.</p> <p>22 Q. So did you think -- were you surprised when that car</p> <p>23 with a man sitting in it in a lane that's made for</p> <p>24 parking started to drive the vehicle?</p> <p>25 A. You said was I surprised?</p>
<p style="text-align: right;">Page 35</p> <p>1 truck have been able to see my client's vehicle on the</p> <p>2 side of the road as it passed him?</p> <p>3 MS. DIVINEY: Objection, foundation. He</p> <p>4 doesn't know what the truck driver could have seen.</p> <p>5 BY MR. MARKO:</p> <p>6 Q. Go ahead.</p> <p>7 A. What's the question?</p> <p>8 MR. MARKO: Madam Court Reporter, can you</p> <p>9 please read back my question?</p> <p>10 (The requested portion of the record was</p> <p>11 read by the reporter at 2:47 p.m.</p> <p>12 "Q. Did the truck -- based on your</p> <p>13 perceptions, should the truck have been</p> <p>14 able to see my client's vehicle on the side</p> <p>15 of the road as it passed him?")</p> <p>16 A. As we passed him, yes, he should have been able to see</p> <p>17 him parked on the side of the road.</p> <p>18 BY MR. MARKO:</p> <p>19 Q. And you testified that you actually saw my client's</p> <p>20 vehicle begin moving from that lane that he was parked</p> <p>21 in, correct?</p> <p>22 A. Yes.</p> <p>23 Q. Because he was stopped. Did you see him -- did you</p> <p>24 see my client get into his vehicle?</p> <p>25 A. No. I didn't see anybody get in the vehicle. I just</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. Right.</p> <p>2 A. No, I wasn't surprised. The whole thing, the guy was</p> <p>3 showboating. He was driving on the side of us, I</p> <p>4 slowed down. I waved to him to go --</p> <p>5 Q. Sir, just listen to the question. Just listen to the</p> <p>6 question.</p> <p>7 MS. DIVINEY: Excuse me. Let him finish</p> <p>8 his answer. Let him finish his answer.</p> <p>9 A. I'm answering your question.</p> <p>10 BY MR. MARKO:</p> <p>11 Q. Mr. Pace, I don't know why you have so much</p> <p>12 hostility --</p> <p>13 A. Because you're yelling.</p> <p>14 Q. -- towards me and my client's family of a dead man. I</p> <p>15 mean, its mind boggling to me.</p> <p>16 A. I'm giving you my version of what happened and what I</p> <p>17 saw happen is what I saw happen. I can't take one</p> <p>18 side for another side.</p> <p>19 Q. It sounds to me like you are. It sounds to me like</p> <p>20 you've aligned yourself with the insurance company</p> <p>21 and --</p> <p>22 MS. DIVINEY: I disagree. I actually</p> <p>23 disagree. I think Mr. Pace is giving his opinion.</p> <p>24 A. I wasn't promised anything for giving a statement. I</p> <p>25 didn't want to give a statement. I honestly don't</p>

<p style="text-align: right;">Page 38</p> <p>1 want to give a statement. It's none of my business.  2 I wasn't in the accident. I had nothing to do with  3 anything that's going on. You're being very rude.  4 I'm answering every question you ask and now you're  5 stopping me from answering the question because it's  6 going to criminalize your client.  7 MR. MARKO: Can you please read back my  8 question, Madam Court Reporter?  9 (Off the record at 2:50 p.m.)  10 (Back on the record at 2:51 p.m.)  11 THE WITNESS: A guy just ran into the back  12 of my car. It's okay, though.  13 MS. DIVINEY: Do you need to take a break?  14 THE WITNESS: No. That's okay, it's fine.  15 There was no damage. He didn't hit it hard. It was  16 an older guy.  17 MS. DIVINEY: Let us know if you need to  18 take a break.  19 MS. GALE-BARBANTINI: Mr. Pace, if you can  20 do us a favor, it's really hard to understand what  21 you're trying to say to Mr. Marko when everyone is  22 talking over each other, so it would be helpful if  23 people just waited until everyone was done talking  24 because then I think we'll understand what you're  25 trying to tell us and your side of the story better.</p>	<p style="text-align: right;">Page 40</p> <p>1 I asked you -- I wasn't surprised of him driving his  2 vehicle.  3 Q. Okay.  4 A. You're asking me was I surprised -- if you are asking  5 me was I surprised that he didn't merge over into the  6 driving lane, yeah, I was surprised that he didn't  7 merge up because I slowed down to allow him to drive  8 into the merging lane and he didn't get over. He  9 stayed on the side of me, bobbing his head to his  10 music.  11 Q. Excuse me, sir. So please just answer my questions.  12 A. I'm answering your question.  13 Q. Excuse me. So let's talk about that. You were able  14 to see that you slowed -- you took and reacted to  15 this, my client's vehicle beginning to drive; is that  16 fair to say?  17 A. Yes.  18 Q. And you said this guy is driving, he probably needs to  19 get into my lane, I should take some action. Is that  20 what was going through your head?  21 A. Yes.  22 Q. And you did take action, you slowed your vehicle down,  23 correct?  24 A. Yes.  25 Q. And you never contacted my client's vehicle; is that</p>
<p style="text-align: right;">Page 39</p> <p>1 THE WITNESS: Okay.  2 MS. GALE-BARBANTINI: Thank you.  3 BY MR. MARKO:  4 Q. So, Mr. Pace, the sooner we can get through these  5 questions that I ask, the sooner you can get out of  6 this.  7 MR. MARKO: So, Madam Court Reporter, can  8 you please read back my question?  9 (The requested portion of the record was  10 read by the reporter at 2:52 p.m.)  11 "Q. Were you surprised when that car with  12 a man sitting in it in a lane that's made  13 for parking started to drive the vehicle?"  14 A. No.  15 BY MR. MARKO:  16 Q. And why weren't you surprised that a man sitting in  17 his own vehicle in the driver's seat started to drive  18 out of a parking lane?  19 A. Because driving is a normal thing. Why would I be  20 surprised if somebody is driving their vehicle?  21 Q. So it's fair to say that it wasn't unexpected, based  22 on the position that you were in, that a guy sitting  23 in his vehicle on the side of the road, who's leaving  24 that area, would start driving?  25 A. You're asking -- I'm not understanding your question.</p>	<p style="text-align: right;">Page 41</p> <p>1 true?  2 A. No.  3 Q. So let's take a look at this video. And, by the way,  4 sir, are you aware that the Michigan State Police  5 accident reconstruction team of the fatal squad did an  6 examination of that truck?  7 A. Um-hum.  8 Q. Did you know that?  9 A. Yeah, I was told.  10 Q. Who told you that?  11 A. The insurance.  12 Q. Did they tell you what they found?  13 A. No.  14 Q. Did they tell you that an expert, a true expert  15 accident reconstructionist determined that that  16 blinker on that truck was not operational?  17 MS. DIVINEY: Objection, because you're not  18 telling the full story to Mr. Pace. Object to  19 relevancy, foundation.  20 A. No, they did not say that. What they said, what they  21 told me was, they said that the blinker wasn't  22 operational but it could have been from the collision  23 of the accident.  24 BY MR. MARKO:  25 Q. Who told you that?</p>

<p style="text-align: right;">Page 42</p> <p>1 A. The insurance.</p> <p>2 Q. Oh, the insurance told you that the blinker wasn't</p> <p>3 operational but that that was from the accident?</p> <p>4 A. They said it could have been.</p> <p>5 Q. Who told you that?</p> <p>6 A. Whoever I talked to from the insurance company.</p> <p>7 Q. Was it Ms. Diviney?</p> <p>8 A. But I know for a fact with my own eyes I saw a blinker</p> <p>9 on that truck.</p> <p>10 Q. Now, was it a solid blinker or a -- was it a solid</p> <p>11 light or a blinking light?</p> <p>12 A. It was blinking. I know there was a blinker on.</p> <p>13 Q. Where was the blinker located on the back of his</p> <p>14 truck?</p> <p>15 A. I don't remember none of that. All I remember is what</p> <p>16 I saw when I jumped out of my car and I tried to help</p> <p>17 the guy.</p> <p>18 Q. On this particular vehicle, on this particular dump</p> <p>19 truck that the defendant driver was in, where are the</p> <p>20 back blinkers located?</p> <p>21 A. I'm not sure. It wasn't my truck. I just know I saw</p> <p>22 blinkers.</p> <p>23 MS. DIVINEY: Objection.</p> <p>24 BY MR. MARKO:</p> <p>25 Q. Well, where was it, sir? If you saw it, where was it</p>	<p style="text-align: right;">Page 44</p> <p>1 it only from the back.</p> <p>2 (Video playing)</p> <p>3 A. This is the front of the truck.</p> <p>4 BY MR. MARKO:</p> <p>5 Q. So when is the blinker on? Is it on now?</p> <p>6 A. I'm not sure where the blinker on the front of truck</p> <p>7 is. I'm not an expert on the truck. I don't know.</p> <p>8 Q. I'm showing you this at 55 seconds. Is the blinker on</p> <p>9 now?</p> <p>10 MS. DIVINEY: We're looking at the truck</p> <p>11 from the front and he was viewing it from the back.</p> <p>12 MR. MARKO: Ms. Diviney, tell me, are you</p> <p>13 trying to say that there's a separate blinker for the</p> <p>14 front and back of the truck on this particular truck?</p> <p>15 Because unless you're saying something that's so</p> <p>16 absurd like that --</p> <p>17 MS. DIVINEY: Show us where we should be</p> <p>18 looking at.</p> <p>19 MR. MARKO: Just please stop. Just please</p> <p>20 make a proper objection or we're going to stop the</p> <p>21 deposition --</p> <p>22 MS. DIVINEY: Well, it's my deposition, so</p> <p>23 you can't stop it. It's my deposition. I noticed it.</p> <p>24 You can't stop it.</p> <p>25 MR. MARKO: I'll file a motion to strike.</p>
<p style="text-align: right;">Page 43</p> <p>1 located?</p> <p>2 A. I don't know where it's located on the truck. That's</p> <p>3 not a question you can ask me. I'm not an expert.</p> <p>4 Remember?</p> <p>5 Q. You have no idea, do you?</p> <p>6 A. I'm not an expert. I'm not an expert on the truck, so</p> <p>7 I wouldn't be able to tell you.</p> <p>8 Q. What color was the truck?</p> <p>9 A. It was a red truck.</p> <p>10 Q. Was it all red or just partially red?</p> <p>11 A. I think it was red and white. I didn't see the front</p> <p>12 of the truck. I was behind the truck.</p> <p>13 Q. Did the truck have any signs on it?</p> <p>14 A. I didn't see -- I didn't look at any of that. When I</p> <p>15 was behind the truck, all I saw was -- I don't know.</p> <p>16 I don't know if the truck had a sign on it or</p> <p>17 anything. I didn't look at the truck. When I got out</p> <p>18 of my car to go over to the scene of the accident, I</p> <p>19 didn't look at the truck. All I thought was about</p> <p>20 helping a guy from under his car. That's all I</p> <p>21 thought about. I didn't think to stop and look at the</p> <p>22 truck to see what was on the front side of the truck.</p> <p>23 Q. Let me show you this video. I want you to show me on</p> <p>24 this video where we can see the blinker of the truck.</p> <p>25 MS. DIVINEY: Objection, because it shows</p>	<p style="text-align: right;">Page 45</p> <p>1 MS. DIVINEY: Well, you can file a motion</p> <p>2 to strike --</p> <p>3 MR. MARKO: I haven't got the documents --</p> <p>4 MS. DIVINEY: You're asking him to show</p> <p>5 you --</p> <p>6 MR. MARKO: The time is ticking down.</p> <p>7 You've got 29 days left according to Judge Gibson. I</p> <p>8 haven't seen these documents that your client threw in</p> <p>9 a dumpster.</p> <p>10 MS. DIVINEY: Well, you know what, I</p> <p>11 haven't seen your client's vehicle that your client</p> <p>12 apparently allowed to be sold at auction.</p> <p>13 BY MR. MARKO:</p> <p>14 Q. Sir, my question is at 55 seconds on my video is the</p> <p>15 truck's blinker on?</p> <p>16 A. I can't see the truck. I can't tell -- I can't see</p> <p>17 anything on that vehicle. I don't see anything on</p> <p>18 there.</p> <p>19 Q. What do you mean you can't see anything?</p> <p>20 A. I can't see anything on -- I can't see anything. I</p> <p>21 don't know where the blinker would be on this truck,</p> <p>22 so I can't see anything on this video.</p> <p>23 Q. So you don't know?</p> <p>24 A. I don't know. I can't see. All I know is what I saw</p> <p>25 from behind from the back of the truck. That's it.</p>

<p style="text-align: right;">Page 46</p> <p>1 Q. I want to know at what time did the truck, is it your 2 testimony that this truck turned its blinker on? 3 A. I don't know what time it turned its blinker on. All 4 I know is when the blinker came on, he began to 5 turn -- all I was doing was paying attention to the 6 guy that was on the side of me because I was waving 7 him to go ahead and he didn't go. When he sped off, 8 he hit the side -- the front of the truck. That's all 9 I know. I don't know anything about the truck. I 10 don't know anything about anything about the truck, 11 so -- 12 Q. All right. Let's talk about that. So you just 13 testified that you slowed down -- 14 A. Yes, to allow your client to merge in. He never 15 merged in. He stayed on the side of me, showboating 16 in his vehicle, bobbing his head, listening to his 17 music. And then as we got closer to wherever the 18 truck was turning, your client punched on his gas and 19 tried to speed past and hit the front of the truck. 20 That's all I know. 21 Q. Excuse me. My question is show me on this video, sir, 22 where you slowed down to allow my client an 23 opportunity to merge from his lane into your lane. 24 A. Do you see the big gap in between me and your client? 25 Q. Show me, sir.</p>	<p style="text-align: right;">Page 48</p> <p>1 an opportunity to merge in front of you, okay? 2 A. Play the video. 3 MS. DIVINEY: Objection. He doesn't have 4 the power to stop the video and objection, he's asked 5 and answered this question several times. 6 BY MR. MARKO: 7 Q. Here we go, sir. Here we go. 8 (Video Playing) 9 A. Stop. 10 BY MR. MARKO: 11 Q. At 57 seconds -- 12 MS. DIVINEY: Excuse me. I didn't hear 13 you. 14 THE COURT REPORTER: Can you repeat that? 15 BY MR. MARKO: 16 Q. Mr. Pace? Excuse me, Mr. Pace, I did not hear you. 17 A. I asked if you could play the video back. 18 Q. Sure. I'll play it as many times as you want. 19 (Video playing) 20 A. Stop. As I started to pass him and he started to 21 drive off, I slowed my gas and he stayed on the side 22 of me showboating. 23 BY MR. MARKO: 24 Q. So your testimony -- 25 A. Wait. I waved my hand for him to pass. He never</p>
<p style="text-align: right;">Page 47</p> <p>1 A. Do you see that big gap between me and your client? 2 Listen, watch the video. You can see the big gap 3 between me and your client. 4 Q. Did you box my client into that lane -- 5 A. I did not box your client in. 6 Q. -- because he bobbed his head at you? 7 A. I did not. Why would I box him in because he bobbed 8 his head? I slowed down to allow your client to go -- 9 to merge in. I even waved my hand for him to go in 10 and he stayed on the side of me showboating and then 11 he punched his gas. 12 Q. Sir, show me on the video, sir, at what point -- 13 A. Look at the video. 14 MS. DIVINEY: Asked and answered. 15 THE COURT REPORTER: You're all talking 16 over each other. 17 BY MR. MARKO: 18 Q. This is a circus. Okay? 19 A. You're making it a circus. 20 Q. This is a circus and if we don't stop this deposition 21 is going to be continued with Judge Gibson sitting in 22 on it. Listen to my questions. 23 My question is, I'm going to play the video 24 in its entirety and I want you to stop the video at 25 what point your testimony is that you gave my client</p>	<p style="text-align: right;">Page 49</p> <p>1 passed. He punched his gas and tried to pass the 2 truck as it was turning. 3 Q. So your testimony is -- 4 A. Watch the video. My testimony is what? 5 Q. Your testimony is at 56 seconds, the time stamp is 6 11:33:25, that at that point in time that you slowed 7 your vehicle down to enough space for my client to 8 pass in front of you? 9 A. Yes. There's enough space right there for your client 10 to pass in front of me. 11 Q. But at that time, sir, isn't my client directly next 12 to your vehicle? 13 A. Driving on the side of me. 14 Q. If he merged into your lane at that point in time, 15 wouldn't he have hit your vehicle? 16 A. No. There's space in between me and the truck -- me 17 and the dump truck, there's space in between us for 18 your client to move over. Your client never moved -- 19 I even waved my hand for your client to move over. 20 Your client never moved over. He stayed on the side 21 of me showboating and then he punched his gas. 22 Q. Sir, at what point -- I want you to show me on the 23 video, at what point did you wave your hand for my 24 client -- 25 A. The whole time he was on the side of me when he was</p>



<p style="text-align: right;">Page 50</p> <p>1 driving. Once he started to drive on the side of me,  2 I waved my hand for him to go. My kids were in the  3 car, so I wasn't even trying to be don't try to pass  4 me type of crap. Your client stayed on the side of me  5 trying to showboat in a nice car and as the truck was  6 passing, was turning your client punched on his gas --  7 instead of turning over, your client punched on his  8 gas in that one lane and hit the front of the truck.  9 Q. Sir, how many feet -- I'm going to show you 11:33:28.  10 How close were you to the rear of this dump truck at  11 this time?  12 A. I was really -- I wasn't real close to it at this  13 time. I can't -- I don't know the math of how close I  14 was to the truck. All I know is when your client hit  15 his gas, he hit the truck and the truck came to a  16 stop.  17 Q. Sir, you would agree that at the time the truck  18 initiated its turn at the video time stamp 11:33:28,  19 there was not enough room between the truck and your  20 vehicle that would allow my client to merge into that  21 lane.  22 A. At the time of the accident, no, because he was on the  23 side -- he stayed on the side. He never moved over.  24 He never got over to get in front of me. Your client  25 stayed on the side of me, driving on the side of me,</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. So let me ask you something. If you thought that my  2 clients was trying to get over and you were slowing  3 your vehicle down --  4 A. Your client, he was never trying to get over is what  5 I'm telling you. He didn't try to get over. I told  6 him to get over. He didn't try to get over. Your  7 client stayed on the side of me, driving on the side  8 of me, bobbing his head listening to his music.  9 That's what I'm telling you. He never tried to get  10 over. He never turned on the blinker to get over.  11 Your client never tried to merge over into the road  12 where he could drive. He stayed in that lane.  13 Q. Excuse me. At 11:33:26, sir, if knowing that my  14 client is directly next to you in what you described  15 as a parking lane, why are you within feet of the rear  16 of the dump truck?  17 A. I was a vehicle -- your client's vehicle could have  18 fit in front of me and that dump truck. If you were  19 on that road at the time of the accident, you would  20 have seen that your client's vehicle was able to get  21 in between me and that dump truck. You're watching a  22 video from the front of the accident. If there was a  23 video from across the street hitting the side of the  24 accident, you would have seen your client's vehicle  25 able to get in between me and that dump truck. Your</p>
<p style="text-align: right;">Page 51</p> <p>1 bobbing his head listening to his music. Your client  2 never tried to move over, sir. I'm sorry, but your  3 client never tried to move over. Your client --  4 Q. I want you to show me where on this video my client --  5 A. I'm done showing you on the video. Your client hit  6 the front of truck.  7 Q. Sir --  8 A. That's all I know. All I know is we were driving up  9 the road, we were driving up the road, your client  10 came off the side of the road. As the dump truck  11 began to turn, your client hit his gas and hit the  12 back of the truck. That's all I know. Anything other  13 than that I don't know, sir. I don't know about if  14 the blinker of the front of the truck was working or  15 not. All I know is what I saw on the back of the  16 truck. All I know is what I saw with your client on  17 the side of me. And that's it. Anything after that I  18 don't know. What's the next question?  19 Q. I want to understand, because I've watched this video  20 about a hundred times and I haven't seen a single time  21 where my client was in a position where he could have  22 safely merged in between your vehicle and the truck.  23 A. If you were there you would have seen the time where  24 your client could have safely merged in between my  25 vehicle and the truck.</p>	<p style="text-align: right;">Page 53</p> <p>1 client never tried to merge over to get over into the  2 driving lane. Your client wanted to stay in the right  3 lane or the parking lane, whatever you want to call  4 it, your client wanted to stay over there. Your  5 client never made a gesture of him wanting to merge  6 over. I waved my hand for your client to move over as  7 we were driving and your client stayed in that lane  8 showboating and that's it.  9 Q. I want you to tell me at what point my client's  10 vehicle --  11 A. I don't know at what point on this video which way he  12 could have merged over because I cannot see. You  13 cannot see if you're watching the front of the video.  14 Q. Well, we can see he's right next to your car at  15 11:33:24, can't we?  16 A. Um-hum.  17 Q. And we know that if he's next to your car he can't  18 safely merge into your lane, right?  19 A. And you can also see that there's a big gap in between  20 me and that dump truck. Your client's vehicle could  21 have merged over but he did not want to merge over.  22 He stayed there and he wanted to showboat because he  23 had a nice car.  24 Q. Excuse me. So my question is, your testimony is my  25 client should have gunned it in front of your</p>

<p style="text-align: right;">Page 54</p> <p>1 vehicle --</p> <p>2 A. No, that's not what I said. That's not what I said.</p> <p>3 What I said is -- what I said is your client wanted to</p> <p>4 stay on the side of me and bob his head listening to</p> <p>5 his music instead of getting over into the driving</p> <p>6 lane. That's what I said. I never said your client</p> <p>7 wanted to do anything. Anything that you're saying</p> <p>8 that's not what I'm saying. Don't make a suggestion</p> <p>9 of what I'm saying.</p> <p>10 MS. DIVINEY: I need to put an objection on</p> <p>11 the record, gentlemen, because Mr. Pace would not know</p> <p>12 what your client is thinking, Mr. Marko, or what your</p> <p>13 client --</p> <p>14 MR. MARKO: Your objection is to</p> <p>15 foundation.</p> <p>16 BY MR. MARKO:</p> <p>17 Q. Sir, I just want a clear answer. At what time</p> <p>18 stamp --</p> <p>19 A. I gave you a clear answer. I gave you a clear answer</p> <p>20 and that was my answer, sir.</p> <p>21 Q. That's your answer. At what time stamp --</p> <p>22 A. My answer is your client was able to merge over and he</p> <p>23 decided not to merge over. Your client decided to hit</p> <p>24 his gas as that truck was turning and he hit the front</p> <p>25 of the truck. That's my answer. There's not going to</p>	<p style="text-align: right;">Page 56</p> <p>1 A. I have an appointment at 3:00 that I'm missing with my</p> <p>2 neurosurgeon.</p> <p>3 Q. You have a medical issue with your brain?</p> <p>4 A. What?</p> <p>5 Q. Do you have a brain injury?</p> <p>6 A. No. I have a spine injury.</p> <p>7 Q. Sir, I want to know, video aside, how many seconds</p> <p>8 prior to the crash did my client have an opportunity</p> <p>9 where his vehicle was in a position --</p> <p>10 A. I'm not sure.</p> <p>11 Q. Why are you not sure?</p> <p>12 A. Because I wasn't looking at the time or counting the</p> <p>13 time of your client being on the side of me.</p> <p>14 Everything happened fast, so I'm not sure. I'm not</p> <p>15 sure. I don't know. I'm not an expert on videos.</p> <p>16 I'm not an expert on time. I'm not an expert on</p> <p>17 anything that you're asking me. All I can do is give</p> <p>18 you my encounter of the accident. I'm giving you my</p> <p>19 encounter and what I seen in the accident. That's all</p> <p>20 I can do, sir. I can't give you anything other than</p> <p>21 that.</p> <p>22 Q. Sir, you were asked did my client have his turn signal</p> <p>23 on.</p> <p>24 A. Your client did not have a turn signal on.</p> <p>25 Q. So when you are driving side by side, as can be seen</p>
<p style="text-align: right;">Page 55</p> <p>1 be another answer, sir. There's not going to be</p> <p>2 another answer.</p> <p>3 Q. At which time point was my client in a position where</p> <p>4 he could have merged --</p> <p>5 A. I've never seen the video, so I don't know anything</p> <p>6 about this video, sir. I don't know.</p> <p>7 MS. DIVINEY: He also does not know if this</p> <p>8 video has been speeded up or altered in any way, so</p> <p>9 objection to foundation with respect to that.</p> <p>10 A. Right there your client could have jumped in, your</p> <p>11 client could have merged in. He didn't want to merge</p> <p>12 in, he wanted to stay on the side and bob his head to</p> <p>13 his music and showboat his nice car. That's all it</p> <p>14 is, sir. There's no other answer to it.</p> <p>15 BY MR. MARKO:</p> <p>16 Q. How many seconds before the crash --</p> <p>17 A. I don't know. I don't know.</p> <p>18 THE COURT REPORTER: You're both talking on</p> <p>19 top of each other.</p> <p>20 BY MR. MARKO:</p> <p>21 Q. I want a clear answer to this question.</p> <p>22 MS. DIVINEY: Mr. Marko, he's asked and</p> <p>23 answered this question several times.</p> <p>24 BY MR. MARKO:</p> <p>25 Q. I want to understand. Your testimony is under oath --</p>	<p style="text-align: right;">Page 57</p> <p>1 in this video --</p> <p>2 A. Um-hum.</p> <p>3 Q. -- next to my client --</p> <p>4 A. Before I passed -- your client was already in his</p> <p>5 vehicle. As I passed your client, your client never</p> <p>6 did have a turn signal on, sir. Your client wanted to</p> <p>7 stay in that lane. He never wanted to get over.</p> <p>8 That's all there is to it. Your client never wanted</p> <p>9 to get over.</p> <p>10 Q. Sir, you've got to stop.</p> <p>11 A. You're asking a question and I'm answering.</p> <p>12 Q. Sir, you've got to stop talking.</p> <p>13 MS. DIVINEY: Mr. Marko, you also need to</p> <p>14 let him finish his answer to your question.</p> <p>15 MR. MARKO: I'm moving to strike as</p> <p>16 nonresponsive. You know, look, I know we're on Zoom,</p> <p>17 but the court rules apply to this.</p> <p>18 A. I have an appointment, sir. I have to go. You're</p> <p>19 very rude.</p> <p>20 BY MR. MARKO:</p> <p>21 Q. I have additional questions. You're not answering my</p> <p>22 questions.</p> <p>23 A. I'm answering your questions. You're being bullheaded</p> <p>24 and you don't want to accept the answers. You don't</p> <p>25 want to accept the true story to what happened in your</p>

<p style="text-align: right;">Page 58</p> <p>1 client's accident because you want to win the case.</p> <p>2 That's all it is. Your client caused an accident that</p> <p>3 cost him his life, sir. I'm sorry. I'm sorry.</p> <p>4 There's nothing else to it.</p> <p>5 Q. Sir, why are you driving during your deposition?</p> <p>6 A. I'm not driving. I'm sitting at a light. I have to</p> <p>7 go because I have to get to my appointment.</p> <p>8 Q. Sir, you were driving when we first started the</p> <p>9 deposition.</p> <p>10 A. And you all had me pull over, right? And I pulled</p> <p>11 over, right? And I parked on the side of the road.</p> <p>12 Look where I am still parked on the side of the road.</p> <p>13 I'm still parked on the side of the road. I'm not</p> <p>14 moving. I'm parked on the side of the road.</p> <p>15 Q. Sir, why were you driving your vehicle when we first</p> <p>16 started this Zoom deposition?</p> <p>17 A. Because I'm on my way to a doctor's appointment. I</p> <p>18 was coming from work on my way to the doctor's</p> <p>19 appointment. My appointment is at 3:00. It's 3:16</p> <p>20 right now and I'm still sitting here on the side of</p> <p>21 the road talking to you because you don't want to</p> <p>22 accept the answers that I'm giving you. You asked me</p> <p>23 questions, I'm giving you answers, but you don't want</p> <p>24 to accept those answers. It's not going anywhere if</p> <p>25 you can't accept the true answer of what happened.</p>	<p style="text-align: right;">Page 60</p> <p>1 here for a fatality accident?</p> <p>2 A. Listen, sir. Ask the question regarding to your</p> <p>3 client's case. Don't ask me questions about what's</p> <p>4 going on right now. Ask me questions regarding to</p> <p>5 your client's case. I'm parked right now. I'm parked</p> <p>6 on the side of the road.</p> <p>7 MR. MARKO: Madam Court Reporter, can you</p> <p>8 read back my question?</p> <p>9 THE COURT REPORTER: Which question,</p> <p>10 Jonathan?</p> <p>11 MR. MARKO: I said do you think it's safe,</p> <p>12 my last one.</p> <p>13 (The requested portion of the record was</p> <p>14 read by the reporter at 2:11 p.m.</p> <p>15 "Q. So if it's not safe to drive while</p> <p>16 you're on your phone, why were you doing it</p> <p>17 today when you know we're here for a</p> <p>18 fatality accident?")</p> <p>19 A. I have a mount in my vehicle that holds my phone.</p> <p>20 MR. MARKO: I object as nonresponsive. Can</p> <p>21 you re-ask my question, please?</p> <p>22 A. I have a mount in my vehicle that holds my phone.</p> <p>23 MR. MARKO: Madam Court Reporter, can you</p> <p>24 ask the question? I move to strike the answer as</p> <p>25 nonresponsive.</p>
<p style="text-align: right;">Page 59</p> <p>1 It's not going to go anywhere.</p> <p>2 Q. Do you think that it's a safe driving habit to use a</p> <p>3 video phone to conduct a court deposition while you're</p> <p>4 driving your vehicle on public roads?</p> <p>5 A. I'm parked on the side of the road. I'm not driving</p> <p>6 my vehicle on a public road.</p> <p>7 Q. You initially were driving while the deposition was</p> <p>8 going on and the attorneys had to tell you to pull</p> <p>9 over.</p> <p>10 A. I have a mount in my vehicle that I can put my phone</p> <p>11 on to video or to do anything on, so --</p> <p>12 Q. Okay. My question is do you think it's an acceptable</p> <p>13 driving thing to do?</p> <p>14 A. Sir, I'm not here to answer those questions. I'm here</p> <p>15 to answer questions about the accident. Ask your</p> <p>16 questions about the accident. Are there any more</p> <p>17 questions that you want to ask about the accident,</p> <p>18 sir, so I can go?</p> <p>19 Q. Yes, there is.</p> <p>20 A. Okay. What are your other questions?</p> <p>21 Q. Do you think that it's safe to drive --</p> <p>22 A. No, it's not safe to drive while you're on your phone,</p> <p>23 no. Okay. Next question, sir.</p> <p>24 Q. So if it's not safe to drive while you're on your</p> <p>25 phone, why were you doing it today when you know we're</p>	<p style="text-align: right;">Page 61</p> <p>1 (The requested portion of the record was</p> <p>2 read by the reporter at 3:18 p.m.</p> <p>3 "Q. So if it's not safe to drive while</p> <p>4 you're on your phone, why were you doing it</p> <p>5 today when you know we're here for a</p> <p>6 fatality accident?")</p> <p>7 A. I have a mount in my vehicle that holds my phone.</p> <p>8 MS. DIVINEY: He also pulled over before</p> <p>9 the dep started so that way we could --</p> <p>10 BY MR. MARKO:</p> <p>11 Q. And just so we're clear here today, during this</p> <p>12 deposition you actually were in an accident.</p> <p>13 A. Well, I was sitting on the side of the road talking to</p> <p>14 you to answer your question. You don't want to accept</p> <p>15 my answers to the questions.</p> <p>16 MR. MARKO: Madam Court Reporter --</p> <p>17 A. Wait. Let me finish talking, sir. So I'm still</p> <p>18 sitting on the side of the road answering your</p> <p>19 questions that you keep asking me the same question</p> <p>20 and you're going to keep getting the same answer to</p> <p>21 and I'm still sitting here.</p> <p>22 MR. MARKO: Move to strike as</p> <p>23 nonresponsive.</p> <p>24 Madam Court Reporter, could you please read</p> <p>25 back my last question? We'll do this as many times --</p>

<p style="text-align: right;">Page 62</p> <p>1 MS. DIVINEY: I'm going to object because</p> <p>2 he's already answered the question.</p> <p>3 A. I did answer the question.</p> <p>4 MR. MARKO: Madam Court Reporter, please</p> <p>5 read back my last question.</p> <p>6 BY MR. MARKO:</p> <p>7 Q. Sir, until you just give me a direct answer, I have to</p> <p>8 keep asking this over and over again. And when we go</p> <p>9 to trial, when I subpoena you to trial in this case</p> <p>10 and you're going to give testimony that's</p> <p>11 contradictory to the Michigan State Police and</p> <p>12 everybody else, I'll do the same thing then.</p> <p>13 MR. MARKO: Madam Court Reporter, please</p> <p>14 read back my last question.</p> <p>15 (The requested portion of the record was</p> <p>16 read by the reporter at 3:20 p.m.</p> <p>17 "Q. And just so we're clear here today,</p> <p>18 during this deposition you actually were in</p> <p>19 an accident.")</p> <p>20 A. Yes, somebody did in run into -- somebody pulled into</p> <p>21 the back of my vehicle.</p> <p>22 BY MR. MARKO:</p> <p>23 Q. And was that all their fault, too?</p> <p>24 A. What was that?</p> <p>25 Q. Was that all the other driver's fault, too?</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. Where are you doing this deposition from</p> <p>2 geographically?</p> <p>3 A. In my car.</p> <p>4 Q. Where is it parked?</p> <p>5 A. On the side of the road.</p> <p>6 MS. GALE-BARBANTINI: Can I? Excuse me</p> <p>7 one minute.</p> <p>8 (Off the record at 3:21 p.m.)</p> <p>9 (Back on the record at 3:21 p.m.)</p> <p>10 MS. GALE-BARBANTINI: Thank you. Back on</p> <p>11 the record.</p> <p>12 BY MR. MARKO:</p> <p>13 Q. Sir, where are you?</p> <p>14 A. Parked on the side of the road on Linwood and John C.</p> <p>15 Lodge.</p> <p>16 Q. You're on the Lodge Freeway?</p> <p>17 A. No. I'm on the service drive of the Lodge Freeway.</p> <p>18 Q. In Detroit?</p> <p>19 A. Yes.</p> <p>20 Q. The camera on the video is now off.</p> <p>21 MR. BAUM: Is there a connection issue?</p> <p>22 A. No, I'm trying to find the number to my doctor so I</p> <p>23 can let them know that I'm going to be late for my</p> <p>24 appointment.</p> <p>25 MR. MARKO: Sir, I'm sorry, I have to move</p>
<p style="text-align: right;">Page 63</p> <p>1 MS. DIVINEY: Objection.</p> <p>2 A. If I'm parked on the side of the road with my hazards</p> <p>3 on and he runs into the back of my vehicle, yes.</p> <p>4 BY MR. MARKO:</p> <p>5 Q. Okay. And where are you parked, sir?</p> <p>6 A. On the side of the road.</p> <p>7 Q. Where? Where are you?</p> <p>8 MS. DIVINEY: Objection, relevance. Go</p> <p>9 ahead.</p> <p>10 BY MR. MARKO:</p> <p>11 Q. Where are you, sir?</p> <p>12 A. It doesn't matter where I am. Ask me questions in</p> <p>13 regards to your case, sir.</p> <p>14 Q. Sir, where are you?</p> <p>15 A. Ask me questions regarding to your case, sir.</p> <p>16 Q. I have a right to know where a deponent --</p> <p>17 A. You don't have the right to know where I am. You have</p> <p>18 no right to know where I am.</p> <p>19 Q. I have to a right to know where a deponent is</p> <p>20 appearing for his deposition.</p> <p>21 A. I'm sitting in my car. I'm sitting in my car.</p> <p>22 Q. And where is your car parked?</p> <p>23 A. Parked on the side of the road.</p> <p>24 Q. And where, sir, geographically?</p> <p>25 A. I'm on the side of the road.</p>	<p style="text-align: right;">Page 65</p> <p>1 to strike this whole deposition. The deponent is</p> <p>2 driving his vehicle --</p> <p>3 MS. DIVINEY: Objection.</p> <p>4 MR. MARKO: Excuse me. Objection to my</p> <p>5 objection? Let me finish for God's sake.</p> <p>6 This deponent is in a vehicle, he was</p> <p>7 driving his vehicle initially. He's gotten into a car</p> <p>8 accident during the deposition. His video camera has</p> <p>9 been off. We've had --</p> <p>10 MS. DIVINEY: It's only been off for the</p> <p>11 last few seconds because he was trying to find his</p> <p>12 doctor's phone number.</p> <p>13 MR. MARKO: He's been talking to other</p> <p>14 people during the deposition.</p> <p>15 A. There's nobody else in my vehicle. I'm in the vehicle</p> <p>16 by myself.</p> <p>17 MS. DIVINEY: Mr. Marko, he got out of his</p> <p>18 vehicle to talk to the person that he got in the</p> <p>19 accident with. I think that's understandable by all</p> <p>20 the attorneys. So please try not to turn this into</p> <p>21 something else.</p> <p>22 MR. MARKO: You've got to let me finish. I</p> <p>23 know that you're relying on this guy as the star</p> <p>24 witness for your case, but you've got to let me</p> <p>25 finish.</p>

<p style="text-align: right;">Page 66</p> <p>1 MS. DIVINEY: And I know what you're trying</p> <p>2 to do, you're trying to destroy his testimony here and</p> <p>3 you're trying to get it kicked for reasons that are</p> <p>4 not justifiable. Go ahead.</p> <p>5 MR. MARKO: Excuse me. And he's making</p> <p>6 phone calls to third parties.</p> <p>7 MS. DIVINEY: He's calling his doctor's --</p> <p>8 we can take a break. You know, Mr. Marko, a break is</p> <p>9 allowable to allow a witness to make a phone call.</p> <p>10 MR. MARKO: I'm not agreeing this is your</p> <p>11 witness, this is a third-party subpoenaed witness.</p> <p>12 Although it seems like he is your witness.</p> <p>13 BY MR. MARKO:</p> <p>14 Q. Sir, I'm going to ask that you stop calling people</p> <p>15 during this deposition, that you keep your video on,</p> <p>16 that you don't talk to other people who aren't part of</p> <p>17 this deposition.</p> <p>18 MS. DIVINEY: Mr. Pace, if you need a break</p> <p>19 you can take a break and call your doctor. Just let</p> <p>20 us know.</p> <p>21 THE WITNESS: Okay.</p> <p>22 BY MR. MARKO:</p> <p>23 Q. Mr. Pace, is it your testimony that my client should</p> <p>24 have been able to see that the truck was turning --</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 68</p> <p>1 screen and he apparently turned off his video.</p> <p>2 MS. DIVINEY: Matthew, can you hear us? He</p> <p>3 said his phone was disconnecting, so I don't know.</p> <p>4 MR. MARKO: Let the record reflect -- Madam</p> <p>5 Court Reporter, is this being video recorded?</p> <p>6 THE COURT REPORTER: No.</p> <p>7 MS. DIVINEY: He's gone now.</p> <p>8 MR. MARKO: Now the client has just</p> <p>9 disconnected. So I just want the record to be</p> <p>10 clear --</p> <p>11 MS. GALE-BARBANTINI: Amy, can you try and</p> <p>12 call Mr. Pace?</p> <p>13 MS. DIVINEY: I'll call him. Give me a</p> <p>14 second.</p> <p>15 MR. MARKO: And I want the record to be</p> <p>16 clear. I still have questioning about the crash.</p> <p>17 It's apparent from what happened that the client --</p> <p>18 I'm sorry, I keep calling him the client because</p> <p>19 you've talked to him so many times, Ms. Diviney. The</p> <p>20 third-party deponent --</p> <p>21 MS. DIVINEY: Objection. You know, that's</p> <p>22 just uncalled for, Mr. Marko.</p> <p>23 MR. MARKO: Excuse me. The third-party</p> <p>24 deponent said my phone is disconnecting, my phone is</p> <p>25 disconnecting and then we can see his finger touch his</p>
<p style="text-align: right;">Page 67</p> <p>1 Q. -- and then decided to just drive into the truck?</p> <p>2 MS. DIVINEY: Objection, foundation.</p> <p>3 A. Your client saw that the truck was turning and he sped</p> <p>4 to try to pass the truck before it turned.</p> <p>5 BY MR. MARKO:</p> <p>6 Q. Do you think my client was trying to kill himself?</p> <p>7 A. No. I think he was trying to pass the truck before it</p> <p>8 turned.</p> <p>9 Q. Well, sir, you understand that the --</p> <p>10 A. I'm pretty certain he didn't try to kill himself. He</p> <p>11 thought he was going to be able to pass the truck, but</p> <p>12 he didn't pass the truck before it turned.</p> <p>13 Q. Did the truck ever --</p> <p>14 A. My phone is cutting off. My phone is cutting off.</p> <p>15 Q. My question is did the truck ever brake? Sir, did the</p> <p>16 truck ever brake?</p> <p>17 MS. DIVINEY: His phone cut off he said.</p> <p>18 Let's see if he connects again.</p> <p>19 MR. MARKO: He's still connected. It's</p> <p>20 right there.</p> <p>21 MS. DIVINEY: Oh, well, I can't see that,</p> <p>22 so I apologize.</p> <p>23 MR. MARKO: Just so the record is clear,</p> <p>24 Madam Court Reporter, I want it to reflect Matthew</p> <p>25 Pace is still connected, it says Matthew Pace on the</p>	<p style="text-align: right;">Page 69</p> <p>1 phone, touch the screen of the phone.</p> <p>2 MS. DIVINEY: I saw no finger touch the</p> <p>3 phone, Mr. Marko, and I was watching the video.</p> <p>4 MR. MARKO: Excuse me. His --</p> <p>5 MS. DIVINEY: Well, I don't appreciate that</p> <p>6 you're making up things that didn't occur.</p> <p>7 MR. MARKO: Excuse me. Excuse me. His</p> <p>8 name was then on the screen, which showed that he was</p> <p>9 still connected, and it appears that he turned his</p> <p>10 video off at which he had specifically stated he did</p> <p>11 not want to be here. He was driving his vehicle</p> <p>12 during his deposition, he was talking to third</p> <p>13 parties. He got into a car crash during this</p> <p>14 deposition. And I've probably taken a thousand</p> <p>15 depositions in my career and I have never seen</p> <p>16 anything as dysfunctional, disrespectful and a circus</p> <p>17 act as this deposition.</p> <p>18 MS. DIVINEY: And I've never seen someone</p> <p>19 treat a witness like you have in a deposition.</p> <p>20 MR. MARKO: I'm not done. Mr. Baum, I</p> <p>21 would ask that you confirm that Mr. Pace's name was</p> <p>22 still on the screen and it appeared that he had turned</p> <p>23 off his video and then ultimately entirely</p> <p>24 disconnected from the deposition. Because I don't</p> <p>25 want to be -- Ms. Diviney has a completely different</p>



<p style="text-align: right;">Page 70</p> <p>1 view of the reality of what's going on here.</p> <p>2 MR. BAUM: For the record my view on my</p> <p>3 Zoom for I believe about 30 or so seconds at the very</p> <p>4 end before he disconnected I still had a screen for</p> <p>5 him that said Matthew Pace, which presumably means</p> <p>6 that just video is turned off but there was still</p> <p>7 connection. I think I saw that for maybe 30,</p> <p>8 40 seconds at the end here.</p> <p>9 MS. DIVINEY: I saw his finger, so --</p> <p>10 MR. MARKO: I'm going to turn my screen off</p> <p>11 and there's a button on Zoom that says stop video, and</p> <p>12 just so we're all on the same page about what</p> <p>13 happened, can you just state what happens when I turn</p> <p>14 off the video on my screen?</p> <p>15 MR. BAUM: I sure can, Jon. It's the same</p> <p>16 black screen with your title, John Marko, in the</p> <p>17 middle, the same as Matthew Pace was for the last 30</p> <p>18 to 45 seconds before he disconnected.</p> <p>19 MR. MARKO: So that's exactly the same</p> <p>20 thing. When I clicked the stop video button, the same</p> <p>21 thing occurs as occurred when Mr. Pace disconnected</p> <p>22 from the deposition prior to him disconnecting.</p> <p>23 MR. BAUM: It looks the same to me, yes.</p> <p>24 MS. DIVINEY: Okay. I just got the word,</p> <p>25 his phone died, his battery died on his phone. He's</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. Did the dump truck that was in front of you ever brake</p> <p>2 at any time, sir?</p> <p>3 A. He started to brake to turn.</p> <p>4 Q. Did he ever brake prior to turning?</p> <p>5 A. No.</p> <p>6 Q. How fast was the dump truck going?</p> <p>7 A. I don't know the speed. I think it's like 20. It's</p> <p>8 either 20 or 25 miles per hour over there, so --</p> <p>9 Q. So is it your testimony that the truck was going the</p> <p>10 speed limit?</p> <p>11 A. Yes.</p> <p>12 Q. And that was 25 miles an hour?</p> <p>13 A. From what I could see, yes. I'm not sure of the speed</p> <p>14 limit over there. It wasn't going real fast, though.</p> <p>15 Q. Was he going real slow?</p> <p>16 A. Not really. I'm not sure. I can't gage the -- I</p> <p>17 don't know, I didn't have a speed radar machine in the</p> <p>18 car, so I don't know how fast he was going. I know he</p> <p>19 wasn't speeding.</p> <p>20 Q. Well, let's look at the video, because you claim that</p> <p>21 you were going how fast? You claim you were going the</p> <p>22 speed limit, correct? Is that correct?</p> <p>23 A. Yes.</p> <p>24 Q. And if you look at the video that I'm showing you</p> <p>25 right now, would you agree that you and the truck</p>
<p style="text-align: right;">Page 71</p> <p>1 coming back on. He's getting a plug for his phone.</p> <p>2 MR. BAUM: Can we take a quick break? Can</p> <p>3 we go off the record here?</p> <p>4 (Off the record at 3:30 p.m.)</p> <p>5 (Back on the record at 3:41 p.m.)</p> <p>6 BY MR. MARKO:</p> <p>7 Q. So, Mr. Pace, what happened?</p> <p>8 A. My phone died and it's got four percent right now,</p> <p>9 though, so it's on the charger.</p> <p>10 Q. And I hear a car blinker going on. Where are you now?</p> <p>11 A. I'm still on the side of the road. Those are the</p> <p>12 hazards.</p> <p>13 Q. And are you driving like you were before?</p> <p>14 A. No, I'm not driving.</p> <p>15 MR. MARKO: Madam Court Reporter, can you</p> <p>16 read back my last question?</p> <p>17 (The requested portion of the record was</p> <p>18 read by the reporter at 3:42 p.m.</p> <p>19 "Q. Did the truck ever brake?")</p> <p>20 BY MR. MARKO:</p> <p>21 Q. Did the truck that hit my client that was in front of</p> <p>22 you --</p> <p>23 MS. DIVINEY: Objection to the form of the</p> <p>24 question.</p> <p>25 BY MR. MARKO:</p>	<p style="text-align: right;">Page 73</p> <p>1 appear to be going approximately the same speed?</p> <p>2 MS. DIVINEY: If you know.</p> <p>3 A. Yes.</p> <p>4 BY MR. MARKO:</p> <p>5 Q. So if you're going the speed limit and you and the</p> <p>6 truck are going the same speed, sir, then you would</p> <p>7 agree that the truck was apparently going the speed</p> <p>8 limit.</p> <p>9 A. He's definitely braking -- he had to brake to turn.</p> <p>10 He definitely had to brake. He didn't hit his brake.</p> <p>11 When you're coming from a light -- the corner before</p> <p>12 you get to where the accident happened had a light</p> <p>13 there. So as he passed the light, when he got ready</p> <p>14 to turn he hit his brakes, he tapped on his brakes to</p> <p>15 turn, so he slowed to turn.</p> <p>16 Q. Prior to tapping on his brakes directly before</p> <p>17 turning, did he ever use his brakes at any other time</p> <p>18 prior to the crash?</p> <p>19 A. I'm not sure.</p> <p>20 Q. Did you ever see --</p> <p>21 A. I wasn't paying attention to his brakes. I was paying</p> <p>22 attention to the guy that was on the side of me.</p> <p>23 Q. Sir, my question is did you ever see his brake lights</p> <p>24 go on?</p> <p>25 A. I said I'm not sure. I answered your question</p>

<p style="text-align: right;">Page 74</p> <p>1 already.</p> <p>2 Q. How is it that you don't remember these things but you</p> <p>3 testified that -- you know, strike that. We'll leave</p> <p>4 that for the jury.</p> <p>5 Did the truck -- where were the truck's</p> <p>6 brake lights located?</p> <p>7 A. I'm not sure.</p> <p>8 Q. Were they in the same unit as the --</p> <p>9 A. I don't know anything about --</p> <p>10 Q. Excuse me, sir, you've got to let me finish. You've</p> <p>11 got to let me finish the question.</p> <p>12 A. Okay.</p> <p>13 Q. Was the brake lights in the same unit as the blinkers,</p> <p>14 such as in a passenger vehicle or were they separate?</p> <p>15 Was there a separate unit for each blinker and brake</p> <p>16 light?</p> <p>17 A. I don't know.</p> <p>18 Q. Did you ever even see brake lights?</p> <p>19 A. Yep.</p> <p>20 Q. And what did they look like?</p> <p>21 A. Lights.</p> <p>22 Q. And where were they located?</p> <p>23 A. On the back of the truck.</p> <p>24 Q. Where on the back of the truck?</p> <p>25 A. I'm not sure.</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. Did the truck -- did anyone ever blow a horn,</p> <p>2 including you, the truck or my client?</p> <p>3 A. No.</p> <p>4 Q. Did you report this -- did you stay on the scene when</p> <p>5 the police were there?</p> <p>6 A. I did.</p> <p>7 Q. So right after this crash -- now, did the crash occur</p> <p>8 in your lane of travel or in the parking lane?</p> <p>9 A. In the parking lane.</p> <p>10 Q. If the truck had continued to go straight and not</p> <p>11 turn, would the crash have occurred?</p> <p>12 A. I'm pretty sure not.</p> <p>13 Q. Why not?</p> <p>14 A. Because your client would have kept going straight in</p> <p>15 the parking lane.</p> <p>16 Q. Was there anything -- would you agree that at the time</p> <p>17 that the truck began to turn into that drive that</p> <p>18 there was nothing that you could see that would have</p> <p>19 obstructed his vision of my client's car?</p> <p>20 MS. DIVINEY: Objection, foundation, form.</p> <p>21 A. There are trees there. But, I mean, everything</p> <p>22 happened so fast, man, it's like once the guy hit his</p> <p>23 gas it was done. It was there, man. You're watching</p> <p>24 the video. If you were there in real time, man,</p> <p>25 everything happened so fast. There was no time for</p>
<p style="text-align: right;">Page 75</p> <p>1 Q. Were they up high? Was there double lights? So, for</p> <p>2 example --</p> <p>3 A. It was a tall truck, so, yeah, it would have went up</p> <p>4 high. I'm not sure exactly where they were located on</p> <p>5 the truck. I'm not sure. I don't know anything about</p> <p>6 the truck, so I don't know where anything is placed on</p> <p>7 the truck. So you're asking me questions that I'm not</p> <p>8 qualified to know. I'm not an expert on the truck.</p> <p>9 Q. Sir, how long had you been following that truck?</p> <p>10 A. Since from behind -- since the light at Schaefer and</p> <p>11 Schoolcraft.</p> <p>12 Q. And how far is that from this crash scene?</p> <p>13 A. I'm not sure.</p> <p>14 Q. Approximately.</p> <p>15 A. I don't know.</p> <p>16 Q. Well, is it more or less than five minutes away?</p> <p>17 A. No, way less. Like a minute.</p> <p>18 Q. For how long were you following that truck?</p> <p>19 A. I'm not sure.</p> <p>20 Q. Approximately.</p> <p>21 A. Probably three, four minutes.</p> <p>22 Q. And in those three to four minutes that you were</p> <p>23 following this truck -- when did you first get behind</p> <p>24 the truck?</p> <p>25 A. At Schaefer -- at Schoolcraft.</p>	<p style="text-align: right;">Page 77</p> <p>1 anybody to react, to stop what was going on.</p> <p>2 BY MR. MARKO:</p> <p>3 Q. So, sir, can you just --</p> <p>4 MR. MARKO: Madam Court Reporter, can you</p> <p>5 read back my question?</p> <p>6 A. I know the question you asked me, was there anything</p> <p>7 that obstructed the truck driver from seeing your</p> <p>8 client's truck. What I'm saying is there was a tree</p> <p>9 there, I believe, I believe there's a tree there</p> <p>10 and -- but at the same time your client was --</p> <p>11 everything was going so fast, man. Even if the truck</p> <p>12 did see the car, this vehicle coming, there would have</p> <p>13 been no way he could have stopped his truck from</p> <p>14 turning.</p> <p>15 BY MR. MARKO:</p> <p>16 Q. Do you think that the tree obstructed the truck</p> <p>17 driver's vision?</p> <p>18 A. Probably in some way, but I don't know because I</p> <p>19 wasn't driving the truck so I couldn't tell you. I</p> <p>20 don't know.</p> <p>21 Q. Well, based on what you saw.</p> <p>22 MS. DIVINEY: Objection.</p> <p>23 A. From what I saw, there would have been no way for him</p> <p>24 to stop himself from -- the accident from happening.</p> <p>25 There's no way the truck driver would have known that</p>

<p style="text-align: right;">Page 78</p> <p>1 guy was going to hit his gas to try and speed past</p> <p>2 him.</p> <p>3 BY MR. MARKO:</p> <p>4 Q. To your knowledge, did the truck driver even know that</p> <p>5 my client's vehicle was there at any time?</p> <p>6 MS. DIVINEY: Objection, form, foundation.</p> <p>7 A. I'm pretty sure he saw him sitting on the side of the</p> <p>8 road as he passed him. I'm not sure of what he saw</p> <p>9 after he pulled off or not. I'm not sure.</p> <p>10 BY MR. MARKO:</p> <p>11 Q. I'm going to show you the video. And I want you to</p> <p>12 point out this tree that you were describing to us</p> <p>13 earlier. Go ahead and point out the tree on this</p> <p>14 video to me.</p> <p>15 A. There's no tree there then. I said there might have</p> <p>16 been. I don't know. What you're doing is irrelevant</p> <p>17 to the whole situation or the fact of the matter.</p> <p>18 Q. Sir --</p> <p>19 A. I told you I don't know if he saw the car or not.</p> <p>20 Even if he did see the car, there was no way for him</p> <p>21 to stop the turn. There was no way.</p> <p>22 Q. Sir, sir, my question is --</p> <p>23 A. That's what I told you. I don't know. My answer is I</p> <p>24 don't know.</p> <p>25 Q. My question is please point where on the video this</p>	<p style="text-align: right;">Page 80</p> <p>1 A. I can't hear anything.</p> <p>2 MS. DIVINEY: Hold on, Jon. He says he</p> <p>3 can't hear. Can you hear now? We can see you. Can</p> <p>4 you hear us now?</p> <p>5 THE WITNESS: Yes, I can.</p> <p>6 MR. MARKO: Madam Court Reporter, can you</p> <p>7 read back my last question, please?</p> <p>8 MS. DIVINEY: Matthew, you're muted.</p> <p>9 (The requested portion of the record was</p> <p>10 read by the reporter at 3:54 p.m.</p> <p>11 "Q. Sir, my question is, because although</p> <p>12 you understand that I prepared and wasted a</p> <p>13 lot of my time preparing for that June 8th</p> <p>14 deposition, I want to know why did you miss</p> <p>15 the deposition on June 8th.")</p> <p>16 MS. DIVINEY: Matthew, you're still muted.</p> <p>17 We can't hear you. There you go.</p> <p>18 THE WITNESS: Hello.</p> <p>19 MS. DIVINEY: Can you hear us?</p> <p>20 THE WITNESS: Yeah.</p> <p>21 A. I don't remember what was going on on June 8th, so I</p> <p>22 don't know why I missed it. I think I just forgot</p> <p>23 about it. I know I had other appointments and stuff,</p> <p>24 too. I missed a lot of appointments, so --</p> <p>25 BY MR. MARKO:</p>
<p style="text-align: right;">Page 79</p> <p>1 tree is that you referred to earlier.</p> <p>2 A. There's no tree there. I said there might have been a</p> <p>3 tree. I said I don't remember, there might have been</p> <p>4 a tree there.</p> <p>5 Q. Okay. Okay. Now, we were supposed to have your</p> <p>6 deposition previously that I prepared for and attended</p> <p>7 on June 8th. Why didn't you attend that deposition?</p> <p>8 A. Because I missed it. I had other stuff going on. I</p> <p>9 have a life, that's why. I have a life. I was doing</p> <p>10 other things. I have doctors' appointments, I have</p> <p>11 other appointments and I was doing other things and I</p> <p>12 missed the appointment. So I'm doing the deposition</p> <p>13 now, so --</p> <p>14 Q. My question is what were you doing on June 8th at 2:00</p> <p>15 p.m.?</p> <p>16 A. It doesn't matter what I was doing, man. Do you have</p> <p>17 any more questions pertaining to this case?</p> <p>18 Q. I've got probably another hour of questions.</p> <p>19 A. I don't have an hour to give you, so I've got to go.</p> <p>20 Q. Sir, my question is, because although you understand</p> <p>21 that I prepared and wasted a lot of my time preparing</p> <p>22 for that June 8th deposition --</p> <p>23 A. I can't hear anything you said.</p> <p>24 Q. I want to know why did you miss the deposition on</p> <p>25 June 8th?</p>	<p style="text-align: right;">Page 81</p> <p>1 Q. Why do you miss a lot of appointments?</p> <p>2 A. Because I forget about my appointments.</p> <p>3 Q. Why?</p> <p>4 A. I don't know. It's like I'll be having so much going</p> <p>5 on that when it comes time for the appointment, either</p> <p>6 I overwork it or it will just slip my mind completely</p> <p>7 and I'll remember like oh, man, I forgot I had to do</p> <p>8 this and that's what happened on June 8th when I</p> <p>9 forgot. I'm oh, man, I forgot and I called to</p> <p>10 reschedule or I've got to call to reschedule.</p> <p>11 Q. So what do you do for work?</p> <p>12 A. I'm a security guard.</p> <p>13 Q. Where?</p> <p>14 A. A lot of different places, gas stations, dispensaries,</p> <p>15 parking lots.</p> <p>16 Q. Where are you currently employed, sir?</p> <p>17 A. For Matron. I own a security company.</p> <p>18 Q. You own a security company?</p> <p>19 A. Yes.</p> <p>20 Q. And spell the name of your security company.</p> <p>21 A. M-A-T-R-O-N.</p> <p>22 Q. And who owns Matron?</p> <p>23 A. What?</p> <p>24 Q. Who owns Matron?</p> <p>25 A. I do.</p>

<p style="text-align: right;">Page 82</p> <p>1 Q. Does it have any other employees?</p> <p>2 A. Yes.</p> <p>3 Q. Who are they? What are their names?</p> <p>4 A. I can't give you their names. Sorry.</p> <p>5 Q. Why not?</p> <p>6 A. Because I can't. It's not my business to give.</p> <p>7 MS. DIVINEY: I'm going to put an objection</p> <p>8 to relevance.</p> <p>9 BY MR. MARKO:</p> <p>10 Q. Sir, how do you make money?</p> <p>11 A. Doing security.</p> <p>12 Q. Who are your clients right now that you do security</p> <p>13 for?</p> <p>14 MS. DIVINEY: Objection, relevancy.</p> <p>15 BY MR. MARKO:</p> <p>16 Q. I'm sorry, sir?</p> <p>17 A. I'm not going to give you my clients either.</p> <p>18 Q. Sir, you don't have a job, do you?</p> <p>19 A. I have a security job.</p> <p>20 MS. DIVINEY: Objection, relevancy.</p> <p>21 BY MR. MARKO:</p> <p>22 Q. Go ahead.</p> <p>23 MS. DIVINEY: He's asked and answered the</p> <p>24 question.</p> <p>25 BY MR. MARKO:</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. Are you refusing to answer my questions?</p> <p>2 A. I'm answering your questions. I'm giving you answers.</p> <p>3 If you're not going to accept the answers that I'm</p> <p>4 giving you, then it's on you.</p> <p>5 Q. Sir, when was the last time you filed taxes?</p> <p>6 A. It has no relevance to your case, sir.</p> <p>7 Q. Are you refusing to answer the question?</p> <p>8 A. I'm answering your question.</p> <p>9 Q. Sir, I don't have an answer.</p> <p>10 A. I said that was my answer.</p> <p>11 Q. You're refusing to answer my question?</p> <p>12 A. I answered your question.</p> <p>13 Q. Sir, what's your cellphone number?</p> <p>14 A. It's listed I'm pretty sure.</p> <p>15 Q. What's your cellphone number, sir?</p> <p>16 A. I'm pretty sure it's listed.</p> <p>17 Q. Sir, are refusing to tell us your cellphone number?</p> <p>18 A. You have my cellphone number.</p> <p>19 Q. What is it?</p> <p>20 A. You have it.</p> <p>21 Q. For the record, what is it for this court record, sir?</p> <p>22 A. (315) 608-0864.</p> <p>23 THE COURT REPORTER: I'm sorry, can you</p> <p>24 repeat that?</p> <p>25 THE WITNESS: (315) 608-0864.</p>
<p style="text-align: right;">Page 83</p> <p>1 Q. Sir, did you file taxes for the year 2020?</p> <p>2 MS. DIVINEY: Objection, relevancy,</p> <p>3 foundation.</p> <p>4 BY MR. MARKO:</p> <p>5 Q. Go ahead.</p> <p>6 A. What does it matter?</p> <p>7 Q. Did you file taxes or not, sir?</p> <p>8 A. It has nothing to do with your case, though. What</p> <p>9 does it matter?</p> <p>10 Q. Oh, it's going to have a lot to do with the case after</p> <p>11 today.</p> <p>12 A. Okay. Okay.</p> <p>13 Q. So did you file taxes in 2020?</p> <p>14 A. It doesn't matter.</p> <p>15 Q. Did you file taxes in 2019?</p> <p>16 A. It doesn't matter.</p> <p>17 MS. DIVINEY: Objection, foundation,</p> <p>18 relevancy, form.</p> <p>19 BY MR. MARKO:</p> <p>20 Q. When was the last time you filed taxes?</p> <p>21 MS. DIVINEY: Objection, relevancy,</p> <p>22 foundation, form.</p> <p>23 BY MR. MARKO:</p> <p>24 Q. Sir, when was the last time you filed taxes?</p> <p>25 A. It has no relevance to your case, sir.</p>	<p style="text-align: right;">Page 85</p> <p>1 BY MR. MARKO:</p> <p>2 Q. 315 -- go ahead.</p> <p>3 MS. DIVINEY: He's already given it. Do</p> <p>4 you need it again?</p> <p>5 BY MR. MARKO:</p> <p>6 Q. I want to hear it.</p> <p>7 MR. MARKO: Madam Court Reporter, could you</p> <p>8 read back the number that he gave us?</p> <p>9 (The requested portion of the record was</p> <p>10 read by the reporter at 4:00 p.m.</p> <p>11 "A. (315) 608-0864.")</p> <p>12 A. She has it.</p> <p>13 BY MR. MARKO:</p> <p>14 Q. No, I don't have it.</p> <p>15 A. She has it. She just said it.</p> <p>16 Q. We need to know the number.</p> <p>17 A. She just said the number.</p> <p>18 MR. MARKO: Madam Court Reporter, I don't</p> <p>19 have the number, so you need to either tell it to me</p> <p>20 or he has to answer the question.</p> <p>21 (The requested portion of the record was</p> <p>22 read by the reporter at 4:00 p.m.</p> <p>23 "A. (315) 608-0864.")</p> <p>24 BY MR. MARKO:</p> <p>25 Q. Sir, is that your number?</p>

<p style="text-align: right;">Page 86</p> <p>1 A. Yes.</p> <p>2 Q. And, sir, what's your address?</p> <p>3 MS. DIVINEY: Can you hear us?</p> <p>4 MR. MARKO: Madam Court Reporter, can you</p> <p>5 read back my last question?</p> <p>6 (The requested portion of the record was</p> <p>7 read by the reporter at 4:01 p.m.</p> <p>8 "Q. And, sir, what is your address?")</p> <p>9 A. 9158 Steel Street.</p> <p>10 BY MR. MARKO:</p> <p>11 Q. 9158 what street?</p> <p>12 A. Steel, S-T-E-E-L.</p> <p>13 Q. S-T-E-E-L?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And what city is that in?</p> <p>16 A. Detroit.</p> <p>17 Q. And who do you live there with?</p> <p>18 A. My wife and kids.</p> <p>19 Q. Anyone else?</p> <p>20 A. No.</p> <p>21 Q. And how long have you lived at 9158 Steel Street in</p> <p>22 Detroit?</p> <p>23 A. 2019.</p> <p>24 Q. And how many vehicles do you currently own?</p> <p>25 A. One. Two now.</p>	<p style="text-align: right;">Page 88</p> <p>1 Q. Are you familiar with the address 19350 Archdale</p> <p>2 Street in Detroit?</p> <p>3 A. Yes.</p> <p>4 Q. And how are you familiar with that address?</p> <p>5 A. My mom lived there.</p> <p>6 Q. Does she still live there?</p> <p>7 MS. DIVINEY: I'm going to place an</p> <p>8 objection on the record, form and foundation, with</p> <p>9 respect to these addresses that you're questioning him</p> <p>10 on, form and foundation.</p> <p>11 BY MR. MARKO:</p> <p>12 Q. Go ahead.</p> <p>13 MS. DIVINEY: I did it, go ahead.</p> <p>14 BY MR. MARKO:</p> <p>15 Q. Go ahead.</p> <p>16 MS. DIVINEY: I already put my objection.</p> <p>17 BY MR. MARKO:</p> <p>18 Q. Go ahead, sir.</p> <p>19 A. I said no.</p> <p>20 Q. Sir, at the time of this crash was your driver's</p> <p>21 license suspended --</p> <p>22 A. No.</p> <p>23 Q. -- or invalid?</p> <p>24 A. No.</p> <p>25 Q. Do you have a valid driver's license?</p>
<p style="text-align: right;">Page 87</p> <p>1 Q. And what's the vehicle that you own?</p> <p>2 A. A Hyundai Sonata.</p> <p>3 MS. DIVINEY: I'm going to place an</p> <p>4 objection on the record, form, foundation, relevancy.</p> <p>5 BY MR. MARKO:</p> <p>6 Q. Is that the same vehicle that you owned at the time of</p> <p>7 the incident?</p> <p>8 A. Yes.</p> <p>9 Q. Have you ever been involved in a lawsuit before?</p> <p>10 A. No.</p> <p>11 Q. Have you ever been sued before?</p> <p>12 A. No.</p> <p>13 Q. Have you ever given sworn testimony in a case before?</p> <p>14 A. Yes.</p> <p>15 Q. And what was that?</p> <p>16 A. In this case.</p> <p>17 Q. Other than this case, what case?</p> <p>18 A. It was a case for a pistol, somebody with a pistol.</p> <p>19 Q. Sir, are you familiar with the address 14185 Prevost</p> <p>20 Street in Detroit, Michigan?</p> <p>21 A. No.</p> <p>22 Q. Have you ever lived there?</p> <p>23 A. No.</p> <p>24 Q. Have you ever been there?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 89</p> <p>1 A. Yes.</p> <p>2 Q. What's your driver's license number?</p> <p>3 A. That doesn't matter.</p> <p>4 Q. Are you refusing to answer my question?</p> <p>5 A. No, I'm not refusing. I'm giving you an answer. I</p> <p>6 said it doesn't matter. What do you need my driver's</p> <p>7 license information for?</p> <p>8 Q. Tell us your driver's license number.</p> <p>9 A. Why is what I'm asking?</p> <p>10 Q. Go ahead, sir.</p> <p>11 A. Why?</p> <p>12 Q. Sir, you're not allowed to ask me questions.</p> <p>13 A. I can't ask you questions but you can ask me</p> <p>14 questions?</p> <p>15 Q. That's the deal.</p> <p>16 A. No, it's not the deal.</p> <p>17 Q. That's how this process works, sir. When you get your</p> <p>18 bar license and you represent clients and you go to</p> <p>19 law school, one day you can do that, too. Until then</p> <p>20 I need you to answer my questions.</p> <p>21 A. I'm not giving you my driver's license number.</p> <p>22 MS. GALE-BARBANTINI: Can we briefly go off</p> <p>23 the record.</p> <p>24 (Off the record at 4:05 p.m.)</p> <p>25 (Back on the record at 4:06 p.m.)</p>



<p style="text-align: right;">Page 90</p> <p>1 A. 200-589-439-447.</p> <p>2 BY MR. MARKO:</p> <p>3 Q. Do you have more than one cellphone number?</p> <p>4 A. No.</p> <p>5 Q. What's the highest level you've achieved in school?</p> <p>6 A. I got a GED.</p> <p>7 Q. Did you ever graduate high school?</p> <p>8 A. I have a GED.</p> <p>9 Q. Did you go to high school?</p> <p>10 A. Yes, I did.</p> <p>11 Q. Where did you go?</p> <p>12 A. I went to Finney and I went to the Academy of Oak</p> <p>13 Park.</p> <p>14 Q. What was the first school that you went to?</p> <p>15 A. I can't hear.</p> <p>16 Q. What was the first school that you went to?</p> <p>17 MS. DIVINEY: What was the first one that</p> <p>18 you said?</p> <p>19 THE WITNESS: Oh, Finney.</p> <p>20 BY MR. MARKO:</p> <p>21 Q. Could you spell that for the court reporter?</p> <p>22 A. F-I-N-N-E-Y.</p> <p>23 Q. And why did you leave Finney?</p> <p>24 A. It closed.</p> <p>25 Q. And then where did you go?</p>	<p style="text-align: right;">Page 92</p> <p>1 BY MR. MARKO:</p> <p>2 Q. Go ahead.</p> <p>3 A. I've been in the military. I've worked for 15 years,</p> <p>4 right? I worked for a place called -- it's something</p> <p>5 assembly. I went around to Home Depots and put their</p> <p>6 barbecue grills and wheelbarrows and stuff together.</p> <p>7 I worked for Securitas. I worked for the Marriott at</p> <p>8 the Renaissance Center. I worked for Brinks. I</p> <p>9 worked for GardaWorld.</p> <p>10 (Off the record at 4:10 p.m.)</p> <p>11 (Back on the record at 4:10 p.m.)</p> <p>12 BY MS. DIVINEY:</p> <p>13 Q. Anything else?</p> <p>14 A. No, that's it.</p> <p>15 Q. Do you plan on moving in the next two years?</p> <p>16 A. No, sir.</p> <p>17 Q. You said that you were discharged from the military.</p> <p>18 Do you have a medical condition?</p> <p>19 A. Yes.</p> <p>20 Q. What was the medical condition?</p> <p>21 A. I got injured.</p> <p>22 Q. I understand that. What was the injury?</p> <p>23 A. A back injury.</p> <p>24 Q. What type of back injury?</p> <p>25 A. I'm not sure. I don't know.</p>
<p style="text-align: right;">Page 91</p> <p>1 A. Academy of Oak Park.</p> <p>2 Q. And did you graduate from there?</p> <p>3 A. It closed.</p> <p>4 Q. What year did you get your GED?</p> <p>5 A. I think I got it in 2010 -- yeah, 2010 or 2011. I</p> <p>6 don't remember.</p> <p>7 Q. Have you held any employment in the last ten years</p> <p>8 where you received money from any business other than</p> <p>9 Matron Security?</p> <p>10 MS. DIVINEY: Objection, relevancy, form.</p> <p>11 Are you asking him within the last ten years?</p> <p>12 MR. MARKO: Correct. That's what I said.</p> <p>13 MS. DIVINEY: That's pretty broad. I know</p> <p>14 that Mr. Pace testified earlier that he was in the</p> <p>15 military.</p> <p>16 MR. MARKO: Okay. Let him answer. We'll</p> <p>17 find out.</p> <p>18 MS. DIVINEY: Well, ten years, that's back</p> <p>19 to 2011.</p> <p>20 MR. MARKO: Thank you, Ms. Diviney, for</p> <p>21 doing the math for us. I appreciate that.</p> <p>22 MR. MARKO: Madam Court Reporter, can you</p> <p>23 read back the last question for the witness?</p> <p>24 A. I know the question. Are you ready for me to answer?</p> <p>25 You said not to cut you off.</p>	<p style="text-align: right;">Page 93</p> <p>1 Q. Are you receiving any type of governmental benefits</p> <p>2 related to your back injury?</p> <p>3 MS. DIVINEY: Objection, relevancy, form,</p> <p>4 foundation.</p> <p>5 BY MR. MARKO:</p> <p>6 Q. Go ahead.</p> <p>7 MS. DIVINEY: You can answer the question,</p> <p>8 Mr. Pace.</p> <p>9 A. I get -- yeah, I get VA benefits, yeah.</p> <p>10 BY MR. MARKO:</p> <p>11 Q. And do you get any Social Security benefits?</p> <p>12 A. No.</p> <p>13 Q. Have you ever applied for Social Security?</p> <p>14 MS. DIVINEY: Objection, form, foundation,</p> <p>15 relevancy. You can go ahead and answer, Mr. Pace.</p> <p>16 A. No.</p> <p>17 BY MR. MARKO:</p> <p>18 Q. So what percentage did the military disable you? I</p> <p>19 know there's different percentages.</p> <p>20 MS. DIVINEY: Objection, form, foundation,</p> <p>21 relevancy. You can answer, Mr. Pace.</p> <p>22 A. Eighty percent.</p> <p>23 BY MS. DIVINEY:</p> <p>24 Q. So tell me, you have an 80 percent back injury</p> <p>25 disability. How does that affect your ability to work</p>

<p style="text-align: right;">Page 94</p> <p>1 as a security guard?</p> <p>2 A. It doesn't.</p> <p>3 Q. Why not?</p> <p>4 A. Because it doesn't affect my ability to work.</p> <p>5 Q. Have you ever sought any psychiatric treatment?</p> <p>6 A. In the military, yes.</p> <p>7 Q. And what was that for?</p> <p>8 A. PTSD.</p> <p>9 Q. Were you diagnosed with PTSD?</p> <p>10 A. Yes.</p> <p>11 Q. And what was that related to?</p> <p>12 A. Stuff that was going on in life.</p> <p>13 Q. I don't know what that means.</p> <p>14 A. Things that I was seeing in the military. That's it.</p> <p>15 And the car accident.</p> <p>16 Q. Who was in a car accident?</p> <p>17 A. Me and my family.</p> <p>18 Q. And when was that?</p> <p>19 A. In 2017.</p> <p>20 Q. And did you file a lawsuit?</p> <p>21 A. No.</p> <p>22 Q. Did you receive benefits related to that case?</p> <p>23 A. No.</p> <p>24 Q. Did you get sued?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 96</p> <p>1 though.</p> <p>2 Q. And the driver of the white vehicle, you would agree</p> <p>3 that he could have slowed down and entered the lane of</p> <p>4 traffic behind you, true?</p> <p>5 A. Yes.</p> <p>6 Q. The entire time that that white vehicle was alongside</p> <p>7 of you and slightly in front of you at times as it</p> <p>8 appears in the video, he continued to drive in the</p> <p>9 parking lane and/or that bike lane as you described it</p> <p>10 on northbound Meyers, correct?</p> <p>11 A. Yes.</p> <p>12 MS. DIVINEY: No more questions.</p> <p>13 EXAMINATION</p> <p>14 BY MR. BAUM:</p> <p>15 Q. Just briefly, and I don't mean to rehash the whole</p> <p>16 darn thing here, but, Mr. Pace, you had the</p> <p>17 opportunity to review video footage provided by</p> <p>18 Mr. Marko here during your deposition; is that</p> <p>19 correct? You agree that you were able to see video of</p> <p>20 the accident?</p> <p>21 A. Yes.</p> <p>22 Q. And you agree that that accident, I know it's from a</p> <p>23 different angle than from where you are, but do you</p> <p>24 have any reason to believe that that video is not --</p> <p>25 that's a bad question.</p>
<p style="text-align: right;">Page 95</p> <p>1 Q. Who was your insurance company?</p> <p>2 A. USAA. I wasn't driving my vehicle. I was in a</p> <p>3 different vehicle.</p> <p>4 MR. MARKO: Okay. I don't have any other</p> <p>5 questions at this time.</p> <p>6 MR. GUMTOW: I have no questions for you</p> <p>7 today, Mr. Pace. I appreciate your time.</p> <p>8 THE WITNESS: Thank you.</p> <p>9 MS. DIVINEY: Anyone else?</p> <p>10 MS. GALE-BARBANTINI: I have no questions</p> <p>11 for Mr. Pace. Thank you very much for your time</p> <p>12 today, sir.</p> <p>13 THE WITNESS: Thank you.</p> <p>14 MR. BAUM: No questions.</p> <p>15 MR. MOUGHNI: No questions either. Thank</p> <p>16 you.</p> <p>17 RE-EXAMINATION</p> <p>18 BY MS. DIVINEY:</p> <p>19 Q. Mr. Pace, I just have a couple of quick follow-up</p> <p>20 questions and again I thank you for your time today.</p> <p>21 Real quick, when the white vehicle started</p> <p>22 to drive in the parking lane next to you, did you feel</p> <p>23 you had an obligation to slow down to let that vehicle</p> <p>24 into the travel lane?</p> <p>25 A. I didn't feel like I had an obligation to, but I did,</p>	<p style="text-align: right;">Page 97</p> <p>1 You agree that that video depicts the</p> <p>2 accident that you were a witness to, correct?</p> <p>3 A. Yes.</p> <p>4 Q. Okay.</p> <p>5 A. You said depicts it. What does that mean?</p> <p>6 Q. Shows it. It shows that's the accident that you</p> <p>7 remember that you were involved in, correct? I mean,</p> <p>8 you weren't in the accident but you were there.</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And did you agree, and again I don't want to</p> <p>11 get combative here, but did you agree at any time --</p> <p>12 let me ask it this way. At any time during</p> <p>13 Mr. Marko's playing of the video, that I know you</p> <p>14 weren't in control of the video, but at any time</p> <p>15 during the video did you observe what you could</p> <p>16 identify as a blinker on the truck?</p> <p>17 A. I couldn't see it. I wear glasses. Everything on</p> <p>18 that video was real small, so I'm not sure.</p> <p>19 Q. You don't have your glasses on today?</p> <p>20 A. No.</p> <p>21 Q. Did you have your glasses on at the time of the</p> <p>22 accident?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Do you have to drive in your glasses?</p> <p>25 A. No, I've got contacts in right now.</p>

<p style="text-align: right;">Page 98</p> <p>1 Q. What's your script, do you know?</p> <p>2 A. I don't know.</p> <p>3 Q. Okay. I mean a stigmatism, nearsighted, farsighted?</p> <p>4 A. I'm not sure.</p> <p>5 Q. How long have you been wearing glasses?</p> <p>6 A. My whole life. Since I was ten.</p> <p>7 Q. When's the last time you got a new script?</p> <p>8 A. I just got contacts, so I just got a new script.</p> <p>9 Q. When was that?</p> <p>10 A. I believe two or three months ago.</p> <p>11 Q. Okay. So before two or three months ago when you got</p> <p>12 a new script when was the last time before that that</p> <p>13 you had gotten a new script?</p> <p>14 A. 2000 -- right before I got out of the military.</p> <p>15 Q. What year was that?</p> <p>16 A. 2018.</p> <p>17 Q. So at the time of the accident do you believe that the</p> <p>18 -- I'm sorry, did you say you were wearing contacts at</p> <p>19 the time of the accident or glasses?</p> <p>20 A. No, I was wearing my glasses at the time of the</p> <p>21 accident.</p> <p>22 Q. At the time of the accident you were wearing glasses</p> <p>23 that would have been prescribed for you, what, a</p> <p>24 year-and-a-half earlier?</p> <p>25 A. I'm not sure. I don't know how long it was before I</p>	<p style="text-align: right;">Page 100</p> <p>1 A. I'm not sure. I get -- there will be times where my</p> <p>2 sight do get blurry but it comes right back, though,</p> <p>3 so I'm not sure.</p> <p>4 Q. All right. Have you noticed that progressing as you</p> <p>5 age?</p> <p>6 A. No.</p> <p>7 Q. Okay. Where did you get your script a couple of</p> <p>8 months ago for your eyesight?</p> <p>9 A. The VA. The contacts is SVS Vision.</p> <p>10 Q. SVS Vision. And that's paid for by your insurance</p> <p>11 through the VA?</p> <p>12 A. No.</p> <p>13 Q. You pay for it yourself?</p> <p>14 A. That's paid through my insurance through GardaWorld.</p> <p>15 Q. All right. So you haven't had -- fair to say that the</p> <p>16 first time you've ever seen video of the accident is</p> <p>17 today, correct?</p> <p>18 A. Correct.</p> <p>19 Q. And the first time that you ever seen video of the</p> <p>20 accident, you don't have your glasses or your contacts</p> <p>21 in so it was tough for you to see what was going on in</p> <p>22 the video, fair?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. But during that video you identified a couple</p> <p>25 of moments where you think that there was room for the</p>
<p style="text-align: right;">Page 99</p> <p>1 had got my glasses before the accident. I'm not sure.</p> <p>2 Q. But you've been wearing glasses your whole life,</p> <p>3 correct?</p> <p>4 A. Um-hum.</p> <p>5 Q. That's a yes? I'm sorry um-hums just don't show up.</p> <p>6 A. Yes. I'm sorry, yes.</p> <p>7 Q. That's okay. And then when you got a new prescription</p> <p>8 a couple of months ago, do you know what the change</p> <p>9 was in your vision?</p> <p>10 A. No.</p> <p>11 Q. I mean, do you have eyes like me where every time you</p> <p>12 go and get a new check-up they're getting a little bit</p> <p>13 worse?</p> <p>14 A. I don't know.</p> <p>15 Q. Before you went and got the new script a couple of</p> <p>16 months ago did you notice any change in your vision</p> <p>17 even using your older script, you know, with the</p> <p>18 glasses and the contacts?</p> <p>19 A. No.</p> <p>20 Q. Have you ever been diagnosed with any, you know,</p> <p>21 disease or anything of the eye, like -- and, again,</p> <p>22 I'm not trying to suggest that you're going blind or</p> <p>23 anything like that, but you'd know what was going on</p> <p>24 with your eye script. I mean, is your eyesight</p> <p>25 getting worse?</p>	<p style="text-align: right;">Page 101</p> <p>1 white Sebring to get in between you and the truck. Do</p> <p>2 you remember giving testimony to that?</p> <p>3 A. Yes.</p> <p>4 Q. Do you think your inability to see the video was</p> <p>5 affecting your ability to make that determination?</p> <p>6 A. I'm not sure.</p> <p>7 Q. Let me tell you, because the reason I'm asking is, you</p> <p>8 know, you gave testimony about, you know, at a certain</p> <p>9 point, I believe it was something at 57 seconds when</p> <p>10 Mr. Marko asked you, you said there's the time where I</p> <p>11 waved him in or I would have given him room to merge</p> <p>12 between me and the truck. Do you remember saying</p> <p>13 that?</p> <p>14 A. As soon as we started driving --</p> <p>15 Q. We've got you now. I think you were just echoing</p> <p>16 through someone else. Here's my question. My</p> <p>17 question is very specific. Do you remember earlier</p> <p>18 when you stopped Mr. Marko at a point in time on the</p> <p>19 video and you said that is where I believe I signaled</p> <p>20 for him to come in and I think he had room to merge</p> <p>21 between me and the truck; do you remember that?</p> <p>22 A. Yes, but the video kept going before he stopped it.</p> <p>23 Q. Sure.</p> <p>24 A. He didn't stop the video. He kept going.</p> <p>25 Q. And when I finish my question you'll realize I'm not</p>

<p style="text-align: right;">Page 102</p> <p>1 really interested in that. But you gave some</p> <p>2 testimony based on the video and you think you were</p> <p>3 able to see okay in order to give that testimony,</p> <p>4 fair?</p> <p>5 A. Um-hum.</p> <p>6 Q. That's yes?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And then when asked about whether or not there</p> <p>9 was any blinkers that you could see, you're now</p> <p>10 telling us that you can't really see in the video,</p> <p>11 it's too small.</p> <p>12 A. No. What I'm saying is me seeing two big objects and</p> <p>13 me seeing two little lights blinking is completely</p> <p>14 different. That's what I'm saying.</p> <p>15 Q. All right. Earlier you were asked some questions, and</p> <p>16 I won't go through them all again, of course, but</p> <p>17 earlier you were asked some questions about the type</p> <p>18 of blinker, where on the truck the blinker was; do you</p> <p>19 remember being asked those questions?</p> <p>20 A. Yeah, I don't remember. I don't know where the</p> <p>21 blinker would be on the truck.</p> <p>22 Q. As we sit here today, do you have any idea where on</p> <p>23 that truck the blinker was that you testified you saw</p> <p>24 blinking?</p> <p>25 A. No. I don't know where it was. I just know I saw a</p>	<p style="text-align: right;">Page 104</p> <p>1 accident on the date of the accident would be a more</p> <p>2 accurate reflection of what happened than your memory</p> <p>3 two years afterward?</p> <p>4 A. No.</p> <p>5 Q. Okay. Why don't you believe -- why don't you agree</p> <p>6 with me on that?</p> <p>7 A. Because when you're looking at something in real time</p> <p>8 and you're looking at something on a video it's never</p> <p>9 going to be accurate.</p> <p>10 Q. Okay. You're saying that the videos are never</p> <p>11 accurate as to what actually happens?</p> <p>12 A. Yeah. I'm talking about as far as the time. As far</p> <p>13 as everything that's going on, it's not accurate.</p> <p>14 Q. Okay. You have a problem with it, you don't think</p> <p>15 that the video is very accurate; is that what you're</p> <p>16 saying?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. When you determined that the driver of the</p> <p>19 Sebring was not going to merge into your lane or get</p> <p>20 in front of you, did you then speed up?</p> <p>21 A. No, I continued at the same rate of speed.</p> <p>22 Q. And what speed was that?</p> <p>23 A. I'm not sure. I know we was doing the speed limit.</p> <p>24 I'm not sure. We came from a light, from the red</p> <p>25 light at Schoolcraft and we continued on. I didn't</p>
<p style="text-align: right;">Page 103</p> <p>1 blinking light.</p> <p>2 Q. Earlier you testified that, and again I don't mean to</p> <p>3 rehash anything, but earlier you testified that</p> <p>4 sometimes you're forgetful and you miss appointments.</p> <p>5 Do you remember giving that testimony?</p> <p>6 A. Yep.</p> <p>7 Q. Okay. As we sit here today, do you know how long it's</p> <p>8 been since the car accident?</p> <p>9 A. I don't know. I know it's been a year or two.</p> <p>10 Q. Okay. The first time that you gave --</p> <p>11 MR. MARKO: I'm sorry, the car accident he</p> <p>12 just got in today or the car accident he got into</p> <p>13 involving my client?</p> <p>14 BY MS. DIVINEY:</p> <p>15 Q. Yes, the car accident involving the truck and the</p> <p>16 Sebring; do you know how long ago it's been?</p> <p>17 A. A year or two.</p> <p>18 Q. As we sit here today -- well, strike that.</p> <p>19 Would you agree that your memory of the</p> <p>20 accident would have been better the day after than it</p> <p>21 is now?</p> <p>22 A. Of the accident?</p> <p>23 Q. Yes.</p> <p>24 A. I don't know.</p> <p>25 Q. Okay. Would you agree that a video depicting the</p>	<p style="text-align: right;">Page 105</p> <p>1 have to turn off until the truck actually started to</p> <p>2 turn and the accident happened.</p> <p>3 Q. Okay. And, in fact, when the truck started turning,</p> <p>4 you had to swerve to the left to avoid the truck when</p> <p>5 it started turning.</p> <p>6 A. Yeah, because it stopped.</p> <p>7 Q. Is that because you were following too close to the</p> <p>8 truck?</p> <p>9 A. No, that's because he got into the accident and he</p> <p>10 came to a stop.</p> <p>11 Q. Okay. So if he hadn't gotten into the accident, I</p> <p>12 guess --</p> <p>13 A. He would have turned in and I would have kept going.</p> <p>14 Q. Okay. Were you able to stop in time in order to avoid</p> <p>15 hitting the truck?</p> <p>16 A. Yes. If you saw it on the video, I stopped and then</p> <p>17 went around the vehicle.</p> <p>18 Q. Well, hold on just a second then. And unfortunately</p> <p>19 I'm running with two different systems here so I can't</p> <p>20 share screen on the video. But just one second. Just</p> <p>21 because I want to make sure that I've got this</p> <p>22 correct.</p> <p>23 So it's your recollection that you stopped</p> <p>24 behind the truck and then went around it?</p> <p>25 A. Yes. When the truck came to a stop, I stopped and</p>

<p style="text-align: right;">Page 106</p> <p>1 went around.</p> <p>2 Q. Okay.</p> <p>3 A. I had to brake and go around.</p> <p>4 Q. For how long did you stop behind the truck before</p> <p>5 going around?</p> <p>6 A. It wasn't long at all, it was hitting the brake and</p> <p>7 then going around.</p> <p>8 Q. Was it a stop or just a slow?</p> <p>9 A. I don't know, man. I don't know. You're watching the</p> <p>10 video, so I'm pretty sure you know. It's the same</p> <p>11 questions over and over again and I'm going to keep</p> <p>12 giving you all the same answers. It's starting to get</p> <p>13 irritating because you all is taking up my whole day.</p> <p>14 When I was told about this disposition stuff, I wasn't</p> <p>15 told it was going to take this long. I'm late going</p> <p>16 back to work right now and I missed my whole</p> <p>17 appointment, man.</p> <p>18 Q. Well, Mr. Pace, look, I can appreciate that this isn't</p> <p>19 something that you want to do. You've never had a</p> <p>20 conversation with me before this deposition, have you?</p> <p>21 A. I don't even know. I don't know how many people I</p> <p>22 ever talked to. I don't know who I talked to. All I</p> <p>23 know is that people keep calling me about it and it's</p> <p>24 starting to get real frequent and irritating, man.</p> <p>25 Q. But I never told you what to expect, you know, I never</p>	<p style="text-align: right;">Page 108</p> <p>1 you use someone else's phone?</p> <p>2 A. Yeah, I got my wife's phone. It's in the car. I</p> <p>3 called the lawyer from her phone to let her know that</p> <p>4 my phone died and I was going to call her right back</p> <p>5 once it charged up.</p> <p>6 Q. You called Ms. Diviney and let her know that?</p> <p>7 A. Um-hum.</p> <p>8 MS. DIVINEY: He called our assistant at</p> <p>9 the office here just so the record is clear. Because</p> <p>10 I was still with you guys on the Zoom.</p> <p>11 MR. BAUM: Fair enough.</p> <p>12 BY MR. BAUM:</p> <p>13 Q. How did you have her number or that number?</p> <p>14 A. It was in my e-mail.</p> <p>15 Q. Okay. So you were able to access your e-mail from</p> <p>16 your wife's phone?</p> <p>17 A. Yes.</p> <p>18 Q. Has your wife met up with you where you are now since</p> <p>19 this dep has been going on for hours?</p> <p>20 A. No.</p> <p>21 Q. You just happened to have your wife's phone with you</p> <p>22 while doing this deposition?</p> <p>23 A. Yep. I still got it.</p> <p>24 Q. Because you're alone in the car, correct?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 107</p> <p>1 set your expectations for a half an hour or an hour,</p> <p>2 did I?</p> <p>3 A. Okay. So what's the next question, sir?</p> <p>4 Q. So my question, though, is, and here's the reason I'm</p> <p>5 asking is because you just got done telling me that</p> <p>6 when you're there in person that's more accurate than</p> <p>7 what the video shows. The video doesn't show you</p> <p>8 stopping behind the truck.</p> <p>9 A. So what does the video show?</p> <p>10 Q. Well, I guess what do you recall? My question is --</p> <p>11 A. All I know is when it happened, the vehicle stopped --</p> <p>12 when the truck stopped in front of me, I hit my brake</p> <p>13 and went around the truck. That's all I know, man.</p> <p>14 That's it. Other than that I don't know nothing else,</p> <p>15 man.</p> <p>16 Q. Have you made a claim to any insurance companies for a</p> <p>17 traumatic injury as a result of your witnessing this</p> <p>18 accident?</p> <p>19 A. I have not.</p> <p>20 Q. Okay. Have you experienced any symptoms of trauma as</p> <p>21 a result of your witnessing this accident?</p> <p>22 A. No.</p> <p>23 Q. We took a break when you lost your communication, you</p> <p>24 know, when you lost your cellphone. How were you</p> <p>25 able to communicate with one of the lawyers here? Did</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. All right. At any time, and I don't mean to suggest</p> <p>2 this, I have to do my job and I have to ask, apart</p> <p>3 from the communication about your cellphone dying and</p> <p>4 you're using a new cellphone, any other conversation</p> <p>5 with Ms. Diviney during the period of time where you</p> <p>6 were off your Zoom with a dead phone?</p> <p>7 A. No. I didn't talk to her. I talked to whoever</p> <p>8 answered the phone and she said she's going to let her</p> <p>9 know that I was going to call back.</p> <p>10 Q. Fair enough. And, again, at the time that you gave a</p> <p>11 recorded statement to the insurance company you had</p> <p>12 never seen the video, correct?</p> <p>13 A. No.</p> <p>14 Q. And at any time prior to today, any conversations with</p> <p>15 any lawyers or insurance companies, you had never seen</p> <p>16 the video when you made those statements, correct?</p> <p>17 A. No.</p> <p>18 Q. All right. And typically I'd ask if you'd then defer</p> <p>19 to the video, but it sounds like, from what you've</p> <p>20 seen of the videos, you've got some issues because it</p> <p>21 doesn't accurately reflect what you remember; is that</p> <p>22 correct?</p> <p>23 A. Say it again.</p> <p>24 Q. I said normally I would ask if you'd defer to the</p> <p>25 video, but it sounds like from some of your testimony</p>



<p style="text-align: right;">Page 110</p> <p>1 you've got problems with parts of the video that</p> <p>2 you've seen because you feel it doesn't accurately</p> <p>3 reflect what you remember; is that fair?</p> <p>4 A. I don't really care about what the video shows. All I</p> <p>5 know is what I saw when everything was happening. All</p> <p>6 I can give you answers to is what I saw on video. I</p> <p>7 can't give you no answers to nothing about the video.</p> <p>8 I can't give you any suggestions about the video. So</p> <p>9 I'd rather you all ask me questions about the accident</p> <p>10 and that's it.</p> <p>11 Q. This is it and I promise I'll kind of wrap it up here,</p> <p>12 though.</p> <p>13 Do you rely on your memory more than the</p> <p>14 video to refresh your recollection of what happened?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And it is in your memory that you recall a</p> <p>17 blinker being somewhere on the truck; is that fair?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And I know that you can't see very well and you</p> <p>20 might be using a small screen, but you'd agree that</p> <p>21 the video, you were unable to ascertain a blinker</p> <p>22 anywhere on the truck when you saw it, correct?</p> <p>23 A. I can't see the lights anywhere on the truck. I can't</p> <p>24 see any lights on the truck.</p> <p>25 Q. So you'd agree with me that at least on the video what</p>	<p style="text-align: right;">Page 112</p> <p>1 A. I'm not sure. His body wasn't moving. I don't know</p> <p>2 if his body was moving or not. All I saw was his</p> <p>3 head. His head was moving like back and forth. I</p> <p>4 couldn't see his body. All I saw was his head.</p> <p>5 Q. How long was his head moving?</p> <p>6 A. I'm not sure. I don't know. I didn't want to sit</p> <p>7 there and look at it.</p> <p>8 Q. Well, how long did you watch him with his head?</p> <p>9 A. Not long. I stopped and I went over to check and we</p> <p>10 stood there and waited for the cops to come.</p> <p>11 Q. Did you say anything to him?</p> <p>12 A. I was trying to see if he could hear me or if he could</p> <p>13 talk, but other than that, no.</p> <p>14 Q. What did he say to you?</p> <p>15 A. He didn't say anything.</p> <p>16 Q. Could you hear some moans?</p> <p>17 A. No.</p> <p>18 Q. Was there noises being made?</p> <p>19 A. No.</p> <p>20 Q. What was the truck driver doing while this was going</p> <p>21 on?</p> <p>22 A. I'm not sure.</p> <p>23 Q. Did you ever see the truck driver?</p> <p>24 A. Yeah, I know he walked over and started walking back</p> <p>25 and forth. Other than that, I'm not sure what he was</p>
<p style="text-align: right;">Page 111</p> <p>1 you saw, you couldn't see lights on the truck, fair?</p> <p>2 That's a yes?</p> <p>3 A. Yes.</p> <p>4 MR. BAUM: I don't have any more questions</p> <p>5 for you, sir. Thank you.</p> <p>6 RE-EXAMINATION</p> <p>7 BY MR. MARKO:</p> <p>8 Q. Mr. Pace, you would agree that you got out of your</p> <p>9 vehicle and did you go over to my client's Sebring?</p> <p>10 A. Yes.</p> <p>11 Q. And you would agree that his body was moving?</p> <p>12 A. Yes.</p> <p>13 Q. And describe for me what my client's body was doing</p> <p>14 under that vehicle.</p> <p>15 A. It was like -- I don't know, man.</p> <p>16 Q. I just want to take you back to that moment and I want</p> <p>17 you to tell me what you see.</p> <p>18 A. I saw the fricking door in his head, pinning his head</p> <p>19 down and I saw, it was like his body was trying to</p> <p>20 push himself from under the truck.</p> <p>21 Q. It was almost like he was trying to get out from under</p> <p>22 the car?</p> <p>23 A. Yeah.</p> <p>24 Q. And then how long was he trying to get out from under</p> <p>25 the car before his body stopped moving?</p>	<p style="text-align: right;">Page 113</p> <p>1 doing.</p> <p>2 Q. What did he say to you?</p> <p>3 A. The truck driver?</p> <p>4 Q. Yeah.</p> <p>5 A. He didn't say anything.</p> <p>6 Q. He didn't say a single word to you?</p> <p>7 A. Not that I recall.</p> <p>8 Q. Did you say anything to him?</p> <p>9 A. No. I don't know. I don't remember talking to the</p> <p>10 truck driver. I remember talking to the cops and some</p> <p>11 other guys that was outside. Because a lot of people</p> <p>12 had came out. There was like a bunch of workers out</p> <p>13 there. I don't know which one was the truck driver.</p> <p>14 I don't know. All I know is he got out of his truck.</p> <p>15 After that I don't know where he went because it's</p> <p>16 like everybody came over.</p> <p>17 Q. So you knew the police -- you were there when the</p> <p>18 police came?</p> <p>19 A. Yes.</p> <p>20 Q. And were you worried?</p> <p>21 A. Worried about what?</p> <p>22 Q. About anything.</p> <p>23 A. I was worried about if the guy was going to survive or</p> <p>24 not. That's it. Other than that, no.</p> <p>25 Q. When did you know he wasn't going to survive, sir?</p>

<p style="text-align: right;">Page 114</p> <p>1 A. When the fire truck or the police officer, one of them</p> <p>2 said that there was nothing that they could do. Me</p> <p>3 and my brother was asking if we could try to lift the</p> <p>4 car to pull him from under and they said there was</p> <p>5 nothing to do.</p> <p>6 Q. And that was it?</p> <p>7 A. Yeah.</p> <p>8 Q. Where did you go after the accident?</p> <p>9 A. To my sister's house.</p> <p>10 Q. What did you do there?</p> <p>11 A. I dropped my kids off.</p> <p>12 Q. And then where did you go?</p> <p>13 A. I don't remember.</p> <p>14 Q. Did you go to a party?</p> <p>15 A. No.</p> <p>16 Q. You don't remember where you went?</p> <p>17 A. No.</p> <p>18 MR. MARKO: I don't have any other</p> <p>19 questions.</p> <p>20 MR. BAUM: Anyone? I have just two or</p> <p>21 three.</p> <p>22 MS. DIVINEY: I have a couple, but go</p> <p>23 ahead, Alex.</p> <p>24 RE-EXAMINATION</p> <p>25 BY MR. BAUM:</p>	<p style="text-align: right;">Page 116</p> <p>1 BY MS. DIVINEY:</p> <p>2 Q. Mr. Pace, was that your testimony, that that's why you</p> <p>3 disagree with the video, it runs at a slower pace than</p> <p>4 what you recall the accident occurring?</p> <p>5 A. Yeah.</p> <p>6 Q. And also the video is taken from the front side and</p> <p>7 you were behind the dump truck, correct?</p> <p>8 A. Yes.</p> <p>9 Q. And in the video, the video shows only the front of</p> <p>10 the dump truck, but you recall being behind the dump</p> <p>11 truck and seeing the blinker activated in the back of</p> <p>12 the dump truck, correct?</p> <p>13 A. Yes.</p> <p>14 Q. At any time that you were driving behind the dump</p> <p>15 truck on northbound Meyers that day, were you going to</p> <p>16 try to pass the dump truck on the right side of it?</p> <p>17 A. No.</p> <p>18 MS. DIVINEY: No more questions.</p> <p>19 RE-EXAMINATION</p> <p>20 BY MR. MARKO:</p> <p>21 Q. Mr. Pace, what's your brother's name?</p> <p>22 A. Andre.</p> <p>23 Q. And where does he live?</p> <p>24 A. I don't know. I don't talk to my brother.</p> <p>25 Q. You don't know where your own brother lives?</p>
<p style="text-align: right;">Page 115</p> <p>1 Q. Mr. Pace, have you ever had a conversation with your</p> <p>2 brother about this accident in the past two years</p> <p>3 since this happened?</p> <p>4 A. No. Well, I told him about you guys trying to get in</p> <p>5 touch with us.</p> <p>6 Q. Okay. But have you ever had a conversation with him</p> <p>7 about what happened and how it happened and things</p> <p>8 like that?</p> <p>9 A. Yeah.</p> <p>10 Q. Okay. Have you and he ever disagreed on any details</p> <p>11 or remembered things differently?</p> <p>12 A. No.</p> <p>13 MR. BAUM: All right. No more questions.</p> <p>14 RE-EXAMINATION</p> <p>15 BY MS. DIVINEY:</p> <p>16 Q. Real quick, Mr. Pace, and correct me if I'm wrong, you</p> <p>17 have issues with the video, and I think if I</p> <p>18 understood you correctly me when you were answering</p> <p>19 the question it's because the video kind of slows down</p> <p>20 the speed of -- as the accident is occurring it's at a</p> <p>21 slower speed than what --</p> <p>22 MR. MARKO: Objection. That</p> <p>23 mischaracterizes his testimony.</p> <p>24 MS. DIVINEY: You know what, Marko, thank</p> <p>25 you.</p>	<p style="text-align: right;">Page 117</p> <p>1 A. I haven't talked to my brother in a while.</p> <p>2 Q. When was the last time you talked to him?</p> <p>3 A. A couple of months ago.</p> <p>4 Q. Where does he live?</p> <p>5 A. I don't know.</p> <p>6 Q. Where did he last live that you know about?</p> <p>7 A. I know he lived in Detroit. If you're asking me for</p> <p>8 his address, I don't know.</p> <p>9 Q. What's his phone number?</p> <p>10 A. Can I go in my phone and get it?</p> <p>11 Q. Sure.</p> <p>12 A. Ready? Hello.</p> <p>13 Q. Yes.</p> <p>14 A. It's (313) 768-4556.</p> <p>15 Q. And what does he do?</p> <p>16 A. Nothing.</p> <p>17 Q. What do you mean nothing?</p> <p>18 A. You asked me what does he do for work?</p> <p>19 Q. Yes, what does he do for work?</p> <p>20 A. I don't think he does anything.</p> <p>21 Q. When you were talking to the insurance company and the</p> <p>22 attorneys, was he ever with you or on the line?</p> <p>23 A. No.</p> <p>24 Q. Have you talked to him about what he saw happen?</p> <p>25 A. We talked about it at after it happened. Other than</p>

<p style="text-align: right;">Page 118</p> <p>1 that we haven't had any conversation about it.</p> <p>2 MR. MARKO: Okay. Thank you.</p> <p>3 RE-EXAMINATION</p> <p>4 BY MR. BAUM:</p> <p>5 Q. Mr. Pace, when you had the conversation with the</p> <p>6 insurance company or the attorney, earlier you</p> <p>7 testified that you were told that the truck's blinker</p> <p>8 wasn't working but that may have been because of the</p> <p>9 accident. Is that what you testified?</p> <p>10 A. No. They said that -- I guess the -- they said the</p> <p>11 police had did an investigation on it and they said</p> <p>12 that the blinker wasn't working, but that could have</p> <p>13 been because of the accident but they didn't know but</p> <p>14 they were asking me questions about it because of that</p> <p>15 reason.</p> <p>16 Q. Okay. And how long after the accident was it that you</p> <p>17 had had that conversation, if you remember?</p> <p>18 A. I don't know, two years, a year.</p> <p>19 Q. At any time from the time of the accident until you</p> <p>20 had that conversation with the insurance company about</p> <p>21 the blinker, did you ever have any memories or did you</p> <p>22 think at all about the blinker on the truck for those</p> <p>23 two years?</p> <p>24 A. No.</p> <p>25 Q. And then when you have a conversation with the</p>	<p style="text-align: right;">Page 120</p> <p>1 CERTIFICATE</p> <p>2 STATE OF MICHIGAN</p> <p>3 COUNTY OF MACOMB</p> <p>4</p> <p>5 I, SUSAN LOWRY, a Notary Public in and for</p> <p>6 the above county and state, do hereby certify that</p> <p>7 this deposition was taken before me at the time and</p> <p>8 place hereinbefore set forth; that the witness was by</p> <p>9 me first duly sworn to testify to the truth; that this</p> <p>10 is a true, full and correct transcript of my</p> <p>11 stenographic notes so taken; and that I am not</p> <p>12 related, nor of counsel to either party, nor</p> <p>13 interested in the event of this cause.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 <i>Susan L. Lowry</i></p> <p>22 SUSAN LOWRY, CSR-2636</p> <p>23 Notary Public</p> <p>24 Macomb County, Michigan</p> <p>25 My commission expires December 3, 2022</p>
<p style="text-align: right;">Page 119</p> <p>1 insurance company there's discussion about a blinker</p> <p>2 and that's when you recall having seen a blinker</p> <p>3 somewhere on the truck?</p> <p>4 A. No. I just know -- I just recall seeing the lights</p> <p>5 and I recall seeing the flashing light on the truck.</p> <p>6 That's it. Other than that I don't know.</p> <p>7 Q. But as we sit here you're not sure where on the truck</p> <p>8 it was, fair?</p> <p>9 A. No.</p> <p>10 Q. That's a fair statement? That's a correct statement</p> <p>11 that I made there?</p> <p>12 A. Yes.</p> <p>13 MR. BAUM: That's all.</p> <p>14 (The deposition was concluded at 4:41 p.m.</p> <p>15 Signature of the witness was not requested by</p> <p>16 counsel for the respective parties hereto.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

# **EXHIBIT 13**

**Nick Schubeck**  
**04/19/2021**

RECEIVED by MSC 11/4/2024 7:59:14 AM

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

SCOTT M. NEAL,

Plaintiff,

Case No. 20-012305-NF

-vs-

Hon. Sheila Ann Gibson

CHANDRA McDUFFIE, Personal

Representative of the Estate of

William Howard McDuffie-Connor,

Deceased, EMC PROPERTY & CASUALTY

COMPANY, FARM BUREAU MUTUAL INSURANCE

COMPANY and MICHIGAN AUTOMOBILE

INSURANCE PLACEMENT FACILITY,

Defendants.



1 Consolidated with  
2 CHANDRA McDUFFIE, Personal  
3 Representative of the Estate of  
4 William Howard McDuffie-Connor,  
5 Deceased,  
6 Plaintiff,  
7 Case No. 20-007497-NF  
8 -vs- Hon. Sheila Ann Gibson  
9  
10 SCOTT M. NEAL, N.S.S. CONSTRUCTION,  
11 INC., and MEMBERSELECT INSURANCE  
12 COMPANY,  
13 Defendants.  
14 \_\_\_\_\_/  
15 PAGE 1 TO 77  
16  
17 The deposition of NICK SCHUBECK,  
18 Taken Via Hanson Remote  
19 Commencing at 10:09 a.m.,  
20 Monday, April 19, 2021  
21 Before Jennifer Boutsikaris, CSR-8575.  
22  
23  
24 Court reporter and some attorneys appearing remotely  
25

Page 3

1 APPEARANCES:  
2 MR. MAJED A. MOUGHNI - P61087  
3 Law Offices of Majed A. Moughni, PLLC  
4 290 Town Center Drive, Suite 332  
5 Dearborn, Michigan 48126-2765  
6 (313) 581-0800  
7 moughni@aol.com  
8 Appearing remotely on behalf of the Plaintiff  
9 Scott Neal.  
10  
11 MR. MICHAEL JOHN SAPICK - P80999  
12 Kopka, Pinkus, Dolin, PLC  
13 32605 West 12 Mile Road, Suite 300  
14 Farmington Hills, Michigan 48334-3390  
15 (248) 699-1570  
16 mjsapick@kopkalaw.com  
17 Appearing remotely on behalf of the Defendant  
18 McDuffie.  
19  
20  
21  
22  
23  
24  
25

1 APPEARANCES CONTINUED:  
2 MR. DANIEL ERICH GUMTOW - P82748  
3 Anselmi, Mierzejewski, Ruth & Sowle, PC  
4 1750 South Telegraph Road, Suite 306  
5 Bloomfield Hills, Michigan 48302-0179  
6 (248) 338-2290  
7 dgumtow@a-mlaw.com  
8 Appearing remotely on behalf of the Defendant Farm  
9 Bureau.  
10  
11 MR. JONATHAN ROBERT MARKO - P72450  
12 Marko Law, PLLC  
13 1300 Broadway Street, Suite 500  
14 Detroit, Michigan 48226-2274  
15 (313) 777-7529  
16 jon@markolaw.com  
17 Appearing on behalf of the Plaintiff McDuffie.  
18  
19  
20  
21  
22  
23  
24  
25

Page 5

1 APPEARANCES CONTINUED:  
2 MS. AMY LOUISE DIVINEY - P77164  
3 Merry, Farnen & Ryan, PC  
4 300 Maple Park Boulevard, Suite 301  
5 St. Clair Shores, MI 48081-2217  
6 (586) 541-6281  
7 adiviney@mfr-law.com  
8 Appearing on behalf of the Defendants N.S.S.  
9 Construction, Inc., and Scott Neal.  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1	TABLE OF CONTENTS	
2	Witness	
3	NICK SCHUBECK	
4		
5	EXAMINATIONS	
6	Page	
7	EXAMINATION BY MR. MARKO:	7
8	EXAMINATION BY MR. MOUGHNI:	70
9	EXAMINATION BY MR. SAPICK:	74
10		
11	EXHIBITS	
12	Exhibit	Page
13	(Exhibits not offered.)	
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

Page 7

1 Remote deposition  
2 Monday, April 19, 2021  
3 About 10:09 a.m.  
4 THE COURT REPORTER: My name is  
5 Jennifer Boutsikaris, a Michigan State notary public and  
6 certified shorthand reporter, and this deposition is  
7 being held via videoconferencing equipment. The witness  
8 and reporter are not in the same room. The witness will  
9 be sworn in remotely pursuant to agreement of all  
10 parties. The parties stipulate that the testimony is  
11 being given as if the witness was sworn in person.  
12 Mr. Schubeck, please raise your right hand.  
13 Do you solemnly swear or affirm that the testimony you  
14 are about to give will be the truth, the whole truth,  
15 and nothing but the truth?  
16 MR. SCHUBECK: Yes.  
17 NICK SCHUBECK,  
18 having first been duly sworn, was examined and testified  
19 on his oath as follows:  
20 EXAMINATION BY MR. MARKO:  
21 Q. Mr. Schubeck, my name is Jon Marko. I'm an attorney. I  
22 represent the estate of William Howard McDuffie-Connor  
23 arising out of an automobile crash that resulted in his  
24 death on July 17th, 2019.  
25 I called you here for your deposition. Have

1 you ever given a deposition before?  
2 A. Yes.  
3 Q. How many times?  
4 A. Several.  
5 Q. What does that mean? Three? To a lawyer, several means  
6 three times.  
7 A. I couldn't answer that question honestly. A number of  
8 times, I've been in a deposition.  
9 Q. Okay. What were -- why did you give depositions in the  
10 past?  
11 A. Generally, dealing with labor law. The unions that I  
12 was signatory to in the past.  
13 Q. Okay. So what does that mean? What types of cases were  
14 you --  
15 A. They were collectors, probably.  
16 Q. Okay. So you were being sued by employees?  
17 A. No.  
18 Q. Okay. Explain it to me, then.  
19 A. As I said, the unions; not my employees specifically.  
20 Q. Where the unions were suing you?  
21 A. Correct. I should have been more clear.  
22 Q. And what were they suing you for?  
23 A. Dollars. They were trying to collect.  
24 Q. Right, but what type of case was it?  
25 A. I don't know how to answer that. I'm not an attorney.

Page 9

1 Q. Okay. Well, what were they alleging happened in the  
2 case that they were suing you?  
3 A. They were alleging I owed benefit hours that were  
4 unpaid.  
5 Q. So like hours that employees worked that were not paid  
6 under the Fair Labor Standards Act?  
7 A. Hours of unpaid benefits -- (inaudible).  
8 (Interruption by the reporter.)  
9 BY MR. MARKO:  
10 Q. Okay. And did you ever go to trial on any of those  
11 cases?  
12 A. No.  
13 Q. What happened with those cases?  
14 A. Some of them are ongoing but the bulk of them got paid.  
15 Q. Have you ever had your deposition taken in a case that  
16 was not brought by the union?  
17 A. No.  
18 Q. Well, you know, you've said you've been deposed, you've  
19 had a court reporter, and you sat at a table like this  
20 before?  
21 A. Yes.  
22 Q. Okay. So you know rules. You're under oath. You  
23 understand that?  
24 A. Yes.  
25 Q. If you don't understand something that I ask you, tell

1 me and I'll be happy to rephrase it.  
 2 **A. Sure.**  
 3 Q. You understand that?  
 4 If you don't understand a word that I use,  
 5 tell me, and I'll ask a different question or ask it in  
 6 different ways; is that fair?  
 7 **A. Sure.**  
 8 Q. If you need a break, as long as there's not a question  
 9 posed, I'll be happy to accommodate you.  
 10 I understand that you prepared for your  
 11 deposition. I know you met with your attorney this  
 12 morning, correct?  
 13 **A. Yes.**  
 14 Q. And you reviewed some documents, correct?  
 15 **A. Yes.**  
 16 Q. What else did you do?  
 17 **A. Drank a cup of coffee.**  
 18 Q. Anything else?  
 19 **A. No.**  
 20 Q. What documents did you review in preparation for your  
 21 deposition?  
 22 **A. We went through this case; other than that, we did not.**  
 23 MS. DIVINEY: It was just the case caption.  
 24 That's it.  
 25 MR. MARKO: Just the case caption?

1 MS. DIVINEY: Yeah. So he could understand  
 2 why there were so many attorneys present today.  
 3 BY MR. MARKO:  
 4 Q. Okay. Did you review any materials such as police  
 5 report, photos, things of that nature?  
 6 **A. No.**  
 7 Q. Okay. Sir, what is your address?  
 8 **A. 22770 Worthington Court, St. Clair Shores, Michigan**  
 9 **48081.**  
 10 Q. And who do you live there with?  
 11 **A. Myself and my girlfriend.**  
 12 Q. And anyone else live there?  
 13 **A. Her daughter.**  
 14 Q. And how long have you lived there for?  
 15 **A. Since 2006. Fifteen years.**  
 16 Q. And what do you do for employment?  
 17 **A. I've excavated in general.**  
 18 Q. Who's your employer?  
 19 **A. Contract Excavating.**  
 20 Q. That's the name of the company?  
 21 **A. That's the name of the company.**  
 22 Q. Contract Excavating. And what's your position with  
 23 Contract Excavating?  
 24 **A. I manage.**  
 25 Q. And do you have an ownership in Contract Excavating?

1 **A. I have a partnership interest in Contract Excavating.**  
 2 Q. And who is your partner?  
 3 **A. That's an LLC. I'm a single member LLC. So I am a**  
 4 **member of the LLC and the sole member of the LLC.**  
 5 Q. Okay. So when you say a partnership LLC, it's a --  
 6 **A. No, no. That -- I'm a member of the LLC. It's just me.**  
 7 Q. And you're the only member of that LLC?  
 8 **A. Correct.**  
 9 Q. And when did you form Contract Excavating?  
 10 **A. In 2020.**  
 11 Q. And why did you form Contract Excavating?  
 12 **A. N.S.S. Construction went out of business.**  
 13 Q. When did N.S.S. Construction go out of business?  
 14 **A. N.S.S. Construction wrapped up all of its operations the**  
 15 **end of 2019.**  
 16 Q. And why did it do that?  
 17 **A. I had union concerns.**  
 18 Q. And what were those union concerns?  
 19 **A. They wanted money. I didn't have any more money to**  
 20 **give.**  
 21 Q. Did you declare bankruptcy for the company?  
 22 **A. No.**  
 23 Q. Have you ever declared bankruptcy?  
 24 **A. No.**  
 25 Q. So N.S.S. Construction wrapped up at the end of the same

1 year as this crash, right?  
 2 **A. Yes.**  
 3 Q. And did the fact that one of your drivers was in a fatal  
 4 crash and a claim was being made against your company  
 5 have anything to do with your company closing?  
 6 **A. No.**  
 7 Q. So Contract Excavating does what type of work?  
 8 **A. Underground sewer and water, installation and repair.**  
 9 Q. And how many employees does it have?  
 10 **A. Myself.**  
 11 Q. And is there any other employees?  
 12 **A. No.**  
 13 Q. What type of equipment does it have?  
 14 **A. A skid steer and a compact excavator.**  
 15 Q. Does it have any other equipment that it owns?  
 16 **A. No.**  
 17 Q. N.S.S. -- do you have any other source of income other  
 18 than Contract Excavating currently?  
 19 **A. No.**  
 20 Q. When was N.S.S. Construction formed?  
 21 **A. 2001.**  
 22 MS. DIVINEY: Is that an approximate or is  
 23 that a...  
 24 **THE WITNESS: It was 2001.**  
 25 ///

1 BY MR. MARKO:  
 2 Q. And what type of company is N.S.S. Construction or was  
 3 it?  
 4 **A. N.S.S. Construction was an S-type Corporation.**  
 5 Q. Who were the shareholders in that N.S.S. Construction?  
 6 **A. Me.**  
 7 Q. Was there any other shareholders other than you?  
 8 **A. Just me.**  
 9 Q. And how many employees did N.S.S. Construction have?  
 10 **A. It varied over time. I mean, anywhere from five**  
 11 **employees to 55 employees.**  
 12 Q. And in 2019, how many employees did it have?  
 13 **A. It depends on the time of year. In the beginning of the**  
 14 **year, maybe ten; by July, August of that year, maybe two**  
 15 **or three; by the end of 2019, zero.**  
 16 Q. What type of work did N.S.S. Construction do?  
 17 **A. They did underground construction for electrical and**  
 18 **mechanical contractors in institutional and industrial**  
 19 **business.**  
 20 Q. Okay. What does that mean in layman's terms?  
 21 **A. That means we dug ditches and holes for electricians and**  
 22 **mechanical contractors.**  
 23 Q. Okay, but how did you get into the business of N.S.S.  
 24 Construction?  
 25 **A. I started this in 2001 doing small things, we worked our**

1 way up, and now I've ended up with contracts with these  
 2 electricals and mechanicals working at the hospitals.  
 3 They automatically resume, et cetera, et cetera.  
 4 Q. Okay. So prior to N.S.S. Construction, did you have any  
 5 previous experience of whether you owned your own  
 6 company or whether you worked for someone else with the  
 7 type of work that you do?  
 8 **A. Yes.**  
 9 Q. And what was that experience?  
 10 **A. I worked for other companies before I went into business**  
 11 **for myself.**  
 12 Q. What type of companies did you work for?  
 13 **A. Underground construction companies.**  
 14 Q. And how long did you work for underground construction  
 15 companies?  
 16 **A. From '96 until 2001.**  
 17 Q. And do you have a CDL?  
 18 **A. Yes.**  
 19 Q. And how long have you had a CDL?  
 20 **A. Since 1996 or '7.**  
 21 Q. Have you ever had your CDL lapse or get taken away for  
 22 any reason?  
 23 **A. No.**  
 24 Q. Have you ever been charged with a crime before?  
 25 **A. No.**

1 Q. Have you ever been arrested before?  
 2 **A. Excuse me, charged with a crime before? Am I being**  
 3 **charged with a crime?**  
 4 Q. My question was have you ever been charged with a  
 5 crime --  
 6 **A. A crime --**  
 7 Q. -- before.  
 8 **A. -- before which would indicate I'm being charged with a**  
 9 **crime currently.**  
 10 Q. Sir, have you ever been charged with a crime before?  
 11 MS. DIVINEY: Let me put an objection on the  
 12 record real quick --  
 13 **A. Before?**  
 14 MS. DIVINEY: -- for relevancy --  
 15 **THE WITNESS: please.**  
 16 MS. DIVINEY: -- and form and foundation.  
 17 So before as to which date are you talking  
 18 about?  
 19 BY MR. MARKO:  
 20 Q. Have you ever been charged with a crime before July of  
 21 2019?  
 22 **A. I've never been charged with a crime.**  
 23 Q. Ever in your whole life?  
 24 **A. Right.**  
 25 Q. Have you ever had to hire a lawyer before other than for

1 the union stuff?  
 2 **A. No.**  
 3 Q. Who was your lawyer for these union lawsuits?  
 4 MS. DIVINEY: Objection. Relevancy and form  
 5 and foundation.  
 6 Q. Go ahead.  
 7 **A. Kotz Sangster.**  
 8 Q. And who is the lawyer there?  
 9 **A. Jeff Hill.**  
 10 Q. Briefly, what's your educational experienced?  
 11 **A. I finished high school.**  
 12 Q. Did you graduate?  
 13 **A. Yes.**  
 14 Q. From where?  
 15 **A. Grosse Pointe North.**  
 16 Q. Have you ever been in the military before?  
 17 **A. No.**  
 18 Q. So you said that you had, depending on the time,  
 19 between -- in early 2019, around ten employees?  
 20 **A. Correct.**  
 21 Q. Okay. So tell me what those employees did for you.  
 22 **A. Underground construction.**  
 23 Q. Did they all have the same job position?  
 24 **A. I don't know how to answer that.**  
 25 Q. Well, did you have a manager?

1 A. At the beginning of 2019?  
 2 Q. Correct.  
 3 A. Yes.  
 4 Q. And who was that?  
 5 A. The unions came, put a stop work on my build employees,  
 6 and I no longer had them.  
 7 Q. Okay. So on July 17th, 2019, who was your manager?  
 8 A. Me.  
 9 Q. Did you have any other managers?  
 10 A. No.  
 11 Q. So what was Mr. Neal's job title?  
 12 A. Truck driver.  
 13 Q. Did you have a formal job description for Mr. Neal?  
 14 A. There was a formal job description in the syllabus in  
 15 the employee handbook.  
 16 At the time when Scott Neal came to work for  
 17 me, it was a temporary position. We were ramping down  
 18 operations at that point.  
 19 Q. Did you ever give Mr. Neal a copy of the employee  
 20 handbook?  
 21 A. I assume so but that was a couple years ago.  
 22 Q. Can you provide evidence that you gave him a copy of the  
 23 employee handbook?  
 24 A. I don't have any of the records from that company left.  
 25 Q. Can you provide a -- I understand there's a sign sheet

1 that all your employees are supposed to sign when they  
 2 get a copy of the handbook; isn't that correct?  
 3 A. Yes.  
 4 Q. Okay. Can you show me the signed sheet?  
 5 A. That company is not an ongoing entity and I don't have  
 6 any of those records at this point.  
 7 Q. What happened to all those records?  
 8 A. I lost my shop. Most of those records ended up in the  
 9 dumpster.  
 10 Q. What do you mean you lost your shop?  
 11 A. I lost my shop.  
 12 Q. But what does that mean? I don't know what that means.  
 13 A. I purchased it on a land contract and the land contract  
 14 was foreclosed upon and I lost my shop.  
 15 Q. And when was that?  
 16 A. December of 2019.  
 17 Q. Okay. And so was that when all these records were  
 18 destroyed?  
 19 A. Correct. The company was no longer ongoing.  
 20 MS. DIVINEY: Object.  
 21 Do you know that they were destroyed or were  
 22 they left in the business and they were --  
 23 THE WITNESS: Put in a dumpster.  
 24 MR. MARKO: Yeah. That's -- the dumpster is  
 25 destroying.

1 BY MR. MARKO:  
 2 Q. Okay. So let's talk about your hiring processes at  
 3 N.S.S. Construction. Okay. What type of -- what was  
 4 the job responsibilities of a truck driver like  
 5 Scott Neal?  
 6 A. To drive trucks.  
 7 Q. All right. And so what was the criteria that N.S.S. had  
 8 in hiring a truck driver like Scott Neal?  
 9 A. Scott Neal was a trained and experienced CDL driver.  
 10 Q. Okay. That wasn't my question, though. My question,  
 11 sir, is: What was the hiring criteria for hiring a  
 12 truck driver like Scott Neal?  
 13 A. The criteria was that he needed to be a trained and  
 14 experienced CDL driver.  
 15 Q. Okay. And so, obviously, you know these truck drivers  
 16 are gonna be driving equipment on the roads, correct?  
 17 A. They will be driving trucks on the road.  
 18 Q. Which is a piece of equipment, right? Some of --  
 19 A. No. A piece of equipment would fall under an inland  
 20 marine policy. A truck would fall under an auto policy.  
 21 They're two very distinctly different things.  
 22 Q. Okay. What type of trucks would your employees be  
 23 driving on the public roads?  
 24 A. Trucks.  
 25 Q. What kind of trucks?

1 A. Dump trucks.  
 2 Q. What else?  
 3 A. Pickup trucks.  
 4 Q. What else?  
 5 A. Dump trucks.  
 6 Q. You already said that.  
 7 A. That's what I owned, dump trucks and pickup trucks.  
 8 Q. So how many trucks did N.S.S. own in 2019?  
 9 A. Including pickup trucks and dump trucks?  
 10 Q. All kinds of trucks.  
 11 A. Probably a dozen. Maybe a few more, maybe a few less.  
 12 I believe the auto policy would indicate the individual  
 13 vehicles.  
 14 Q. So these trucks that your truck drivers are driving such  
 15 as this dump truck, what was your criteria in screening  
 16 these individuals?  
 17 A. I required trained CDL drivers to drive trucks that  
 18 require a CDL driver.  
 19 Q. And you understand that the truck involved in this  
 20 fatality required a trained CDL driver? You understand  
 21 that?  
 22 A. I think we both understand that. Yes.  
 23 Q. So if someone said that you didn't need a CDL to drive  
 24 the type of truck that was involved in this accident on  
 25 a public roadway for business purposes, that would be



1 untrue?

2 **A. Correct. A CDL is a required to operate that vehicle.**

3 Q. So tell me your hiring process in general for these

4 truck drivers.

5 **A. You might have to ask that in a different fashion. What**

6 **hiring process?**

7 Q. That's what I want to know is what was the process that

8 N.S.S. Construction went through in finding trained and

9 qualified drivers for these trucks that were gonna be

10 operated on public roadways.

11 **A. Up until June of two thousand -- oh, up until May of**

12 **2019, those things would be provided by unions.**

13 Q. So is it your testimony that the union is who hired

14 Scott Neal?

15 **A. In no fashion.**

16 Q. So what happened with Scott Neal's hiring?

17 **A. I hired Scott Neal.**

18 Q. And so when -- is it your testimony that the unions

19 handled the hiring compared to you handling the hiring?

20 **A. Excuse me?**

21 Q. Yeah. When did you handle the hiring for your truck

22 drivers?

23 **A. By April or May of 2019.**

24 Q. Until when?

25 **A. Until 2019 when I stopped about all operations, which**

1 **would have been December.**

2 Q. Okay. And how many truck drivers did you hire at

3 N.S.S. --

4 **A. One.**

5 Q. -- Construction?

6 One? And it was Scott Neal?

7 **A. Correct.**

8 Q. And why didn't you hire any of your other truck drivers?

9 **A. I didn't hire any truck drivers after I hired**

10 **Scott Neal.**

11 Q. What about before Scott Neal?

12 **A. I hired union employees. The union sent people with**

13 **this type of qualification and training.**

14 Q. Okay. So what happened when Scott Neal was hired

15 outside the normal union process?

16 **A. The union put me on a stop work. I stopped all of my**

17 **build operations. When I hired Scott Neal, it was in a**

18 **temporary position as I was ramping down the operations**

19 **and closing up that company.**

20 Q. What union did that, put you on a stop order?

21 **A. Local 324, the operating engineers.**

22 Q. And why did the Local 324 put you on a stop order?

23 **A. Money.**

24 Q. Well, what does mean?

25 **A. Okay. They were looking for benefit hours to be paid**

1 **that hadn't been paid, and I'm in an ongoing lawsuit**

2 **with them over dollars.**

3 Q. Why didn't your company pay the benefits that were

4 alleged to have been owed?

5 **A. A lot of the dollars there were audit results that were**

6 **in dispute for a significant period of time.**

7 Q. What does --

8 **A. That's an ongoing and very different lawsuit.**

9 Q. And what does that mean?

10 **A. I have no idea.**

11 MS. DIVINEY: I'm gonna put an objection on

12 the record as to relevancy.

13 **A. I don't know that the finances at that point have much**

14 **to do with this.**

15 Q. Did any of the -- how many drivers would be out on the

16 road on any given day in 2019, early 2019, for your

17 company?

18 MS. DIVINEY: Objection. You mean -- what is

19 early 2019? Could you explain like what the time period

20 is so he knows how to answer?

21 **A. Well, early of '19 is pretty simple. The first quarter**

22 **of 2019, that's the middle of the winter, we don't have**

23 **a whole lot of build operations at that point. Maybe**

24 **there were two people that were on the road, three**

25 **people, probably one CDL driver at any given time.**

1 Q. So how many people on the road at a given time? I'm not

2 sure I understand.

3 **A. CDL drivers or --**

4 Q. Yes.

5 **A. -- people? Actually, people on the road, there are**

6 **millions. I've noticed them every day when I'm out on**

7 **the road.**

8 Q. How many people that were employed by you, sir?

9 **A. Ah, as I stated, maybe two or three people in the early**

10 **2019. In the wintertime, our operations were always**

11 **very slow.**

12 Q. Okay. So about a given day, you had two to three people

13 in trucks working for your company in 2019, a

14 roundabout?

15 **A. Sure. Probably one CDL driver if it was required that**

16 **day.**

17 Q. How many crashes or accidents had any of your employees

18 been in other than Scott Neal?

19 **A. I'm sure there must have been fender benders over the**

20 **years but never had a significant event such as this.**

21 Q. Okay. And all of those were union drivers other than

22 Scott Neal, correct?

23 **A. Those were all CDL drivers.**

24 Q. Screened and provided by the union?

25 **A. Sure.**

1 Q. Okay. So the one guy that you hired ends up killing  
2 somebody?  
3 MS. DIVINEY: Objection. There's been no  
4 evidence that Mr. Neal's driving caused this accident or  
5 killed anyone, and the prosecutor has --  
6 MR. MARKO: Yes, there has, and yes, there  
7 will be. And let's not make speaking objections.  
8 Q. So --  
9 MS. DIVINEY: Well, then let's --  
10 Q. -- the one driver -- the one --  
11 MS. DIVINEY: Objection. Form and foundation.  
12 MR. MARKO: Okay. That's a better objection.  
13 BY MR. MARKO:  
14 Q. So the one driver that you hired on your own outside of  
15 the union was in a fatal accident; is that true?  
16 **A. Was in a fatal accident? I believe he's still alive.**  
17 Q. You believe that --  
18 **A. That Scott Neal is still alive.**  
19 Q. -- my client -- my client is still alive?  
20 **A. No. I don't believe that Scott Neal was involved in a**  
21 **fatal accident. Scott Neal is still alive.**  
22 Q. Scott Neal was involved in an accident that caused a  
23 fatality. Do --  
24 **A. That, I won't argue.**  
25 Q. -- you understand that?

1 **A. That, I won't argue. That was much more clear.**  
2 Q. And Neal, he's the one driver that you hired, right?  
3 **A. Sure.**  
4 Q. Okay. So let's talk about your hiring process with  
5 Mr. Neal. What did you do to screen Mr. Neal?  
6 **A. Mr. Neal had a CDL driver's license.**  
7 Q. Okay. What else?  
8 **A. I was hiring him on a temporary basis.**  
9 Q. Okay. What else?  
10 **A. That would be it.**  
11 Q. So the minimum qualifications for your company as I  
12 understand it is if the driver had a CDL, that was good  
13 enough for you?  
14 **A. I was hiring Scott Neal on a very temporary basis. And,**  
15 **yes, that answer would be correct.**  
16 Q. Okay. And you understand that a CDL requires a minimum  
17 set of governmental requirements in order to obtain that  
18 license; in other words, it's a minimum requirement?  
19 MS. DIVINEY: Objection. Form and foundation.  
20 What -- I don't know that if my client understands what  
21 you mean by government requirement, if you're referring  
22 to Michigan, federal law. What are you referring to?  
23 **A. When you obtain a CDL, it's the State of Michigan from**  
24 **the certain subtests, the road test. That's gonna be in**  
25 **Michigan. I can understand that. I understand how you**

1 **receive a CDL.**  
2 Q. Okay. So did you do any further inquiry outside of  
3 having this knowledge of this CDL Mr. Neal had? Did you  
4 do any further background investigation into it?  
5 **A. No.**  
6 Q. Did you run any type of criminal checks on him outside  
7 of what was provided through his CDL?  
8 **A. No. And his criminal background wouldn't be any**  
9 **interest of mine.**  
10 Q. Did you ask him about prior work history?  
11 **A. Yes. We discussed that Scott had driven CDL trucks in**  
12 **the past.**  
13 Q. Okay. Did you ask him -- did you call any of his  
14 previous employers to do a reference check?  
15 **A. No. I was only employing him on a temporary -- as a**  
16 **temporary concern.**  
17 Q. Did you pull an updated driving record for Mr. Neal?  
18 **A. No.**  
19 Q. Did you do anything else other than get and verify his  
20 CDL?  
21 **A. No.**  
22 Q. No? Let me ask you some things that, from an employer  
23 standpoint, if it would concern you about someone who  
24 you were hiring and was gonna be driving one of your  
25 trucks.

1 Would it concern you if one of your drivers  
2 had 34 traffic citations?  
3 **A. Probably not.**  
4 Q. Why not?  
5 **A. Well, traffic citations can be a lot of different**  
6 **things.**  
7 Q. Would it concern you if your driver had a history of  
8 at-fault accidents?  
9 **A. Yeah. I would assume that that would concern me.**  
10 Q. And why is that?  
11 **A. Because they would be at-fault accidents.**  
12 Q. Would it concern you if one of your drivers had been  
13 terminated from past jobs for crashing into other  
14 vehicles?  
15 **A. Sure.**  
16 Q. And why would that concern you?  
17 **A. Well, I don't believe any of that information was**  
18 **disclosed to me at that point.**  
19 Q. Well, no, that wasn't my question. Why would that  
20 concern you?  
21 **A. It's probably not a good thing if someone likes crashing**  
22 **into things.**  
23 Q. Would it concern you if one of your drivers was  
24 terminated from a position because he was accused of  
25 falsifying driving logs?

1 A. I would assume that would concern me as well.  
 2 Q. Why would that concern you?  
 3 A. Because that would be falsified driving logs.  
 4 Q. Would it concern you if one of your drivers left his job  
 5 because he crashed into an 80-year-old man on the  
 6 highway?  
 7 A. A man standing on his own --  
 8 Q. An 80-year-old man --  
 9 A. -- on the freeway?  
 10 Q. -- sitting in his vehicle.  
 11 A. Oh, he ran into a vehicle. Would he have known the man  
 12 was 80 years old?  
 13 Q. Sir, can you just answer my question?  
 14 MS. DIVINEY: I don't...  
 15 A. If he ran into a vehicle, then I understand it. I  
 16 understand it that he was in a number of accidents. I  
 17 don't understand who piloting the vehicle would be of  
 18 any relevance to anything.  
 19 Q. Well, here's the great thing: You don't have to  
 20 understand anything in this case because --  
 21 A. So I don't believe that he hit an eighty --  
 22 Q. -- you're a witness. You're the witness --  
 23 A. I don't believe -- I don't believe --  
 24 Q. Sir --  
 25 A. -- that he hit an 80-year-old man on the freeway. He

1 may have hit someone's car on the freeway which  
 2 contained --  
 3 Q. No, no --  
 4 A. -- an 80-year-old man. That's an entirely different  
 5 question than what you asked.  
 6 Q. No. No. My question is: Would it concern you that one  
 7 of your drivers had been losing his previous trucking  
 8 jobs for at-fault accidents?  
 9 A. I'm sure that would concern me.  
 10 Q. Okay. So what did you do to ascertain Mr. Neal's  
 11 employment history when you hired him?  
 12 MS. DIVINEY: I'm just gonna --  
 13 A. From what I understand, on a temporary basis, I hired a  
 14 guy with a CDL.  
 15 Q. And what did you do to ascertain Mr. Neal's traffic  
 16 citation history when you hired him?  
 17 A. I did not.  
 18 Q. And what did you do to ascertain Mr. Neal's history of  
 19 at-fault accidents when you hired him?  
 20 A. I did not.  
 21 Q. And what did you do to ascertain Mr. Neal's history of  
 22 alcohol abuse when you hired him?  
 23 A. I would not know anything about that.  
 24 Q. Did you ask Mr. Neal about -- did you know he was in the  
 25 military?

1 A. Yes. He told me he was in the military.  
 2 Q. Did you ascertain why he was discharged from the  
 3 military?  
 4 A. No.  
 5 Q. Did you ask him?  
 6 A. No.  
 7 Q. Did you ask him about -- tell me what you did do during  
 8 the hiring process of Mr. Neal.  
 9 A. I interviewed Scott.  
 10 Q. And how did you interview him?  
 11 A. Face-to-face.  
 12 Q. And how did you come in contact with Scott Neal? How  
 13 was it that you were able to find him?  
 14 A. I believe I put an ad on Craigslist.  
 15 Q. And did he call you?  
 16 A. He answered the ad. I couldn't answer two years later  
 17 as to what medium he used to contact me at that point.  
 18 Q. And what was the -- tell me the -- take me through from  
 19 step one to the end of your hiring process with  
 20 Mr. Neal.  
 21 A. I interviewed him, I had hired him, he worked for me on  
 22 a temp -- as a temporary concern, and was eventually  
 23 laid off.  
 24 Q. And when you hired -- how long was the interview with  
 25 Mr. Neal?

1 A. Maybe it was a 20-minute interview. Maybe it was a half  
 2 hour interview. Again, this was two years ago. I  
 3 couldn't tell you how long I spent specifically  
 4 interviewing Scott Neal.  
 5 Q. And what was Mr. Neal's pay rate?  
 6 A. I think I gave Scott \$20 an hour.  
 7 Q. And how did you pay Mr. Neal?  
 8 A. Mr. Neal I think was paid as a 1099 employee.  
 9 Q. Okay. So did you pay him in a check, cash, or other  
 10 form?  
 11 A. Probably a check.  
 12 Q. And so do you have those records, those 1099s, for  
 13 Mr. Neal?  
 14 A. I would assume that I could find some financial records.  
 15 Again, the bulk of the records from that company are  
 16 gone.  
 17 Q. So, I mean, did you have an accountant who was doing  
 18 your business work?  
 19 A. By the end of 2019, I no longer had dollars to employ an  
 20 accountant to do that work.  
 21 Q. So who was the accountant who did it previously?  
 22 A. I had a concept. I would have to consult some records.  
 23 I don't remember who was doing that work. It was  
 24 different accountants over the years.  
 25 Q. Okay. Well, tell me any of your accountants.

1 A. The last would have been Skulsky who was doing the bulk  
2 of the accounting work for the last several years, so.  
3 Q. Isn't it true that you paid Mr. Neal in cash?  
4 A. Yeah, maybe.  
5 Q. And you just gave him --  
6 A. That was two years ago.  
7 Q. -- an envelope of cash at the end of the week?  
8 A. That was two years ago. That could have been, but I'm  
9 sure that he would have received checks as well, though.  
10 Q. Okay. And so why did you pay Mr. Neal in cash?  
11 A. Again, I was ramping down the operations of the company.  
12 Scott Neal was hired as a very temporary employee.  
13 Q. So do you have records of how often Scott Neal worked?  
14 A. I don't have almost -- I have almost no records from the  
15 operations of that company at this point, and I think  
16 I've stated that.  
17 Q. What records do you have?  
18 A. I could go through the file boxes and that's about all I  
19 could tell you. No idea.  
20 Q. Have you done that?  
21 A. Have I gone through the file boxes?  
22 Q. Correct.  
23 A. Yes.  
24 Q. And what was in them?  
25 A. It's very helter-skelter. I got to pack up a very

1 significant office and shop into a number of boxes,  
2 among those boxes and a truck and drive away. Again,  
3 the shop was repossessed. I have almost no records from  
4 the time I owned that business.  
5 Q. I know you've said that many times now, but my question  
6 is: What records do you have in those file boxes?  
7 A. No idea.  
8 Q. Okay. And --  
9 A. I could not clearly answer that question. I don't know.  
10 Q. And where are the records located?  
11 A. In my home.  
12 Q. And where in your home?  
13 A. In a file box.  
14 Q. Okay. And is it -- so you have a file box at your house  
15 with some records from N.S.S.?  
16 A. Correct.  
17 Q. Okay. And have you given those records to your  
18 attorney?  
19 A. No.  
20 Q. Why not?  
21 A. I'm not going to spend a -- because I haven't been able  
22 to locate all that many records. It's very little that  
23 exists, and I don't know which -- I don't know what  
24 you'd like me to give her. I don't --  
25 Q. I'd like you to give her all the records that you have

1 related to N.S.S. Can you do that?  
2 A. All of the records I have related to a company that  
3 operated for 18 years?  
4 Q. Correct.  
5 THE WITNESS: Would you like all the records I  
6 have in regards to all my operations for N.S.S.  
7 Construction for 18 years?  
8 MS. DIVINEY: Well, let me place an objection  
9 to relevancy as to respect with all the records. We'll  
10 work it out at some point. Mr. Marko has asked for some  
11 of the information from N.S.S. and, you know, I will let  
12 you know the specifics, so.  
13 BY MR. MARKO:  
14 Q. I mean, you understand there's a motion pending in court  
15 right now for these records, right?  
16 MS. DIVINEY: Objection.  
17 Q. Do you know that?  
18 MS. DIVINEY: Objection. You're looking for  
19 attorney-client communications.  
20 MR. MARKO: No, I'm not.  
21 MS. DIVINEY: You are. You're asking for him  
22 to tell what I've disclosed to him so you are.  
23 Q. Did you know that there's --  
24 MS. DIVINEY: So you don't have to answer --  
25 Q. Did you know there's --

1 MS. DIVINEY: -- that question. It's  
2 attorney-client --  
3 Q. -- a motion pending in court?  
4 MS. DIVINEY: As of the date of today on the  
5 docket, there's no motion pending.  
6 MR. MARKO: There's two.  
7 MS. DIVINEY: No. On the docket, there's no  
8 motions pending.  
9 BY MR. MARKO:  
10 Q. Did you know that?  
11 MS. DIVINEY: Here, I can go print it.  
12 Q. Did you know that?  
13 MS. DIVINEY: Do not answer the question.  
14 It's attorney-client privilege as to what we've  
15 discussed.  
16 MR. MARKO: I'm not asking what you discussed.  
17 MS. DIVINEY: You are. You're asking --  
18 BY MR. MARKO:  
19 Q. Are you aware that there's been motions filed with  
20 Judge Gibson for production of documents?  
21 MS. DIVINEY: He would only become aware of  
22 that through communication with me so now you're asking  
23 him for privileged communications between him and his  
24 attorney.  
25 Q. So, sir, do you have a driver's file for Mr. Neal at the

1 time that he worked for you?  
 2 **A. At the time he worked for me, yes. Does it exist now?**  
 3 **Probably not.**  
 4 Q. Okay. So let's go over what was destroyed, okay? So  
 5 the driver's file, you don't have now?  
 6 **A. Correct.**  
 7 Q. And --  
 8 MS. DIVINEY: Do you know that for sure?  
 9 **THE WITNESS: I don't know that for sure but I**  
 10 **would say with 90 percent accuracy, it doesn't exist at**  
 11 **this point.**  
 12 Q. And do you have a copy of his certified driving record  
 13 from 2019?  
 14 **A. No.**  
 15 Q. Why not?  
 16 **A. I don't have a record of almost anything that had to do**  
 17 **with that company. Some tax documents would be all that**  
 18 **still exists.**  
 19 Q. So that was destroyed as well?  
 20 MS. DIVINEY: Objection. If you --  
 21 Q. The dumpster.  
 22 MS. DIVINEY: If you know it was destroyed.  
 23 He's already testified he doesn't know --  
 24 necessarily know what are in his boxes in his file.  
 25 And --

1 **THE WITNESS: Well, it's very little left**  
 2 **there. I mean --**  
 3 MS. DIVINEY: Hang on.  
 4 **THE WITNESS: -- to tape some of the hole, I**  
 5 **probably kept 3 percent of the documents that were on**  
 6 **that boat at the time. I mean, there's no -- there's no**  
 7 **way I could tell you specifically do I have this piece**  
 8 **of paper or that piece of paper.**  
 9 BY MR. MARKO:  
 10 Q. But you can go look for it, and if you have it, you'll  
 11 give it to your attorney, right?  
 12 **A. Sure.**  
 13 Q. Okay. So then let's go over what else. Do you have the  
 14 vehicle maintenance file for the dump truck?  
 15 **A. No. I wouldn't have maintained any of those.**  
 16 MS. DIVINEY: But you don't know -- again, you  
 17 don't know for sure? It may be in the box?  
 18 **THE WITNESS: I don't know that for sure but**  
 19 **the chances that I -- I kept some tax records for that.**  
 20 BY MR. MARKO:  
 21 Q. Okay. The accident register for the dump truck, do you  
 22 have that?  
 23 **A. I don't have -- I'm gonna stay in the same spot. I**  
 24 **don't -- I don't think so.**  
 25 Q. The driver logs for Mr. Neal?

1 **A. I don't think so.**  
 2 Q. Did you ever have driver logs for Mr. Neal?  
 3 **A. At the time, I'm sure I did.**  
 4 Q. Do you know why Mr. Neal would say he never filled out  
 5 any driver logs?  
 6 **A. Maybe Mr. Neal couldn't. Again, he was there on a**  
 7 **temporary concern and for a very short period.**  
 8 Q. The driver vehicle inspection reports, do you have  
 9 those?  
 10 **A. I doubt that I have any of the things you're asking for.**  
 11 **The bulk of that paperwork went into a dumpster.**  
 12 Q. The driver qualification file, do you have that?  
 13 **A. Again, these things went in a dumpster.**  
 14 MS. DIVINEY: To your best guess.  
 15 **A. To the best of my knowledge.**  
 16 MS. DIVINEY: But you could --  
 17 Q. And every question is to the best of your knowledge.  
 18 Do you have any training documentation for  
 19 Mr. Neal?  
 20 **A. No.**  
 21 Q. Any preemployment drug and alcohol testing documents for  
 22 Mr. Neal?  
 23 **A. I believe that he would have been prescreened through**  
 24 **Concentra. But if I have them or not, they would be on**  
 25 **file there.**

1 Q. Do you have those documents?  
 2 **A. To the best of my knowledge, no. Would they be on file**  
 3 **with Concentra? To the best of my knowledge, yes.**  
 4 Q. Do you have postaccident drug and alcohol screen for  
 5 Mr. Neal?  
 6 **A. Some of them I did at Concentra. Concentra would have**  
 7 **those records.**  
 8 Q. Do you have signed acknowledgements or receipts for a  
 9 misuse of alcohol and use of controlled substances  
 10 policy?  
 11 **A. Excuse me?**  
 12 Q. Do you have a signed acknowledgement for Mr. Neal that  
 13 he was given a company policy on the misuse of alcohol  
 14 or controlled substances?  
 15 **A. To the best of my knowledge, this paperwork all went in**  
 16 **a dumpster.**  
 17 Q. Do you have an annual inquiry and review of Mr. Neal's  
 18 driving record?  
 19 **A. No.**  
 20 Q. Did you ever have one?  
 21 **A. No. Mr. Neal worked for me for a very, very short**  
 22 **period.**  
 23 Q. Do you have a completed application for employment for  
 24 Mr. Neal?  
 25 **A. I did.**



1 Q. Where is it?  
 2 **A. Probably in a dumpster.**  
 3 Q. Did you have a driver investigation history file for  
 4 Mr. Neal?  
 5 **A. To the best of my knowledge, all this stuff's in a**  
 6 **dumpster.**  
 7 Q. Do you have pre-trip inspections for that dump truck  
 8 that was involved in this fatality?  
 9 **A. Be more specific.**  
 10 Q. Do you have any documents showing inspections prior  
 11 to --  
 12 **A. To the best of my knowledge all that stuff's in a**  
 13 **dumpster.**  
 14 Q. Do you have any documentation of safety meetings held by  
 15 N.S.S. Construction?  
 16 **A. To the best of my knowledge, all this information is in**  
 17 **a dumpster.**  
 18 Q. Did you ever have safety meetings?  
 19 **A. Yes.**  
 20 Q. With Mr. Neal?  
 21 **A. Probably not.**  
 22 Q. Why not?  
 23 **A. By the time Mr. Neal was hired, I was ramping down the**  
 24 **operations. He was hired as a very temporary concern.**  
 25 Q. Do you have safety director records including safety

Page 43

1 meeting records, and accident, illness, injury report or  
 2 investigations?  
 3 **A. The best opportunity is is those were in a dumpster.**  
 4 Q. Do you have bills or records related to that dump truck?  
 5 **A. The bulk of that stuff went in a dumpster.**  
 6 Q. Do you have any inspection reports for that dump truck  
 7 that was involved in this incident?  
 8 **A. I did not retain very many of these records outside of**  
 9 **some tax documentation. To the best of my knowledge,**  
 10 **this stuff is in a dumpster.**  
 11 Q. Do you have Mr. Neal's abstract driving record --  
 12 **A. No.**  
 13 Q. -- from the time of his hiring?  
 14 **A. No.**  
 15 Q. What is your understanding of your insurance as it  
 16 relates to this case?  
 17 **A. I don't understand the question.**  
 18 Q. Sure. The vehicle was insured, correct?  
 19 **A. Correct.**  
 20 Q. And you had a commercial policy on it?  
 21 **A. Correct.**  
 22 Q. Okay. Did you have an umbrella policy for your  
 23 business?  
 24 **A. I have an inland marine policy, a general liability**  
 25 **policy. I have an auto policy, a workers' compensation**

1 **policy, and an umbrella policy.**  
 2 Q. Okay. And who is your umbrella policy with?  
 3 **A. I believe this is all to be EMC.**  
 4 Q. For who?  
 5 **A. EMC.**  
 6 Q. And how much was your umbrella policy?  
 7 **A. I don't remember.**  
 8 Q. Okay. So then you understand that this case, to your  
 9 knowledge, you have an auto policy?  
 10 **A. Correct.**  
 11 Q. And you don't know how much money that is?  
 12 **A. No.**  
 13 Q. Okay. And then on top of that auto policy, you have an  
 14 umbrella policy?  
 15 **A. True.**  
 16 Q. Which is also through EMC?  
 17 **A. To the best of my knowledge, yes.**  
 18 Q. Okay. Did you ever receive any, what's called a,  
 19 reservation of rights letter?  
 20 **A. I have no idea.**  
 21 Q. Okay. You were made aware -- when was the first time  
 22 you spoke with someone from the insurance company about  
 23 this case?  
 24 MS. DIVINEY: Objection. Relevancy, form,  
 25 foundation.

Page 45

1 **A. I don't know that I can answer that question.**  
 2 Q. Well, was this --  
 3 **A. I don't recall.**  
 4 Q. Was it shortly thereafter the incident?  
 5 **A. I would assume it was not prior to the incident.**  
 6 Q. Right. I mean, did you -- you didn't wait around a year  
 7 or something to contact your insurance company, did you?  
 8 **A. No. I'm sure not.**  
 9 Q. So when was the first time that you contacted --  
 10 **A. I'm sure shortly thereafter but I don't recall. This**  
 11 **was two years ago.**  
 12 Q. And did you do it yourself?  
 13 **A. I'm sure I must have.**  
 14 Q. And did you file a claim?  
 15 **A. No. I don't think I had a claim to file.**  
 16 Q. Well, did you file a claim for any damage to the  
 17 vehicle?  
 18 **A. No. Remember, this is in the middle of winding down**  
 19 **that business. I never saw that dump truck again after**  
 20 **that day.**  
 21 Q. So, yeah. So what happened to this dump truck?  
 22 **A. The police impounded it for an investigation. The truck**  
 23 **had damage to its front axle anyway. The impound fees**  
 24 **would have been somewhere in excess of four thousand,**  
 25 **forty-five hundred dollars. I was in the middle of**

1 liquidating, auctioned the bulk of my equipment, anyway.  
 2 This thing never came up. Probably the City of Detroit  
 3 took it to that. I have no idea.  
 4 Q. So it's your -- so you never saw this vehicle again  
 5 after it was impounded by the City of Detroit; that's  
 6 your testimony?  
 7 A. Correct. Correct.  
 8 Q. And did you ever receive auction money for this vehicle?  
 9 A. The City of Detroit simply didn't write me a check for  
 10 auction money.  
 11 Q. Okay. So it was impounded by the City of Detroit and  
 12 that's the last time you ever saw it?  
 13 A. Correct.  
 14 Q. And you never got any money from it?  
 15 A. No.  
 16 Q. So as far as you know, it was liquidated by the city?  
 17 A. Yes.  
 18 Q. So what type of supervision was given to Mr. Neal?  
 19 A. I don't know that I can answer that question.  
 20 Q. Well, was any supervision given to Mr. Neal?  
 21 A. In regards to...  
 22 Q. His daily job duties, his performance. Was there any  
 23 mechanisms in place to supervise what he was doing?  
 24 A. Did someone lord over him while he drove a truck  
 25 independently? I don't think so.

1 Q. Was there any supervision at all provided to Mr. Neal?  
 2 A. Did someone watch him while he worked? Was I in contact  
 3 with him while he was working? I was in contact with  
 4 him while he was working. There had to be some  
 5 direction for what activities needed to be performed.  
 6 Q. So tell me the general -- first of all, how was Mr. Neal  
 7 as an employee? Because he's had some bad things to say  
 8 about you.  
 9 MS. DIVINEY: Objection. Form, foundation.  
 10 Q. Have you read his deposition?  
 11 A. No.  
 12 Q. All right. He said some derogatory things about you in  
 13 his --  
 14 A. Good for him.  
 15 Q. -- deposition and your company. So --  
 16 MS. DIVINEY: Objection. You're misconstruing  
 17 Mr. Neal's deposition testimony.  
 18 Q. Well, you can read -- I'll leave this copy, if you want  
 19 to read it. I'm happy to provide it to you. I have  
 20 extra copies.  
 21 A. I'm not terribly interested.  
 22 Q. So how was Mr. Neal as an employee?  
 23 A. Mediocre.  
 24 Q. So what was good about him and what was bad about him?  
 25 A. He didn't like to show up very early and he liked to

1 leave a bit early, but he did just fine driving a truck  
 2 for me. He did just fine performing the duties he was  
 3 required to.  
 4 Q. So when did Mr. Neal first start working for you?  
 5 A. I don't have his hire date on hand.  
 6 Q. Give me your best -- and that's probably since he was  
 7 paid cash and we don't have any records, you're not  
 8 really sure?  
 9 MS. DIVINEY: Well, objection. Objection  
 10 to --  
 11 A. He worked for me -- he --  
 12 MS. DIVINEY: -- misconstruing...  
 13 Q. Go ahead.  
 14 A. The guy worked for me for maybe a month to six weeks or  
 15 something like that. Not long.  
 16 Q. All right. So in the month to six weeks approximately  
 17 prior to this crash, he -- did he appear hungover in the  
 18 morning?  
 19 A. No.  
 20 Q. Did you know that he had a drinking problem?  
 21 A. No.  
 22 MS. DIVINEY: Objection. There's been no  
 23 testimony that he had a drinking problem --  
 24 MR. MARKO: Yes, there --  
 25 MS. DIVINEY: -- at the times that he was

1 employed with N.S.S. Construction.  
 2 MR. MARKO: Well, the guy's an alcoholic. The  
 3 guy's a recovering alcoholic. It's in his deposition.  
 4 So --  
 5 MS. DIVINEY: Okay. Objection. Again, I  
 6 think you're misconstruing Mr. Neal's deposition  
 7 testimony.  
 8 BY MR. MARKO:  
 9 Q. Did you know that Mr. Neal was kicked out of the  
 10 military for alcoholism?  
 11 A. No.  
 12 Q. Did you ever go out drinking with him?  
 13 A. No.  
 14 Q. Did he ever drink at work?  
 15 A. Not to my knowledge, no.  
 16 Q. Okay. So tell me all the bad things about him as a  
 17 driver.  
 18 A. He didn't always run on time.  
 19 Q. Okay. What else?  
 20 A. That's what I got.  
 21 Q. What were the good things about Mr. Neal?  
 22 A. He showed up and did the job that he was asked to.  
 23 Q. Okay. And so in that month to six weeks prior, what  
 24 type of problems had you had to discuss with him about  
 25 his work performance?

1 A. He'd sometimes run late.  
 2 Q. What else?  
 3 A. That's what I got.  
 4 Q. And then on the date of the incident -- did you have any  
 5 requirements with regards to these trucks to be  
 6 inspected prior to being taken on?  
 7 A. Well, everything got a pre-trip inspection, at least a  
 8 walk around inspection by a driver, before it left.  
 9 Q. And whose responsibility was that?  
 10 A. The driver.  
 11 Q. So that would be Mr. Neal's in this case?  
 12 A. Correct.  
 13 Q. And do you have written forms for these pre-trip  
 14 inspections or do you just trust that the employee's  
 15 gonna do it?  
 16 A. There were written forms for this. I don't have any of  
 17 this documentation anymore. There's a great chance  
 18 they've gone into a dumpster. By the time Scott came to  
 19 work, I was no longer operating under that structure and  
 20 that environment. Again, he was a very temporary  
 21 employee as I was ramping down the operations.  
 22 Q. So since you were ramping down, does that mean at the  
 23 time that Scott was there, that it was just a visual  
 24 inspection with no documentation?  
 25 A. I would assume that is incorrect.

1 Q. Okay. So how do we know that on July 17th, 2019, that  
 2 Mr. Neal actually did his pre-trip inspection?  
 3 A. We don't.  
 4 Q. And on that particular day -- I mean, do you have a time  
 5 frame on how fast your drivers need to get the load to  
 6 where it needs to be?  
 7 A. This is a guy driving a dump truck so there's only so  
 8 much load that's going across somewhere to. And where  
 9 this accident occurred was maybe 300 yards away from my  
 10 shop at that point in time. Was he in a hurry to drive  
 11 300 yards from the shop to the concrete crusher?  
 12 Probably not.  
 13 Q. Well, what was going on that day? What was Mr. Neal  
 14 doing at the time of the crash?  
 15 A. He was driving a dump truck.  
 16 Q. I understand, but where was he driving it to?  
 17 A. The concrete crusher across Schaefer.  
 18 Q. And what was he doing there?  
 19 A. Either dropping concrete or picking up material. I  
 20 don't know which.  
 21 Q. Do you know if he had a load in the truck at the time of  
 22 the crash?  
 23 A. I don't.  
 24 Q. Do you have time records that show when Mr. Neal arrived  
 25 that morning?

1 A. No. All of that stuff would have been thrown away.  
 2 Q. Okay. Do you have records that show if he would have  
 3 been alone in the truck on that day?  
 4 A. No. And anything that may have existed would have been  
 5 gone at this point.  
 6 Q. Okay. Do you have any trip records for that vehicle for  
 7 that day?  
 8 A. I don't have any records for that vehicle for that day  
 9 to the best of my knowledge.  
 10 Q. Okay. And were you physically at your shop on that day,  
 11 on the date of the incident?  
 12 A. At some point, I'm sure I was.  
 13 Q. Well, were you there prior to the crash?  
 14 A. I don't recall what I was doing specifically two years  
 15 ago.  
 16 Q. Well, where were you when you -- how'd you find out  
 17 about the crash?  
 18 A. I received a telephone call from Scott Neal.  
 19 Q. And where were you when you received that call?  
 20 A. I have no idea.  
 21 Q. Were you at work?  
 22 A. I'm always at work.  
 23 Q. Were you physically at your work location?  
 24 MS. DIVINEY: Objection. Asked and answered.  
 25 A. At my work location? Probably. Whatever location I

1 was, I was working.  
 2 Q. Well, do you know where you were, sir, at the time that  
 3 you received --  
 4 A. Not at all.  
 5 Q. Had you had any discussions with Scott Neal that day?  
 6 Had you physically seen him?  
 7 A. I don't remember.  
 8 Q. Had you physically yourself inspected that truck?  
 9 A. Over the course of the time I owned that truck, plenty  
 10 of times.  
 11 Q. When was the last time you had physically inspected that  
 12 truck prior to the accident in this --  
 13 A. That was more than two years ago. I don't recall.  
 14 Q. And there's no documentation you can look at to see?  
 15 A. Sorry. The company went under, the shop was taken away,  
 16 and the bulk of those records are in a dumpster.  
 17 Q. Okay. What about the repair of that vehicle, sir? Had  
 18 that vehicle had any repairs done to it in the years  
 19 preceding this accident?  
 20 A. I would certainly hope so.  
 21 Q. And what repairs were done to it?  
 22 A. Over the course of the, say, 14 years I owned that  
 23 truck, I don't believe I could detail those.  
 24 Q. And has any records thrown away?  
 25 A. I don't have any of these records. This company went

1 out of business. All of these records, other than some  
 2 tax documents, have just been thrown out.  
 3 Q. And who is it that was responsible for repairing that  
 4 truck? Did you repair it in-house or did you have an  
 5 outside vendor to repair that truck?  
 6 A. I probably did the bulk of this work in-house.  
 7 Q. Okay. So there's no like outside company we can go to  
 8 and ask them for records of the repair and maintenance  
 9 history of that vehicle?  
 10 A. No, not at all.  
 11 Q. And as you sit here today, because it happened so long  
 12 ago, you can't tell me any specifics about its repair or  
 13 maintenance history?  
 14 A. I -- no. I can't give you any specifics about its  
 15 repair and maintenance history.  
 16 Q. And as you sit here today, do you know the condition of  
 17 that truck on the date of the incident?  
 18 A. Those trucks were always in fine shape and roadworthy  
 19 when I owned them.  
 20 Q. Okay. And how would you make sure that you knew that  
 21 they were in fine condition and roadworthy?  
 22 A. The drivers performed pre-trip inspections.  
 23 Q. So your reliance for that is trusting in Scott Neal, the  
 24 great guy that he is, the great employee that he is, did  
 25 his job?

Page 55

1 A. Scott did his job. He ran late sometimes.  
 2 Q. Sir, are you aware that the Michigan State Police  
 3 Commercial Vehicle Enforcement Division did an  
 4 inspection of that vehicle after the crash?  
 5 A. No, I'm not aware of that.  
 6 Q. And as part of that inspection, they documented some  
 7 issues with the truck and they also documented whether  
 8 those issues were caused by the crash or whether they  
 9 existed before the crash. Are you aware of that?  
 10 A. Not at all.  
 11 Q. According to Michigan State Police Accident  
 12 Reconstructionist Ryan Wilson, the truck had, that was  
 13 involved in this crash, the rear turn signals did not  
 14 blink and were inoperable. Were you aware of that?  
 15 A. No, I was not aware of that.  
 16 Q. And that the brakes were out of adjustment. Were you  
 17 aware of that?  
 18 A. No, I wasn't aware of that.  
 19 Q. In fact, according to him, and this is Defendant's  
 20 Bates-stamped 169, the brakes were actually pulled out  
 21 of service, the number of defective brakes is equal or  
 22 greater than 20 percent of the service brakes in the  
 23 vehicle or combination. Were you aware of that?  
 24 A. No.  
 25 Q. Does it trouble you that the Michigan State Police found

1 that prior to this crash, the truck that was involved in  
 2 this crash had defective brakes and defective rear turn  
 3 signals?  
 4 MS. DIVINEY: I'm gonna place an objection on  
 5 the record real quick because he can't see what you're  
 6 looking at and you're just --  
 7 Q. Sure. Do you want to look at it?  
 8 MS. DIVINEY: -- verbally saying it.  
 9 A. I wouldn't have known any of this at the time. I  
 10 wouldn't know any of this until you're telling me this  
 11 right now.  
 12 MR. MARKO: I mean, you're not claiming that  
 13 I'm misrepresenting?  
 14 MS. DIVINEY: I -- I --  
 15 THE WITNESS: No. You're asking if it  
 16 concerns me. A couple of years ago, that would have  
 17 concerned me had I known about these issues, but I don't  
 18 believe these issues were there.  
 19 BY MR. MARKO:  
 20 Q. Okay. And, sir, what is your basis for the statement  
 21 that you disagree with a certified Michigan State Police  
 22 officer accident reconstructionist?  
 23 A. I don't believe I said that I disagreed with a Michigan  
 24 State Police officer. I didn't say that. I said I  
 25 wasn't aware of these problems. I also wasn't aware of

Page 57

1 whatever it is you're showing me right now until right  
 2 now.  
 3 Q. So do you have any reason to dispute Officer Wilson's  
 4 findings with regards to the condition of the vehicle's  
 5 turn signals and/or brakes?  
 6 MS. DIVINEY: Objection. You're asking him if  
 7 he has a reason to dispute something that he hasn't even  
 8 had a chance to -- an opportunity to review or look  
 9 over. Would you consider --  
 10 MR. MARKO: Right. I mean, it's very  
 11 self-explanatory.  
 12 MS. DIVINEY: It's not so self-explanatory.  
 13 He doesn't know the dates of inspection. He doesn't  
 14 know --  
 15 MR. MARKO: Yeah, no.  
 16 MS. DIVINEY: -- exactly what State Trooper  
 17 Wilson did.  
 18 BY MR. MARKO:  
 19 Q. Well, let me just make it real simple. Do you have any  
 20 evidence, knowledge, or information to dispute the  
 21 Michigan State Police determination that at the time of  
 22 the crash, the turn signals were inoperable on that  
 23 vehicle?  
 24 MS. DIVINEY: Are you asking him if he has any  
 25 knowledge or information at this --

1 MR. MARKO: This -- yes.  
 2 MS. DIVINEY: -- time to dispute this?  
 3 MR. MARKO: At any time.  
 4 MS. DIVINEY: And --  
 5 **A. I haven't seen that truck since that day. There's no**  
 6 **possible way I could tell you that at the time of the**  
 7 **crash or at any time from then till now what is or what**  
 8 **isn't on that truck. I haven't seen that vehicle since.**  
 9 Q. Okay. And the same question with regards to the brakes.  
 10 Do you have any evidence or reason to dispute the  
 11 Michigan State Police conclusion that the brakes were  
 12 inoperable at the time --  
 13 MS. DIVINEY: Objection.  
 14 MR. MARKO: --- of the -- excuse me. I  
 15 haven't even finished my question.  
 16 MS. DIVINEY: Okay.  
 17 MR. MARKO: And I don't know if you're gonna  
 18 object to form.  
 19 MS. DIVINEY: Well, 'cause --  
 20 MR. MARKO: I mean, these are like pretty  
 21 simple --  
 22 MS. DIVINEY: It's form and foundation.  
 23 You're asking him for evidence to dispute or refute  
 24 this.  
 25 MR. MARKO: These are like simple things.

Page 59

1 MS. DIVINEY: They're not --  
 2 MR. MARKO: These are simple questions.  
 3 MS. DIVINEY: -- simple things. This is...  
 4 BY MR. MARKO:  
 5 Q. Like, do you have like a record of like a brake  
 6 inspection prior to the crash that you can show us?  
 7 **A. You asked me about post-crash and I haven't seen the**  
 8 **truck again since.**  
 9 Q. Right.  
 10 **A. I don't have any of the records that existed prior to**  
 11 **that. The company went under, my shop was foreclosed**  
 12 **on, all of the paperwork that was pertinent to this went**  
 13 **into the dumpster. I can't be more clear. I don't know**  
 14 **how many times you're going to ask me a question that**  
 15 **has the same answer. And you know this answer will stay**  
 16 **just exactly the same. I can answer -- I could -- we**  
 17 **could just record this at this point. I mind as well**  
 18 **play a recording of myself saying this over and over.**  
 19 Q. And I have to ask as many times as it takes. Do you  
 20 have any evidence, information, that would contradict or  
 21 put in dispute --  
 22 **A. I do not.**  
 23 Q. Okay.  
 24 MS. DIVINEY: At this time?  
 25 Q. Unless -- yeah. I mean, do you --

1 **A. How -- like how --**  
 2 Q. -- have some magical evidence that like you haven't  
 3 produced to me yet?  
 4 MS. DIVINEY: Well --  
 5 **THE WITNESS: He's asking about post-crash. I**  
 6 **haven't seen the truck again post-crash.**  
 7 MR. MARKO: Yeah.  
 8 MS. DIVINEY: So --  
 9 **THE WITNESS: So there's absolutely nothing I**  
 10 **can say to that.**  
 11 BY MR. MARKO:  
 12 Q. And just so we have a clear record. So, sir, do you  
 13 have any evidence or information that would dispute the  
 14 Michigan State Police conclusion that the brakes were  
 15 not properly working at the time of the crash?  
 16 **A. Any information that I would have went into a dumpster**  
 17 **several years ago.**  
 18 MS. DIVINEY: I'm gonna object to that as well  
 19 because there is, as you know, Mr. Neal testified that  
 20 he inspected the truck. He did --  
 21 MR. MARKO: Well, let's not do --  
 22 MS. DIVINEY: -- his first truck inspection in  
 23 the --  
 24 MR. MARKO: Well, let's not do a speaking  
 25 objection, okay?

Page 61

1 MS. DIVINEY: But your questions are  
 2 objectionable based on --  
 3 MR. MARKO: I mean, they're very --  
 4 MS. DIVINEY: -- form and foundation.  
 5 MR. MARKO: -- simple questions that we're  
 6 gonna ask --  
 7 MS. DIVINEY: They're not simple questions.  
 8 MR. MARKO: We're gonna ask at trial and what  
 9 do you think the judge is gonna do?  
 10 MS. DIVINEY: Well, I don't think you're gonna  
 11 ask a witness at trial for his evidence. You're gonna  
 12 ask him what he knows about the brakes --  
 13 MR. MARKO: Okay. We'll see.  
 14 MS. DIVINEY: -- and their function at the --  
 15 MR. MARKO: We'll see.  
 16 MS. DIVINEY: Can we take a quick break? I  
 17 need to use the restroom.  
 18 MR. MARKO: Sure.  
 19 (Recess taken.)  
 20 BY MR. MARKO:  
 21 Q. Okay. Sir, how was it that you found out about the  
 22 crash involving my client?  
 23 **A. Scott called me.**  
 24 Q. And what did he say?  
 25 **A. He said he's got into an accident.**



1 Q. Did you ask him what happened?  
 2 **A. He said he was pulling across the street and someone ran**  
 3 **into the side of the truck.**  
 4 Q. What else did he tell you?  
 5 **A. That was all. He was pretty animated at the time.**  
 6 **Excited, if you will.**  
 7 Q. But what did you say to him?  
 8 **A. I told him that I was gonna go over there to see.**  
 9 Q. And did you do that?  
 10 **A. Yes.**  
 11 Q. And when you arrived at the scene, what did you see?  
 12 **A. I saw a car upside down, my dump truck on the side of**  
 13 **the road.**  
 14 Q. Were the police or paramedics there at the time?  
 15 **A. Yes.**  
 16 Q. Both?  
 17 **A. Yeah, I believe so. Yes.**  
 18 Q. And tell me what you saw as you approached the scene.  
 19 **A. The police line but I wasn't invited across.**  
 20 Q. How close were you able to get?  
 21 **A. Maybe 30 feet away.**  
 22 Q. Were you able to see my client?  
 23 **A. No.**  
 24 Q. Did you speak with anyone at the scene?  
 25 **A. No.**

Page 63

1 Q. Did anyone speak with you at the scene?  
 2 **A. No.**  
 3 Q. Did Mr. Neal speak with you?  
 4 **A. Mr. Neal spoke with me.**  
 5 Q. And what did he say?  
 6 **A. He said he was going across there and someone ran into**  
 7 **him.**  
 8 Q. Did you ask him how it happened?  
 9 **A. I don't remember. That was a couple of years ago in a**  
 10 **conversation but I don't remember the specifics of the**  
 11 **conversation.**  
 12 Q. Do you remember anything else at the site of the scene?  
 13 **A. No.**  
 14 Q. So what did you do?  
 15 **A. What did I do?**  
 16 Q. Yeah.  
 17 **A. I tried to make arrangements to get that truck towed out**  
 18 **of there.**  
 19 Q. And how did you do that?  
 20 **A. I didn't. The police decided they would take the truck**  
 21 **for an investigation.**  
 22 Q. Okay. And so what did you do next?  
 23 **A. I drove two blocks down to my office.**  
 24 Q. To do what?  
 25 **A. Probably paperwork.**

1 Q. Okay. And was that the end of your involvement with the  
 2 crash?  
 3 **A. The end of my involvement was I sent Scott for his**  
 4 **post-crash testing at Concentra.**  
 5 Q. What else? Anything else that you did in response to  
 6 the crash?  
 7 **A. I don't think so.**  
 8 Q. Did you ever sit down with Scott and go over what had  
 9 happened?  
 10 **A. Yeah. We talked about it.**  
 11 Q. And what did he tell you?  
 12 **A. That he didn't believe in any fashion he was wrong.**  
 13 Q. And what did you say?  
 14 **A. I agreed with him.**  
 15 Q. And how did you agree with him? How did you gather  
 16 information to make a determination of who was at fault  
 17 for this crash?  
 18 **A. You know, basically what he told me about what went on**  
 19 **there.**  
 20 Q. So the only information that you had about the -- you  
 21 didn't see the crash, right?  
 22 **A. No.**  
 23 Q. The only information you had about what happened came  
 24 from Mr. Neal; is that fair?  
 25 **A. I just looked at it. I didn't have anyone else to talk**

Page 65

1 **to about it.**  
 2 Q. Okay. And did you ever see the video of the crash?  
 3 **A. No.**  
 4 Q. And as you sit here today, have you seen the video?  
 5 **A. No.**  
 6 Q. Were you aware there was a video?  
 7 **A. Yes.**  
 8 Q. Have you ever spoken with anybody else about the crash  
 9 such as like an investigator or --  
 10 **A. No.**  
 11 Q. Let's talk about that area, okay? I'm gonna show you  
 12 the video. And you're familiar with this area because  
 13 you said it was real close to your shop, right?  
 14 **A. Yes.**  
 15 Q. And what's your understanding of the area that the crash  
 16 occurred? Where did it happen?  
 17 **A. On Schaefer, directly across the street from Gavel**  
 18 **Street.**  
 19 Q. All right. And let's talk about that. And did Mr. Neal  
 20 tell you like the car came out of nowhere --  
 21 **A. Yes.**  
 22 Q. -- or anything like that?  
 23 **A. Yeah. Scott said he was crossing the street and then**  
 24 **this car hit him as he was crossing the road.**  
 25 Q. And what was your understanding of where Scott was

1 going?  
 2 **A. Scott was going to the concrete crusher.**  
 3 Q. Okay. And so let's talk about this. So you -- this  
 4 road is a -- it's a pretty wide road; isn't it?  
 5 **A. No.**  
 6 Q. It's not? How many lanes are it in it, sir?  
 7 **A. Two lanes.**  
 8 MS. DIVINEY: Well, which street are you  
 9 talking about?  
 10 MR. MARKO: The main street.  
 11 **THE WITNESS: He's got to be talking about**  
 12 **Schaefer.**  
 13 **A. Schaefer's two lanes.**  
 14 MS. DIVINEY: Two lanes. And one in each  
 15 direction or two --  
 16 **THE WITNESS: No. Two lanes total; one each**  
 17 **direction. One lane by itself.**  
 18 BY MR. MARKO:  
 19 Q. Okay. And what is the name of your shop?  
 20 **A. N.S.S. Construction.**  
 21 Q. And where was that located?  
 22 **A. On Gavel Street.**  
 23 Q. How do you spell that?  
 24 **A. G-A-V-E-L.**  
 25 (Internet connectivity issue.)

1 (An off-the-record discussion was held.)  
 2 BY MR. MARKO:  
 3 Q. All right. So we're talking about the area where the  
 4 crash occurred. You would agree, sir, that this road,  
 5 you said it was a pretty rough area, I think was how --  
 6 **A. Yep.**  
 7 Q. -- you described it?  
 8 **A. Yep, yep.**  
 9 Q. There's industrial, there's a junkyard, a cement yard?  
 10 **A. Yep. A junkyard. There's a concrete crusher across the**  
 11 **street. A lot of abandoned stuff, a lot rundown,**  
 12 **unoccupied buildings that are in various states of**  
 13 **disrepair.**  
 14 Q. And so there's trucks coming in and out? These include,  
 15 you know, cars and industrial-type vehicles, correct?  
 16 **A. Right.**  
 17 Q. And they're going in and out of driveways, things of  
 18 that nature, right?  
 19 **A. Yes.**  
 20 MS. DIVINEY: For the record, just to make it  
 21 clear, can we put back on the record what area we're  
 22 looking at? Because she might have been --  
 23 MR. MARKO: Yeah. Well, this is the video of  
 24 the area of the crash. Okay?  
 25 MS. DIVINEY: Which is which street again?

1 **THE WITNESS: Meyers.**  
 2 MR. MARKO: Meyers. Okay.  
 3 BY MR. MARKO:  
 4 Q. And we said that there's a lane of travel going each way  
 5 on the street, correct?  
 6 **A. Right.**  
 7 Q. And then there's also a parking lane on each side,  
 8 correct?  
 9 **A. Correct.**  
 10 Q. And you would agree that, even though people may not  
 11 supposed to be doing it, sometimes people drive in those  
 12 parking lanes, but they pass people in the parking  
 13 lanes?  
 14 **A. I would say they pass in the parking lanes. I wouldn't**  
 15 **say that people typically drive in these parking lanes.**  
 16 Q. Okay. People would park there, they'd pass there, they  
 17 go in these driveways from there, correct?  
 18 **A. Yes.**  
 19 Q. And you would expect your driver to pay attention when  
 20 he's turning into driveways on the street?  
 21 **A. Yes.**  
 22 Q. And that would include making sure that his blind spots  
 23 are cleared, correct?  
 24 **A. Of course.**  
 25 Q. Making sure that somebody isn't in the lane next to him

1 when he's turning through that lane, correct?  
 2 **A. Correct.**  
 3 Q. Okay. So let me show the video. And I can represent --  
 4 do you see that white Sebring right there?  
 5 **A. I can't tell if that's a Sebring. I see a white blob on**  
 6 **your screen.**  
 7 Q. Well, you'll see it. I can represent to you it is, but  
 8 do you see where that arrow is where that car is --  
 9 **A. I see it.**  
 10 Q. -- pulling in?  
 11 Okay. And then do you recognize that truck  
 12 there?  
 13 **A. That's a Ford L9000 it looks like.**  
 14 MS. DIVINEY: Let the record reflect that he's  
 15 playing the video, and the dump truck is coming up  
 16 Meyers.  
 17 Q. Okay. And it'll zoom in.  
 18 **A. The Sebring's clearly not moving or has been.**  
 19 Q. Okay. Sir, did you see the video?  
 20 **A. Yeah.**  
 21 Q. So, sir, based on your review of this video, do you have  
 22 any criticisms whatsoever about Scott Neal's driving on  
 23 that day?  
 24 **A. No.**  
 25 Q. And as far as you're concerned, he didn't do anything

1 wrong; is that your testimony?  
 2 **A. He passed by a car. No, I don't see him doing anything**  
 3 **wrong there.**  
 4 Q. And you don't think he should have done anything  
 5 differently; is that your testimony?  
 6 **A. I don't think so.**  
 7 MR. MARKO: Okay. I don't have any other  
 8 questions but I don't know if they do.  
 9 MR. MOUGHNI: I got a couple questions.  
 10 MR. SAPICK: I got a couple, too. Do you want  
 11 to go first, Majed?  
 12 MR. MOUGHNI: Sure.  
 13 So your employment policy -- I'm  
 14 Majed Moughni, by the way. I'm the attorney for  
 15 Scott Neal. Scott Neal has a couple cases going on as  
 16 far as, you know, no-fault cases he was involved.  
 17 MS. DIVINEY: Majed, we can't quite hear you.  
 18 Can you speak up a little bit, please?  
 19 MR. MOUGHNI: Sure. Let me get closer to the  
 20 mic.  
 21 I represent Scott Neal in the cases that he  
 22 has pending before the courts.  
 23 EXAMINATION BY MR. MOUGHNI:  
 24 Q. Your testimony today states that Scott Neal was a  
 25 temporary employee; is that correct?

1 **A. Yes.**  
 2 Q. What was the arrangements as far as his employments?  
 3 How long were you gonna keep him?  
 4 **A. A couple of months at the onset.**  
 5 Q. Is that something that you and him worked out?  
 6 **A. I don't know that I would have advertised to him that I**  
 7 **was hiring him on a very temporary basis.**  
 8 Q. So you never told him this was just a temporary job,  
 9 that --  
 10 **A. Correct.**  
 11 Q. If Scott Neal had done anything wrong, would you have  
 12 terminated him?  
 13 **A. Yes.**  
 14 Q. Did you terminate him after this accident?  
 15 **A. I laid him off a couple of weeks after that, but that**  
 16 **had nothing to do with this accident.**  
 17 Q. And did you bring him back to work after this accident?  
 18 **A. Yes.**  
 19 Q. And what kind of work was he doing?  
 20 **A. Driving trucks.**  
 21 Q. Eventually, did you end up terminating him?  
 22 **A. Yes.**  
 23 Q. And what was the --  
 24 **A. Well, I ended up laying him off.**  
 25 Q. And what was the cause of the layoff?

1 **A. Well, that truck went into impound, I've got another**  
 2 **truck that was being worked on out on that end, so I had**  
 3 **nothing for him to drive.**  
 4 Q. Was there anything that Scott Neal did --  
 5 **A. No.**  
 6 Q. -- that caused that truck to be impounded?  
 7 **A. Anything that Scott did that caused that truck to be**  
 8 **impounded? The accident that we're talking about here**  
 9 **is what caused the truck to be impounded.**  
 10 Q. Was there a second truck that was taken by the police or  
 11 a --  
 12 **A. No.**  
 13 Q. -- second pickup?  
 14 **A. No. Oh, was there a second vehicle based on this**  
 15 **accident taken? No.**  
 16 Q. Not based on this accident. Based on another incident  
 17 that happened with Scott Neal, are aware of?  
 18 **A. Yes.**  
 19 Q. And can you tell us more about that?  
 20 **A. A pickup truck was impounded by the police on the basis**  
 21 **of a solicitation charge.**  
 22 Q. So is it your understanding that Scott Neal was  
 23 soliciting a prostitute?  
 24 **A. It's my understanding that Scott Neal was picking up his**  
 25 **girlfriend.**

1 Q. Okay. And then what happened with the truck?  
 2 **A. It was impounded.**  
 3 Q. Was that your truck?  
 4 **A. That was a company pickup truck.**  
 5 Q. Did you have to pay money to get it out?  
 6 **A. Yes.**  
 7 Q. Do you remember how much you had to pay?  
 8 **A. It was like 1900 bucks by the time we got it back out.**  
 9 Q. Is that one of the reasons why you fired Scott, because  
 10 of that incident?  
 11 **A. I would say --**  
 12 MS. DIVINEY: Objection. Asked and answered.  
 13 He testified that he laid Scott off.  
 14 MR. MOUGHNI: Right.  
 15 BY MR. MOUGHNI:  
 16 Q. Was Scott Neal fired or was he laid off because of this  
 17 incident?  
 18 **A. Scott was laid off not because of this incident. Scott**  
 19 **was laid off because I ran out of work for him to do.**  
 20 Q. And why couldn't Scott do some of the driving or the  
 21 trucking work?  
 22 **A. Pardon me?**  
 23 Q. Why couldn't Scott do any of the work?  
 24 **A. I had -- my CDL truck was impounded by the police for an**  
 25 **investigation, an accident investigation, and I employed**

1 Scott to drive CDL vehicles. That was the only CDL  
 2 vehicle I had on hand.  
 3 Q. Did Scott Neal ever complain to you about his mental  
 4 state after this, after witnessing the other vehicle  
 5 flipped over and seeing the driver who --  
 6 A. No.  
 7 Q. -- was deceased?  
 8 Did he ever complain to you?  
 9 A. No.  
 10 MR. MOUGHNI: All right. No other questions.  
 11 MR. SAPICK: Mr. Schubeck, my name is  
 12 Michael Sapick. I also represent Ms. McDuffie.  
 13 EXAMINATION BY MR. SAPICK:  
 14 Q. So Majed just asked you a number of questions that I was  
 15 going to ask you, so I'm going to be pretty brief. I'm  
 16 gonna jump around. I'm kind of looking at my notes at  
 17 the same time.  
 18 A. Sure.  
 19 Q. I apologize for any delays in my questioning, but I'm  
 20 gonna be brief.  
 21 In total, sir, how long did Scott Neal work  
 22 for you?  
 23 A. Like maybe six weeks.  
 24 Q. Okay. And I'm correct that he did continue to work with  
 25 you or work for you after this accident?

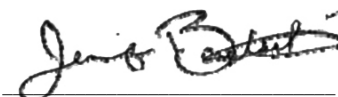
Page 75

1 A. Correct.  
 2 Q. And you said that he was driving trucks after this  
 3 accident occurred, correct?  
 4 A. Yeah. I said that I kept him on but his employment was  
 5 short lived because I didn't have a need for a CDL  
 6 driver.  
 7 Q. Okay. So when you say that -- I'm correct that at the  
 8 time of this accident, Scott Neal was driving like a  
 9 gravel dump truck, right?  
 10 A. Scott Neal was driving a tri-axle L9000 dump truck.  
 11 Q. Okay. Did you have any other vehicles like that or was  
 12 that the only one?  
 13 A. That was -- well, I had two dump trucks that required  
 14 CDL. That particular one went into impound; the other  
 15 one was inoperable at the time.  
 16 Q. Okay. So the vehicles that Scott Neal drove for you  
 17 after this accident, how would you describe those  
 18 vehicles?  
 19 A. They would have been below a CDL dump truck.  
 20 Q. Okay. Okay. Fine. Fair enough.  
 21 So are you aware of Scott Neal sustaining any  
 22 physical injuries as a result of this accident?  
 23 A. No.  
 24 Q. So Majed just asked you about -- I believe he asked you  
 25 about emotional conditions or psychological conditions,

1 and you testified that Scott never complained of any  
 2 emotional distress or psychological condition to you  
 3 after this accident; is that correct?  
 4 A. Correct.  
 5 Q. All right. Are you aware of or did Scott ever tell you  
 6 that he was suffering from post-traumatic stress  
 7 disorder after this accident?  
 8 A. No.  
 9 MR. SAPICK: Mr. Schubeck, I said I was going  
 10 to be brief. I don't think I have anything else for  
 11 you. Thanks for your time.  
 12 THE WITNESS: Thank you.  
 13 MR. GUMTOW: I have no questions for you  
 14 today, sir.  
 15 MS. DIVINEY: I have no questions.  
 16 Marko has no more either.  
 17 MR. MARKO: Okay. We're done. Thank you,  
 18 sir.  
 19 (Deposition concluded at 11:34 a.m.)  
 20  
 21  
 22  
 23  
 24  
 25

Page 77

1 CERTIFICATE OF NOTARY  
 2  
 3 STATE OF MICHIGAN )  
 4 ) SS  
 5 COUNTY OF MACOMB )  
 6 I, Jennifer Boutsikaris, Certified Shorthand  
 7 Reporter, a Notary Public in and for the above county  
 8 and state, do hereby certify that the above deposition  
 9 was taken before me at the time and place hereinbefore  
 10 set forth; that the witness, NICK SCHUBECK, was by me  
 11 first duly sworn to testify to the truth, and nothing  
 12 but the truth; that the foregoing questions asked and  
 13 answers made by the witness were duly recorded by me  
 14 stenographically and reduced to computer transcription;  
 15 that this is a true, full and correct transcript of my  
 16 stenographic notes so taken; and that I am not related  
 17 to, nor of counsel to either party nor interested in the  
 18 event of this cause.



Jennifer Boutsikaris, CSR-8575

Notary Public,

Macomb County, Michigan

My Commission expires: October 4, 2024

# **EXHIBIT 14**



MARK L. DOLIN (P45081)  
 ERIK C. STEIN (P72172)  
 MICHAEL J. SAPICK (P809999)  
**KOPKA PINKUS DOLIN, P.C.**  
 Attorney for Defendant McDuffie  
 32605 W. 12 Mile Road, Suite 300  
 Farmington Hills, MI 48334  
 (248) 324-2620 / Fax: (248) 324-2610  
[mldolin@kopkalaw.com](mailto:mldolin@kopkalaw.com)  
[ecstein@kopkalaw.com](mailto:ecstein@kopkalaw.com)  
[mjsapick@kopkalaw.com](mailto:mjsapick@kopkalaw.com)

MICHAEL T. RYAN (P53634)  
**MERRY FARNEN & RYAN, P.C.**  
 Attorney for Defendants NSS & Neal  
 300 Maple Park Boulevard, Suite 301  
 St. Clair Shores, MI 48081  
 (586) 776-5927 / Fax: (586) 776-1501  
[mryan@mfr-law.com](mailto:mryan@mfr-law.com)

MAUREEN CHRISTENSEN (P33656)  
**HOM CORBETT KRAMER HARDING &  
 DOMBROWSKI**  
 Attorney for Defendant Membersselect  
 1450 W. Long Lake Road, Suite 100  
 Troy, MI 48098  
 (248) 712-0602 / Fax: (248) 480-4576  
[mchristensen@acg.aaa.com](mailto:mchristensen@acg.aaa.com)

~~CAMERON R. GETTO (P57300)~~  
~~**ZAUSMER, P.C.**~~  
~~Attorney for Defendant EMC~~  
~~32255 Northwestern Highway, Ste 225~~  
~~Farmington Hills, MI 48334~~  
~~(248) 851-4111 / Fax: (248) 851-0100~~  
~~[egetto@zacfirm.com](mailto:egetto@zacfirm.com)~~

JONATHAN R. MARKO (P72450)  
**MARKO LAW, PLLC**  
 Attorney for Plaintiff McDuffie  
 1300 Broadway Street, 5<sup>th</sup> Floor  
 Detroit, MI 48226  
 (313) 777-7529 / Fax: (313) 771-5785  
[jon@markolaw.com](mailto:jon@markolaw.com)  
[melinda@markolaw.com](mailto:melinda@markolaw.com)

---

**PLAINTIFF, CHANDRA McDUFFIE, AS PERSONAL REPRESENTATIVE  
 OF THE ESTATE OF WILLIAM HOWARD McDUFFIE-CONNOR'S  
 REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANTS  
 SCOTT M. NEAL, N.S.S. CONSTRUCTION, INC. AND MEMBERSELECT  
 INSURANCE COMPANY**

---

**PLEASE TAKE NOTICE** that the following Request for Production of Documents are submitted to you under the provisions of the Michigan Court Rules.

You are required to serve Answers to the Request for Production of Documents within twenty-eight (28) days after service of them upon Defendants.

The requests for production which follow are to be regarded as continuing, and you are requested to provide, by way of supplementary answers thereto, such additional information or material as you, your counsel, or any other agent on your behalf, or subject to your control, may hereinafter obtain, which will augment or otherwise modify the answers now given to those requests to produce which have reference to names and addresses of person having knowledge of discoverable facts, which have reference to the names and addresses of expert witnesses expected to be called at trial, or which correct those requests to produce, the responses to which were incorrect when made or which are now incorrect because of a change in circumstance.

1. Please produce any/all medical clearance forms for Scott Neal that were *in effect on the date of the incident*.

**RESPONSE:**

2. Please produce a valid driver's license for Scott Neal that was *in effect on the date of the incident*. (See FMCSR 391.11(5)).

**RESPONSE:**

3. Please produce a copy of Scott Neal's Med Card *in effect on the date of the incident*. (See FMCSR 391.41).

**RESPONSE:**

4. Please produce any/all umbrella insurance policies or any other coverage whatsoever that was *in effect on the date of the incident* or that could conceivably provide any coverage whatsoever for the loss in this case.

**RESPONSE:**

5. Please produce any/all paperwork or other materials that Scott Neal filled out when he started with Defendant, NSS Construction, Inc., as testified to by Scott Neal in his deposition testimony.

**RESPONSE:**

6. Please produce any/all payroll records for Scott Neal including, but not limited to, timecards, timesheets, W-2 forms, paystubs, and other evidence of payment for work.

**RESPONSE:**

7. Please produce any/all vehicle maintenance files for the vehicle involved in the incident, Plate AC32797, VIN 1FDYU90T5VVA29053. (See FMCSR 396.11).

**RESPONSE:**

8. Please produce any/all Accident Registers for the vehicle involved in the incident. (See FMCSR 390.15(b)).

**RESPONSE:**

9. Please produce any/all driver logs for Scott Neal. (See FMCSR 395.8).

**RESPONSE:**

10. Please produce any/all DVIRs/pre-trip inspections reports for the vehicle involved in the incident. (See FMCSR 396.11).

**RESPONSE:**

11. Please produce any/all complete Driver Qualification files for Scott Neal. (See FMCSR 391.51).

**RESPONSE:**

12. Please produce any/all Training Documents for Scott Neal. (See FMCSR 383.11).

**RESPONSE:**

13. Please produce any/all pre-employment drug and alcohol screening results for Scott Neal. (See FMCSR 382.301).

**RESPONSE:**

14. Please produce any/all post-accident drug and alcohol screening results for Scott Neal. (See FMCSR 382.303).

**RESPONSE:**

15. Please produce any/all signed acknowledgments and/or receipts for FMCSR, Drug & Alcohol Policy, etc. (See FMCSR 382.601).

**RESPONSE:**

16. Please produce any/all initial MVR for Scott Neal. (See FMCSR 391.23).

**RESPONSE:**



17. Please produce the completed Application for Employment filled out by Scott Neal. (See FMCSR 391.21).

**RESPONSE:**

18. Please produce any/all previous employer inquiries conducted on Scott Neal. (See FMCSR 391.23 and 391.53).

**RESPONSE:**

19. Please produce any/all records regarding safety meetings documented by NSS Construction, Inc. including, but not limited to roster of attendees, subjects discussed, etc.

**RESPONSE:**

20. Please produce any/all records and reports regarding a roadside, driver only, inspection that occurred on March 20, 2019 for the vehicle involved in the incident including, but not limited to, the driver of the vehicle and violations issued to said driver.

**RESPONSE:**

21. Please produce the initial MVR obtained on Scott Neal contained in the Driver Qualification File and contains dates from approximately May of 2016 to date Scott Neal began employment at NSS Construction.

**RESPONSE:**

22. Please produce any/all safety manuals pertaining to the safe operation of the commercial motor vehicle.

**RESPONSE:**

Respectfully submitted,

/s/ Jonathan R. Marko

Jonathan R. Marko (P72450)

**MARKO LAW, PLLC**

1300 Broadway Street, Fifth Floor  
Detroit, MI 48226

(313) 777-7529 / Fax: (313) 777-5785

Email: [jon@markolaw.com](mailto:jon@markolaw.com)

Dated: March 18, 2021

**PROOF OF SERVICE**

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each attorney of record on **March 18, 2021**, via:

- ☐ U.S. Mail
- ☐ Hand Delivered
- ☐ Certified Mail
- ☐ ECF System

- ☐ Fax
- ☐ Overnight Carrier
- ☒ Other: Mi-FILE Truefiling
- ☐ Email

/s/ Melinda S. Morisset

# **EXHIBIT 15**

**A0240**[LARA Home](#)[Contact LARA](#)[Online Services](#)[News](#)[MI.gov](#)

# LARA Corporations Online Filing System

Department of Licensing and Regulatory Affairs

**ID Number:** 800636109[Request certificate](#)[Return to Results](#)[New search](#)**Summary for:** N.S.S. CONSTRUCTION, INC.**The name of the DOMESTIC PROFIT CORPORATION:** N.S.S. CONSTRUCTION, INC.**Entity type:** DOMESTIC PROFIT CORPORATION**Identification Number:** 800636109 **Old ID Number:** 33029D**Date of Incorporation in Michigan:** 06/18/2004**Purpose:** All Purpose Clause**Date of Dissolved:** 07/15/2021**Term:** Perpetual**Most Recent Annual Report:** 2018**Most Recent Annual Report with Officers & Directors:** 2018**The name and address of the Resident Agent:**

Resident Agent Name: NICHOLAS SCHUBECK III

Street Address: 12838 GAVEL

Apt/Suite/Other:

City: DETROIT

State: MI

Zip Code: 48227

**Registered Office Mailing address:**

P.O. Box or Street Address: 12838 GAVEL

Apt/Suite/Other:

City: DETROIT

State: MI

Zip Code: 48227

**The Officers and Directors of the Corporation:**

Title	Name	Address
PRESIDENT	NICK SCHUBECK	12838 GAVEL DETROIT, MI 48227 USA
TREASURER	NICK SCHUBECK	12838 GAVEL DETROIT, MI 48227 USA
SECRETARY	NICK SCHUBECK	12838 GAVEL DETROIT, MI 48227 USA
DIRECTOR	NICK SCHUBECK	12838 GAVEL DETROIT, MI 48227 USA

**Act Formed Under:** 284-1972 Business Corporation Act**Total Authorized Shares:** 60,000☐ **Written Consent**[View Assumed Names for this Business Entity](#)

# **EXHIBIT 16**



**ST STATE OF MICHIGAN**  
**IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

---

**SCOTT M. NEAL**

PLAINTIFF,

-and-

**PRECISE MRI OF MICHIGAN, LLC and U.S. REHABILITATION  
AND HEALTH SERVICES, INC.,**

INTERVENING PLAINTIFFS,

vs.

C.A. NO. 20-012305-NF  
HON. SHEILA ANN GIBSON

**FARM BUREAU MUTUAL INSURANCE  
COMPANY,**

DEFENDANT.

*Consolidated with:*

**CHANDRA McDUFFIE**, Personal Representative  
of the Estate of **WILLIAM HOWARD  
McDUFFIE-CONNOR**, Deceased,

PLAINTIFF,

vs.

C.A. NO. ~~20-007497-NF~~  
HON. SHEILA ANN GIBSON

**N.S.S. CONSTRUCTION, INC.; and  
MEMBERSELECT INSURANCE  
COMPANY,**

DEFENDANTS.

---

**MAJED A. MOUGHNI P61087**  
**Law Offices of Majed A. Moughni, PLLC**  
ATTORNEY FOR PLAINTIFF, SCOTT NEAL  
290 Town Center Drive, Ste. 322  
Dearborn, MI 48126  
313-581-0800 / 313-581-0808 - FAX  
[moughni@aol.com](mailto:moughni@aol.com)

**JONATHAN R. MARKO P72450**  
**Marko Law, PLLC**  
ATTORNEY FOR PLAINTIFF, MCDUFFIE  
1300 Broadway Ave, Fifth Floor  
Detroit, MI 48226  
(313) 241-8924 (direct)  
(313) 777-7529 / (313) 771-5785 - FAX  
[jon@jmarkolaw.com](mailto:jon@jmarkolaw.com)

**MARK L. NAWROCKI P69017**  
**Anselmi, Mierzejewski, Ruth & Sowle, PC**  
ATTORNEYS FOR DEFENDANT FARM BUREAU  
1750 S. Telegraph Road, Ste. 306  
Bloomfield Hills, MI 48302  
248-338-2290 / 248-338-4451 - FAX  
[mnawrocki@a-mlaw.com](mailto:mnawrocki@a-mlaw.com)

**MICHAEL T. RYAN P53634**  
**JOHN J. SCHUTZA P26338**  
**Merry, Farnen & Ryan, P.C.**  
ATTORNEYS FOR DEF N.S.S. CONSTRUCTION  
300 Maple Park Blvd., Suite 301  
St. Clair Shores, MI 48081  
586-776-6700 / 586-776-1501 - FAX  
586-776-5927 (Ryan direct)  
[mryan@mfr-law.com](mailto:mryan@mfr-law.com)

**SARAH B. GALE-BARBANTINI P76321**  
**Kramer, Corbett, Harding & Dombrowski**  
ATTORNEYS FOR DEFENDANT MEMBERSELECT  
150 W. Jefferson Avenue  
Suite 1500  
Detroit, MI 48226  
313-237-5733/ 313-237-5732 - FAX  
[sbgale-barbantini@acg.aaa.com](mailto:sbgale-barbantini@acg.aaa.com)

**DANI A. JAJOU P80645**  
**YOUSIF J. YATOMA P80627**  
**The Law Offices of Dani A. Jajou, PLLC**  
ATTORNEYS FOR PRECISE MRI OF MICHIGAN  
3080 Telegraph Road, Suite 1924  
Bingham Farms, MI 48025  
248-985-3232/ 248-792-5678 - FAX  
[djajou@jajoulaw.com](mailto:djajou@jajoulaw.com)  
[yvatomaa@jajoulaw.com](mailto:yvatomaa@jajoulaw.com)

**DODD B. FISHER P51382**  
**Dodd B. Fisher Law, PLC**  
ATTORNEY FOR U.S. REHABILITATION AND HEALTH  
19658 Mack Avenue  
Grosse Pointe Woods, MI 48236  
313-971-3561  
[dodd@doddfisherlaw.com](mailto:dodd@doddfisherlaw.com)

---

**ORDER DENYING DEFENDANT N.S.S. CONSTRUCTION, INC.'S  
MOTION FOR SUMMARY DISPOSITION**

---

At a session of said court held in the City of Detroit,  
County of Wayne and State of Michigan,  
on: 2/23/2022

PRESENT: **HON. SHEILA ANN GIBSON**  
Circuit Court Judge

This matter having come before the Court upon the Defendant N.S.S. Construction, Inc.'s Motion for Summary Disposition, the Court having read the same and the response of Plaintiff Chandra McDuffie, Personal Representative of the Estate of William Howard McDuffie-Connor, deceased, and having heard from counsel for all parties in open court, and being otherwise fully advised in the premises:

**IT IS HEREBY ORDERED** that the motion is denied for the reasons stated on the record of proceedings in this case on February 8, 2022.

**IT IS FURTHER ORDERED** that Defendant N.S.S. Construction, Inc. may bring a motion in limine concerning the issue of admissibility of opinion testimony from plaintiff's

expert witness, Timothy Abbo, regarding whether decedent violated the Michigan Vehicle Code, including M.C.L. 257.637(2).

**THIS IS NOT A FINAL ORDER AND THE CASE REMAINS OPEN.**

/s/ Sheila A. Gibson

**CIRCUIT COURT JUDGE**

**Order Prepared By:**

*Michael T. Ryan P53634*

*Merry, Farnen & Ryan, P.C.*

Attorney for Defendant N.S.S.

# **EXHIBIT 17**

A0246

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

SCOTT M. NEAL,

Plaintiff,

-vs-

Case No. 20-012305-NF

Hon. Sheila Ann Gibson

CHANDRA McDUFFIE, Personal Representative  
of the Estate of William Howard McDuffie-Connor,  
Deceased, ~~EMC PROPERTY & CASUALTY~~  
~~COMPANY, FARM BUREAU MUTUAL INSURANCE~~  
~~COMPANY and MICHIGAN AUTOMOBILE~~  
~~INSURANCE PLACEMENT FACILITY,~~

Defendants.

*Consolidated with*

CHANDRA McDUFFIE, Personal Representative  
of the Estate of William Howard McDuffie-Connor,  
Deceased,

Plaintiff,

-vs-

Case No. 20-007497-NF

Hon. Sheila Ann Gibson

SCOTT M. NEAL, N.S.S. CONSTRUCTION, INC.  
And MEMBERSELECT INSURANCE COMPANY,

Defendants.

MAJED A. MOUGHNI (P61087)  
LAW OFFICES OF MAJED A. MOUGHNI, PLLC  
Attorney for Plaintiff Scott M. Neal  
290 Town Center Drive, Suite 322  
Dearborn, MI 48126  
P: (313) 581-0800 / F: (313) 581-0808  
[moughni@aol.com](mailto:moughni@aol.com)

MARK L. NAWROCKI (P69017)  
ANSELM, MIERZEJEWSK, RUTH &  
SOWLE, P.C.  
Attorney for Defendant Farm Bureau  
1750 S. Telegraph Road, Suite 306  
Bloomfield Hills, MI 48302  
P: (248) 338-2290 / F: (248) 338-4451  
[mnawrocki@a-mlaw.com](mailto:mnawrocki@a-mlaw.com)

**ORDER REGARDING**  
**PLAINTIFF'S MOTION FOR**  
**RELIEF DUE TO N.S.S.**  
**CONSTRUCTION, INC.'S**  
**INTENTIONAL SPOILIATION**  
**OF EVIDENCE**



MARK L. DOLIN (P45081)  
 ERIK C. STEIN (P72172)  
 MICHAEL J. SAPICK (P80999)  
**KOPKA PINKUS DOLIN, P.C.**  
 Attorney for Defendant McDuffie  
 32605 W. 12 Mile Road, Suite 300  
 Farmington Hills, MI 48334  
 P: (248) 324-2620 / F: (248) 324-2610  
[mldolin@kopkalaw.com](mailto:mldolin@kopkalaw.com)  
[ecstein@kopkalaw.com](mailto:ecstein@kopkalaw.com)  
[mjsapick@kopkalaw.com](mailto:mjsapick@kopkalaw.com)

CAMERON R. GETTO (P57300)  
**ZAUSMER, P.C.**  
 Attorney for Defendant EMC  
 32255 Northwestern Highway, Ste 225  
 Farmington Hills, MI 48334  
 P: (248) 851-4111 / F: (248) 851-0100  
[egetto@zaefirm.com](mailto:egetto@zaefirm.com)

MICHAEL T. RYAN (P53634)  
 AMY L. DIVINEY (P77164)  
**MERRY FARNEN & RYAN, P.C.**  
 Attorney for Defendants NSS & Neal  
 300 Maple Park Boulevard, Suite 301  
 St. Clair Shores, MI 48081  
 P: (586) 776-5927 / F: (586) 776-1501  
[adiviney@mfr-law.com](mailto:adiviney@mfr-law.com)

JONATHAN R. MARKO (P72450)  
**MARKO LAW, PLLC**  
 Attorney for Plaintiff McDuffie  
 1300 Broadway Street, 5<sup>th</sup> Floor  
 Detroit, MI 48226  
 P: (313) 777-7529 / F: (313) 771-5785  
[jon@markolaw.com](mailto:jon@markolaw.com)  
[melinda@markolaw.com](mailto:melinda@markolaw.com)

SARAH GALE-BARBANTINI (P76321)  
**KRAMER CORBETT HARDING & DOMBROWSKI**  
 Attorney for Defendant Memberselect  
 150 W. Jefferson Avenue, Suite 1500  
 Detroit, MI 48226  
 P: (313) 237-5733 / F: (313) 237-5732  
[Sbgale-barbantini@acg.aaa.com](mailto:Sbgale-barbantini@acg.aaa.com)

---

**ORDER REGARDING PLAINTIFF'S MOTION FOR RELIEF DUE TO N.S.S. CONSTRUCTION, INC.'S INTENTIONAL SPOILIATION OF EVIDENCE**

At a session of said Court, held in the County  
 Courthouse, City of Detroit, County of Wayne, State  
 of Michigan on 6/18/2021

PRESENT: HON. Sheila Ann Gibson  
 CIRCUIT COURT JUDGE


Plaintiff, Chandra McDuffie, Personal Representative of the Estate of William Howard McDuffie-Connor, Deceased's Motion for Relief Due to N.S.S. Construction, Inc.'s Intentional Spoliation of Evidence is taken under advisement. Defendant, N.S.S. Construction, Inc. has thirty (30) days from today's date (June 11, 2021) to provide the documents related to the vehicle and Scott Neal's employment as requested by the Plaintiff and outlined on page 4-6 of Plaintiff's Motion, and the truck involved in this crash.

IT IS FURTHER ORDERED that the Court will hear Plaintiff's Motion on July 16, 2021, at 11:30 a.m. to consider Plaintiff's prayer for relief. Plaintiff shall re-notice her motion for that time and date.

IT IS SO ORDERED.

/s/ Sheila A. Gibson  
\_\_\_\_\_  
CIRCUIT COURT JUDGE

MARKOLAW.COM

1300 BROADWAY ST., 5TH FLOOR  
DETROIT, MI 48226P: (313) 777-7LAW  
F: (313) 771-5785 MARKOLAW

# **EXHIBIT 18**

ERIK C. STEIN (P72172)  
 ALEXANDER R. BAUM (P76488)  
**KOPKA PINKUS DOLIN, P.C.**  
 Attorney for Defendant McDuffie  
 32605 W. 12 Mile Road, Suite 300  
 Farmington Hills, MI 48334  
 P: (248) 324-2620 / F: (248) 324-2610  
[ecstein@kopkalaw.com](mailto:ecstein@kopkalaw.com)  
[arbaum@kopkalaw.com](mailto:arbaum@kopkalaw.com)

CAMERON R. GETTO (P57300)  
**ZAUSMER, P.C.**  
 Attorney for Defendant EMC  
 32255 Northwestern Highway, Ste 225  
 Farmington Hills, MI 48334  
 P: (248) 851-4111 / F: (248) 851-0100  
[egetto@zaefirm.com](mailto:egetto@zaefirm.com)

MICHAEL T. RYAN (P53634)  
 AMY L. DIVINEY (P77164)  
**MERRY FARNEN & RYAN, P.C.**  
 Attorney for Defendants NSS & Neal  
 300 Maple Park Boulevard, Suite 301  
 St. Clair Shores, MI 48081  
 P: (586) 776-5927 / F: (586) 776-1501  
[adiviney@mfr-law.com](mailto:adiviney@mfr-law.com)

JONATHAN R. MARKO (P72450)  
**MARKO LAW, PLLC**  
 Attorney for Plaintiff McDuffie  
 1300 Broadway Street, 5<sup>th</sup> Floor  
 Detroit, MI 48226  
 P: (313) 777-7529 / F: (313) 771-5785  
[jon@markolaw.com](mailto:jon@markolaw.com)  
[melinda@markolaw.com](mailto:melinda@markolaw.com)

SARAH GALE-BARBANTINI (P76321)  
**KRAMER CORBETT HARDING &  
 DOMBROWSKI**  
 Attorney for Defendant Memberselect  
 150 W. Jefferson Avenue, Suite 1500  
 Detroit, MI 48226  
 P: (313) 237-5733 / F: (313) 237-5732  
[Sbgale-barbantini@acg.aaa.com](mailto:Sbgale-barbantini@acg.aaa.com)

---

**ORDER REGARDING PLAINTIFF, CHANDRA McDUFFIE'S MOTION  
 FOR RELIEF DUE TO DEFENDANT N.S.S. CONSTRUCTION, INC.'S  
 INTENTIONAL SPOILIATION OF EVIDENCE**

At a session of said Court, held in the County  
 Courthouse, City of Detroit, County of Wayne, State of  
 Michigan on 8/4/2021

PRESENT: HON. Sheila Ann Gibson  
 CIRCUIT COURT JUDGE

Upon the filing of Plaintiff, Chandra McDuffie's Motion for Relief due to Defendant  
 N.S.S. Construction, Inc.'s Intentional Spoliation of Evidence, briefs having been filed, the

opportunity for oral argument having been heard, and the Court being fully advised in the premises;

IT IS HEREBY ORDERED that, Defendant having previously been ordered to produce certain documents and things no later than January 22, 2021, and Defendant having failed to comply with this Court's Order, this Court finds that Plaintiff is entitled to the following remedies to promote fairness and justice in this case in accordance with the applicable case law and *Brenner v. Kolk*, 226 Mich. App. 149, 162 (1997).

- A. The Court shall give Model Civil Jury Instruction 6.01(a) to the jury in this matter;
- B. Defendant's Affirmative Defenses are hereby stricken and may not be refiled or relied upon at trial;
- C. Defendant is barred from introducing any mitigating evidence regarding their business practices, employment practices, vehicle maintenance practices, safety practices, or otherwise; and
- D. Defendant is to pay monetary costs in the amount of \$3,500.00 to Plaintiff's firm, Marko Law, PLLC, within sixty (60) days of the date of entry of this Order.

/s/ Sheila A. Gibson  
CIRCUIT COURT JUDGE

# **EXHIBIT 19**



## Price v. Austin

Court of Appeals of Michigan

April 30, 2020, Decided

No. 346145

### Reporter

2020 Mich. App. LEXIS 3152 \*; 2020 WL 2095993

ARTHUR ORMONDE PRICE, JR., Plaintiff-Appellant, v SAMUEL ONEAL AUSTIN and L & B CARTAGE, INC., doing business as OMNI QUALITY INSPECTION SERVICES, Defendants-Appellees.

**Notice:** THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

**Subsequent History:** Motion granted by [Price v. Austin, 955 N.W.2d 253, 2021 Mich. LEXIS 349, 2021 WL 926567 \(Mich., Mar. 10, 2021\)](#)

Motion granted by [Price v. Austin, 956 N.W.2d 505, 2021 Mich. LEXIS 605, 2021 WL 1307924 \(Mich., Apr. 7, 2021\)](#)

Motion granted by [Price v. Oneal Austin, 959 N.W.2d 712, 2021 Mich. LEXIS 1049, 2021 WL 2399767 \(Mich., June 11, 2021\)](#)

Reversed by, Remanded by [Price v. Austin, 2022 Mich. LEXIS 791 \(Mich., Apr. 22, 2022\)](#)

**Prior History:** [\*1] Saginaw Circuit Court. LC No. 17-032666-NI.

[Price v. L & B Cartage Inc., 2019 Mich. App. LEXIS 1118 \(Mich. Ct. App., Mar. 27, 2019\)](#)

## Core Terms

---

sudden emergency, defendant-driver, summary disposition, coughing, credibility, experienced, circumstances, reasonably prudent person, emergency, driving, presumption of negligence, rebut a presumption, material fact, matter of law, deposition, witnesses, blacked, brakes, rebut, semi

**Judges:** Before: O'BRIEN, P.J., and JANSEN and GLEICHER, JJ. GLEICHER, J. (dissenting).

## Opinion

---

PER CURIAM.

In this third-party no-fault action, plaintiff appeals by delayed leave granted<sup>1</sup> the order granting summary disposition under [MCR 2.116\(C\)\(10\)](#) in favor of defendants on the basis of the sudden emergency doctrine. We affirm.

### I. FACTUAL BACKGROUND

---

<sup>1</sup> See [Price v L & B Cartage, Inc., unpublished order of the Court of Appeals, entered March 27, 2019 \(Docket No. 346145\), 2019 Mich. App. LEXIS 1118.](#)

This case arises out of an automobile accident that occurred on April 1, 2014, at approximately 8:00 p.m. in Richland Township, Michigan. Defendant-driver, Samuel O'Neal Austin, was driving a tractor-trailer in the eastbound lanes of M-46, a two-lane roadway with no median, in the scope and course of his employment with defendant L & B Cartage, Inc., doing business as Omni Quality Inspection Services. Suddenly, defendant-driver experienced a severe coughing fit and blacked out, causing the semi to cross over into the westbound lanes of M-46. The semi had made it almost to the westbound shoulder when it collided with plaintiff's vehicle. The semi came to its final resting place in a corn field several feet from the highway. Both drivers sustained injuries in the accident: defendant-driver was taken by ambulance [\*2] to Covenant HealthCare Hospital in Saginaw, Michigan, and plaintiff was airlifted to Ascension St. Mary's Hospital in Saginaw, Michigan.

Plaintiff filed suit against defendants, alleging negligence and gross negligence, and seeking non-economic and excess economic damages. Following oral and written discovery, defendants moved for summary disposition under [MCR 2.116\(C\)\(10\)](#), arguing that the sudden emergency doctrine relieved them of liability. The trial court agreed, and in a written opinion and order, granted summary disposition in defendants' favor.

Plaintiff filed a delayed application for leave to appeal the trial court's decision in this court. This Court granted plaintiff's delayed application but limited the appeal "to the issues raised in the application and supporting brief." [Price v L & B Cartage, Inc., unpublished order of the Court of Appeals, entered March 27, 2019, 2019 Mich. App. LEXIS 1118.](#)

## II. STANDARD OF REVIEW

We review a trial court's decision regarding a motion for summary disposition de novo. [Lowrey v LMPS & LMPJ, Inc., 500 Mich 1, 5-6, 890 NW2d 344 \(2016\)](#). A motion for summary disposition brought under [MCR 2.116\(C\)\(10\)](#) "tests the factual sufficiency of the complaint," [Shinn v Mich Assigned Claims Facility, 314 Mich App 765, 768, 887 NW2d 635 \(2016\)](#), and should be granted when "there is no genuine issue regarding any material fact and the moving party is entitled to [\*3] judgment as a matter of law," [West v Gen Motors Corp., 469 Mich 177, 183, 665 NW2d 468 \(2003\)](#).

"The moving party has the initial burden to support its claim for summary disposition by affidavits, depositions, admissions, or other documentary evidence." [McCoig Materials, LLC v Galui Constr, Inc., 295 Mich App 684, 693, 818 NW2d 410 \(2012\)](#). The court must consider all of the admissible evidence in a light most favorable to the nonmoving party. [Liparoto Constr, Inc v Gen Shale Brick, Inc., 284 Mich App 25, 29, 772 NW2d 801 \(2009\)](#). However, the party opposing summary disposition under [MCR 2.116\(C\)\(10\)](#) "may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists." [Oliver v Smith, 269 Mich App 560, 564, 715 NW2d 314 \(2006\)](#) (quotation marks and citation omitted). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." [Bahri v IDS Prop Cas Ins Co., 308 Mich App 420, 423, 864 NW2d 609 \(2014\)](#) (quotation marks and citation omitted). [[Lockwood v Twp of Ellington, 323 Mich App 392, 400-401; 917 NW2d 413 \(2018\)](#).]

## III. ANALYSIS

On appeal, plaintiff generally contests the trial court's determination that defendants were entitled to summary disposition on the basis of the sudden emergency doctrine. More specifically, plaintiff argues that in the trial court, defendants failed to present clear, positive, and credible evidence sufficient to overcome the presumption of negligence that arises out of defendant-driver [\*4] crossing the centerline and colliding head-on with plaintiff's vehicle. We disagree.

[A] statutory presumption of negligence . . . may be rebutted by showing the existence of a sudden emergency. [Vander Laan v Miedema, 385 Mich 226, 231; 188 NW2d 564 \(1971\)](#). The sudden-emergency doctrine applies "when a collision is shown to have occurred as the result of a sudden emergency not of the defendants' own making." *Id.*, citing [McKinney v Anderson, 373 Mich 414, 419; 129 NW2d 851 \(1964\)](#). [[White v Taylor Distribution Co, Inc., 482 Mich 136, 139-140; 753 NW2d 591 \(2008\)](#) (*White II*).]

"[A] sudden emergency sufficient to remove the statutory presumption must be 'totally unexpected.'" *Id. at 140*, quoting *Vander Laan*, 385 Mich at 232. "[I]t is essential that the potential peril had not been in clear view for any significant length of time[.]" *Vander Laan*, 385 Mich at 232. Essentially, the sudden emergency doctrine is "a logical extension of the 'reasonably prudent person' standard, with the question being whether the defendant acted as a reasonably prudent person when facing the emergency, giving consideration to all circumstances surrounding the accident." *White v Taylor Distributing Co, Inc*, 275 Mich App 615, 622; 739 NW2d 132 (2007) (*White I*), citing *Szymborski v Slatina*, 386 Mich 339, 341; 192 NW2d 213 (1971).

"When the trial court undertakes to eliminate from the jury's consideration a statutory presumption as a matter of law, at the very least there must be clear, positive, and credible evidence opposing the presumption." *White I*, 275 Mich App at 621-622, citing *Petrosky v Dziurman*, 367 Mich 539; 116 NW2d 748 (1962), and *Szymborski*, 386 Mich at 341, where our Supreme Court [\*5] concluded that where evidence is less than clear, positive, and credible, the question of whether a statutory presumption can be overcome should be settled by a jury. Indeed, that defendant-driver, who was traveling eastbound crossed the centerline into the westbound lane of travel and struck plaintiff's vehicle as it was rightfully traveling westbound, creates a presumption of negligence. Thus, to be entitled to summary disposition as a matter of law, it is defendants' burden to present clear, positive, and credible evidence that defendant-driver suffered a sudden emergency, totally unexpected and not of his own making, and that he "acted as a reasonably prudent person when facing the emergency, giving consideration to all circumstances surrounding the accident." *White I*, 275 Mich App at 622.

Plaintiff uses the majority of his brief on appeal to highlight what he perceives to be inconsistencies in defendant-driver's statements relating to the symptoms he experienced immediately before blacking out. Indeed, defendant-driver reported slightly different symptoms in the days following the accident. Defendant-driver reported to officers at the scene, and testified in his deposition, that he experienced a violent coughing [\*6] fit before blacking out. Comparatively, defendant-driver reported to his treating physicians that he felt a twinge in his chest, or crushing chest pain, and then blacked out.

However, what plaintiff fails to appreciate is that defendant-driver consistently maintained that all of his symptoms came on suddenly and with no advanced warning before defendant-driver was rendered unconscious. Moreover, the physical evidence in this case is clear that defendant-driver never applied the brakes: there were no pre-collision skid marks at the scene, and the satellite GPS log from the semi, indicated that defendant-driver never braked. The physical evidence supports defendant-driver's position that he experienced a sudden medical emergency.

Plaintiff also argues that a reasonably prudent person with defendant-driver's cardiac history would not have been driving a semi. However, defendant-driver had undergone rigorous testing as recently as 2013 in order to recertify his Class A driving endorsement. Additionally, there is no evidence in the record to even suggest defendant-driver had experienced any cardiac symptoms contemporaneously to the accident, or that defendant-driver had ever experienced an [\*7] episode of sudden unconsciousness.

In sum, defendant-driver presented ample evidence that he experienced some type of syncopal episode while driving without any advance notice, and that he was entitled to rebut the presumption of negligence as a matter of law. In response, plaintiff failed to identify anything in the existing record, or to offer any new evidence, to show that defendant-driver could have done anything differently to avoid the accident that occurred here, or that any genuine issue of material fact remained to submit to a jury. Thus, we conclude that the trial court properly granted summary disposition in favor of defendants on the basis of the sudden emergency doctrine.

Affirmed.

/s/ Colleen A. O'Brien

/s/ Kathleen Jansen

**Dissent by:** Elizabeth L. Gleicher

## Dissent

---

GLEICHER, J. (*dissenting*).

This automobile negligence case arises from a head-on collision between a semi-truck driven by defendant Samuel Austin and plaintiff Arthur Price's Buick. Austin claims that while driving down a straight stretch of two-lane highway, he suddenly began coughing, blacked out, crossed the center line, and struck Price's car. The investigating officer observed no preaccident skid marks attributable to Austin's truck. [\*8]

The majority affirms summary disposition in favor of Austin on the basis of "the sudden emergency doctrine." In so holding, the majority commits two grave legal errors: it decides that defendant's testimony must be believed, and it misapprehends the function of the sudden emergency defense. I respectfully dissent.

### I. GOVERNING LEGAL PRINCIPLES

In every automobile negligence case, the plaintiff must prove that the defendant was negligent. When a defendant's violation of a statute causes an injury, the law bolsters the plaintiff's case by supplying a rebuttable *presumption* that the defendant was negligent. The presumption relieves the plaintiff of the burden of presenting positive evidence of negligence beyond the statutory violation. The defendant is tasked with rebutting the legal conclusion (here, negligence) embedded within the presumption. See [Widmayer v Leonard](#), 422 Mich 280, 289-290; 373 NW2d 538 (1985). "If rebuttal evidence is introduced, the presumption dissolves, but the underlying inferences remain to be considered by the jury[.]" [Ward v Consol Rail Corp](#), 472 Mich 77, 84; 693 NW2d 366 (2005). In other words, the inference (here, an inference of negligence arising from Austin's crossing of the center line) maintains evidentiary power. What was once a presumption of negligence becomes an inference [\*9] of common-law negligence. "[E]ven though facts might be introduced tending to controvert the presumed fact, the presumed fact nonetheless remains as at least a permissible inference for the trier of fact." [Kirilloff v Glinisty](#), 375 Mich 586, 588; 134 NW2d 707 (1965).

[MCL 257.634\(1\)](#) requires drivers to operate their vehicles on the right side of the road. A violation of this statute creates a rebuttable presumption of negligence. Accordingly, Price could establish Austin's negligence based solely on the fact that Austin's truck crossed the center line. Austin was entitled to rebut this presumption of his negligence with evidence of an excuse for his negligence; he did so with his sudden emergency claim. [White v Taylor Distrib Co](#), 275 Mich App 615, 621; 739 NW2d 132 (2007) (*White I*). Austin alleged that while driving down the road, he had "a really bad coughing spell," "tr[ie]d to hit the brakes and . . . get over to the right," but "passed out." He additionally asserted that he unsuccessfully "tried to slow down." This testimony would suffice to rebut the presumption of negligence accompanying Austin's crossing of the center line—if and only if the jury believes it. And contrary to the majority's analysis, even if the *presumption* is successfully rebutted, an inference of negligence remains to be considered by the trier of fact. [\*10]

### II. A JURY MAY DISBELIEVE ANY WITNESS'S TESTIMONY

A critical error permeates the majority opinion. In considering a motion brought under [MCR 2.116\(C\)\(10\)](#), neither we nor the circuit court may weigh evidence or find facts. The majority does both. By deciding that Austin's coughing story is credible, the majority usurps the province of the jury, substituting two judges in the jury's place.

A bedrock legal principle instructs that "the jury is free to credit or discredit *any* testimony." [Kelly v Builders Square, Inc](#), 465 Mich 29, 39; 632 NW2d 912 (2001) (emphasis added). This is a very old rule. More than a century ago, the United States Supreme Court explained the underlying concept:

The jury were the judges of the credibility of the witnesses . . . , and in weighing their testimony had the right to determine how much dependence was to be placed upon it. There are many things sometimes in the conduct of a witness upon the stand, and sometimes in the mode in which his answers are drawn from him through the questioning of counsel, by which a jury are to be guided in determining the weight and credibility of his

testimony. That part of every case . . . belongs to the jury, who are presumed to be fitted for it by their natural intelligence and their practical knowledge of men [\*11] and the ways of men; and so long as we have jury trials they should not be disturbed in their possession of it, except in a case of manifest and extreme abuse of their function. [*Aetna Life Ins Co v Ward*, 140 US 76, 88; 11 S Ct 720; 35 L Ed 371 (1891).]

Michigan's jurisprudence hews to the same legal philosophy. Indeed, a decade before the United States Supreme decided the above-quoted case, our own Justice COOLEY articulated the identical rule. In *Woodin v Durfee*, 46 Mich 424, 427; 9 NW 457 (1881), the Supreme Court reversed a directed verdict resting on "undisputed" evidence that "probably ought to have satisfied any one . . . ." Justice COOLEY explained that a jury "may disbelieve the most positive evidence, even when it stands uncontradicted; and the judge cannot take from them their right of judgment." *Id.*

Our Supreme Court reiterated this point in *Yonkus v McKay*, 186 Mich 203, 210-211, 152 NW 1031 (1915):

To hold that in all cases when a witness swears to a certain fact the court must instruct the jury to accept that statement as proven, would be to establish a dangerous rule. Witnesses sometimes are mistaken and sometimes unfortunately are wilfully mendacious. The administration of justice does not require the establishment of a rule which compels the jury to accept as absolute verity every uncontradicted statement a witness may make.

In *Cuttle v Concordia Mut Fire Ins Co*, 295 Mich 514, 519; 295 NW 246 (1940), the Supreme Court [\*12] again acknowledged that "[u]ncontradicted testimony may be disentitled to conclusiveness because, from lapse of time or other circumstances, it may be inferred that the memory of the witness is imperfect as to the facts to which he testified, or that he recollects what he professes to have forgotten." *Id.*

These principles apply equally to defense witnesses. For example, in *Strach v St John Hosp Corp*, 160 Mich App 251, 271; 408 NW2d 441 (1987) (citation omitted), a medical malpractice case, this Court declared that a jury could disregard a physician's unrebutted testimony, reasoning that "a jury may disbelieve the most positive evidence even when it stands uncontradicted, and the judge cannot take from them their right of judgment." Two additional medical malpractice cases make the same point. In *Ykimoff v WA Foote Mem Hosp*, 285 Mich App 80, 89-90; 776 NW2d 114 (2009), and *Martin v Ledingham*, 488 Mich 987, 987-988; 791 NW2d 122 (2010), the defendant physicians testified that they would have acted in a certain manner if provided with information about a patient's condition. Both appellate courts held that a jury was entitled to disbelieve the physicians' testimony, even though it was unrebutted by other evidence. The Supreme Court stated in *Martin*, 488 Mich at 988: "the treating physician's averment that he would have acted in a manner contrary to this standard of care presents a question of fact and an issue [\*13] of credibility for the jury to resolve." See also *Debano-Griffin v Lake Co*, 493 Mich 167; 828 NW2d 634 (2013); *Soule v Grimshaw* 266 Mich 117; 253 NW 237 (1934); *Ricketts v Froehlich*, 218 Mich 459; 188 NW 426 (1922).

Even the credibility of eyewitness testimony presents a question of fact. *Estate of Taylor by Taylor v Univ Physician Group*, 329 Mich. App. 268, 286; 941 N.W.2d 672 (2019). See also *Arndt v Grayewski*, 279 Mich 224, 231; 271 NW 740 (1937) (holding that eyewitness testimony "is not conclusive upon the court or a jury if the facts and circumstances of the case are such as irresistibly lead the mind to a different conclusion").

Several of the cases discussed above arose in the summary disposition context. The same rule applies: when the resolution of a case depends solely on a witness's credibility, summary disposition is inappropriate because a jury question necessarily exists. An appellate court may not assess credibility or make factual findings when reviewing the propriety of summary disposition. *White v Taylor Distrib Co*, 482 Mich 136, 142-143; 753 NW2d 591 (2008) (*White II*). Furthermore, summary disposition is improper when a trier of fact could reasonably draw an inference in the plaintiff's favor:

It is a basic proposition of law that determination of disputed issues of fact is peculiarly the jury's province. Even where the evidentiary facts are undisputed, it is improper to decide the matter as one of law if a jury could draw conflicting inferences from the evidentiary facts and thereby reach differing conclusions as to [\*14] ultimate facts. [*Nichol v Billot*, 406 Mich 284, 301-302; 279 NW2d 761 (1979) (citations omitted).]



In this case, the majority's holding rests entirely on its determination that Austin's account of what happened is credible, despite that there were no confirming witnesses. Austin's claim that he coughed, became light-headed, and almost instantly passed out is contradicted by the accident report, which notes that Austin informed the officer that the coughing "may have caused him to pass out." Austin claimed at his deposition that when he began coughing he "tr[ie]d to hit the brakes and . . . get over to the right," but none of the physical evidence described by the officer supports that he did either of those things. Austin's medical records contain yet another description of what happened; a physician noted that he experienced "twinging of chest, feeling like he needed to cough. He was bearing down and had a syncopal episode." This recounting did not include the violent coughing that Austin testified to at his deposition. Such inconsistencies matter; in [White II, 482 Mich at 142](#), the Supreme Court highlighted that "[d]efendant's inconsistent statements about the cause of his illness create issues of material fact precluding summary disposition."

Are the discrepancies [\*15] in this case relatively minor? Yes. But they demonstrate that Austin's deposition version of what happened may well have been exaggerated, the coughing magnified, and the efforts to avoid the crash overstated.<sup>1</sup> As the Supreme Court pointed out in *White II*, "if defendant felt ill even a few minutes before he collided with plaintiff, then the emergency may well have been of his own making." *Id.* Ultimately, it is the jury's job to assess whether Austin's story rings true, not this Court's. As this Court has said time and time again, the jury sees, hears, and observes witnesses as they testify, determining whom to believe and who is unworthy of belief. On this ground alone, I would reverse the trial court's grant of summary disposition.

### III. THE SUDDEN EMERGENCY

The majority's next error arises from its interpretation and application of the sudden emergency doctrine. Simply by testifying that he suffered a syncopal episode, the majority holds, Austin "was entitled to rebut the presumption of negligence as a matter of law." The majority reasons that Austin is entitled to avoid a trial based on Price's failure to "identify anything in the existing record, or to offer any new evidence," to [\*16] show that Austin "could have done anything differently to avoid the accident." The majority misapprehends the function and purpose of the sudden emergency doctrine.

The doctrine of sudden emergency is merely one application of the reasonably prudent person standard; it is not an affirmative defense. [Szyborski v Slatina, 386 Mich 339, 341; 192 NW2d 213 \(1971\)](#); [Baker v Alt, 374 Mich 492, 496; 132 NW2d 614 \(1965\)](#). An affirmative defense accepts that the plaintiff has established a prima facie case, but seeks to foreclose relief for reasons unrelated to the plaintiff's proofs. See [Campbell v St John Hosp, 434 Mich 608, 616; 455 NW2d 695 \(1990\)](#). Most affirmative defenses offer the defendant the possibility of a full victory, even if everything the plaintiff claims is true—think of the statute of limitations, release, and immunity granted by law. See [MCR 2.111\(F\)\(3\)](#).

I repeat and emphasize: sudden emergency is *not* an affirmative defense. It is merely a denial of negligence that, if believed by a jury, operates to rebut a presumption of negligence or to provide an excuse for what would otherwise be negligent conduct. Not every case involving the sudden emergency doctrine implicates a presumption of negligence. When there is no presumption to rebut, the sudden emergency doctrine merely offers a garden-variety defense. As with every defense to a negligence claim, the jury applies [\*17] an objective standard: did the defendant behave reasonably under the circumstances? The defendant's *opinion* that he behaved reasonably is not determinative, nor is a judge's concurring view. A jury may find a defendant negligent notwithstanding the defendant's sudden emergency claim.

Similarly, when invoked to rebut a presumption of negligence, the sudden emergency doctrine is not a free ticket to summary disposition. Rather, it continues to serve as a factual circumstance relevant to determining whether the defendant acted reasonably. In other words, when a presumption of negligence falls away, the jury must still determine whether the defendant's acts were consistent with the standard of care expected under the

---

<sup>1</sup> The majority construes the physical evidence as supporting Austin's story. The majority ignores that the physical evidence would also support that Austin fell asleep at the wheel or was distracted and lost control of his truck. Both of these potential accident causes are far more common than an unexpected coughing fit leading to a black-out.



circumstances. See [Baker, 374 Mich at 496](#) ("In actuality, the doctrine of 'sudden emergency' is nothing but a logical extension of the 'reasonably prudent person' rule. The jury is instructed, as was done here, that the test to be applied is what that hypothetical, reasonably prudent person would have done under all the circumstances of the accident, whatever they were."); [Martin v City of New Orleans, 678 F2d 1321, 1325 \(CA 5, 1982\)](#) ("The doctrine of sudden emergency does not invoke a different standard of care than that applied in any other negligence case. [\*18] The conduct required is still that of a reasonable person under the circumstances. The emergency is merely a circumstance to be considered in assessing the actor's conduct.").<sup>2</sup>

[Restatement Torts, 3d, § 9](#), summarizes the sudden emergency doctrine as follows: "If an actor is confronted with an unexpected emergency requiring rapid response, this is a circumstance to be taken into account in determining whether the actor's resulting conduct is that of the reasonably careful person." Michigan law is entirely consistent with this approach. Despite that Austin claims to have experienced a sudden emergency, he crossed the center line and failed to apply his brakes. Did he really have a coughing fit that caused him to pass out? If so, did he act prudently when he began coughing? I don't know, and neither does the majority. I do know that Austin's negligence under the circumstances remains a salient question, and that only a jury is empowered to answer it. Contrary to the majority's view, evidence that Austin was confronted with a sudden emergency does not entitle him to a legal determination that he lacked any fault for the accident. I would reverse the lower court and remand for a jury trial.

/s/ [\*19] Elizabeth L. Gleicher

---

End of Document

---

<sup>2</sup>A number of courts have eliminated the sudden emergency doctrine from their common-law toolbox precisely because it is frequently misused. See [Bedor v Johnson, 292 P3d 924; 2013 CO 4 \(Colo, 2013\)](#), and the cases collected in footnote 2.

# **EXHIBIT 20**

PEOPLE v. BERNAICHE

Court of Appeals of Michigan

April 25, 2006, Decided

No. 255081, No. 261498

**Reporter**

2006 Mich. App. LEXIS 1459 \*; 2006 WL 1083596

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee, v CHRISTOPHER JOHN  
BERNAICHE, Defendant-Appellant. PEOPLE OF  
THE STATE OF MICHIGAN, Plaintiff-  
Appellant/Cross-Appellee, v CHRISTOPHER  
JOHN BERNAICHE, Defendant-Appellee/Cross-  
Appellant.

**Notice:** [\*1] THIS IS AN UNPUBLISHED  
OPINION. IN ACCORDANCE WITH  
MICHIGAN COURT OF APPEALS RULES,  
UNPUBLISHED OPINIONS ARE NOT  
PRECEDENTIALLY BINDING UNDER THE  
RULES OF STARE DECISIS.

**Subsequent History:** Subsequent civil proceeding  
at [Purdy v. Bernaiche, 2006 Mich. App. LEXIS  
1819 \(Mich. Ct. App., June 13, 2006\)](#)

Reversed by, in part, Remanded by, Appeal denied  
by, in part, Motion granted by [People v. Bernaiche,  
480 Mich. 1046, 743 N.W.2d 882, 2008 Mich.  
LEXIS 247 \(2008\)](#)

**Prior History:** Wayne Circuit Court. LC No. 03-  
001733-01, LC No. 03-001733.

**Disposition:** We affirm the trial court's order  
granting defendant a new trial and remand for  
further proceedings. We do not retain jurisdiction.

**Core Terms**

supplemental report, trial court, new trial, insanity,  
disclose, murder, involuntary intoxication,  
premeditation, intoxicated, discovery, argues,  
expert witness, work-product, effects, defendant  
argues, deliberation, first-degree, instructions,

reliable, prepare, rebut, expert testimony, violent  
behavior, prescribed drug, proceedings, convicted,  
violence, conform, drugs

**Judges:** Before: Cooper, P.J., and Jansen and  
Markey, JJ.

**Opinion**

PER CURIAM.

Defendant was convicted by a jury of two counts of  
first-degree premeditated murder, [MCL  
750.316\(1\)\(a\)](#); three counts of assault with intent to  
commit murder, [MCL 750.83](#); and possession of a  
firearm during the commission of a felony, [MCL  
750.227b](#). He was sentenced to concurrent terms of  
life imprisonment for the first-degree murder and  
assault convictions, and a consecutive two-year  
term of imprisonment for the felony-firearm  
conviction. Defendant appeals as of right in Docket  
No. 255081.

After defendant filed his claim of appeal, the trial  
court granted defendant's motion for a new trial on  
the ground that the prosecution failed to comply  
with its duty to supplement disclosure [\*2] under  
[MCR 6.201](#). The trial court retains jurisdiction to  
grant a motion for a new trial if timely filed, even  
where a claim of appeal is also filed. [MCR 7.208](#).  
The prosecutor appeals the order granting a new  
trial by leave granted in Docket No. 261498.

We affirm the trial court's order granting  
defendant's motion for a new trial, and remand for  
further proceedings.

## I. Facts and Proceedings

Defendant's convictions arise from a December 27, 2002, altercation in which he fatally shot two people and wounded three others. At trial, defendant presented a defense of involuntary intoxication causing legal insanity, claiming his conduct was caused by the effects of the antidepressant drug Prozac. Defendant began taking Prozac approximately two months before the events at issue, and his physician had doubled his dosage just a few days before the incident.

At trial, defendant presented Dr. Peter Breggin as an expert witness to support his defense that his violent behavior was caused by the effects of Prozac. Dr. Breggin testified that he specializes in clinical psychopharmacology, the study of how psychiatric drugs affect patients. Dr. Breggin [\*3] indicated that he had substantial experience testifying at trials involving psychiatric drugs, including selective serotonin reuptake inhibitor (SSRI) drugs, the class of drugs that includes Prozac. Dr. Breggin testified that the Prozac drug defendant was taking both stimulated and depressed defendant, leaving him susceptible to uncontrollable violent urges which prevented defendant from conforming his behavior to the requirements of the law. Dr. Breggin explained that defendant displayed the symptoms of mania and akathisia while on Prozac, which were precursors to the violent episode.<sup>1</sup>

The prosecutor relied on two experts, Dr. Philip Margolis, a psychiatrist employed by the Wayne County Jail, and Dr. Stephen Norris, a psychologist employed by the Center for Forensic Psychiatry, to rebut defendant's insanity defense. Drs. Margolis and [\*4] Norris did not give testimony that directly contradicted Dr. Breggin's theory that Prozac may cause some individuals to become aggressive and violent, but both opined that defendant was not legally insane while on Prozac because he

maintained the capacity to appreciate the wrongfulness of his actions and to conform his actions to the requirement of the law.

Dr. Margolis evaluated defendant on December 8, 2003, and prepared a report, dated December 23, 2003. The report indicated Dr. Margolis had reviewed materials on SSRI-induced violence, but rather than addressing the disorder generally, the report focused on defendant individually. Basing his opinion on the inconsistencies between SSRI-induced violence and defendant's behavior, impressions from jail staff of defendant's behavior, defendant's history of substance abuse and anger, defendant's recent personal difficulties, and defendant's behavior on the night of the shooting, Dr. Margolis concluded that defendant was able to control his behavior on the night of the shootings.

Dr. Margolis later prepared a second report ("supplemental report"), which he faxed to the prosecutor on January 12, 2004. The supplemental report summarized [\*5] Dr. Margolis's review of published research on the link between SSRI use and aggressive and violent behavior, and reported that a small minority of patients treated with SSRI experience stimulating side effects<sup>2</sup> that might lead to aggressive or violent behavior. However, Dr. Margolis concluded that defendant did not exhibit any of these symptoms and that his behavior could therefore not be attributed to Prozac.

The prosecutor failed to disclose the supplemental report to defendant. Only after defendant's expert witness, Dr. Breggin, had completed his testimony and left the state did defense counsel discover the existence of Dr. Margolis's supplemental report. The defense being therefore not reasonably situated to evaluate, rebut, or respond to the report, defendant sought to exclude Dr. Margolis's testimony entirely, arguing the prosecutor had failed to meet his obligation to disclose the report under [MCR 6.201](#) and [MCL 768.20a](#) [\*6]. The trial court agreed that the supplemental report

---

<sup>1</sup> Mania causes a person to feel very important and intolerant of anything that irritates him, and akathisia is a feeling of restlessness and an urge to be in constant motion.

---

<sup>2</sup> Mania, hypomania (a milder form of mania), and/or akathisia.

should have been disclosed, but decided that the appropriate remedy was to limit Dr. Margolis's testimony to his original report rather than excluding it entirely. The prosecution filed a motion for immediate reconsideration of this limitation of Dr. Margolis's testimony, and defendant in response reiterated the request that the expert's testimony be stricken in its entirety. The trial court denied both motions. After defendant was convicted, he moved for a new trial on several grounds, including the prosecutor's failure to disclose the supplemental report. The trial court agreed that the remedy applied during trial had been inadequate to redress the harm to defendant, and ordered a new trial.

## II. Docket No. 261498

We first consider the prosecutor's appeal in Docket No. 261498. At issue is whether the prosecutor was obligated to disclose Dr. Margolis's supplemental report to defendant, and, if so, whether the trial court properly awarded defendant a new trial because the report was not disclosed. We find that the prosecutor was obligated to disclose the report, and that the trial court was within its discretion in ordering a new [\*7] trial to redress the discovery violation.

The construction and application of court rules is a question of law that this Court reviews de novo on appeal. See [People v Fosnaugh](#), 248 Mich. App. 444, 449; 639 N.W.2d 587 (2001). Likewise, the question of whether material is privileged under the work-product doctrine is a question of law subject to de novo review. [People v Gilmore](#), 222 Mich. App. 442, 448; 564 N.W.2d 158 (1997). However, a trial court's remedy for a discovery violation is reviewed for an abuse of discretion. [People v Banks](#), 249 Mich. App. 247, 252; 642 N.W.2d 351 (2002).

Discovery in criminal actions is governed by [MCR 6.201](#), which provides that a party "must provide" "any report of any kind produced by or for an expert witness whom the party intends to call at trial." And the duty is both ongoing and self-

executing: "If at any time a party discovers additional information or material subject to disclosure under this rule, the party, without further request, must promptly notify the other party." [MCR 6.201\(H\)](#).

Defendant argues that Dr. [\*8] Margolis's supplemental report was a report produced by an expert witness whom the prosecutor intended to call at trial. The prosecutor argues that the supplemental report was nondiscoverable work-product only. We agree with the trial court that the broad language in [MCR 6.201\(A\)\(3\)](#), "any report of any kind produced by or for an expert witness . . ." plainly includes the supplemental report. Dr. Margolis and his intern prepared the report to summarize their research of publications on Prozac, research they mentioned but did not detail in their initial report. We cannot see how the supplemental report falls outside the broad parameters set forth in [MCR 6.201\(A\)\(3\)](#). Given the continuing duty to disclose, the prosecutor was clearly obligated to disclose the supplemental report to defendant.

We disagree with the prosecutor's assertion that the supplemental report was protected by the work-product privilege. [MCR 2.302\(B\)\(3\)](#) provides that documents prepared in anticipation of litigation or for trial "by or for another party or another party's representative" are not discoverable unless the party seeking discovery "has [\*9] substantial need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means." The work-product privilege applies to both criminal and civil proceedings. [People v Holtzman](#), 234 Mich. App. 166, 181; 593 N.W.2d 617 (1999).

Here, the prosecutor's attempt to characterize the supplemental report as attorney work-product is untenable. Beginning with logic, the prosecutor having turned over to defendant Dr. Margolis's initial report may hardly be heard to later credibly claim the supplemental report is work product. Turning to law, [MCR 6.201\(A\)\(3\)](#) specifically requires disclosure of the reports of expert

witnesses in criminal cases, so this rule supersedes the general civil procedure rules on work-product and discovery. [MCR 6.001\(D\)\(3\)](#) (civil procedural rules are not applicable "when a statute or court rule provides a like or different procedure for criminal actions"). In any case, the supplemental report is substantively not the kind of material the work-product rule protects: "interviews, statements, memoranda, correspondence, [\*10] briefs, mental impressions, personal beliefs, and countless other tangible and intangible" materials that attorneys prepare as they "assemble information, sift what [they] consider to be the relevant from the irrelevant facts, prepare [their] legal theories and plan [their] strategy." [Holtzman, supra at 166](#), quoting [Hickman v Taylor, 329 U.S. 495; 67 S. Ct. 385; 91 L. Ed. 451 \(1947\)](#). We find that the prosecutor violated [MCR 2.601](#) by failing to disclose the supplemental report to defendant.

In its motion for a new trial, defendant argued that the only adequate remedy for this violation was to exclude Dr. Margolis's testimony. The prosecutor argued that this remedy was inappropriate because the supplemental report would harm rather than help defendant. The trial court found that defendant was entitled to have the supplemental report in advance of trial, that the prosecutor in withholding the report had acted intentionally, and that the discovery violation had significantly affected defendant's right to a fair trial.

[MCR 6.201\(J\)](#) provides that if a party fails to comply [\*11] with a discovery rule, "the court, in its discretion, may order that testimony or evidence be excluded, or may order another remedy." When determining the appropriate remedy for a discovery violation, the court must balance the interests of the courts, the public, and the parties in light of all the relevant circumstances, including the reasons for noncompliance. [Banks, supra at 252](#).

Defendant argues that the supplemental report was vital to the defense, because it undermined the prosecution's attempt to discredit Dr. Breggin's theory as "junk science" unworthy of serious

consideration. The prosecution argues that the report was not exculpatory because it indicated that defendant personally did not suffer from Prozac-induced violence, and therefore did not have to be disclosed. The prosecution argues it did not assert that Dr. Breggin's theory is "junk science," but only that it did not apply to defendant, and so could not help the defense. We find that we are not comfortable second-guessing what tactical use defense counsel might have made of the report: "Defense counsel must be afforded 'broad discretion' in the handling of cases, which often results in 'taking [\*12] the calculated risks which still do sometimes, at least, pluck legal victory out of legal defeat.'" [People v. Pickens, 446 Mich. 298, 324; 521 N.W.2d 797 \(1994\)](#) (citation omitted).

The prosecution was in possession of a report prepared by a witness it intended to call at trial, and that report was directly related to the core of defendant's argument; defendant could have used it simply to show that Dr. Breggin's theory was corroborated by published research, or, with sufficient time for analysis, might have been able to challenge the report's conclusion that defendant does not fit the profile for Prozac-induced violence. As the trial court noted, because the report was withheld, defendant was not able to question its own expert or the prosecution's expert about it, which affected the weight the jury gave to the expert testimony and reports. The trial court also suggested the defense might have used the information to prepare differently for various critical points, from voir dire of potential jurors, to preparing opening and closing statements, to preparing to examine and cross-examine experts. Certainly, this one report might not have swayed the jury's [\*13] opinion as to defendant's state of mind, but just as certainly, the defense should have been able to use it to rebut the prosecutor's statements that the Prozac defense is mere "silliness," and that Dr. Breggin is the only person who would testify that it is not. Simply put, the prosecution cannot say that because the report on its face appears to weigh against defendant, defendant could not have made effective use of it at



trial.

Our Supreme Court has set a high bar for the abuse of discretion standard: "It [the lower court decision] may not be such a judgment as we would have rendered in determining the facts, but, unless it is clearly against reason and the evidence, or shows that he acted arbitrarily and unreasonably, it cannot be said that it was an abuse of discretion." Taylor v. Houghton, 234 Mich. 363, 366; 208 N.W. 438 (1926). And this Court has often stated that "we will find an abuse of discretion only if an unprejudiced person, considering the facts on which the trial court made its decision, would conclude that there was no justification for the ruling made." People v Watkins, 176 Mich. App. 428, 430; 440 N.W.2d 36 (1989); [\*14] People v Rockwell, 188 Mich. App. 405, 410; 470 N.W.2d 673 (1991); People v Miller, 198 Mich. App. 494, 495; 499 N.W.2d 373 (1993); Phillips v Deihm, 213 Mich. App. 389, 394; 541 N.W.2d 566 (1995). Given the high level of deference due the trial court's decision, we cannot here say that the trial court abused its discretion in granting defendant a new trial. Banks, supra at 252. We cannot say there is no justification for the decision, or that the trial court acted arbitrarily or unreasonably; rather the trial judge, after due consideration of the ruling she had made during the trial, and after having seen the effects of that ruling on defendant, deemed this remedy appropriate. We add that the trial court found the prosecution's conduct in withholding the report was intentional, and we further note that we have heard no valid justification for the prosecutor's failure to disclose the supplemental report. We therefore affirm the trial court's order granting defendant a new trial and remand for further proceedings.

### III. Docket No. 255081

Defendant first argues that there was [\*15] insufficient evidence of premeditation and deliberation presented at trial to support a conviction of first-degree murder. We consider this issue because, if defendant is correct, constitutional

double jeopardy protections would preclude defendant from being retried for first-degree murder. See People v Jones, 203 Mich. App. 74; 512 N.W.2d 26 (1993).

When a defendant challenges the sufficiency of the evidence in a criminal case, this Court considers whether the evidence, viewed in a light most favorable to the prosecution, would warrant a reasonable juror to find guilt beyond a reasonable doubt. People v Nowack, 462 Mich. 392, 399; 614 N.W.2d 78 (2000); People v Sexton, 250 Mich. App. 211, 222; 646 N.W.2d 875 (2002). To convict a defendant of first-degree, premeditated murder, the prosecution must show that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate. People v Ortiz, 249 Mich. App. 297, 301; 642 N.W.2d 417 (2002). Premeditation, which requires sufficient time to permit the defendant to take a second look, [\*16] may be inferred from the circumstances surrounding the killing. People v Kelly, 231 Mich. App. 627, 642; 588 N.W.2d 480 (1998). Evidence that the defendant had time to consider his actions is sufficient circumstantial evidence of deliberation and premeditation. People v Herndon, 246 Mich. App. 371, 415; 633 N.W.2d 376 (2001). Proof of the actor's state of mind can be proven by minimal circumstantial evidence. Ortiz, supra at 301.

Defendant argues that there was insufficient evidence of deliberation and premeditation, because he acted in the heat of passion. He argues that the evidence establishes voluntary manslaughter or, at the most, second-degree murder. Common-law voluntary manslaughter is defined as an intentional act of killing that is "committed under the influence of passion or in heat of blood, produced by an adequate or reasonable provocation, and before a reasonable time has elapsed for the blood to cool and reason to resume its habitual control, and is the result of the temporary excitement, by which the control of reason was disturbed, rather than of any wickedness of heart or cruelty or recklessness [\*17] of disposition." People v Mendoza, 468 Mich. 527, 535; 664 N.W.2d 685

(2003). The provocation must be adequate; namely, that which would cause a reasonable person to lose control. People v Sullivan, 231 Mich. App. 510, 518; 586 NW2d 578 (1998), aff'd 461 Mich. 992 (2000). Second-degree murder is proved if the evidence establishes that the defendant caused a death with malice and without provocation. People v Harris, 190 Mich. App. 652, 659; 476 N.W.2d 767 (1991).

In this case, the evidence disclosed that defendant was ejected from a bar following an altercation with a patron. He did not return until approximately 45 or 50 minutes later. In the interim, he obtained a loaded gun and an extra clip. He also called his mother and brother to tell them that he planned to "end it." A jury could infer from this evidence that defendant had sufficient time to cool down, and to plan and deliberate his actions. Herndon, supra at 415; Kelly, supra at 642. There was sufficient evidence of premeditation and deliberation to support a conviction of first-degree murder.

[\*18] Defendant also argues that the trial court erred in finding that Drs. Margolis and Norris were qualified to testify as expert witnesses at trial. We consider this issue because it is likely to arise again on retrial.

A trial court's decision to admit or exclude evidence, including expert testimony, is reviewed for an abuse of discretion. Craig v Oakwood Hosp., 471 Mich. 67, 76-77; 684 N.W.2d 296 (2004).

MRE 702, governing the admissibility of expert testimony, provides:

If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has

applied the principles and methods reliably to the facts of the case.

In Gilbert v DaimlerChrysler Corp., 470 Mich. 749, 780; 685 N.W.2d 391 (2004), our Supreme Court held that [\*19] MRE 702 imposes a "gatekeeper role" to make certain "that any expert testimony admitted at trial is reliable." *Id.* (citation omitted); see also Daubert v Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 589; 113 S. Ct. 2786; 125 L. Ed. 2d 469 (1993) (concluding from similar language in FRE 702 that "the trial judge must ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable").

Defendant argues that Drs. Margolis and Norris failed to meet the qualification requirements imposed by MRE 702 because they had no expertise concerning prescription drug side effects or SSRI-induced violence and, were therefore unqualified to rebut the defense that Prozac can induce violent behavior in some persons. Defendant also argues that because neither Dr. Margolis nor Dr. Norris gave any opinion at all on Prozac side effects their testimony was irrelevant. The flaw in defendant's argument is that the testimony of Drs. Margolis and Norris was not intended to directly address Dr. Breggin's Prozac theory, but to address defendant's state of mind or mental capacity. Defendant's [\*20] argument pertains more to the relevance of their testimony than to the qualification requirement of MRE 702.

Relevant evidence is evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401; People v Aldrich, 246 Mich. App. 101, 114; 631 NW2d 67 (2001). Generally, all relevant evidence is admissible, unless otherwise provided by law, and evidence which is not relevant is not admissible. MRE 402; Aldrich, supra. Relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice,

confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." MRE 403; Aldrich, supra. The relevance of the prosecution experts' testimony hinges on the requirements to establish an involuntary intoxication defense.

In People v Caulley, 197 Mich. App. 177, 188; 494 N.W.2d 853 (1992), this Court stated that involuntary intoxication [\*21] by a prescription drug "can constitute a complete defense if the defendant was unexpectedly intoxicated because of the ingestion of a medically prescribed drug." The Court explained:

In order to establish the intoxication is not voluntary, the defendant must now know or have reason to know that the prescribed drug is likely to have the intoxication effect. . . . Second, the prescribed drug, not another intoxicant, must have caused the defendant's intoxicated condition. . . . Third, the defendant must establish that as a result of the intoxicated condition, he was rendered temporarily insane. . . . Consequently, it is necessary to assess the effect of intoxication in conjunction with Michigan's test for insanity. [*Id.* (citations omitted).]

The operative part of the definition of legal insanity in MCL 768.21a(1) provides that a person who "lacks substantial capacity either to appreciate the nature and quality or the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law" may have an affirmative defense to criminal acts.

Dr. Breggin's Prozac theory was just one component of the defense of legal insanity [\*22] by involuntary intoxication. Defendant could not prevail on his defense merely by showing that Prozac may have induced him to behave violently. He was also required to show that the prescribed drug, and not other substances, caused his intoxicated state, and that his intoxication rendered him temporarily insane such that he lacked the

capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law.

Defendant does not argue that Drs. Margolis and Norris were unqualified to testify on these general aspects of the insanity defense. We briefly note that there is nothing in the record suggesting that Dr. Margolis, a psychiatrist, and Dr. Norris, a psychologist, lack the experience and education to testify as experts on forensic psychiatry or psychology. There is also no basis for concluding that their testimony was not based on sufficient facts; namely, their observations of defendant in the course of evaluating him, or that their testimony was not the product of reliable principles and methods that they reliably applied to the facts of the case. Although defendant argues that they should not have been permitted to testify because they did [\*23] not actually rebut Dr. Breggin's Prozac theory, because their testimony was relevant to rebut other essential elements of the insanity defense, the trial court did not abuse its discretion in allowing the testimony.

Defendant finally argues that the trial court erred in rejecting his proposed jury instructions on involuntary intoxication causing insanity. We review jury instructions in their entirety to determine whether there is error requiring reversal. People v Gonzalez, 256 Mich. App. 212, 225; 663 N.W.2d 499 (2003).

The trial court's instructions were modeled on CJI2d 7.10, involuntary intoxication, and CJI2d 7.11, insanity. Defendant's proposed instructions incorporated summaries of Dr. Breggin's theory of how Prozac induces aggressive and violent behavior in some individuals. Relying on Caulley, supra, defendant argues that the trial court's instructions were inadequate because they did not adequately explain that involuntary intoxication encompasses a situation where a patient experiences unexpected side effects as a result of voluntarily taking medically prescribed drugs. We disagree. In Caulley, this Court held that the [\*24]

then-existing version of CJI2d 7.10 did not fairly explain the defendant's theory of involuntary intoxication by prescription drugs. But CJI2d 7.10 has since been amended to conform with *Caulley*, so the trial court properly gave the standard instruction instead of defendant's proposed special instruction. The Court in *Caulley* did not require the trial court to incorporate summaries of an expert witness's testimony in the instruction; on the contrary, the Court refrained from setting forth specific instructions. [\*Id.\* at 190 n 4.](#)

We do not consider defendant's remaining issues, which are rendered moot by our decision to affirm the trial court's order granting defendant a new trial.

We affirm the trial court's order granting defendant a new trial and remand for further proceedings. We do not retain jurisdiction.

/s/ Jessica R. Cooper

/s/ Kathleen Jansen

/s/ Jane E. Markey

# **EXHIBIT 21**

*Estate of James Thomas Bush v. City of St. Clair Shores*

Court of Appeals of Michigan

May 7, 2019, Decided

No. 340667

**Reporter**

2019 Mich. App. LEXIS 1690 \*; 2019 WL 2016027

ESTATE OF JAMES THOMAS BUSH, by  
CHRISTINA REFFLE and THOMAS BUSH, Co-  
Personal Representatives, Plaintiffs-  
Appellees/Cross-Appellants, v CITY OF ST.  
CLAIR SHORES, ST. CLAIR SHORES POLICE  
DEPARTMENT, and THOMAS MURPHY,  
Defendants-Appellants/Cross-Appellees.

**Notice:** THIS IS AN UNPUBLISHED OPINION.  
IN ACCORDANCE WITH MICHIGAN COURT  
OF APPEALS RULES, UNPUBLISHED  
OPINIONS ARE NOT PRECEDENTIALLY  
BINDING UNDER THE RULES OF STARE  
DECISIS.

**Prior History:** [\*1] Macomb Circuit Court. LC  
No. 2016-000287-NI.

*Estate of Bush v. City of St. Clair Shores*, 2018  
Mich. App. LEXIS 1181 (Mich. Ct. App., Apr. 5,  
2018)

**Core Terms**

gross negligence, trial court, impaired, summary  
disposition, proximate cause, toxicology,  
defendants', speed, blood, controlled substance,  
marijuana, minivan, driver, government agency,  
motorcycle, causation, turning, lights, fault, video,  
foreseeable, damages, question of fact, marijuana  
use, activate, time of an accident, oncoming traffic,  
oncoming lane, driveway, oncoming

**Judges:** Before: O'BRIEN, P.J., and JANSEN and  
RONAYNE KRAUSE, JJ. RONAYNE KRAUSE,  
J. (concurring).

**Opinion**

PER CURIAM.

Plaintiffs, as co-personal representatives of the  
estate of James Thomas Bush (the "decedent"),  
brought this wrongful death action against  
defendants, the city of St. Clair Shores, the St. Clair  
Shores Police Department, and St. Clair Shores  
Police Officer Thomas Murphy. Defendants appeal  
as of right the trial court's order denying their  
motion for summary disposition under MCR  
2.116(C)(7) (governmental immunity) and (10) (no  
genuine issue of material fact). Plaintiffs have filed  
a cross-appeal, challenging the trial court's denial  
of their own motion for partial summary  
disposition, as well as the trial court's decision to  
allow defendants to introduce a toxicology report of  
an analysis of the decedent's blood and urine, which  
showed that the decedent had THC, the active  
ingredient of marijuana, in his system at the time of  
the events giving rise to this action. We affirm.

**I. RELEVANT FACTUAL BACKGROUND**

This action arises out of a vehicular accident on  
July 22, 2015, when St. Clair Shores Police Officer  
Thomas Murphy made a left-hand turn in front of  
the decedent, [\*2] who was operating a motorcycle  
and approaching from the opposite direction. The  
accident occurred at 9:34 p.m. on Eight Mile Road,  
near the border between St. Clair Shores and  
Harper Woods. Murphy was on road patrol, driving  
a Chevrolet Tahoe on east-bound Eight Mile Road  
near the I-94 freeway. At this location, Eight Mile  
Road is a two-lane road with a speed limit of 35



miles an hour. Murphy observed a minivan driving west on Eight Mile Road without its headlights on. He first attempted to alert the driver of the minivan, but when that had no effect, he made a U-turn to travel west on Eight Mile Road to make a traffic stop. Before he made the U-turn, he allowed a car that was behind the minivan to pass. After completing the U-turn, he caught up to the two vehicles as the minivan began to make a left-hand turn from Eight Mile Road into a residential driveway. As Murphy prepared to also turn into the driveway, he crossed into the oncoming lane of traffic. He activated his lights after he began his left-hand turn. As he did so, the decedent, who was riding a motorcycle, slid his motorcycle into the front right side of Murphy's police vehicle. The decedent attempted to avoid the collision, [\*3] but was unable to do so. The decedent was taken to a hospital, but died from injuries received in the collision. A postmortem analysis of the decedent's blood and urine indicated the presence of 16 ng/mL of Delta-9 THC, the active ingredient of marijuana. However, defendants' experts were unable to provide an opinion whether the decedent's marijuana use impaired his operation of the motorcycle at the time of the accident. Defendants also offered expert witnesses who concluded that the decedent was exceeding the speed limit at the time of the accident, but plaintiffs offered expert testimony refuting defendants' experts' calculations and speed estimates, including whether speed was a factor in the accident.

Defendants moved for summary disposition, arguing that there was no evidence that Murphy was negligent or grossly negligent, and thus they were entitled to governmental immunity. Defendants also argued that even if a jury could find that Murphy was negligent or grossly negligent, plaintiffs could not establish that Murphy's conduct was "the proximate cause" of the decedent's death, particularly in light of the decedent's marijuana use and excessive speed. Defendants further argued [\*4] that the decedent was 50% or more at fault, precluding plaintiffs from recovering any damages. Plaintiffs filed their

own motion for summary disposition on the issue of Murphy's gross negligence. The trial court denied both motions, finding that genuine issues of material fact precluded summary disposition for any party.

Plaintiffs also filed a motion to exclude the evidence of the toxicology analysis of the decedent's blood and urine. Plaintiffs argued that the toxicology results were not relevant because defendants' experts were unable to provide an opinion whether the decedent was actually impaired at the time of the accident. The trial court initially agreed and ruled that the toxicology report would be excluded, but on defendants' motion for reconsideration, the trial court reversed its decision and ruled that the report could be admitted.

## I. SUMMARY DISPOSITION

On appeal, we first consider whether the trial court erred by denying the parties' respective motions for summary disposition. As relevant to this appeal, the parties sought summary disposition under [MCR 2.116\(C\)\(7\)](#) and [\(10\)](#). In [Allen v Bloomfield Hills Sch Dist, 281 Mich App 49, 52; 760 NW2d 811 \(2008\)](#), this Court stated:

This Court reviews de novo a trial court's decision on a motion for summary disposition. [MCR 2.116\(C\)\(7\)](#) permits [\*5] summary disposition of a claim that is barred by immunity granted by law. In reviewing a motion under [MCR 2.116\(C\)\(7\)](#), a court is required to consider not only the pleadings, but also any affidavits, depositions, admissions, or other documentary evidence filed or submitted by the parties. The contents of the complaint must be accepted as true unless contradicted by the documentary evidence, which must in turn be considered in a light most favorable to the nonmoving party. The trial court properly grants a motion for summary disposition under [MCR 2.116\(C\)\(7\)](#) when the undisputed facts establish that the moving party is entitled to immunity granted by law. [Citations omitted.]

A motion for summary disposition under [MCR 2.116\(C\)\(10\)](#) tests the factual sufficiency of the complaint. [Joseph v Auto Club Ins Ass'n, 491 Mich 200, 206; 815 NW2d 412 \(2012\)](#). This Court reviews a "motion brought under [MCR 2.116\(C\)\(10\)](#) by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." [Latham v Barton Malow Co, 480 Mich 105, 111; 746 NW2d 868 \(2008\)](#). "Summary disposition under [MCR 2.116\(C\)\(10\)](#) is appropriately granted if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." [Greene v AP Prod, Ltd, 475 Mich 502, 507; 717 NW2d 855 \(2006\)](#). "A genuine issue of material fact exists when the record leaves open an issue upon [\*6] which reasonable minds could differ." [Debano-Griffin v Lake Co, 493 Mich 167, 175; 828 NW2d 634 \(2013\)](#).

Except as otherwise provided, the governmental tort liability act (GTLA), [MCL 691.1401 et seq.](#), broadly shields and grants to governmental agencies immunity from tort liability when an agency is engaged in the exercise or discharge of a governmental function. [MCL 691.1407\(1\)](#); [Duffy v Dep't of Natural Resources, 490 Mich 198, 204; 805 NW2d 399 \(2011\)](#); [Grimes v Dep't of Transp, 475 Mich 72, 76-77; 715 NW2d 275 \(2006\)](#). Therefore, a governmental agency can be held liable under the GTLA only if a case falls into one of the enumerated statutory exceptions. [Grimes, 475 Mich at 77](#). One of these is the automobile exception. [MCL 691.1405](#) provides, in pertinent part:

Governmental agencies shall be liable for bodily injury and property damage resulting from the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle of which the governmental agency is owner[.]

To establish a case of negligence, the plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) the defendant breached that duty; (3)

the breach of duty was a proximate cause of the plaintiff's damages; and (4) that the plaintiff suffered damages. [Frohman v Detroit, 181 Mich App 400, 411; 450 NW2d 59 \(1989\)](#).

With respect to Murphy, [MCL 691.1407\(2\)](#) provides immunity for government employees as follows:

Except as otherwise provided in this section, and without regard to the discretionary or ministerial nature of the [\*7] conduct in question, each officer and employee of a governmental agency, each volunteer acting on behalf of a governmental agency, and each member of a board, council, commission, or statutorily created task force of a governmental agency is immune from tort liability for an injury to a person or damage to property caused by the officer, employee, or member while in the course of employment or service or caused by the volunteer while acting on behalf of a governmental agency if all of the following are met:

- (a) The officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority.
- (b) The governmental agency is engaged in the exercise or discharge of a governmental function.
- (c) The officer's, employee's, member's, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage.

[MCL 691.1407\(8\)\(a\)](#) defines gross negligence as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." Through this language, the Legislature intended to limit employee liability to only "situations where the contested conduct was substantially more than negligent." [Maiden v Rozwood, 461 Mich 109, 122; 597 NW2d 817 \(1999\)](#). This [\*8] Court has stated that gross negligence involves

almost a willful disregard of precautions or

measures to attend to safety and a singular disregard for substantial risks. It is as though, if an objective observer watched the actor, he could conclude, reasonably, that the actor simply did not care about the safety or welfare of those in his charge. [*Tarlea v Crabtree*, 263 Mich App 80, 90; 687 NW2d 333 (2004).]

Whether a government employee's conduct constitutes gross negligence under MCL 691.1407 is generally a question of fact. *Id.* at 88. But a court may grant summary disposition under MCR 2.116(C)(7) if "no reasonable person could find that a governmental employee's conduct was grossly negligent." *Id.*

In this case, the parties dispute whether Murphy's conduct was negligent or grossly negligent. In analyzing these issues, the trial court considered a number of traffic regulations and observed that, "[i]n Michigan . . . the rule is that evidence of violation of a penal statute creates a rebuttable presumption of negligence." *Klanseck v Anderson Sales & Serv, Inc*, 426 Mich 78, 86; 393 NW2d 356 (1986). With respect to the decedent's actions, the trial court noted that both MCL 257.627 and MCL 257.628(9) proscribe operating a motor vehicle at speeds faster than the established limit. The trial court also noted that pursuant to MCL 257.649(5), "[t]he driver of a vehicle traveling at an unlawful [\*9] speed shall forfeit a right of way which the driver might otherwise have." With respect to Murphy's actions, the trial court referred to MCL 257.650(1), which establishes rules for the right of way when turning left at an intersection. More directly relevant, MCL 257.648(1) provides that "[t]he operator of a vehicle or bicycle upon a highway, before stopping or turning from a direct line, shall first determine that the stopping or turning can be made in safety and shall give a signal as required in this section."<sup>1</sup>

In reviewing the motions for summary disposition, the trial court viewed a video recording of the accident, as recorded by a dash-board camera ("dash-cam") from Murphy's police vehicle. The trial court found that the dash-cam video, together with other evidence submitted by the parties, established a question of fact whether Murphy was negligent or grossly negligent. We agree.

The dash-cam video shows that Murphy slowed behind the car following the minivan. As the minivan started its turn, the car behind it started to accelerate and Murphy immediately began to move into the oncoming, east-bound lane. Murphy did not make a "clean" turn, but proceeded partly into the oncoming lane as he approached the driveway [\*10] before turning. The minivan was not even through the oncoming lane into the driveway at this time. Once the uninvolved car moved out of the way, the decedent's motorcycle can be seen. From what is depicted in the video, Murphy may not have seen the oncoming motorcycle, but not because its headlights blurred into those behind it, but because he could not see beyond the car in front of him to even check whether the oncoming lane was clear before he began to make his turn. Despite what some of the still photographs appear to depict, it appears in real time that Murphy had no clear line of sight when he began to make his turn. This evidence supports the trial court's determination that the dash-cam video establishes a question of fact regarding whether Murphy was negligent or grossly negligent when he turned into the lane of oncoming traffic without ascertaining that it was safe to do so.

Other aspects of the video also support the trial court's decision. The sky was not altogether dark, but the streetlights were on and a slight glare can be seen. Murphy also did not activate his emergency

<sup>1</sup>We note that a driver also owes a general duty of care to other motorists and pedestrians to exercise ordinary and reasonable care and caution in the operation of his car and make reasonable allowances for traffic, weather, and road conditions. *De Priest v*

*Kooiman*, 379 Mich. 44, 46; 149 N.W.2d 449 (1967); *Zarzecki v Hatch*, 347 Mich 138, 141; 79 NW2d 605 (1956). In addition, police officers pursuing a suspect owe a duty of care to innocent third persons. *Robinson v Detroit*, 462 Mich 439, 450-451; 613 NW2d 307 (2000). Although the pursuit here did not involve a high-speed chase, Murphy acknowledged that he was pursuing the driver of the minivan when he made his turn into traffic.

lights until after he was already into his turn, leaving oncoming traffic no time to see them and [\*11] proceed with caution. In addition, at the time Murphy began his turn, he could not have known whether there would be room to pull into the driveway behind the minivan. If the minivan had stopped at the end of the driveway, Murphy's vehicle would have had to stop sideways in the oncoming lane, leaving him exposed to any oncoming cars that might not have enough time to see him and stop. There is no apparent reason that Murphy could not have simply stopped in the west-bound lane and waited. The driver of the minivan was not attempting to evade Murphy, and the minivan was pulling into a driveway, rather than a side street.

In his deposition, Murphy testified that he could not tell whether the camera angle was better or worse than his own field of vision at the time he made the turn. He stated that he did see a set of lights in the distance, and acknowledged that one of the headlights belonged to the decedent, but he could not tell from the video whether they were approaching. He maintained that he thought he had enough room to safely make the turn. He further testified that he could see the motorcycle approach in the video, but stated that he never saw the motorcycle at the time of the [\*12] accident.

Defendants note that, according to the still photographs, "the single headlight of the motorcycle does not become independent of the headlights of following vehicles until frame 170, when the entire width of Murphy's SUV is already in the lane of the approaching traffic." Even if this is true, it does not preclude a finding that Murphy acted negligently, or was even grossly negligent. A reasonable jury could find that, if the glare of the oncoming traffic rendered it difficult or impossible to see whether any of the vehicles were close enough to pose a danger, Murphy reasonably should have stopped and waited until he was sure that all oncoming traffic had passed before turning, and find that his failure to do so constituted negligence, and possibly even gross negligence.

The evidence established a question of fact whether Murphy began his left-hand turn either without properly checking for oncoming vehicles, or without being able to clearly ascertain if the pathway was clear. A jury could find that either scenario, along with Murphy's failure to activate his emergency lights until he had begun his turn and was in the pathway of oncoming vehicles, demonstrated a substantial [\*13] lack of concern for whether an injury would result, thereby supporting a finding of gross negligence.

We reject defendants' argument that Murphy's failure to activate his lights before he began his turn is immaterial to the question of gross negligence because he was not acting in a high-speed chase or an emergency situation. Under [MCL 257.603](#), the driver of an emergency vehicle, including a police vehicle, may "disregard regulations governing direction of movement or turning in a specified direction" for the purpose of "pursuing or apprehending a person . . . suspected of violating the law," but only if the driver "sounds an audible signal by bell, siren, air horn, or exhaust whistle as may be reasonably necessary," unless the driver of a police vehicle "is engaged in an emergency run in which silence is required." Although Murphy was not engaged in an emergency run, he admittedly was pursuing a person suspected of violating the law.

Moreover, defendants conflate the premise that Murphy may not have been required to activate his lights with their contention that his decision not to do so sooner could not be taken into account when deciding whether, as a whole, his actions could be considered negligent [\*14] or grossly negligent. Given the evidence that Murphy decided to activate his lights during the turn, a jury could find that he recognized the significance of doing so in order to alert oncoming cars to his presence, and that, having failed to activate the lights before he began making his turn, he should have waited to turn until any oncoming vehicles had a chance to see him and react to his presence. In any event, the fact that Murphy used his lights *during the turn* does not



provide him with a special defense for moving partly into the oncoming lane or turning in front of the decedent before the lights were activated. See [\*Flanagin v Kalkaska Co Rd Comm\*, 319 Mich App 633, 638; 904 NW2d 427 \(2017\)](#) (recognizing that police and emergency vehicles may be excused from following the "rules of the road," but they are still required to ascertain that it is safe to do so).

Defendants alternatively argue that plaintiffs failed to establish a question of fact concerning proximate causation. As noted earlier, under [\*MCL 691.1407\(2\)\*](#), a government employee's gross negligence does not give rise to liability unless the negligence is "the proximate cause" of the plaintiff's injuries. In the context of [\*MCL 691.1405\*](#), our Supreme Court has equated this element with proof that the accident "resulted from" [\*15] the negligent operation of a motor vehicle by the government employee. [\*Robinson v Detroit\*, 462 Mich 439, 445; 613 NW2d 307 \(2000\)](#). This Court has equated *Robinson's* analysis as creating a requirement that the automobile exception requires that the government vehicle be physically involved in the collision, which occurred here. [\*Curtis v City of Flint\*, 253 Mich App 555, 561; 655 NW2d 791 \(2002\)](#). Defendants also argue that even if Murphy acted negligently, pursuant to statute, plaintiffs cannot recover any damages because the decedent was 50% or more at fault for the accident.

Causation in a negligence action requires proof of both cause in fact and proximate cause. [\*Reeves v Kmart Corp\*, 229 Mich App 466, 479; 582 NW2d 841 \(1998\)](#). "Proximate cause is an essential element of a negligence claim." [\*Ray v Swager\*, 501 Mich 52, 63; 903 NW2d 366 \(2017\)](#). Proximate cause requires an examination of the foreseeability of consequences, and whether a defendant is legally responsible for those consequences. *Id.* Proximate cause should not be confused with cause in fact, or factual causation, which means that a plaintiff's injury would not have occurred "but for" the actions of a defendant. *Id.* A court must determine that a defendant's negligence was a cause in fact of a plaintiff's injuries before it can conclude that it

was the proximate or legal cause of the injuries. *Id. at 64*. "In a negligence action, a plaintiff must establish both factual [\*16] causation, i.e., 'the defendant's conduct in fact caused harm to the plaintiff,' and legal causation, i.e., the harm caused to the plaintiff 'was the general kind of harm the defendant negligently risked.'" *Id.* (quotations omitted). When a motion for summary disposition challenges causation, "the court's task is to review the record evidence, and all reasonable inferences therefrom, and decide whether a genuine issue of any material fact exists to warrant a trial." [\*Skinner v Square D Co\*, 445 Mich 153, 161, 516 NW2d 475 \(1994\)](#).

These general causation principles also apply when deciding whether Murphy's gross negligence could be found to be "the" proximate cause of the decedent's injuries within the meaning of [\*MCL 691.1407\(2\)\(c\)\*](#). That determination hinges on "whether it was foreseeable that the defendant's conduct could result in the harm to the victim." [\*Ray\*, 501 Mich at 65](#); see also *id. at 74*. As explained by this Court, to determine whether a government employee's conduct can be considered "the" proximate cause of an injury, a court should engage in the following analysis:

In addition to considering the governmental actor's conduct, it must also be decided whether there are other proximate causes of the injury. [\*\[Ray, 501 Mich\] at 74-76\*](#). Determining if there were other proximate causes requires [\*17] consideration of whether any other human actor was negligent because "only a human actor's breach of a duty can be a proximate cause." *Id. at 72*. "Nonhuman and natural forces" may bear on the question of foreseeability and intervening causes for purposes of analyzing proximate cause, but they can never be considered the proximate cause of a plaintiff's injuries for purposes of the GTLA. *Id.*

Once the various proximate causes have been determined, the question then becomes whether, taking all possible proximate causes

into account, the government actor's gross negligence was the proximate cause of injury. *Id.* at 83. This requires "considering defendant's actions alongside any other potential proximate causes to determine whether defendant's actions were, or could have been, 'the one most immediate, efficient, and direct cause' of the injuries." *Id.* at 76. The relevant inquiry is not whether the defendant's conduct was the immediate factual cause of injury, but whether, weighing the legal responsibilities of the actors involved, the government actor could be considered "the proximate cause." *Id.* at 71-72. [*Ray v Swager (After Remand)*, 321 Mich App 755, 760; 909 NW2d 917, 920 (2017).]

Applying this standard, we conclude that there are material questions of fact regarding the respective negligence of [\*18] Murphy and the decedent, which in turn affect their competing legal responsibilities, as well as a determination of the proximate cause of the decedent's death. Therefore, the trial court properly denied defendants' motion for summary disposition on the issue of proximate cause.

One of defendants' principal arguments is that it was not foreseeable that Murphy's actions would be harmful to the decedent because Murphy could not have seen the decedent as Murphy made his turn. This argument presupposes that Murphy did not act negligently, or breach any duty of due care, during his turn. To prevail under this argument, defendants would need to show that there is no genuine issue of fact that Murphy properly checked for any oncoming traffic before beginning his turn, and was not capable of seeing the decedent approach. However, a jury could conclude from the video, as the trial court did, that Murphy began entering oncoming traffic and turning before he was able to clearly see whether anyone was approaching. If a jury found that Murphy breached his duty of care by beginning his turn without adequate warning and without properly ascertaining that it was safe to do so, the foreseeability question [\*19] becomes

whether someone who improperly turns left into oncoming traffic could reasonably foresee that such conduct could result in harm to another person. The likelihood of a collision under such circumstances is indeed foreseeable. The factual questions about Murphy's conduct preclude a court from determining that Murphy could not be the proximate cause of the accident as a matter of law.

Defendants also argue that, even if Murphy acted negligently, he was not the proximate cause of the accident because of the decedent's speeding and marijuana use. Similarly, defendants argue that plaintiffs cannot recover because the decedent was more than 50% at fault for the accident. Defendants rely on [MCL 500.3135\(2\)\(b\)](#) and [MCL 600.2955a](#) in support of the latter argument. [MCL 500.3135\(2\)\(b\)](#) provides that, for noneconomic loss damages in an automobile accident, "damages shall be assessed on the basis of comparative fault, except that damages shall not be assessed in favor of a party who is more than 50% at fault." More generally, [MCL 600.2955a](#) provides:

(1) It is an absolute defense in an action for the death of an individual or for injury to a person or property that the individual upon whose death or injury the action is based had an impaired ability to [\*20] function due to the influence of intoxicating liquor or a controlled substance, and as a result of that impaired ability, the individual was 50% or more the cause of the accident or event that resulted in the death or injury. If the individual described in this subsection was less than 50% the cause of the accident or event, an award of damages shall be reduced by that percentage.

(2) As used in this section:

(a) "Controlled substance" means that term as defined in [section 7104](#) of the public health code, Act No. 368 of the Public Acts of 1978, being [section 333.7104 of the Michigan Compiled Laws](#).

(b) "Impaired ability to function due to the



influence of intoxicating liquor or a controlled substance" means that, as a result of an individual drinking, ingesting, smoking, or otherwise consuming intoxicating liquor or a controlled substance, the individual's senses are impaired to the point that the ability to react is diminished from what it would be had the individual not consumed liquor or a controlled substance. An individual is presumed under this section to have an impaired ability to function due to the influence of intoxicating liquor or a controlled substance if, under a standard prescribed by [section 625a](#) of the Michigan vehicle code, Act No. 300 [\*21] of the Public Acts of 1949, being [section 257.625a of the Michigan Compiled Laws](#), a presumption would arise that the individual's ability to operate a vehicle was impaired.

We conclude that there are genuine issues of fact regarding whether the decedent's speed or marijuana use were a contributing factor to the accident, and if so, the extent to which they contributed to the decedent's comparative fault.

Although evidence of violation of a penal statute creates a rebuttable presumption of negligence, [Klanseck, 426 Mich at 86](#), the decedent's intoxication or speeding would not itself relieve Murphy of liability for his negligence on the ground that the collision was not foreseeable or that the decedent's actions were a superseding cause as a matter of law.

Where an act of negligence is a substantial factor in bringing about an injury, it does not cease to be a legal and proximate cause thereof because of the intervention of a subsequent act of negligence of another which contributed to the injury, if the prior act of negligence is still operating, and the injury inflicted is not different in kind from that which would have resulted from the prior act. [[Comstock v Gen Motors Corp, 358 Mich 163, 178; 99 NW2d 627, 635 \(1959\)](#) (quotation omitted).]

Murphy's acts or omissions in relation to turning before he could see around the car [\*22] in front of him, or in misjudging the distance between himself and the decedent, was clearly operative up to the point of impact in this accident. The collision that resulted is the kind of injury that such actions produce. Thus, defendants' arguments depend on whether the decedent was grossly negligent, which would act as a superseding cause to break the chain of causation. [People v Schaefer, 473 Mich 418, 437-438, 703 NW2d 774 \(2005\)](#), overruled in part on other grounds in [People v Derror, 475 Mich 316, 334; 715 NW2d 822 \(2006\)](#).

Contrary to defendants' argument, the decedent's marijuana use alone does not automatically constitute a superseding cause. [People v Bergman, 312 Mich App 471; 879 NW2d 278 \(2015\)](#). With respect to whether the decedent's speed, combined with the marijuana use, could act as a superseding cause, questions of fact remain that preclude summary disposition.<sup>2</sup> As the trial court noted, there was conflicting expert testimony concerning both the effect of the decedent's marijuana use on his driving ability and how fast he was going at the time of the accident. Given the conflicting evidence regarding whether the decedent's speed or presence of marijuana in his system contributed to the accident, the trial court properly declined to rule that Murphy could not be the proximate cause of the accident, or that the decedent was 50% or more at [\*23] fault. Defendants' reliance on the fact that other cars stopped whereas the decedent did not does not compel a conclusion that the decedent was grossly negligent or speeding excessively. We reject this argument because there is no evidence that the decedent's motorcycle was similarly situated to any other vehicles at the time Murphy began his turn and entered the roadway.

For these reasons, the trial court did not err by denying defendants' motion for summary disposition.

---

<sup>2</sup>These questions of fact also preclude deciding that the decedent was 50% or more at fault for the accident.

Although plaintiffs argue on cross-appeal that the trial court erred by denying their own motion for summary disposition on the issues of Murphy's gross negligence and the absence of any fault by the decedent, we conclude that the trial court also properly denied plaintiff's motion in light of the disputed factual issues discussed earlier.

## II. ADMISSIBILITY OF THE TOXICOLOGY RESULTS

On cross-appeal, plaintiffs argue that the trial court erred by ruling that the decedent's toxicology results were admissible because they were relevant to the issue of the decedent's comparative fault. They further argue that, even if relevant, the evidence should have been excluded under [MRE 403](#). We disagree with both arguments. As our Supreme [\*24] Court stated in [Waknin v Chamberlain](#), 467 Mich 329, 332; 653 NW2d 176 (2002):

We review for an abuse of discretion a trial court's decision whether to admit evidence. To the extent that this inquiry requires examination of the meaning of the Michigan Rules of Evidence, we address such a question in the same manner as the examination of the meaning of a court rule or a statute, which are questions of law that we review de novo. [Citations omitted.]

An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes. [Maldonado v Ford Motor Co](#), 476 Mich 372, 388; 719 NW2d 809 (2006).

Plaintiffs contend that because none of defendants' expert witnesses were able to offer an opinion as to whether the marijuana in the decedent's system actually affected his ability to drive, the toxicology results should have been excluded as irrelevant. We disagree. "Generally, all relevant evidence is admissible at trial." [People v Aldrich](#), 246 Mich. App. 101, 114; 631 NW2d 67 (2001). Relevant evidence is evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or

less probable than it would be without the evidence." [MRE 401](#).

We agree with defendants that the fact that the decedent's blood tested positive for THC is relevant to [\*25] the question of negligence which, as noted earlier, must be considered to determine whether the decedent could be an additional proximate cause of the accident, possibly relieving Murphy or the city of liability. To this end, [MCL 257.625\(8\)](#) prohibits a person operating a motor vehicle with "any amount" of a schedule 1 controlled substance in his body. This creates a presumption of negligence on the decedent's part. [Klanseck](#), 426 Mich at 86. In addition, plaintiffs' emphasis on the inability of defendants' experts to state with certainty that the decedent's marijuana use impaired his ability to drive reflects an overly narrow view of relevance. Moreover, it conflates intoxication with actual impairment. To avoid liability pursuant to [MCL 600.2955a\(1\)](#), defendants must show both that the decedent was under the influence of intoxicating liquor or a controlled substance, and that the substance impaired the decedent's ability to function such that the decedent was 50% or more the cause of the accident. When deciding questions of fact, a jury is permitted to consider all the evidence and make inferences from testimony presented. [Jenkins v Raleigh Trucking Servs, Inc](#), 187 Mich App 424, 427; 468 NW2d 64, 66 (1991). Even though defendants' experts were unable to offer an opinion regarding whether the decedent was actually impaired [\*26] at the time of the accident, their testimony about how marijuana affects brain chemistry would provide the jury with a basis for determining that the decedent's brain chemistry could have been affected if he was under the influence of marijuana. The toxicology results were probative of whether the decedent was under the influence of marijuana, even if the results, standing alone, could not establish the extent, if any, of the decedent's impairment. It would be up to the jury to determine from this evidence, along with other testimony and evidence of the decedent's conduct and reaction to the events, including the jury's own observations of the situation

encountered by the decedent as depicted in the dash-cam video, whether the decedent's use of marijuana impaired his senses "to the point that [his] ability to react [was] diminished from what it would [have been] had [he] not consumed liquor or a controlled substance." [MCL 600.2955a\(2\)\(b\)](#).<sup>3</sup>

As discussed by defendants, [MCL 257.625a\(6\)\(a\)](#) also supports the admissibility of the toxicology evidence. [MCL 257.625a\(6\)](#) provides, in pertinent part:

The following provisions apply to chemical tests and analysis of a person's blood, urine, or breath, other than a preliminary chemical breath analysis: [\*27]

(a) The amount of alcohol or presence of a controlled substance or other intoxicating substance in a driver's blood or urine or the amount of alcohol in a person's breath at the time alleged as shown by chemical analysis of the person's blood, urine, or breath is admissible into evidence in any civil or criminal proceeding and is presumed to be the same as at the time the person operated the vehicle.

Our Supreme Court has recognized that [MCL 257.625a\(6\)\(a\)](#) is a "flat statement" of admissibility, and that "[p]ursuant to the express language of the statute, test results 'are admissible . . . and will be considered.'" [People v Wager, 460 Mich 118, 121, 124-125; 594 NW2d 487 \(1999\)](#), citing [MCL 257.625a\(6\)\(b\)\(ii\)](#).

Plaintiffs cite *Bergman* in support of their argument that evidence of the presence of THC in the decedent's blood, without more, is irrelevant. In *Bergman*, the defendant was convicted of operating a vehicle under the influence of intoxicating liquor or a controlled substance causing death when he crossed the centerline and struck a pickup truck in

the oncoming lane, killing the occupants. [Bergman, 312 Mich App at 474-475](#). On appeal, the defendant argued that the trial court had erred "by excluding evidence of intoxicants and controlled substances in the blood stream of . . . the driver of the [truck struck by [\*28] the defendant]," because such evidence was relevant to establishing that driver's negligence. *Id. at 482*. This Court disagreed, concluding that the excluded evidence was not probative of any intervening or superseding cause to break the causal link between the defendant's driving and the deaths of the occupants of the other truck. *Id. at 486*. However, this determination was based on the general premise that criminal liability will not attach when the result of the defendant's conduct is viewed as too remote or unnatural and that a superseding or intervening cause, such as gross negligence, has broken the chain of causation. See [People v Feezel, 486 Mich 184, 195; 783 NW2d 67 \(2010\)](#) (CAVANAGH, J.). Ordinary negligence, however, does not break the chain of causation because it is foreseeable. *Id.* Thus, although this Court in *Bergman* also used the term "negligence, it appears that it actually found that without other evidence of misconduct on the part of the other driver, the evidence of intoxicants in his blood would not be relevant to show gross negligence to prevent criminal liability. [Bergman, 312 Mich App at 486](#). Accordingly, *Bergman* is not dispositive of the instant case. Although Murphy's possible gross negligence is at issue in deciding his liability, the determination of the [\*29] decedent's comparative negligence, if any, still remains if plaintiffs are able to convince a jury that Murphy was grossly negligent and the proximate cause of the accident. See [Laier v Kitchen, 266 Mich App 482, 496; 702 NW2d 199 \(2005\)](#) ("The standards for determining the comparative negligence of a plaintiff are the same as those of a defendant—the jury must consider the nature of the conduct and its causal relationship to the damages.") In addition, unlike in *Bergman*, defendants have offered other evidence of the decedent's negligence, e.g., that he was exceeding the speed limit. Moreover, *Bergman* did not discuss the import, if any, that [MCL](#)

<sup>3</sup>We express no opinion whether the testimony of defendants' experts satisfies the standards of reliability of expert testimony under [MRE 702](#) and [Daubert v Merrell Dow Pharm, Inc, 509 U.S. 579; 113 S. Ct. 2786; 125 L. Ed. 2d 469 \(1993\)](#).

[257.625a\(6\)\(a\)](#) would have on an analysis of this issue, or the fact that evidence of violation of a penal statute creates a rebuttable presumption of negligence. [Klanseck, 426 Mich at 86](#).

Accordingly, the trial court did not abuse its discretion by ruling that the decedent's toxicology results were relevant, and thus generally admissible under [MRE 402](#).

Plaintiffs further argue that even if the evidence is marginally relevant, it should be excluded under [MRE 403](#) because its probative value is substantially outweighed by the danger of unfair prejudice. As our Supreme Court observed in [People v Mills, 450 Mich 61, 75-76; 537 NW2d 909 \(1995\)](#), "[a]ll evidence offered by the parties is 'prejudicial' to some extent, [\*30] but the fear of prejudice does not generally render the evidence inadmissible." "It is only when the probative value is substantially outweighed by the danger of unfair prejudice that evidence is excluded." *Id.* See also [Waknin, 467 Mich at 335](#). To require that evidence be excluded under [MRE 403](#), there must be "an undue tendency" for the evidence "to move the tribunal to decide on an improper basis, commonly, though not always, an emotional one." [People v Vasher, 449 Mich 494, 501; 537 NW2d 168 \(1995\)](#).

As explained earlier, the toxicology results are relevant, particularly when considered with other evidence that the decedent was speeding, and the proposed testimony about the general effect of marijuana on brain chemistry, such as altering perception and decreasing reaction times or a person's ability to multi-task. This relevance is not "tangential" or "marginal," but would serve as a substantial basis for determining whether the decedent was also at fault, and to what extent. Plaintiffs suggest that a jury could be influenced by the "popular stereotype" of marijuana users and thereby unfairly decide the case based on emotional considerations rather than a proper evaluation of the evidence. We are not persuaded that this is an appropriate basis for excluding the evidence, [\*31] which otherwise is relevant, particularly

considering that plaintiffs may request a cautionary instruction to ensure that the jury considers the evidence only for its permissible purpose and does not rely on any preconceived prejudices. Juries are presumed to follow their instructions. [People v Abraham, 256 Mich App 265, 279; 662 NW2d 836 \(2003\)](#). Accordingly, the trial court did not abuse its discretion by refusing to exclude the evidence under [MRE 403](#).

Affirmed.

/s/ Colleen A. O'Brien

/s/ Kathleen Jansen

**Concur by:** Amy Ronayne Krause

**Concur**

---

RONAYNE KRAUSE, J. (*concurring*)

I agree with the majority in all respects other than its reasoning for why the decedent's toxicology report was admissible. I conclude that the majority's reasoning improperly and unconstitutionally holds that [MCL 257.625a\(6\)\(a\)](#) overrides the Michigan Rules of Evidence. I would hold that the statement of admissibility in the statute cannot bypass considerations of relevance under [MRE 402](#). However, I agree that the report is admissible because it is relevant.

The Legislature may enact statutes affecting the admissibility of evidence that irreconcilably conflict with the Michigan Rules of Evidence and will prevail over the latter, to the extent they are "based on policy considerations over and beyond the orderly dispatch of judicial [\*32] business." [People v Watkins, 491 Mich 450, 475; 818 NW2d 296 \(2012\)](#). However, our Supreme Court's "authority in matters of practice and procedure is exclusive and therefore beyond the Legislature's power to exercise." *Id. at 472-473*. The constitutionality of a statute affecting admissibility of evidence turns on "whether the statute addresses



purely procedural matters or substantive law." *McDougall v Schanz*, 461 Mich 15, 27; 597 NW2d 148 (1999). In *Watkins*, our Supreme Court determined that *MCL 768.27a* did not purport to override *MRE 403* despite its silence regarding that court rule, and therefore our Supreme Court did not need to decide whether a statute could prevail over *MRE 403*. *Watkins*, 491 Mich 481-486, 486 n 82. Furthermore, relevance was unquestioned in that case. See *id.* at 470. Nevertheless, our Supreme Court took the opportunity to observe that "it is not hard to see that *MRE 402* and *403* are rules of the procedural variety." *Id.* at 475 n 61. I would not dismiss that observation as mere dicta. See *People v Higuera*, 244 Mich App 429, 437; 625 NW2d 444 (2001).

It is therefore clear that *MRE 401* and *402*, which define what constitutes relevant evidence and establish that only relevant evidence may be admitted, are so fundamental to the practice and procedure of the courts that the Legislature cannot constitutionally enact a statute in conflict with either court rule. We must presume the Legislature did not intend to create a conflict or to enact an unconstitutional [\*33] law. See *McDougall*, 461 Mich at 24. As the majority notes, our Supreme Court has held that blood toxicology tests are admissible pursuant to *MCL 257.625a(6)(a)*. *People v Wager*, 460 Mich 118, 121-126; 594 NW2d 487 (1999). However, at issue in *Wager* was the validity of prerequisites to that admissibility developed through case law, not any potential conflict with a rule of evidence. *Id.* Indeed, the *Wager* Court implied that relevance under the rules of evidence was a preemptive consideration. *Id.* at 125, 125 n 8. I therefore conclude, as our Supreme Court did in *Watkins*, that *MCL 257.625a(6)(a)* is constitutional but necessarily subordinate to considerations of relevance under *MRE 401* and *402*, and the possibility of unfair prejudice under *MRE 403*. To the extent the majority holds otherwise, I conclude that it upholds a violation of the separation of powers.

Nonetheless, I agree with the majority to the extent

it rejects plaintiffs' argument that the toxicology results should have been excluded as irrelevant. Plaintiff argues that none of defendants' expert witnesses could offer an opinion whether the THC in decedent's blood actually affected his ability to drive. I believe that this mischaracterizes the experts' testimony slightly, and under the circumstances, we conclude that the weaknesses in the experts' proffered testimony goes to weight [\*34] rather than admissibility.

According to the toxicology report, the decedent was found to have 16 ng/mL of THC in his blood, in addition to a certain amount of inactive and irrelevant metabolite. Both of defendant's proffered expert witnesses adamantly stated that at a blood THC level of 16 ng/mL, the decedent was definitely experiencing some impairment effects of marijuana. The experts conceded that different people are affected in different ways and to different extents, and it was impossible to determine the precise nature and extent of the impairment that the decedent would have experienced.<sup>1</sup> However, they did not opine that they could not determine whether the decedent was impaired. Their testimony was quite the opposite. Furthermore, they opined that some of the likely effects would have been slowed reaction time and impaired multi-tasking or concentration.

Defendant's experts were only unable to offer an opinion regarding the *extent* of the decedent's impairment at the time of the accident. They were, however, able to offer an opinion that the [\*35] decedent was, in fact, impaired. As the majority

---

<sup>1</sup>This is consistent with scientific literature finding that THC definitely causes impairment, but that specific blood concentrations of THC have little predictive value in any particular individual. See Robbe and O'Hanlon, *Marijuana and actual driving performance*, US Dep't of Transp Report No. DOT HS 808 078 (1993), available at <https://rosap.ntl.bts.gov/view/dot/1558> ; Robbe and O'Hanlon, *Marijuana, Alcohol, and Actual Driving Performance*, US Dep't of Transp Report No. DOT HS 808 939 (1999), available at <https://rosap.ntl.bts.gov/view/dot/1649> ; Compton, *Marijuana-Impaired Driving — A Report to Congress*, US Dep't of Transp Report No. DOT HS 812 440, available at <https://rosap.ntl.bts.gov/view/dot/34995> .

states, the experts' testimony regarding the effects THC has on brain chemistry, consciousness, and functioning would have assisted the jury in determining whether the decedent was impaired by marijuana and the extent, if any, to which that impairment played a role in his ability to avoid the accident. Under the circumstances of this case, I cannot find that the trial court abused its discretion by ruling that the toxicology results were relevant, and therefore admissible, under [MRE 402](#). Additionally, I agree with the majority that I am unpersuaded that the probative value of the report was substantially outweighed by a danger of unfair prejudice pursuant to [MRE 403](#). In addition to the majority's discussion, defendant's experts' opinions are subject to cross-examination regarding their inability to determine how impaired the decedent might have been.

I concur in affirming.

/s/ Amy Ronayne Krause



# **EXHIBIT 22**

**FORNARI v. GREGORY LEE HOOVER & MIDWEST FIBERGLASS POOL  
DISTRIBS.**

Court of Appeals of Michigan

February 8, 2007, Decided

No. 265813

**Reporter**

2007 Mich. App. LEXIS 321 \*; 2007 WL 420210

ANTHONY P. FORNARI, Plaintiff-Appellant, v  
GREGORY LEE HOOVER and MIDWEST  
FIBERGLASS POOL DISTRIBUTORS,  
Defendants-Appellees.

**Notice:** [\*1] THIS IS AN UNPUBLISHED  
OPINION. IN ACCORDANCE WITH  
MICHIGAN COURT OF APPEALS RULES,  
UNPUBLISHED OPINIONS ARE NOT  
PRECEDENTIALLY BINDING UNDER THE  
RULES OF STARE DECISIS.

**Subsequent History:** Appeal denied by [Fornari v. Hoover, 2007 Mich. LEXIS 2795 \(Mich., Oct. 29, 2007\)](#)

**Prior History:** Genesee Circuit Court. LC No. 04-078667-NI.

**Disposition:** Reversed and remanded. We do not retain jurisdiction in this matter.

**Core Terms**

trailer, trial court, directed verdict, turn signal, reasonable inference, time of an accident, brake light, truck, light most favorable, proximate cause, grant a motion, cause in fact, activated, causation, injuries, proof of causation, defense counsel, nonmoving party, de novo, intersection, deposition, turning, lights, signal

**Judges:** Before: Sawyer, P.J., and Fitzgerald and Donofrio, JJ.

**Opinion**

PER CURIAM.

Plaintiff appeals as of right from an order granting a directed verdict in favor of defendants in this negligence suit arising from a motor vehicle accident. Because plaintiff created a justiciable issue of fact on causation, we reverse and remand for trial. This case is being decided without oral argument under [MCR 7.214\(E\)](#).

Plaintiff argues that the trial court erred in granting a directed verdict in favor of defendants based on the issue of proximate cause because there was evidence that defendant Gregory Hoover's vehicle and trailer were stopped without brake lights or turning signal being activated at the time of the accident when plaintiff caught his leg on the rear of the trailer as he drove his motorcycle in avoidance of the trailer.

We review a decision on a motion for a directed verdict [\*2] de novo with the evidence considered in the light most favorable to the nonmoving party. [Zsigo v Hurley Med Ctr, 475 Mich 215, 220-221; 716 N.W.2d 220 \(2006\)](#). The elements of a negligence claim are that: (1) the defendant owed the plaintiff a duty of care, (2) the defendant breached that duty, (3) the plaintiff was injured, and (4) the defendant's breach caused the plaintiff's injuries. [Henry v Dow Chemical Co, 473 Mich. 63, 71-72; 701 N.W.2d 684 \(2005\)](#). Proof of causation requires proof of both cause in fact and proximate cause. [Wiley v Henry Ford Cottage Hosp, 257 Mich. App. 488, 496; 668 N.W.2d 402 \(2003\)](#). However, a defendant's negligence cannot

be a proximate cause of a plaintiff's injuries unless it was a cause in fact. [\*Craig v Oakwood Hosp\*, 471 Mich. 67, 87; 684 NW2d 296 \(2004\)](#). Cause in fact may be established by reasonable inferences from circumstantial evidence, but not by mere speculation. [\*Wiley, supra at 496\*](#). Accordingly, proof of causation in fact "requires more than a mere possibility or a plausible explanation." [\*Craig, supra at 87\*](#). [\*3] Rather, to present sufficient evidence of causation, a plaintiff must present substantial evidence that "more likely than not, but for the defendant's conduct, the plaintiff's injuries would not have occurred." [\*Skinner v Square D Co\*, 445 Mich. 153, 164-165; 516 N.W.2d 475 \(1994\)](#).

The accident at issue occurred on Torrey Road near its intersection with Cook. Plaintiff testified that Hoover's truck and empty low riding trailer were stopped at the time of the accident and that neither had brake lights or turn signal activated. A permissible inference from the evidence presented is that defendant intended to turn onto Cook. In viewing the evidence in a light most favorable to him, [\*Zsigo, supra at 220-221\*](#), it must be accepted that neither the brake lights nor the turn signals on either vehicle were activated at the time of the accident. In addition, during trial, defendant allowed the inference to be created that the trailer lights were not operative due to a loose electrical connection to the trailer. Defendant further testified by deposition introduced at the trial that he was relying on the trailer taillights to provide notice when he anticipated [\*4] a turn. This testimony also creates the inference that defendant's trailer did not have operable turn signals.

At trial, Dr. Pachella, plaintiff's perception expert, provided testimony on observation and reactions with respect to stopped and slowing vehicles. He also testified on the necessity of brake lights and turn signals to aid in correct motor vehicle operation perceptions. The trial court observed that in Dr. Pachella's opinion, under the circumstances present, it could certainly be possible that Hoover's actions or inactions were the proximate cause of the accident. Although accepting this expert opinion,

the trial court believed that Dr. Pachella's opinion on causation "hinged on the question of whether or not Mr. Hoover was in fact stopped . . . ." The trial court then engaged in a factual analysis of the evidence surrounding whether Hoover's truck and trailer were stopped at the time of the accident. During this exercise, the trial court questioned defense counsel regarding his recollection of the testimony. Defense counsel advised the court, "He absolutely did not testify that he knew it was stopped." Counsel's confirmation cemented the court's view that the evidenced [\*5] failed to establish the requisite fact for signal failures and granted the motion for directed verdict.

Again, we point out that, a trial court's decision whether to grant a motion for directed verdict is reviewed de novo, considering all evidence and reasonable inferences in the light most favorable to the nonmoving party and granting the motion only if reasonable minds could not perceive the existence of a genuine factual question. [\*Meagher v Wayne State Univ\*, 222 Mich. App. 700, 708; 565 N.W.2d 401 \(1997\)](#). Contrary to the view of the trial court, after reviewing the record, we conclude that the record evidence is sufficient to create a reasonable inference that Hoover's truck and trailer were stopped prior to plaintiff's evasive maneuver. Supporting the inference is plaintiff's clear testimony both on direct and cross-examination that Hoover's truck and trailer were stopped prior to the accident. Moreover, the deposition testimony introduced at trial created inferences of the malfunction of lights and the absence of turn signals. Stated otherwise, our review of the evidence reveals that the location of the accident, both plaintiff's and Hoover's testimony, [\*6] and Dr. Pachella's testimony at trial created a reasonable inference that Hoover's vehicle and trailer were stopped in the intersection, most likely for turning. The trial court did err in granting a directed verdict to defendants.

Reversed and remanded. We do not retain jurisdiction in this matter.

/s/ David H. Sawyer

/s/ E. Thomas Fitzgerald

/s/ Pat M. Donofrio

---

End of Document

RECEIVED by MSC 11/4/2024 7:59:14 AM

# **EXHIBIT 23**



*Presnell v. Pac. Gateway Transp., Inc.*

United States District Court for the Northern District of Georgia, Atlanta Division

April 7, 2020, Decided

Civil Action No. 1:19-CV-01193-WMR

**Reporter**

2020 U.S. Dist. LEXIS 267350 \*; 2020 WL 13573502

DEXTER PRESNELL, Plaintiff, v. PACIFIC GATEWAY TRANSPORTATION, INC., NEW YORK MARINE AND GENERAL LIFE INSURANCE COMPANY, LANNIGAN TRANSPORT, INC., AND WALTER LANNIGAN, Defendants.

**Core Terms**

driver, hours of service, left lane, collision, trucking, driving, logs, summary judgment motion, summary judgment, right turn, inspection, driveway, mirror, punitive damages, regulations, inoperable, fatigued, backing, trailer, fender, wreck, trip, industry standard, turn signal, falsified, pre-trip, genuine, opined, signal, right side

**Counsel:** [\*1] For Walter Lannigan, Pacific Gateway Transportation Inc., New York Marine and General Life Insurance Company, Defendants: Tracy Cullen O'Connell, LEAD ATTORNEY, Ellis Painter Ratterree & Adams LLP, Savannah, GA.

For Lannigan Transport Inc., Defendant: Tracy Cullen O'Connell, Ellis Painter Ratterree & Adams LLP, Savannah, GA.

For Dexter Presnell, Plaintiff: Eric Jonathan David Rogers, LEAD ATTORNEY, Fried Goldberg LLC, Atlanta, GA; Michael L. Goldberg, LEAD ATTORNEY, Fried Rogers Goldberg LLC - Atl, Atlanta, GA.

**Judges:** WILLIAM M. RAY, II, UNITED STATES DISTRICT JUDGE.

**Opinion by:** WILLIAM M. RAY, II

**Opinion****ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

This matter is before the Court on Defendants' Motion for Summary Judgment [Doc. 60] in the Plaintiff Dexter Presnell's suit arising from his injuries from a crash between his motorcycle and a tractor-trailer truck driven by Defendant Walter Lanigan. Defendants moved for Summary Judgment, claiming that the undisputed facts and evidence show that Lanigan "breached no legal duty to Plaintiff causing the accident." [Doc. 60, p. 11]. The Court disagrees. There are disputed facts of a material nature, and it will be up to a jury at trial to determine whether the Defendants [\*2] have liability to the Plaintiff. Accordingly, Defendants' Motion for Summary Judgment is denied.

**I. BACKGROUND*****A. The Subject Collision***

On February 28, 2018, Plaintiff was operating a motorcycle traveling on Pine Meadow Drive in Chatham County, Georgia. (Doc. 1-1, ¶ 7). At the same time, Defendant Lannigan was also operating a tractor-trailer on Pine Meadow Drive. Lannigan turned into the wrong driveway of a facility located on that road. Another driver, William Butler, testified that he had seen Lannigan at the facility

previously. [Doc. 79-5, pp. 21-22].

Once Lannigan made the wrong turn, instead of pulling into the facility and turning around, Mr. Lannigan backed out of the facility's drive onto the roadway without using a helper to assist him. [Doc. 79-6, p. 79, lns.14-25]. Lannigan then needed to make an immediate righthand turn into the very next driveway from the left lane. [Doc. 79-6, p. 81, lns.15-25; p. 82, lns.1-10]. The very next driveway was the proper driveway for Lannigan to enter.

After exiting the wrong driveway, Lannigan positioned the tractor-trailer in the left lane of Pine Meadow Drive. Witness Futch testified that Lannigan backed out into the left lane. [Doc. 79-3, [\*3] p. 9]. Plaintiff's vehicle was eight feet behind Lannigan's tractor-trailer in the left lane. [Doc. 79-4, p. 54, ln.9]. The right turn signal on Lannigan's trailer was inoperable. (Doc. 79-2, p. 7, lns. 3-25). Plaintiff "did not see any indication he [Lannigan] was taking a turn." (Doc. 79-4, p. 56, lns. 12-13). Plaintiff switched lanes and attempted to pass Lannigan on the right side.

Lannigan either failed to adjust his fender mirror properly or failed to look into the fender mirror. [Doc. 79-6, p. 45, lns.17-25]. In either case, he did not see Plaintiff on his right side prior to impact. Lannigan attempted to make a right turn from the left lane. [Doc. 79-4, p. 56, lns.12-13]. Plaintiff "maneuvered" and swerved to the right to try to avoid colliding with Lannigan's truck. [Doc. 79-4, p. 47, lns.16-21; p. 58, lns.15-19]. Defendant Lannigan's vehicle collided with the side of Plaintiff's vehicle. As a result of the collision, Plaintiff suffered severe and permanent injuries to his arms and ankle requiring surgery.

### ***B. Plaintiff's Trucking Expert Lew Grill***

Lew Grill, Plaintiff's trucking standard of care/trucking industry expert, testified by affidavit and by deposition. [Doc. 79-1; Doc. [\*4] 79-6]. (Defendants have not moved to exclude Lew Grill's opinions under [FRE 702](#), and Defendants have not

submitted any expert testimony that directly rebuts Mr. Grill's opinions). Mr. Grill testified that Lannigan violated the following trucking industry standards, which caused or contributed to the collision:

- Lannigan violated trucking industry standards engaging in blindside backing. [Doc. 79-6, p. 80, lns.15-24];
- Lannigan violated trucking industry standards by making a right turn from the left lane. [Doc. 79-6, p. 82, lns.17-25; p. 83, lns.1-5];
- Lannigan violated trucking industry standards by failing to properly use his fender mirror. [Doc. 79-6, p. 45, lns.17-25];
- Lannigan violated trucking industry standards by failing to perform a proper pre-trip inspection, which would have revealed that the right turn signal on the trailer was inoperable. [Doc. 79-6, p. 136, lns.22-25; p. 137, lns.2-4];
- Lannigan falsified his driving logs regarding the trip he was on at the time this wreck occurred. [Doc. 79-1, ¶ 10];
- Lannigan violated federal hours of service requirements regarding the trip he was on at the time this wreck occurred. [Doc. 79-1, ¶ 10];
- Lannigan was a fatigued driver and should [\*5] not have been driving at the time this wreck occurred. [Doc. 79-1, ¶ 10]; and
- Lannigan turned into the wrong driveway of a facility that he had been to many times before because he was fatigued. [Doc. 79-6, p. 78, lns.9-14].<sup>1</sup>

### ***C. Marijuana***

Defendants rely on the fact that Plaintiff tested positive for marijuana. However, Defendants have

---

<sup>1</sup> The Court recognizes that some of Mr. Grill's testimony was based on assumptions from the evidence or lack of evidence in the record.

not submitted evidence showing that the Plaintiff was impaired, and in the absence of impairment evidence at the time of the injury, this evidence is not determinative. See Gayton v. Trux Transp., Inc., 2006 WL 3266488 (N.D.Ga., Nov. 9, 2006), 2006 U.S. Dist. LEXIS 82022 ("Indeed, several courts from other jurisdictions have found that in a personal injury lawsuit, marijuana use is relevant only if impairment at the time of injury can be demonstrated").<sup>2</sup>

## II. LEGAL STANDARD

When a parties' pleadings, affidavits, and other discovery materials establish that there is no genuine dispute of material facts and that the movant is entitled to judgement as a matter of law, summary judgement should be granted. Fed R. Civ. P. 56(c). The moving party bears the burden of showing the absence of a genuine issue of material fact while viewing the evidence in the light most favorable to the nonmovant. Adickes v. S. H. Kress & Co., 398 U.S. 144, 157, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970); Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). In other words, Defendants must show that the undisputed facts in the record, when [\*6] viewed in the light most favorable to Plaintiff, reveal no evidence sufficient to create a jury issue on any essential element of her case. Steed v. Federal Nat. Mortg. Corp., 301 Ga. App. 801, 802, 689 S.E.2d 843 (2009). After a motion for summary judgment has been properly supported, the nonmovant must present affirmative evidence "from which a jury might return a verdict in his favor" and that demonstrates the presence of "a genuine issue of fact that requires a trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 257, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

## III. DISCUSSION

Under Georgia law, what amounts to the exercise of ordinary care under the circumstances is a jury question. Hand v. Harrison, 99 Ga. App. 429, 432, 108 S.E.2d 814 (1959). Accordingly, "[q]uestions of negligence, contributory negligence, cause and proximate, whose negligence, and what negligence, including lack of care for one's own safety and lack of ordinary care in avoiding the consequences of another's negligence, are, except in plain, palpable and indisputable cases, solely for jury determination." Myers v. Boleman, 151 Ga. App. 506, 508, 260 S.E.2d 359 (1979). Negligence and contributory negligence should not be decided on summary judgement unless a reasonable juror could reach only one conclusion. See Sapp v. Effingham Cty. Bd. of Educ., 200 Ga. App. 695, 696, 409 S.E.2d 89 (1991); Hester v. Baker, 180 Ga. App. 627, 349 S.E.2d 834 (1986).

Here, Defendants have filed their motion for summary judgment claiming that the facts and undisputed evidence show that Lannigan "**breached** no legal **duty** to Plaintiff causing the accident" [\*7] and that Plaintiff is legally responsible for the collision that caused his injuries. [Doc. 60, p. 11]. The Court finds these contentions fail at the summary judgment stage because genuine disputes of material fact on these issues remain. These findings are discussed in greater detail below.

### A. Lannigan's Negligence

Plaintiff's expert, Lew Grill, testified that Lannigan's violated several truck operation industry standards that caused or contributed to the collision. First, Mr. Grill testified that after Lannigan improperly made a right turn from the left lane. There is evidence from which the jury could conclude that Lannigan was in the left lane when he made the turn. Mr. Grill opined that turning from the left lane was a dangerous maneuver. In addition, Mr. Futch, a witness who is also a commercial driver, testified that he would not have made the turn from the left lane. (If Lannigan never

<sup>2</sup> Given the Presiding Judge's long tenure as the Judge of the Gwinnet County Treatment Court, the Presiding Judge is well aware that marijuana can register in a person's urine for many days after its use.

attempted to turn from the left lane, then this wreck might not have occurred because the Plaintiff possibly would not have attempted to pass Lannigan's vehicle on its right side). It is for the jury to determine whether Lannigan's negligence in this regard caused or contributed to the collision. [\*8]

Second, Mr. Grill opined that Lannigan failed properly to use his fender mirror. Specifically, Mr. Grill testified: "[W]hen adjusted properly, it [the fender mirror] absolutely will show the right side of that vehicle and eliminate the blind spots along the right side of the vehicle. That's the purpose of that fender mirror." [Doc. 79-6, p. 46, ln. 2-9]. A reasonable juror could conclude Lannigan failed to adjust the angle of the fender mirror or failed to look into the mirror, and that if he had done both of those things, that Lannigan would have noticed the motorcycle coming up on his right-hand side and that this collision would not have occurred.

Third, Mr. Grill opined that Lannigan did not perform a proper pre-trip inspection, which would have revealed the right turn signal on the tractor was inoperable. Although Lannigan testified that he specifically checked to see if the right turn signal was functioning, it is undisputable that the right turn signal on the trailer was not functioning at the time of the wreck. Further, there is evidence that Lannigan intentionally falsified his driver logs in other respects. Because Lannigan is the only source of evidence that he performed a [\*9] proper pre-trip inspection and there is reason to doubt the veracity of his testimony, the jury would be authorized to conclude that the turn signal was not functioning prior to Lannigan beginning the trip and that he failed to discover it because he did not perform a proper pre-trip inspection. Without a properly functioning turn signal, Plaintiff would not have had any warning prior to passing the trailer that Lannigan was about to turn right.

Fourth, Mr. Grill opined that Lannigan made the fundamental error of backing out into traffic on a 35-mile-an-hour road that has two lanes going in

one direction, which is known as "blind-side backing." He testified that this was "an extreme violation" of the standard of care to engage in blind-side backing without using a helper to assist the driver backing out. Instead, Lannigan should have pulled into the facility and turned around in the facility. This put Lannigan's vehicle in the position of needing to make righthand turn from the left lane into the very next driveway. A reasonable juror could conclude that if Lannigan had just turned around and pulled out of driveway, then he would have been in a safer position to make the turn right [\*10] turn and this collision would not have occurred.<sup>3</sup>

Fifth, Mr. Grill opined that Lannigan falsified his driving logs and committed an hours of service violation. The Federal Motor Carrier Safety Regulations require drivers like Lannigan to keep an accurate tally of the hours in which they are driving, on duty doing something other than driving, and resting. See [49 CFR § 395.8](#). The purpose of that regulation is to ensure that drivers comply with the hours of service requirements. The evidence shows that Lannigan put false information on his log book. There is no reason for Lannigan to have lied and to have violated Federal safety regulations, unless he was trying to hide his violation of the hours of service rules.

This could be important for two reasons: First, it provides the jury with a basis for disbelieving the testimony of Lannigan. Lannigan's self-serving testimony is the sole evidentiary source for the defense's claims that he performed a proper pre-trip inspection, that his turn signals were functioning properly prior to the trip, and that he checked his mirrors before turning right in the second driveway. Because Lannigan may have lied about the information contained in his driver logs, the [\*11] jury could find his testimony on these other matters is not credible. Second, because Lannigan may

---

<sup>3</sup> The Court does not believe that the lack of any help backing was a proximate cause of this wreck, but rather, that it was the turn itself into the driveway from the left-hand lane that could have been.



have violated federal hours of service requirements, there is circumstantial evidence that he was fatigued at the time this wreck occurred. Samuel Reid, a compliance officer for the Georgia Department of Transportation, testified that Lannigan committed an hours of service violation. Mr. Grill provided affidavit testimony that when drivers are over their hours of service, fatigue causes the driver to miss visual clues. [Doc. 79-1, ¶ 10]. Grill opined that Lannigan's fatigue caused or contributed to him failing to see Plaintiff's motorcycle prior to the collision and to take appropriate evasive maneuvers.

In summary, there are genuine issues of fact as to whether Lannigan negligently operated the tractor-trailer and caused the collision.

#### ***B. Derivative Imputed Liability***

Defendants have also moved for summary judgment on Plaintiff's derivative imputed liability claims. The defense's argument on this issue is solely based on the success of its argument that there is an absence of evidence showing that Lannigan was negligent. Therefore, for the same reasons the Court is denying Defendants' Motion [\*12] for Summary Judgment as set forth above, the Court is also denying Defendants' motion on Plaintiff's derivative imputed claims.

#### ***C. Negligent Hiring, Training, and Supervision***

Defendants have also moved for summary judgment on Plaintiff's negligent hiring, training, and supervision claims. The defense's argument on this issue is solely based on the success of its argument that there is an absence of evidence showing that Lannigan was negligent. For the same reasons the Court denied Defendants' Motion for Summary Judgment set forth above, the Court is also denying Defendants' motion on Plaintiff's negligent hiring, training, and supervision claims.

#### ***D. Negligent Inspection***

As discussed above, it is undisputed that the right turn signal on the rear of Lannigan's trailer was inoperable at the time of the crash. While the jury is authorized to conclude that it is just a coincidence the turn signal became inoperable during Lannigan's trip, it is also authorized to conclude that the light was inoperable prior to leaving for his trip and that he failed to properly inspect the trailer. The jury can base the latter conclusion on the basis of Lannigan's alleged falsification of logs, the lack of documentation [\*13] of the pre-trip inspection, and the sheer unlikelihood that the turn signal became inoperable in the brief period of time between Lannigan leaving Orlando and this wreck occurring. Without a properly functioning turn signal, Plaintiff might not have had any warning that Lannigan was about to turn right prior to the collision. For these reasons, the Court finds there is a genuine issue of fact as to whether Lannigan properly inspected the trailer prior to beginning his trip.

#### ***E. Direct Action***

Defendants have also moved for summary judgment on Plaintiff's direct action claim. The defense's argument on this issue is solely based on the success of its argument that there is an absence of evidence showing that Lannigan was negligent. For the same reasons the Court has denied Defendants' Motion for Summary Judgment set forth above, the Court also denies Defendant's motion on Plaintiff's direct action claim.

#### ***F. Punitive Damages***

Under Georgia law, "whether the tort was sufficiently aggravating to authorize punitive damages is generally a jury question[.]" Tookes v. Murray, 297 Ga. App. 765, 768, 678 S.E.2d 209 (2009) (emphasis added); Tunsil v. Jackson, 248 Ga. App. 496, 499, 546 S.E.2d 875 (2001) ("Whether punitive damages should be awarded is

ordinarily a jury question."). So long as "any evidence" supports the imposition [\*14] of punitive damages, the issue should go to the jury. [\*Paine v. Nations\*, 283 Ga. App. 167, 183 \(2006\)](#) (affirming jury's award of punitive damages under "any evidence" standard).

A reasonable juror could conclude that Lannigan acted with a wanton disregard for the safety of others if it concludes that he consciously falsified his driver logs and blatantly disregarded the hours of service requirements imposed by federal law, and that such actions proximately caused this collision. The Federal Motor Carrier Safety Regulations require drivers like Lannigan to keep an accurate tally of the hours in which they are driving, on duty doing something other than driving, and resting. See [49 CFR § 395.8](#). The purpose of that regulation is to ensure that drivers comply with the hours of service requirements. There is evidence showing that Lannigan put false information on his log book.

Lannigan was arguably over his hours by at least 3 hours and potentially up to 6 hours. [Doc. 79-1, ¶¶ 9, 10]. This would be a substantial violation. The jury would be authorized by this evidence to conclude that Lannigan was aware of the hours of service rules, aware that he was violating them, and actively trying to conceal the violation while putting himself in a position [\*15] to cause harm to members of the public, like Plaintiff. See [O.C.G.A. § 51-12-5.1\(b\)](#) (Georgia's Punitive Damages Statute); See *Came v. Micou*, No. 4:04-CV-1207, [2005 WL 1500978, at \\* 4-7 \(M.D. Pa. June 23, 2005\)](#), [2005 U.S. Dist. LEXIS 40037](#) (the court denied a motion for partial summary judgment as to a claim for punitive damages against a trucking company where the evidence showed that the company's driver was in violation of FHWA hours of service regulations, was operating his vehicle in a state of fatigue, and falsified his logs to avoid detection); [Laney v. Schneider Nat'l Carriers, Inc.](#), [2011 WL 1667434 \(N.D.Okla.2011\)](#), [2011 U.S. Dist. LEXIS 47912](#) (denying summary judgment on the issue of punitive damages in part because driver

was not in compliance with hours of service regulations, he had falsified log books, and he was fatigued).

#### IV. CONCLUSION

For the reasons stated above, Defendants' Motion for Summary Judgment [Doc 60] is DENIED. In light of the Court's denial of the Motion for Summary Judgment, Plaintiff's Motion to Strike [Doc. 89] is DENIED as moot.

**IT IS SO ORDERED**, this 7th day of April, 2020.

/s/ William M. Ray, II

WILLIAM M. RAY, II

UNITED STATES DISTRICT COURT JUDGE

---

End of Document



# **EXHIBIT 24**

Melrose v. Warner

Court of Appeals of Michigan

August 2, 2016, Decided

No. 325717

**Reporter**

2016 Mich. App. LEXIS 1470 \*

DOUGLAS MELROSE, Plaintiff-Appellee, v  
RICKY WARNER and WARNER TRUCKING &  
EXCAVATING, INC., Defendants-Appellants.

**Notice:** THIS IS AN UNPUBLISHED OPINION.  
IN ACCORDANCE WITH MICHIGAN COURT  
OF APPEALS RULES, UNPUBLISHED  
OPINIONS ARE NOT PRECEDENTIALLY  
BINDING UNDER THE RULES OF STARE  
DECISIS.

**Prior History:** [\*1] Saginaw Circuit Court. LC  
No. 13-020555-NI.

**Core Terms**

trial court, inspections, truck, statutory violation,  
regulations, driver, tire, licensing, card, directed  
verdict, trial court's decision, earnings, damages,  
proximate cause, violations, proximate, driving,  
alleged violation, failure to comply, documentation,  
defendants', motorcycle, annually, injuries,  
economic damages, allegations, evidentiary,  
speculative

**Judges:** Before: FORT HOOD, P.J., and  
RONAYNE KRAUSE and GADOLA, JJ.  
GADOLA, J. (dissenting).

**Opinion**

PER CURIAM.

Defendant<sup>1</sup> appeals as of right from the circuit

court's order reflecting the jury's finding that  
defendant's negligence caused the injuries plaintiff  
incurred as the result of a trucking accident. We  
affirm.

**I. FACTS**

This case arose when plaintiff was injured in a  
single-vehicle truck accident in 2010. Defendant  
was driving the truck in the course of his trucking  
business, and plaintiff was riding in the truck as  
defendant's customer and passenger. The accident  
resulted from the blowout of the truck's left front  
tire. When the tire failed, defendant lost control of  
the truck, which then struck a median wall and  
burst into flames. The truck's cabin began filling  
with smoke, at which time defendant unfastened  
plaintiff's seat belt and pushed him out of the truck  
while the truck was still moving. Plaintiff suffered  
numerous injuries as a result of the accident,  
some [\*2] of which required surgery and others  
that would leave him with disabling injuries for the  
rest of his life.

Plaintiff commenced this action in 2013, setting  
forth as theories of recovery a failure to maintain  
equipment and negligent driving. Plaintiff's  
amended complaint included assertions of  
regulatory failures, including operating without  
required annual or daily inspections of the truck or  
a "proper health card." Before trial, defendant  
moved to exclude evidence or argument relating to  
inspections of the vehicle, defendant's health card,  
and alleged violations of applicable safety  
regulations. After the trial court denied the motion,  
defendant sought interlocutory relief in this Court,

<sup>1</sup> It is expedient for purposes of this opinion to use the singular  
"defendant" without distinguishing the individual defendant from the

trucking and excavating corporation under which he operates.

but we denied the application "for failure to persuade the Court of the need for immediate appellate review." *Melrose v Warner*, unpublished order of the Court of Appeals, entered November 26, 2014 (Docket No. 324772).

At trial, the plaintiff-appellee offered Don Willcutt, an expert in vehicle safety, driver training, vehicle inspection, and federal and state laws governing commercial vehicle operation. Willcutt opined from his review of the pertinent documents and depositions that at the time of the [\*3] accident, defendant; lacked a required driver qualification file; was operating with an expired medical certificate; had neglected required inspections; had failed to document, or falsely documented, the maintenance and repairs performed on the truck; and was carrying an unauthorized passenger.

At the close of proofs, defendant requested a directed verdict in connection with the allegations of regulatory violations, and also in connection with plaintiff's claim for economic damages. The trial court denied both motions. The jury found defendant liable and awarded damages.

## II. STANDARDS OF REVIEW

We review a trial court's evidentiary rulings for an abuse of discretion. *Price v Long Realty, Inc.*, 199 Mich App 461, 466; 502 NW2d 337 (1993). "An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Radeljak v DaimlerChrysler Corp.*, 475 Mich 598, 603; 719 NW2d 40 (2006).

We review a trial court's decision on a motion for a directed verdict de novo as a question of law. *Meagher v Wayne State Univ.*, 222 Mich App 700, 708; 565 NW2d 401 (1997). In doing so, we review the evidence in a light most favorable to the nonmoving party to determine whether a factual question exists over which reasonable minds could differ. *Oakland Hills Dev. Corp. v. Lueders Drainage Dist.*, 212 Mich. App. 284, 289; 537 N.W.2d 258 (1995).

## III. ANALYSIS

Defendant argues that the trial court should have excluded from trial the allegations of regulatory violations on [\*4] the ground that they did not bear on the question of proximate causation of plaintiff's injuries.

In order to be a proximate cause, the negligent conduct must have been a cause of the plaintiff's injury and the plaintiff's injury must have been a natural and probable result of the negligent conduct. These two prongs are respectively described as "cause-in-fact" and "legal causation." While legal causation relates to the foreseeability of the consequences of the defendant's conduct, the cause-in-fact prong generally requires showing that but for the defendant's actions, the plaintiff's injury would not have occurred. [*O'Neal v St John Hosp & Med Ctr*, 487 Mich 485, 496; 791 NW2d 853 (2010) (internal quotation marks and citations omitted).]

"[T]hat a person has violated a safety statute may be admitted as evidence bearing on the question of negligence." *Klanseck v Anderson Sales & Serv. Inc.*, 426 Mich 78, 86; 393 NW2d 356 (1986). However, evidence "of a statutory violation to establish negligence" is discretionary and may be used only if:

1. the statute is intended to protect against the result of the violation;
2. the plaintiff is within the class intended to be protected by the statute; and
3. the evidence will support a finding that the violation was a proximate contributing cause of the occurrence. [*Id.* at 87.]

The purpose of these factors is to [\*5] establish that the statutory violation has some real relevance to a fact at issue in the case. *Id.* In *Klanseck*, our Supreme Court considered the relevance of a driver's failure to obtain a proper motorcycle endorsement to an assertion that he drove in a negligent or incompetent manner. *Id.* at 80-81. Our Supreme Court found that under the circumstances,

motorcycle licensing was intended to curtail motorcycle accidents caused by legally incompetent drivers and that the plaintiff, despite being the driver, was within the class intended to be protected by that statute; evidence at trial also suggested that a competent driver would have handled the motorcycle's tire failure differently. *Id. at 89-90*. Consequently, the plaintiff's failure to obtain a motorcycle endorsement met the prerequisites for admissibility. *Id.* However, our Supreme Court also noted that a lack of licensure might under other circumstances be irrelevant, citing the situation where a party's inexperience or incompetence was not at issue but rather the mere factual question of whether the party was exceeding the speed limit. *Id. at 88-89*.

Part of plaintiff's theory of the case is that once defendant's tire blew, he did not handle the situation properly or [\*6] in compliance with how a reasonable truck driver would have, calling into question defendant's competence as a truck driver. Having and maintaining a valid medical card is a required component of being properly licensed to operate a commercial vehicle. Being properly licensed is relevant to one's driving competency, and therefore, we conclude that defendant's failure to have a valid medical card at the time of the accident could be relevant to the matter at issue. We find that the trial court did not abuse its discretion by admitting this evidence for the jury to consider when making their decision. We need only determine if "the jury *could* find the causal connection between the statutory violation and the accident," not that they must be able to do so. *Klanseck, 426 Mich at 90*.

The theory of the case also includes allegations that defendant did not properly maintain the truck and therefore was unable to detect any issues with the tires that may have indicated that they were unsafe on which to drive. Regulations regarding daily inspections require that those inspections be documented. We consider the proper documentation of inspections to be an essential part of conducting those inspections, not merely

evidence [\*7] pertinent to the credibility of a party claiming that the inspections took place. Improper inspections are clearly relevant to whether a driver should have noticed a problem with the tires before driving on them.

We review the trial court's decision on evidentiary decisions only for an abuse of discretion. The facts in this case suggest that these evidentiary rulings were close calls, and we will defer to the trial court's decision when the case presents a judgment call. Evidence of regulatory failures, while prejudicial to the defendant, do not appear to be "substantially outweighed" or *unfairly* prejudicial under these circumstances, and therefore, were properly admitted. *MRE 403* [Emphasis added]. We affirm the trial court's decision to let the jury hear the evidence and make a finding of fact.

The jury was properly instructed that there could be more than one proximate cause of the accident. *Kirby v Larson, 400 Mich 585, 605; 256 NW2d 400, 410 (1977)*. Additionally, the jury was not asked to parse the twin theories of deficient equipment maintenance and negligent driving. Evidence other than defendant's regulatory failures was presented to the jury; we find it within the realm of possibility that even without considering the evidence that defendant [\*8] seeks to exclude, the jury would have decided the same way. Is not possible to ascertain the exact extent to which the jury's verdict resulted from the use of evidence of regulatory violations, but we do not find it necessary to determine this distinction. Finding that the admission of this evidence was not an abuse of discretion, we affirm the trial court's decision that a directed verdict for defendant would not have been proper.

Defendant also challenged the evidentiary basis for the jury's award of economic damages. The jury concluded that plaintiff's earning potential was \$16,000 a year for purposes of awarding several years' worth of damages covering lost income, which defendant contends was speculative.

Amount of damages is an issue determined by trier

of fact. McManamon v Redford Twp, 273 Mich App 131, 141; 730 N.W.2d 757 (2006). To establish that amount, plaintiff must prove his damages with "reasonable certainty," Alan Custom Homes, Inc. v. Krol, 256 Mich. App. 505, 512, 667 N.W.2d 379 (2003). "Recovery is not permitted in a tort action for . . . speculative damages," Ensink v Mecosta Co Gen Hosp, 262 Mich App 518, 524; 687 N.W.2d 143 (2004), but "damages are not speculative merely because they cannot be ascertained with mathematical precision." Berrios v Miles, Inc, 226 Mich App 470, 478; 574 N.W.2d 677 (1997). When reviewing a case, this court is reluctant to overturn a jury's verdict, particularly if there is ample evidence to justify the jury's decision. [\*9] Krohn v Sedgwick James of Michigan, Inc., 244 Mich App 289, 295; 624 N.W.2d 212 (2001).

Plaintiff provided evidence of his earning capacity simply by testifying that it was between \$17,000 and \$25,000 annually. Although plaintiff offered no other evidence of this proposition to the court, we recognize "the factfinders responsibility to determine the credibility and weight of trial testimony." Zeeland Farm Servs, Inc v JBL Enterprises, Inc, 219 Mich App 190, 195; 555 N.W.2d 733 (1996). If defendant was frustrated with plaintiff's failures to comply with subpoenas to produce documentation of past income, defendant was free to move the court to compel compliance. Further, defendant could, and did, cross-examine plaintiff over his lack of documentation, and urge the jury to look skeptically on plaintiff's estimate for that reasons.

We find that plaintiff offered the jury a reasonable basis for concluding that the accident and injuries interrupted plaintiff's progress in recovering his ability to provide for himself. We further note that the jury seems to have agreed with defendant that plaintiff may have overestimated his earning capacity, having awarded less in economic damages than plaintiff's estimate would suggest. We disagree with defendant's argument that the jury did not have sufficient evidentiary basis for awarding economic damages. Therefore, the

trial [\*10] court properly denied defendant's motion for a directed verdict in connection with plaintiff's claim for economic damages.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Amy Ronayne Krause

**Dissent by:** Michael F. Gadola

## **Dissent**

---

GADOLA, J. (*dissenting*).

I respectfully dissent because I believe that the trial court failed to properly determine whether the evidence of each alleged statutory violation was relevant to the issue of proximate cause.

In Michigan, evidence of violation of a penal statute may be introduced in a negligence action to create a rebuttable presumption of negligence. Klanseck v Anderson Sales & Service, Inc, 426 Mich 78, 86; 393 NW2d 356 (1986); Zeni v Anderson, 397 Mich 117, 128-129; 243 NW2d 270 (1976); Poch v Anderson, 229 Mich App 40, 48; 580 NW2d 456 (1998). To be admissible, however, the relevance of the evidence of the statutory violation must be specifically established. Klanseck, 426 Mich at 87. The factors necessary to such a determination of relevance are (1) whether the statute was intended to protect against the result of the violation, (2) whether the plaintiff was within the class intended to be protected, and (3) whether the evidence would support a finding that the violation was a proximate contributing cause of the event in the negligence case. *Id.* If these factors are met, the evidence of statutory violation may be introduced, and the presumption of negligence created may thereafter be rebutted by [\*11] evidence of a legally sufficient excuse for the violation. *Id. at 86*. The determination of whether the violation of the statute was a proximate cause of the event in the negligence case is then left to the



jury to decide. *Id.*; [Rodriguez v Solar of Mich, Inc, 191 Mich App 483, 488; 478 NW2d 914 \(1991\)](#).

In this case, plaintiff's Amended Complaint alleged that defendants had failed to inspect the vehicle and that defendant Ricky Warner had failed to possess a valid health card and a valid commercial driver's license at the time of the accident. In response to these allegations, defendants filed a motion in limine in the trial court seeking to exclude any evidence that defendants had allegedly violated any regulations or statutes. Specifically, defendants sought to exclude any evidence that defendants had violated any law by allegedly failing to inspect the vehicle, by defendant Ricky Warner failing to have a valid medical card, by defendant Ricky Warner having an invalid commercial driver's license, or that defendants had violated any federal safety regulations pursuant to the Federal Motor Carrier Safety Act, [49 USC 31100 et seq.](#)

In response to the motion in limine, plaintiff argued that he should be permitted to introduce evidence that defendants had violated several sections of the Federal [\*12] Motor Carrier Safety Regulations, specifically, [49 CFR 390.35](#) (falsification/alteration of reports), [49 CFR 391.41](#) (operating without a medical card), [49 CFR 392.60](#) (unauthorized person in vehicle), [49 CFR 396.3](#) (improper inspection), [49 CFR 396.7](#) (unsafe operations), [49 CFR 396.11](#) (improper and fraudulent driver vehicle inspection report), [49 CFR 396.13](#) (improper driver inspection), [49 CFR 396.17](#) (numerous violations of the required periodic inspection), [49 CFR 396.19](#) (annual inspector unqualified), [49 CFR 396.21](#) (violation of record keeping requirements), and [49 CFR 396.25](#) (brake inspector unqualified).

In ruling upon defendants' motion in limine, the trial court accurately noted that the test in *Klanseck* was determinative, and also accurately noted that the determination of the relevance of evidence of a statutory violation is one of law to be determined by the court. The trial court, however, did not then specifically determine the relevance of each alleged violation. Instead, the trial court simply concluded

that any evidence of a statutory violation alleged by plaintiff was admissible, reasoning that the determination of proximate cause is ordinarily left to the trier of fact. In other words, the trial court did not distinguish between the role of the jury in determining proximate cause and the role of the trial court [\*13] in determining whether the plaintiff had sufficiently established the relevance of a particular statutory violation for it to be submitted to the jury. In this, the trial court erred.

In *Klanseck* our Supreme Court specifically identified a trial court's decision to permit the introduction of evidence of a regulatory violation as a question of law. Our Supreme Court stated:

The foregoing discussion of the relevancy determination involves a decision to be made by the court as a matter of law that, according to the evidence presented, the jury *could* find a causal connection between the statutory violation and the accident. The determination should not be confused with the jury's duty to decide, as a matter of fact, whether the violation *was* a proximate cause of the accident. [*Klanseck*, 426 Mich at 90.]

Here, the trial court failed to make a specific determination regarding each alleged violation, and simply allowed evidence of any and all alleged statutory violations to be submitted to the jury, reasoning that the jury makes the decision regarding proximate cause. The trial court therefore failed to follow the directive of *Klanseck* that requires the trial court to make a specific relevancy determination regarding [\*14] any alleged statutory violation before submitting such evidence to the jury.

Questions of law are reviewed by this Court de novo. [Cardinal Mooney High School v Mich High School Athletic Ass'n, 437 Mich 75, 80; 467 NW2d 21 \(1991\)](#); [Smith v Jones, 246 Mich App 270, 274; 632 NW2d 509 \(2001\)](#). Because the trial court's determination was one of law, we review de novo the trial court's decision regarding the admission of the evidence of alleged statutory violations. Here, a



review of the record indicates that at least some of the alleged statutory violations were not relevant to the issue of proximate cause<sup>1</sup>, that is, evidence of the alleged violations would not support a finding that the violations were proximate contributing causes of the accident. See [Klanseck, 426 Mich at 87](#).

Plaintiff's theory of defendants' liability essentially is twofold: First, plaintiff alleges that the accident was caused by a tire blowout, that the tire blowout might have been caused by a worn or defective tire, that defendants may have failed to identify the potentially worn or defective tire because they failed to inspect the truck as required by certain federal regulations, and that defendants' failure to comply with the regulations was therefore relevant because inspection might have revealed the tire's worn or defective condition (that may or may not have existed). Therefore, argues plaintiff, defendants' failure to comply with federal regulations related to inspection of the truck was a proximate cause of the accident.

Plaintiff's second theory of liability is that once the tire blew out, defendant Ricky Warner's handling of the truck was negligent. Plaintiff reasons that defendant Ricky Warner should have taken different steps to attempt to maintain control of the truck, and if he had, the accident may have been averted or lessened in severity. Plaintiff reasons that defendants' failure [\*16] to comply with certain federal regulations, such as having a valid medical card at the time of the accident, demonstrates that defendants failed in a component

of being properly licensed, that being properly licensed is relevant to one's driving competence, and that evidence of failure to comply with regulations, such as having a valid medical card, is relevant to whether defendant is a competent driver. All of which, plaintiff contends, is relevant to whether defendant was negligent in his response to the tire blowout.

Although an argument can be made that violating a regulation that requires inspection of the vehicle is relevant to the issue of the condition of the vehicle, it is a stretch of reasoning to say that failure to comply with a licensing requirement, for example, failure to have a valid medical card, is relevant to the issue of whether defendant Ricky Warner properly responded when the tire blew out. If it is relevant, then it would seem that all licensing violations are relevant, and that is a result that *Klanseck* cautions against. Rather, our Supreme Court in *Klanseck* stated:

While we hold today that, in certain cases, the fact that a person has violated the motorcycle [\*17] licensing statute may be used as evidence of negligence, we caution that relevance must be specifically established. As the Supreme Court in Florida stated in [Brackin v Boles, 452 So 2d 540, 545 \(Fla, 1984\)](#): Relevancy is usually inherently established when the traffic regulation which was violated concerns the manner in which an automobile was operated. Relevancy is not so easily established when the traffic regulation which was violated concerns a licensing requirement. [[Klanseck, 426 Mich at 87-88](#) (quotation marks omitted).]

---

<sup>1</sup>For example, there appears to be no relevance to the issue of proximate cause of plaintiff's contention that defendant Ricky Warner failed to possess a valid medical card while driving the truck as required by [49 CFR 391.41](#), that defendant Ricky Warner as the driver failed to obtain from himself as defendant Warner Trucking & Excavating, Inc., the motor carrier, written permission to have plaintiff as a passenger in the truck as required by [49 CFR 392.60](#), nor to the allegation that defendant Ricky Warner as the driver failed to provide to himself as defendant Warner Trucking & Excavating, Inc., the motor carrier, a written [\*15] report at the end of each day's work regarding the status of the vehicle as required by [49 CFR 396.11](#).

I therefore would hold that the trial court failed to properly determine the relevance of the specific alleged statutory violations before permitting evidence of those alleged violations to be submitted to the jury. As a result, evidence that had not been determined to be relevant was submitted to the jury. Ordinarily, an error in the admission of evidence does not warrant appellate relief unless refusal to

do so is inconsistent with substantial justice or affects a substantial right of a party. *Badiee v. Brighton Area Sch.*, 265 Mich. App. 343, 356; 695 N.W.2d 521 (2005). In this case, the trial court permitted plaintiff to introduce evidence regarding alleged violations of eleven federal regulations pertaining to two different theories of liability without the trial court determining the relevance of that [\*18] evidence. The jury responded with a substantial award to plaintiff. It is impossible to say upon which of plaintiff's two theories the jury based its award or to say that the jury did not rely upon irrelevant evidence in making the award. I therefore cannot conclude that the erroneous admission of the evidence was consistent with substantial justice or did not affect the substantial rights of a party.

I further conclude that defendants were entitled to a directed verdict on the issue of lost earnings. At the conclusion of the proofs before the trial court, defendants moved for a directed verdict on the issue of lost earnings, arguing that the only evidence presented on that issue was plaintiff's unsubstantiated testimony that he anticipated earning between \$17,000 and \$25,000 annually in the coming years. The trial court denied defendants' motion. The jury award thereafter included \$16,000 annually in lost future earnings. Defendants argue on appeal that the only evidence of anticipated earnings was plaintiff's own testimony, which was so speculative that plaintiff failed to carry his burden of proof. I agree.

Appellate review of a trial court's decision on a motion for directed verdict [\*19] is de novo. *Sniecinski v. Blue Cross & Blue Shield*, 469 Mich 124, 131; 666 N.W.2d 186 (2003). A motion for directed verdict should be granted only if the evidence and all legitimate inferences arising from that evidence, when viewed in a light most favorable to the nonmoving party, fail to establish a claim as a matter of law. *Id.*

In a tort action, damages are not compensable if they are remote, contingent, or speculative. *Hannay*

*v. Dep't of Transp.*, 497 Mich 45, 78; 860 NW2d 67 (2014). A plaintiff is not precluded from recovery simply because the damages lack precise proof, however, and mathematical precision is not required. *Id.* In this case, the parties agree that the *only* evidence supporting the award of future income was plaintiff's own testimony that, but for his injuries, he believed he would be working and earning between \$17,000 and \$25,000 annually. By contrast, plaintiff also testified that he had become disabled by his health in 2007 and had therefore not been employed from 2007 until six weeks before the accident, when plaintiff began to work as a self-employed "scraper." Plaintiff had applied for Social Security Disability benefits in 2007, and continued to have health problems just weeks before the accident<sup>2</sup>. To summarize, not only is there virtually no evidence to support the award, there is evidence that prior [\*20] to the accident, plaintiff was not earning wages and had been unable to earn wages due to his health since 2007. Given the lack of evidence in support of the award and the existence of evidence weighing against the award, the trial court should have granted the motion for directed verdict on this issue.

For these reasons, I would vacate the jury verdict and remand for new trial.

---

<sup>2</sup>Plaintiff testified that prior to the accident, he had experienced myriad injuries and health difficulties that had affected his ability to work. Plaintiff testified that he had suffered nine heart attacks. In 1991, plaintiff was injured when he fell down a flight of steps. That same year, plaintiff accidentally shot himself in the leg, shattering his left femur. In 1995, plaintiff was beneath a jacked-up truck when the truck fell, fracturing his arm and bruising his ribs. In 1999, he was involved in a fight that resulted in injuries to his spine and left wrist. In 2005, plaintiff fell from a boat dock injuring his left shoulder. In 2006, plaintiff sustained injuries in a bus accident. In 2007, plaintiff was involved in another fight resulting in a head injury. And from 1994 until 2007, plaintiff was disabled by pulmonary embolisms, for which he ultimately sought Social Security Disability [\*21] benefits in 2007. On August 2, 2010, about two weeks before the truck accident in this case, plaintiff was diagnosed with deep vein thrombosis in his legs and hospitalized with blood clots. In February 2014, after the truck accident but before trial, plaintiff again fell and suffered an acute closed-head injury and an acute lumbar strain.

/s/ Michael F. Gadola

---

End of Document

RECEIVED by MSC 11/4/2024 7:59:14 AM

# **EXHIBIT 25**

# **Report**

**By Larry Baareman**

---

**September 27, 2021**

**Chandra McDuffie, as Personal  
Representative of the Estate of William  
McDuffie-Connor, deceased,**

**-v-**

**Scott Neal, N.S.S. Construction, Inc., and  
Memberselect Insurance Company**

**TRTC Case #1160-20**

**Crash Date: 07/17/2019 @11:45 a.m.**



## Table of Content

CRASH SUMMARY.....	2
ROADWAY .....	2
WEATHER.....	2
DETROIT POLICE DEPARTMENT REPORT.....	2
DEPOSITION – SCOTT NEAL – DEFENDANT/N.S.S. DRIVER .....	3
DEPOSITION – NICK SCHUBECK – OWNER OF N.S.S. CONSTRUCTION .....	7
DEPOSITION – MR. MATTHEW PACE – WITNESS (07/01/2021).....	15
RECORDED STATEMENT – MR. MATTHEW PACE – WITNESS (02/04/2020) .....	21
DEPOSITION – OFFICER RYAN WILSON – MICHIGAN STATE POLICE CMV ENFORCEMENT OFFICER.....	22
FMCSA SMS DOCUMENTATION- N.S.S. CONSTRUCTION, INC., D/B/A RG BILLS, INC. ....	26
10/16/20 – SCOTT NEAL ABSTRACT DRIVING RECORD (00278) .....	29
SCOTT NEAL’S PREVIOUS EMPLOYER, HAGGERTY LOGISTICS, INC.’S, SUBPOENA RESPONSE.....	30
GOOGLE EARTH/GOOGLE STREET VIEW MAPS .....	32
DOCUMENTS REQUIRED TO BE MAINTAINED BY MOTOR CARRIERS, PURSUANT TO THE FEDERAL MOTOR CARRIER SAFETY REGULATIONS Q by.....	34
CALIBER CONSULTING – MR. TIMOTHY P. ABBO – ACCIDENT RECONSTRUCTION REPORT 08/2/2021.....	35
NSS CONSTRUCTION EMPLOYMENT AND SAFETY MANUALS.....	36
MICHIGAN COMPILED LAW .....	37
OHIO COMMERCIAL DRIVER LICENSE MANUAL.....	38
FEDERAL MOTOR CARRIER SAFETY REGULATIONS .....	41
ON GUARD – U.S. DEPARTMENT OF TRANSPORTATION/FEDERAL HIGHWAY ADMINISTRATION (FHWA-MC-97-004) .....	46
DOCUMENTS REVIEWED .....	46
OPINIONS .....	47



**CRASH SUMMARY**

On Wednesday, July 17, 2019, at around 11:45 a.m. Mr. Scott Neal was operating a red, 1997 Ford LT-9000 Dump Truck, for RG Bills Construction, Inc., while traveling northbound on Meyers Road, in Detroit, MI. At the same time, Mr. William McDuffie-Conner was also traveling northbound on Meyers Road, behind Mr. Neal's dump truck, in a white 2000 Chrysler Sebring. The Detroit Police Department report indicates Mr. McDuffie-Conner attempted to pass Mr. Neal, on the right-hand side, and struck his vehicle, which caused Mr. McDuffie-Conner's Chrysler Sebring to flip over onto its roof. Mr. Neal appeared uninjured, and Mr. McDuffie-Conner sustained fatal injuries.

**ROADWAY**

Meyers Road is an asphalt paved roadway, which consists of one northbound lane, one southbound lane, and is divided by a center turn lane. In each direction, there is a solid white fog line to the right-hand side and a solid yellow line on the left-hand side. Inside the center turn lane, there are dashed yellow lines. Approximately 500 feet south of where this accident occurred, there is a white street sign designating the middle turn lane for left turns only, in either direction. Approximately 537 yards south of the accident scene, the speed limit is posted at 30 MPH. Lastly, both the southbound and northbound lanes have a shoulder, measuring 6 feet 10 inches, which separates the curb from the solid white fog line, on the right-hand sides in each direction.

**WEATHER**

At the time of this crash, the weather was reported as clear, with daylight. The road surface condition was reported as having been dry. Historical weather data for Detroit, Michigan, at 11:48 a.m., show the temperature was 84 degrees, with 66% humidity, zero precipitation and partly cloudy conditions. Visibility measured 10 miles.

**DETROIT POLICE DEPARTMENT REPORT****Reporting Officer Narrative- 7/17/19, SpideID729, 2124**

I spoke to the driver of the semi-truck, who advised that he was traveling northbound on Meyers, near Gavel. Neal stated he went to turn right into 14294 Meyers when he collided with McDuffie. As I was roping off the scene, I went to the business at 14349 Meyers "Big Sam Auto Parts" and observed video recording of the accident. The video showed at 1132 hrs., the white Sebring was stopped in far-right parking lane, facing northbound, when the red dump truck passed it traveling in the correct northbound lane. **The Sebring then started on the road, still traveling in the parking lane, attempting to pass, when the red dump truck started right turn into**

**14349 Meyers and the two vehicles collided**, with the Sebring hitting the curb and S/E pole, rolling over onto its top.

#### **Interview Statement Form- 7/17/19, Scott Neal**

I was at Steel/Gavel. I was going south on Steel then I made a left turn onto Intervale, then I made a left turn on Meyers. I was going north on Meyers; **I was preparing to make a right turn into the driveway of Detroit Recycled Concrete. I had my right turn signal on, I was going very slow, and suddenly I felt the truck jolt and I hear a loud bang.** I thought my tarp came loose. I looked in the passenger side mirror, I saw a glimpse of white, I stopped immediately and got out of the truck. I walked to the back of my truck and saw a white car, flipped upside down. Another guy saw a police car coming up Meyers, so the guy flagged the officer down. I tried to help the man, but I saw his head was smashed, there was nothing we could do. I stayed at the scene and told the officers what I saw.

#### **DEPOSITION – SCOTT NEAL – DEFENDANT/N.S.S. DRIVER**

Mr. Scott Neal remembers both accidents, one happening on May 27<sup>th</sup>, 2020, and one on July 17<sup>th</sup> of 2019 (p.9). At the time of the July 2019 accident, he was staying in Ypsilanti, MI, he bounced between Ohio and Michigan, and he has places in both (p.12). His primary address is in Ohio (p.13). Mr. Neal has an Ohio Class A CDL, with air brake endorsement (p.17). He was trained in the US Navy as a heavy-equipment operator, including truck driving (p.27) He attended C1 Truck Driving School, in Indianapolis, Indiana, in June of 2005 and he officially obtained his Class A CDL. From that time forward, he was employed as a truck driver and was OTR until roughly 2014 (p.27).

Mr. Neal has never been convicted of any crimes and the only issues have been with traffic violations like speeding tickets, seatbelt and traffic lights. He would drive 125 to 150,000 miles a more per year (p.29). Prior to the accident in July of 2019, he was working with NSS Construction as a driver and he was hired there in March of 2019. It was a local route, NSS is a construction company and he hauled material and equipment for Nick, the owner of NSS. He would use their vehicles, trailers and everything (p.30). Mr. Neal was responsible for loading and unloading their equipment as well, such as back hoes, dozers and front-end loaders. **He indicated they did not teach him how to drive any of that and he had experience from the Navy on that** (p.31).

**Mr. Neal indicated his hours at NSS were more like 80 hours per week**, he was paid \$22 an hour and he was never paid any overtime. He indicated it was all

straight time. **When he hired on with Nick, he filled out all the paperwork, tax papers and everything.** Even though he filled everything out, Nick preferred to pay him cash (p.31). He indicated Nick always gave him cash, he has yet to receive any W9 or W2 and he has not been paid for the last two weeks that he worked for Nick. Mr. Neal indicated he as paid anywhere from \$1,500 to \$2,000 per week. **He worked with Nick until July 25, 2019, a couple days after the accident, and Nick put him on an indefinite layoff** (p.32).

Mr. Neal indicated it was his responsibility to make sure they had their equipment where it needed to be and that they had the material they needed. **He was working seven days a week** (p.33). On the day of the 2019 accident, Mr. Neal does not remember much of what had actually happened on that day (p.40). He indicated he got to work, did his pre-trip inspection, checked his lights, horn, brakes, and everything worked. Nick ended up calling him, told him he wanted him to go and pick up a load of gravel and bring it to him in downtown Detroit. Mr. Neal had to go to the gravel place, pick up a load of crushed concrete and bring it to him. He indicated he was driving a tri-axle dump truck (p.41). He explained, he doesn't remember the names of the side streets he was traveling down, the shop was right there on Gavel, and you could not make a hard left-hand turn out of the driveway, or out of the fence onto Gavel. He indicated it was too sharp of a turn, so whenever they left out of the shop area, they would have to go down the one road that was right straight in front of their driveway. They go down one or two streets, make a left, which takes them back out to Meyers. **At Meyers, he would have to make a left-hand turn and the gravel facility- or the crushed concrete facility- would be on the right-hand side just before the railroad tracks** (p.42).

Mr. Neal confirmed Gavel Street is the yard where all his machinery is kept (p.43). He indicated it is roughly two blocks from Gavel Street to where he had to go and get the gravel from, so, it is really close. He indicated it was within a 15–20-minute drive from Gavel Street to where he was going to deliver it, at the Piston's facility (p.44).

**He confirmed he turned left onto Meyers, the gravel facility was before the train tracks, he slowed way down to a creep, he was in 1<sup>st</sup> gear, he had his right-hand** (p.44) **signal on, and he was turning into the facility.** He indicated Meyers Road is one lane going in each direction, with a parking lane on each side and there were cars parallel parked along the side. **Mr. Neal indicated he was making his right-hand turn; he heard a loud bang and the truck jumped.** In the past, whenever his tarp would end up letting loose, the arm on the tarp was spring-loaded, and it would come down with a really loud bang (p.45). **He heard the loud bang and came to a stop.** Mr. Neal originally thought the loud bang was his tarp had come loose and

crashed closed. **When he looked out his mirrors, all he saw was a blur of white, and then the truck jumped** (p.46).

Mr. Neal confirmed the truck was unloaded. He came to a stop, got out of the truck, walked around to the back, saw the car flipped over, and he believes there was another guy (p.46) who ended up seeing a police officer coming down the road. Mr. Neal indicated he was trying to see if there was anything he could do for the occupant of the car, but there was nothing that could be done (p.47). He went to the white car to see if there was anything he could do for the person, he noticed his head had been crushed in between the door and the concrete. He confirmed it was a convertible vehicle and, as far as he could tell, the top was down (p.48).

**Mr. Neal indicated he went back to his truck, looked at it a little bit, and he called his boss to let him know about the accident.** At that point, he indicated the officer was there and he had an opportunity to speak with him. He forgot what the female officer's name was, who took his report, but all of them kept telling him it wasn't his fault and that he had done nothing wrong (p.49). **Mr. Neal indicated the white car struck his truck right below the passenger door, the steps were going up, which is also where his battery box was. The white car initially struck him there and it hit the front axle. It snapped the U-bolt that holds the front axle in place, in turn pushing the axle forward enough to where it came in contact with the front bumper and bent the front bumper up.** He indicated his truck was towed from the scene (p.50).

Mr. Neal indicated the officers did not give him any tickets because of the accident and that the officers told him that he had done nothing wrong, and it wasn't his fault. He confirmed his boss, and owner of the company, Nick and two other coworkers came to the scene and took him back to the yard after the accident (p.50). He believes he left the scene after about a couple hours, and he had no physical injuries. Mr. Neal indicated he hasn't been able to bring himself to get back into another truck, since the accident. **Once he went back to the yard, his boss did not give him anything to fill out, like a report, but told him to go to Concentra to have a drug screen done. He indicated his test results were clean** (p.51).

Mr. Neal confirmed he worked a few days after the accident and, initially, he had him driving a five-ton dump truck (p.51). He explained, during the entire time he was questioning everything he had done, it was like he couldn't do anything right, and eventually, he was put on an indefinite layoff because there really wasn't anything for him to do. He was hired to drive and operate equipment. It had gotten to the point where he was second guessing himself and he was just paranoid quite a bit (p.52).

Mr. Neal indicated, on the day of the 2019 accident, the weather was beautiful, nice, warm and sunny. He explained, regarding the accident on May 27, 2020, he was panhandling on the street corner (p.56) in Ypsilanti. He indicated he was standing at a corner at a light and this accident happened when the Black Lives Matter rally was taking place in Ypsilanti. There were two black guys who pulled up in a black pickup truck, they offered him a dollar, he walked out in the street to grab the dollar, and when he reached into the cab of the truck to get the dollar bill, the driver grabbed his arm and stomped on the gas. They ended up jackrabbiting off, it slung him into the side of the truck, he had two broken ribs and then he fell to the (p.57) ground. They drove over top of his left foot, which broke his left foot (p.58).

Mr. Neal confirmed, since May of 2020 until present, he is still 50/50 between Ohio and Michigan (p.71). He indicated his discharge documents say, "General discharge under honorable conditions." **He confirmed the Navy believed he had a drinking problem, and he did not want to seek treatment for that.** He has never been to an alcoholic anonymous meeting, he has never had any treatment or counseling for alcohol, he had a DUI offense when he was 18 years old, and he has not had any others (p.83).

Mr. Neal indicated he is not aware of anything inaccurate in the statement he wrote. He confirmed he took photos on his phone because, when he started driving truck, part of his training told him that if he were ever in an accident, you can never have too many pictures (p.85). He took 5-6 photos, gave them to his attorney, he did not give them to his boss, and his boss never asked for them (p.86). Mr. Neal indicated the last time he talked to his boss at NSS was about a year ago (p.87).

Mr. Neal indicated he has specialized certificates of training from the United States Navy, he doesn't know if he still has his certificate of training from when he obtained his CDL and he has his joint forces training certificate under on heavy equipment (p.87). He joined the Navy on September 18, 1996, and was generally discharged on September 17, 1997, after approximately one year. **For his CDL, he went to C1 Truck Driving School in Indianapolis, IN. His training lasted about three to four weeks** and the only other training in truck driving, other than the truck driving school, was in the military. **He indicated the military put him through how to drive a truck, basics, maneuverability and safety on it** (p.88). He does not have any other training, other than from the Navy and the truck driving school. **Mr. Neal confirmed NSS had not provided him with any specific training** (p.89).

Mr. Neal confirmed he is currently unemployed, his last job was with Getaway Tours, where he worked for about two months, ten hours a week, and he was cleaning

buses. He left there due to COVID because the company shut their doors. Prior to Getaway Tours, he was employed with NSS. He began there at the end of March, in 2019 (p.89). He confirmed it was shortly before, a few months before, this crash. His last day with NSS would have been July 25<sup>th</sup>, which is when his boss Nick Schumaker placed him on indefinite leave. Prior to working for NSS, Mr. Neal worked part-time for Home Depot, in the freight department, from February to March. He left Home Depot for NSS and he was not terminated. Prior to Home Depot, he was working at Hungry Howie's from (p.90) January until the middle of February, as a delivery driver. Mr. Neal indicated he left Hungry Howie's because he was tired of driving and wanted to try something different. However, he confirmed he went back to driving when he went to NSS. He was not terminated from Hungry Howie's and indicated he had quit. (p.91)

#### **DEPOSITION – NICK SCHUBECK – OWNER OF N.S.S. CONSTRUCTION**

Mr. Nick Schubeck works for Contract Excavating as a manager (p.11). He has a partnership interest in Contract Excavating. He explained, he is a single member LLC and so he is the sole member of the LLC. **Mr. Schubeck formed Contract Excavating in 2020 because NSS went out of business, at the end of 2019, due to union concerns.** The unions wanted money and he did not have more money to give. He did not declare bankruptcy for the company, and he has never declared bankruptcy (p.12).

Mr. Schubeck confirmed NSS wrapped up at the end of the same year as this crash. **He indicated, the fact that one of his drivers was in a fatal crash and a claim was being made against his company, did not have anything to do with his company closing.** Mr. Schubeck indicated Contract Excavating does underground sewer and water, installation and repair. He is the only employee, there are no other employees, it has a skid steer and a compact excavator, and it does not have any other equipment it owns. Mr. Schubeck does not have any other source of income, other than Contract Excavating (p.13).

Mr. Schubeck indicated NSS Construction was formed in 2001 (p.13), as an S-type Corporation, and he was the sole shareholder. The number of employees at NSS varied, anywhere from five employees to 55 employees. In the beginning of 2019, NSS had maybe ten employees, by July/August maybe two or three and at the end of 2019 he had zero. Mr. Schubeck indicated NSS did underground construction for electrical and mechanical contractors in institutional and industrial business. He explained, that means they dug ditches and holes for electricians and mechanical contractors. Mr. Schubeck started that in 2001 doing small things, they worked their (p.14) way up, and now he's ended up with contracts with electricals and mechanicals working at the hospitals, which automatically resumed, et cetera, et cetera (p.15).



Mr. Schubeck confirmed, prior to NSS Construction, he had previous experience with the type of work he does. **From 1996 to 2001 he worked for Underground construction companies, he had a CDL, and he has had a CDL since 1996 or 1997. He has never had his CDL lapse or get taken away, for any reason** (p.15). He indicated he has never been charged with a crime in his whole life (p.16). Mr. Schubeck graduated high school and has never been in the military (p.17).

Mr. Schubeck confirmed he had around ten employees, in early 2019, they did underground construction for him (p.17), and he had a manager at the beginning of 2019. When asked who the manager was, Mr. Schubeck indicated the unions put a stop work on his build employees, and he no longer had them. **On July 17<sup>th</sup>, 2019, Mr. Schubeck was the manager, he did not have any other managers and Mr. Neal's job title was a Truck Driver. He indicated Mr. Neal's formal job description is in the syllabus of the employee handbook.** At the time Mr. Neal came to work for him, it was a temporary position, and they were ramping down operations. **When asked if Mr. Neal was given a copy of the employee handbook, Mr. Schubeck indicated he assumes so, but that was a couple years ago** (p.18).

**When asked if he could provide evidence that he gave Mr. Neal a copy of the employee handbook, Mr. Schubeck indicated he doesn't have any of the records from that company remaining** (p.18). He confirmed all his employees are supposed to sign a sheet when they receive a copy of the handbook. When asked if he could present the signed sheet, Mr. Schubeck indicated that company is not an ongoing entity and he doesn't have any of those records, at this point. **He explained, he lost his shop and most of those records ended up in the dumpster. He indicated he purchased his shop on a land contract, the land contract was foreclosed upon, and he lost his shop in December of 2019. Mr. Schubeck confirmed that is when all the records were destroyed, because the company was no longer going. He indicated they were put in a dumpster** (p.19).

Mr. Schubeck indicated the job responsibilities of a truck driver, like Scott Neal, were to drive trucks. **When asked what criteria NSS had, in hiring a truck driver like Scott Neal, Mr. Schubeck indicated, Scott Neal was a trained and experienced CDL driver. The criteria were, that he needed to be a trained and experienced CDL driver.** He indicated his employees would be driving trucks on the public roads (p.20). They would drive dump trucks or pickup trucks, which are the types of trucks Mr. Schubeck owned. He indicated he had probably a dozen trucks. **Mr. Schubeck indicated his criteria in screening his truck drivers, who are driving a dump truck, is he required trained CDL drivers to drive trucks that require a CDL driver. He confirmed the truck involved in this fatality, required a trained CDL**

**driver** (p.21). Mr. Schubeck confirmed, if someone said he didn't need a CDL to drive the type of truck that was involved in this accident, on the public roadway and for business purposes, it would be untrue and a CDL is required to operate that vehicle (p.22).

**When asked what NSS' process was, in finding trained and qualified drivers for his trucks, Mr. Schubeck indicated, up until June or May of 2019, those things would be provided by unions. However, he indicated it is, in no fashion, his testimony that the union hired Scott Neal. Mr. Schubeck stated he hired Scott Neal, he handled the hiring for his drivers by April or May and until December of 2019 when he stopped all operations** (p.22).

**Mr. Schubeck had only hired one truck driver at NSS Construction, and it was Scott Neal.** Before he hired Scott Neal, he hired union employees and indicated the union sent people with that type of qualification and training. He explained, when he hired Scott Neal, the union put him on a stop work, he stopped all his build operations, the hiring of Scott Neal was for a temporary position, Mr. Schubeck was ramping down operations and closing that company up. It was the operating engineers of Local 324 who put him on a stop order, because of money. He explained, they were looking for benefit hours to be paid (p.23), that hadn't been paid, and Mr. Schubeck is in an ongoing lawsuit with them over dollars (p.24).

Mr. Schubeck indicated, the first quarter of 2019 was in the middle of the winter, he didn't have a whole lot of build operations at that point, there were maybe two people that were on the road and probably one CDL driver at any given time (p.24). When asked how many crashes or accidents any of his employees had been in, other than Scott Neal, he indicated he is sure there must have been fender benders over the years, but he never had a significant event such as this. He confirmed those would have been CDL drivers that were screened and provided by the union (p.25). **Mr. Schubeck confirmed Mr. Neal is the one driver he hired himself and he won't argue that Mr. Neal was involved in an accident that caused a fatality** (p.26).

**When asked what Mr. Schubeck did to screen Mr. Neal, during the hiring process, Mr. Schubeck stated, "Mr. Neal had a CDL driver's license."** He explained, he hired him on a temporary basis and that would be it. **When asked if the minimum qualifications for his company was that the driver have a CDL, it was good enough for him, Mr. Schubeck indicated he was hiring Scott Neal on a very temporary basis and yes, the minimum qualifications was that the driver had a CDL. Mr. Schubeck indicated, when you obtain a CDL, it is the State of Michigan from the certain subtests, the road test, and that is going to be in the State of**

Michigan. Mr. Schubeck can understand that. He understands how you (p.27) receive a CDL (p.28).

Mr. Schubeck indicated he did not do any further inquiry outside of having the knowledge that Mr. Neal had a CDL and he did not do any further background investigation into it. He did not run any type of criminal checks on him and indicated Mr. Neal's criminal background wouldn't be any interest of his. Mr. Schubeck did ask him about his prior work history, and they discussed that Mr. Neal had driven CDL trucks in the past. He did not call any of Mr. Neal's previous employers to do a reference check and indicated he as only employing him as a temporary concern. Mr. Schubeck indicated he did not pull an updated driving record for Mr. Neal, and he did not do anything else, other than obtain and verify Mr. Neal's CDL (p.28).

When asked, from an employer's standpoint, if it would concern him if one of his drivers had 34 traffic citations and was going to be driving one of his trucks, Mr. Schubeck indicated "probably not" because traffic citations can be a lot of different things. He indicated, yes, he assumes it would concern him if his driver had a history of at-fault accidents, because they would be at-fault accidents. He indicated it would concern him if one of his drivers had been terminated from past jobs for crashing into other vehicles, because it is probably not a good thing if someone likes crashing into things (p.29). He assumes it would also concern him if one of his drivers were terminated from a position for being accused of falsifying driving logs, because that would be falsified driving logs. When asked if it would concern him if one of his drivers left his job because he crashed into an 80-year-old man on the highway, Mr. Schubeck indicated, if he ran into a vehicle, then he understands. He understands Mr. Neal was in a number of accidents (p.30). Mr. Schubeck indicated he is sure it would concern him if one of his drivers had been losing his previous trucking jobs for at-fault accidents. When asked what he did to ascertain Mr. Neal's employment history, when he hired him, Mr. Schubeck indicated, from what he understands, on a temporary basis, he hired a guy with a CDL. He confirmed he did not ascertain Mr. Neal's traffic citation history when he hired him, he did not ascertain Mr. Neal's history of at-fault accidents when he hired him, and he would not know anything about ascertaining Mr. Neal's history of alcohol abuse when he hired him (p.31).

Mr. Schubeck confirmed he knew Mr. Neal had been in the military, he did not ascertain why he was discharged, and he did not ask him. Mr. Schubeck indicated, what he did during the hiring process of Mr. Neal was a face-to-face interview with him. Mr. Schubeck explained, he believes he listed the job in an ad on Craigslist,

Mr. Neal answered the ad, he interviewed him, he hired him, Mr. Neal worked for him as a temporary concern and was eventually laid off (p.32). **Mr. Schubeck believes his interview with Mr. Neal was maybe 20-minutes**, his pay rate was \$20 an hour, he was a 1099 employee, probably paid with a check and **most of those records from the company are gone now** (p.33). Mr. Schubeck indicated he may have paid Mr. Neal, at the end of the week, by giving him an envelope of cash because he was ramping down the operation of the company and Mr. Neal was hired as a very temporary employee (p.34).

Mr. Schubeck confirmed he has a file box at his house that contains some NSS records. **When asked why he has not given those records to his attorney, Mr. Schubeck indicated he is not going to spend- because he hasn't been able to locate all that many records, it is very little that exists, and he doesn't know what he'd like him to give his attorney** (p.35). When asked if he would give his attorney all of the records related to NSS, Mr. Schubeck asked if he would like all the records in regards to all of his operations for NSS Construction, for 18 years? (p.36).

**Mr. Schubeck indicated he did have a driver's file for Mr. Neal at the time he worked for him, but it probably doesn't exist now. He doesn't know for sure, but he would say with 90 percent accuracy, it doesn't exist at this point. He does not have a copy of Mr. Neal's certified driving record from 2019 because he doesn't have a record of almost anything that had to do with that company.** Some tax documents would be all that still exists. He explained, there is very little left, he probably kept 3 percent of the documents that were on that boat, at the time, and there is no way he can tell if he has this specific piece of paper. He confirmed he can go look for it, and if he has it, he will give it to his attorney (p.39).

**Mr. Schubeck indicated he does not have the vehicle maintenance file for the dump truck and that he would not have maintained any of those.** He doesn't know for sure but- he kept some tax records for that. He indicated the same would go for the accident register of the truck, he doesn't think he has it (p.39). **He doesn't have any of the driver logs for Mr. Neal but, at one time, he is sure he did. When asked why Mr. Neal would say he never filled out any driver logs, Mr. Schubeck indicated, maybe, Mr. Neal couldn't, he was there on a temporary concern and for a very short period. Mr. Schubeck doubts he has any driver vehicle examination reports, the bulk of the paperwork went into the dumpster and to the best of his knowledge the driver qualification file went in a dumpster. Mr. Schubeck does not have any training documentation for Mr. Neal, and he believes Mr. Neal would have been prescreened through Concentra, pertaining to any preemployment drug and alcohol testing** (p.40). He indicated, to the best of

his knowledge, he does not have those documents and indicated they would be on file with Concentra. He indicated post-accident drug and alcohol screens for Mr. Neal would have been with Concentra and they would have those records. **A signed acknowledgement or receipts for a misuse of alcohol and use of controlled substances policy, to the best of his knowledge, is paperwork that all went in a dumpster. He does not have an annual inquiry and review of Mr. Neal's driving record, he never had one, and indicated Mr. Neal only worked for him for a very, very short period. Mr. Schubeck indicated he did have a completed application for employment, for Mr. Neal (p.41). When asked where it was, Mr. Schubeck indicated it was probably in a dumpster. He also indicated a driver investigation history file for Mr. Neal, any documents showing inspections and any documentation of safety meetings held by NSS Construction were, to the best of his knowledge, in a dumpster (p.42).**

**Mr. Schubeck indicated NSS has had safety meetings before, probably not with Mr. Neal, because by the time he was hired, he was ramping down the operations and he was hired as a very temporary concern (p.42). He indicated any safety director records, including safety meeting records, accident, illness, injury reports or investigations would be in a dumpster. Bills or records related to that dump truck would also be in a dumpster, he explained, he did not retain very many of those records outside of some tax documentation and to the best of his knowledge those records, and any inspection reports, are in a dumpster. Mr. Schubeck indicated he does not have Mr. Neal's abstract driving record, from the time of his hiring (p.43).**

Mr. Schubeck indicated he likely contacted his insurance company about this accident, shortly after it. He did not file a claim and he did not think he had to file a claim. He confirmed, he did not file a claim for any damage to the vehicle and explained it was in the middle of winding down that business. He indicated he never saw that dump truck again. Mr. Schubeck indicated the police impounded it for an investigation, the truck had damage to its front axle, the impound fees would have been somewhere in excess of four thousand, forty-five hundred dollars, he was in the middle of (p.45) liquidating and auctioned the bulk of his equipment (p.46).

**When asked what type of supervision was given to Mr. Neal, Mr. Schubeck indicated he doesn't know that he can answer that question. He stated, "Did somebody lord over him while he drove a truck independently? I don't think so." (p.47) When asked if there was any supervision provided to Mr. Neal, Mr. Schubeck stated, "Did someone watch him while he worked? Was I in contact with him while he was working?" Mr. Schubeck indicated he was in contact with**

him while he was working and there had to be some direction for what activities needed to be performed. Mr. Schubeck indicated Mr. Neal was a mediocre employee, he didn't like to show up very early and he liked to (p.47) leave a bit early. However, he did just fine driving a truck for him and he did just fine performing the duties he was required to. He indicated Mr. Neal worked for him for six weeks, to a month, and it wasn't for long. **Mr. Schubeck indicated Mr. Neal did not appear hungover in the morning and he did not know that Mr. Neal had a drinking problem** (p.48). Mr. Schubeck did not know Mr. Neal had been kicked out of the military for alcoholism, he never went out drinking with him and, to his knowledge, Mr. Neal never drank at work. When asked to tell all the bad things about Mr. Neal, Mr. Schubeck indicated he didn't always run-on time. When asked what the good things about him were, Mr. Schubeck indicated he showed up and did the job that he was asked to do (p.49).

In the month, to six weeks, prior, Mr. Schubeck indicated he would have to discuss Mr. Neal's work performance because he would sometimes run late. **He indicated his requirement of the trucks being inspected, prior to being taken out, was everything had a pre-trip inspection, at least a walk-around inspection by the driver before he left.** He confirmed, in this case, that would have been Mr. Neal's responsibility. **Mr. Schubeck indicated there were written pre-inspection forms, but he does not have any of the documentation anymore. There is a great chance they have gone into a dumpster.** He explained, by the time Scott came to work, he was no longer operating under that structure and that environment and, again, he was a very temporary employee, as he was ramping down the operations (p.50). **Mr. Schubeck indicated they don't know if Mr. Neal had actually done his pre-trip inspection on July 17<sup>th</sup>, 2019** (p.51).

Mr. Schubeck indicated Mr. Neal was picking up or dropping off material at the concrete crusher and he does not know if he had a load at the time (p.51). **Mr. Schubeck does not have any time records that show when Mr. Neal arrived that morning because all of that stuff would have been thrown away** (p.52). Mr. Schubeck indicated he likely did the bulk of any repairs to the dump truck, in-house. He indicated those trucks were always in fine shape and roadworthy when he owned them. **He would make sure that he knew they were in fine condition and roadworthy because the drivers performed pre-trip inspections** (p.54).

Mr. Schubeck indicated he was not aware that the Michigan State Police Commercial Vehicle Enforcement Division did an inspection of the truck after the crash. **He was not aware the truck involved had rear turn signals that did not blink and were inoperable. He was not aware the brakes were out of adjustment.** When



asked if he was aware that the number of defective brakes was equal to or greater than 20 percent of the service brakes and was pulled out of service, he indicated he was not aware of that (p.55). **Mr. Schubeck indicated, a couple of years ago, that would have concerned him if he had known about the signal and brake issues. He wasn't aware of that until now** (p.56). When asked if he had any documentation of brake inspections prior to the crash, Mr. Schubeck indicated he doesn't have any of the records that existed prior to that. The company went under, his shop was foreclosed, all the paperwork that was pertinent went into the dumpster (p.59).

Mr. Schubeck indicated he found out about the crash when Mr. Neal called him, he said he was in an accident (p.61), he was pulling across the street, and someone ran into the side of the truck (p.62). Mr. Schubeck indicated the end of his involvement with the crash was when he sent Mr. Neal for his post-crash testing at Concentra. He confirmed he and Mr. Neal talked about what happened, Mr. Neal didn't believe in any fashion he was wrong, Mr. Schubeck agreed with him because Mr. Neal told him about what went on there (p.64). He confirmed Mr. Neal told him the car came out of nowhere, he said he was crossing the street and then a car hit him as he was crossing the road (p.65). Mr. Schubeck indicated the road isn't pretty wide, it has two lanes total, one each direction (p.66). He confirmed there is also a parking lane on each side, people pass in the parking lanes, but he wouldn't say they drive in the parking lanes (p.68).

**Mr. Schubeck confirmed he would expect his driver to pay attention when he is turning into driveways on the street, which would include making sure that his blind spots are cleared** (p.68). **He confirmed it would include making sure somebody isn't in the lane next to him when he is turning through that lane. After watching the video of the incident, Mr. Schubeck indicated he does not have any criticisms, whatsoever, about Scott Neal's driving on that day** (p.69). He confirmed his testimony is Mr. Neal passed by a car, he didn't see him doing anything wrong there and he doesn't think Mr. Neal should have done anything differently (p.70).

Mr. Schubeck confirmed Mr. Neal was a temporary employee and if he had done anything wrong, he would have terminated him. He indicated Mr. Neal was laid off a couple weeks after the accident, but it had nothing to do with this accident. He confirmed he brought Mr. Neal back to work after the accident, he was driving trucks and he ended up laying him off (p.71). **Mr. Schubeck confirmed he is aware of another incident involving Mr. Neal when a pickup truck was impounded by the police on the basis of a solicitation charge. When asked if it was his understanding that Mr. Neal was soliciting a prostitute, he indicated he thought Mr. Neal was picking up his girlfriend.** Mr. Schubeck confirmed it was a company truck, it had been impounded, and he had to pay about \$1,900 to get it back out (p.73).

**DEPOSITION – MR. MATTHEW PACE – WITNESS (07/01/2021)**

On the morning of July 17, 2019, Mr. Matthew Pace left his house and was on his way to his sister's (p.10). He was driving a blue Hyundai Sonata, with his brother and three kids in the vehicle as well (p.11).

**Mr. Pace indicated they were driving north up Meyers, toward Fenkell, and there was a big truck up in front of them. As they passed Schoolcraft, there was a liquor store, there was a little white vehicle on the side of the road in the bike lane, parked. He explained, as they passed the white vehicle, he began to drive, he was driving on the side of them, Mr. Pace slowed down to let him in front of them (p.11), but he proceeded on the side of them, listening to music and bobbing his head. Mr. Pace indicated, as they continued to drive, the guy like hit the gas trying to speed off. When they got close to the railroad tracks, close to Linden, as the truck driver was turning, he hit the front passenger's tire area of the truck and flipped his car. Mr. Pace explained, when he flipped his car, he immediately parked, he and his brother jumped out of the car, they ran up to his car to see if they could help him from under the car, because the car was upside down. When they got to the car, they saw the car was pinning him on the ground so they couldn't do anything. They stayed there until the police came and took their statement, and they left (p.12).**

Mr. Pace confirmed he was following behind the big dump truck (p.12) and there were no vehicles between them. He indicated, **as Mr. Pace's car passed the white car, it proceeded to drive in the shoulder area of northbound Meyers.** He confirmed **the dump truck had already passed the white car before it had started to drive. Mr. Pace confirmed that he slowed down to try and allow the white car to come over into the travel lane of northbound Meyers because there is only one lane of travel in that area of northbound Meyers (p.13). Mr. Pace indicated the white car did not put his turn indicator on to indicate he was going to try to pull over into the travel lane (p.14). He confirmed he was behind the dump truck and the dump truck driver turned his right turn indicator on closer towards the railroad track (p.15). Mr. Pace confirmed he saw the right turn indicator blink and he indicated it was blinking for awhile before he came to a stop.** He explained, as they were going towards the railroad track, they were following behind the dump truck, he never stopped, he turned his blinker on, he slowed down, and he turned his blinker on. As he turned his blinker on, that is when he began his turn. But at the same time as him turning, the white car hit his gas and sped up. He confirmed that is when the white car and the dump truck collided. Mr. Pace confirmed he saw the dump truck's brake lights when he slowed down to turn (p.16).

Mr. Pace indicated the driver of the white vehicle, Mr. McDuffie, had looked over toward his vehicle (p.16). He did not indicate to them that he wanted to get into his travel lane, he was on the side of them, Mr. Pace slowed down, he waited for Mr. McDuffie to go in front, but he was just bobbing his head to them, and listening to music. As they got closer to where the accident happened, he just hit his gas, tried to beat the turn of the truck, and he hit the truck and flipped (p.17). **Mr. Pace indicated, Mr. McDuffie was alongside his vehicle and he would have been able to see the turn signal and the brake lights of the truck** (p.18). He indicated there was no sunlight that blocked his view of the dump truck's turn signal or brake lights. Mr. Pace remembers the day of the accident as being warm out, but he knows the sun wasn't in front of him, shining in his face. He confirmed it was not a rainy overcast day (p.19).

**Mr. Pace indicated, in his opinion, he doesn't believe there was anything the truck driver could have done to prevent the accident because he was turning, big vehicles like that are real hard to stop, the truck was turning, the white car hit his gas and tried to pass the truck. So, there was no way that the truck driver could anything to stop the turn or anything else to stop the guy from hitting his truck.** He confirmed that is based on him being present at the accident and witnessing the accident (p.22).

Mr. Pace indicated he has talked to other lawyers or people from the insurance company, probably three or four times (p.23). He thinks the first time he spoke with somebody was last year sometime. He believes he has spoken with Ms. Diviney, the lawyer just questioning him, two or three times (p.24). He never met her in person, and she did not show or send him any documents about the case. She did not send or play his previous statement, she did not show any pictures or videos, but he is aware that there is a video that shows the crash. He was told by the insurance company that there was a video and indicated it just doesn't show the whole ordeal of the accident. He indicated they told him that when they first called him (p.25).

Mr. Pace confirmed he is kind of familiar with the area, there is a parking lane and a driving lane (p.32). He is not sure if there is a middle turn lane but there is either a parking lane or a bike lane with a solid white line there (p.33). He indicated cars do not commonly drive down the parking/bike lane, he drives in the area four or five times a week, he's never seen anybody drive there, and he's seen cars park on the side of the road. **Mr. Pace confirmed he had no problems seeing Mr. McDuffie in his white convertible** (p.34). **Mr. Pace confirmed, as he and the truck passed Mr. McDuffie, the truck should have been able to see him parked on the side of the road. Mr. Pace confirmed he actually saw Mr. McDuffie's vehicle begin moving from the lane he was parked in.** He confirmed he did not see Mr. McDuffie get into his vehicle (p.35).

Mr. Pace indicated, when he first saw Mr. McDuffie's vehicle, it was not moving, and he could see him in the driver's seat of the vehicle. **He confirmed it was clear to him that there was a man in the convertible, that was parked on the side of the road (p.36). Mr. Pace indicated he was not surprised when Mr. McDuffie started to drive his vehicle. He explained, the whole thing was, Mr. McDuffie was showboating, he was driving on the side of them, Mr. Pace slowed down, and Mr. Pace waved for him to go (p.37). He indicated he wasn't surprised because driving is a normal thing so why would he be surprised if somebody was driving their vehicle (p.39). Mr. Pace was surprised that Mr. McDuffie didn't merge over into the driving lane, he was surprised that he didn't merge up because he slowed down to allow him to drive into the merging lane and get over. He indicated Mr. McDuffie stayed on the side of him, bobbing his head to his music. Mr. Pace confirmed he reacted to Mr. McDuffie's vehicle beginning to drive. He confirmed he thought he probably needed to get into his lane so he should take some action, which he did, and slowed his vehicle down (p.40). Mr. Pace confirmed he never contacted Mr. McDuffie's vehicle (p.41).**

Mr. Pace confirmed he was told the Michigan State Police accident reconstruction team, of the fatal squad, did an examination of the truck. He was told by the insurance company, but they did not tell him what they found. **He confirmed they did not tell him that the accident reconstruction expert determined the blinker on the truck was not operational. He explained, they told him that the blinker wasn't operational, but it could have been from the collision (p.41). Mr. Pace indicated he knows for a fact, with his own eyes, he saw a blinker on that truck, it was blinking, and he knows there was a blinker on. He isn't sure where the blinkers on the back of the truck are; he just knows he saw them (p.42). Mr. Pace indicated he does not what time the truck turned its blinker on, he just knows is when the blinker came on, he began to turn. All he was doing was paying attention to the guy that was on the side of him because he was waving him to go ahead, and he didn't go. He indicated, when he sped off, he hit the front of the truck, he doesn't know anything about the truck. Mr. Pace confirmed he slowed down to allow Mr. McDuffie to merge in, he never merged in, he stayed on the side of him, showboating in his vehicle, bobbing his head and listening to his music. As they got closer to wherever the truck was turning, Mr. McDuffie punched the gas and tried to speed past and hit the front of the truck; that is all he knows (p.46).**

**When asked to show when he slowed down, in the video, Mr. Pace said you can see a big gap between he and Mr. McDuffie. Mr. Pace denied having boxed Mr. McDuffie in, because he bobbed his head at him. He indicated he slowed down to allow him to merge in, he even waved his hand for him to go in, he stayed on the side of him showboating and then he punched the gas (p.47). While watching the**

video, Mr. Pace stopped it at 57 seconds, which is where he said he gave Mr. McDuffie an opportunity to merge in front of him (p.48). After playing the video again, he stopped it, said as he started to pass him, Mr. McDuffie started to drive off, he slowed his gas and Mr. McDuffie stayed on the side of him showboating (p.48). He indicated he waved his hand for him to pass, he never passed, he punched his gas and tried to pass the truck as it was turning. He confirmed, at 56 seconds into the video, he slowed his vehicle down to enough space for Mr. McDuffie to pass in front of him. He confirmed, at that time, Mr. McDuffie was directly next to his vehicle driving on the side of him. When asked, if Mr. McDuffie had merged into his lane, wouldn't he have hit his vehicle, he responded no. There was space in between he and the truck, there as space in between them for Mr. McDuffie to move over. He indicated, his client never moved, he even waved his hand for him to move over, he stayed on the side of him showboating and then he punched his gas. When asked, at what point did he wave his hand, he indicated it was the whole time he was on the side of him when he was (p.49) driving. He explained, once he started to drive on the side on him, he waved his hand for him to go. He wasn't trying to not let him pass. He indicated Mr. McDuffie stayed on the side of him, trying to showboat in a nice car, and as the truck was turning, Mr. McDuffie punched on his gas instead of turning over, he punched his gas in that one lane and hit the front of the truck (p.50).

Mr. Pace confirmed at 11:33:28 of the video, he wasn't real close to it at that time. All he knows is Mr. McDuffie hit his gas, he hit the truck and the truck came to a stop. Mr. Pace confirmed, at the time the truck initiated its turn at the video time stamp 11:33:28, there was not enough room between the truck and his vehicle, that would allow his client to merge into that lane. He explained, because Mr. McDuffie stayed on the side, he never moved over, he never got over to get in front of Mr. Pace, Mr. McDuffie stayed on the side of him, he was driving on the side of him (p.50), bobbing his head listening to his music, and he never tried to move over. When asked to show when, in the video, Mr. McDuffie would have been able to safely merge, Mr. Pace indicated to Mr. Marko, if he were there, he would have seen the time where Mr. McDuffie could have safely merged in between his vehicle and the truck (p.51).

When asked why, if Mr. Pace thought Mr. McDuffie was trying to get over and he was slowing his own vehicle, Mr. Pace indicated Mr. McDuffie was never trying to get over, he didn't try to get over, he told him to get over, Mr. McDuffie stayed on the side of him, driving on the side of him, bobbing his head and listening to his music. He restated, Mr. McDuffie never tried to get over, he never turned on the blinker to get over, Mr. McDuffie never tried to merge over into the road where he could drive, and he stayed in that lane. When asked, 11:33:26 in the video, if

knowing Mr. McDuffie was directly next to him in what they called the parking lane, why was he within feet of the rear of the dump truck, Mr. Pace indicated Mr. McDuffie's vehicle could have fit in front of him and the dump truck. He indicated, if you were on that road at the time of the accident, you would have seen Mr. McDuffie's vehicle was able to get in between he and the dump truck. He explained, they are watching a video from the front of the accident and if there were a video from across the street hitting the side of the accident, you would have seen Mr. McDuffie's vehicle able to get in between him and the dump truck (p.52). He explained, Mr. McDuffie never tried to merge over to get over into the driving lane, Mr. McDuffie wanted to stay in the right lane or the parking lane, Mr. McDuffie never made a gesture of him wanting to merge over, Mr. Pace waved his hand for Mr. McDuffie to move over as they were driving, and Mr. McDuffie stayed in that lane showboating and that is it (p.53).

**Mr. Pace confirmed at 11:33:24 of the video he can see that Mr. McDuffie's vehicle is next to his car. When asked, if Mr. Pace was right next to his car, then Mr. McDuffie couldn't safely merge into his lane, Mr. Pace indicated, and you can also see that there is a big gap between he and the dump truck. He indicated Mr. McDuffie's vehicle could merge over, but he did not want to merge over. He stayed there because he wanted to showboat because he had a nice car (p.53).**

Mr. Pace confirmed it is his testimony that Mr. McDuffie should have been able to see that the truck was turning (p.66) and then he sped to try to pass the truck before it turned. He doesn't think Mr. McDuffie tried to kill himself, **he thought he was going to be able to pass the truck, but he didn't pass the truck before it turned (p.67).** Mr. Pace indicated the truck started to brake to turn and he did not brake prior to turning. He indicated the dump truck was going 20 or 25 mph, from what he could see, and he wasn't going really fast. Mr. Pace confirmed he was himself was going the speed limit, which was 25 mph. After looking at the video, Mr. Pace agreed it looked like he and the truck appeared to be going the same speed. Mr. Pace explained, the corner before where you get to where the accident happened, had a light, when he got ready to turn, he hit his brakes, he tapped on his brakes to turn, so he slowed to turn. Mr. Pace is not sure whether he used his brakes at any other time, prior to the crash (p.73).

Mr. Pace indicated he had been behind the truck for approximately three to four minutes. He first got behind the truck at Schoolcraft (p.75). He confirmed no one blew their horn at the truck or Mr. McDuffie, and the crash occurred in the parking lane. **Mr. Pace indicated he is pretty sure this accident wouldn't have taken place if the truck had continued to go straight, and had not turned, because Mr. McDuffie would have kept going straight in the parking lane. When asked whether there may have been anything that obstructed the truck driver's vision of Mr.**



McDuffie's car, Mr. Pace indicated there are trees there, but everything happened so fast, it was like once the guy hit his gas, it was done (p.76). He explained, even if the truck did see the car, there would have been no way he could have stopped his truck from turning. He indicated the tree probably obstructed the truck driver's vision in some way, but from what he saw, there would have been no way for him to stop the accident from happening. There is no way the truck driver would have known that (p.77) guy was going to hit his gas to try and speed past him. Mr. Pace indicated he is pretty sure the truck driver saw Mr. McDuffie sitting on the side of the road as he passed him, and he is not sure what he saw after Mr. McDuffie pulled off or not (p.78). **Upon reviewing the video, Mr. Pace indicated there was no tree there. He explained, he said there might have been a tree, he doesn't remember, there might have been a tree there (p.79).**

When Mr. Pace was asked if he felt he had an obligation to slow down, to let the other vehicle into the travel lane, Mr. Pace said he didn't feel obligated to, but he did (p.95). He agreed Mr. McDuffie could have slowed down and entered the lane of traffic behind him. Mr. Pace confirmed the entire time Mr. McDuffie was alongside of him, and slightly in front of him at times as it appears in the video, Mr. McDuffie continued to drive in the parking lane and/or the bike lane. He confirmed he was able to see video of the accident during his deposition (p.96). **Mr. Pace confirmed the video depicts the accident that he was witness to. He indicated he could not see a blinker on the truck, at any time during the video, because he wears glasses and everything on the video was really small, so he is not sure.** Mr. Pace confirmed he had his glasses on at the time of the accident (p.97).

**Mr. Pace indicated he doesn't agree that his memory of the accident, on the date of the accident, would be a more accurate reflection of what happened in his memory versus two years afterward.** Because when you are looking at something on a video it is never going to be accurate. He explained, he is talking about as far as time and everything that is going on, it is not accurate. **Mr. Pace indicated, when he determined that Mr. McDuffie was not going to merge into his lane, he did not speed up, and he continued the same rate of speed.** He is not sure what speed that was, he knows they were doing the speed limit, they came from the red light at Schoolcraft, and they continued on. He didn't (p.104) have to turn off until the truck actually started to turn, and the accident happened (p.105).

**Mr. Pace confirmed, when the truck started turning, he had to swerve to the left to avoid the truck when it started turning because it stopped. He indicated that was not because he was following too close to the truck.** It was because the truck got into the accident, and he came to a stop. **Mr. Pace indicated, if he had not gotten into the accident, he would have turned in and Mr. Pace would**

have kept going. He confirmed he was able to stop in time to avoid hitting the truck. Mr. Pace confirmed, it is his recollection that he stopped behind the truck and then went around it. He indicated, when the truck came to a stop, he stopped and (p.105) went around. Mr. Pace indicated he had to brake and go around; he wasn't stopped long at all and he doesn't know if it was a stop or just a slowdown (p.106). **Mr. Pace confirmed he relies on his memory more than the video to refresh his recollection of what happened. He confirmed it is his memory that he recalls a blinker being somewhere on the truck. Mr. Pace confirmed he cannot see the lights anywhere on the truck, in the video (110).** He agreed, he could not see lights on the truck in the video, from what he saw (111).

**RECORDED STATEMENT – MR. MATTHEW PACE – WITNESS (02/04/2020)**

On July 17, 2019, at around 11:45, Mr. Matthew Pace confirmed he witnessed an auto accident. He was driving north on Meyers Road, it is just one lane on each side, and pay a parking lane. He believes the speed limit is either 25 or 35 mph (p.4). He indicated he was traveling whatever the speed limit was, there was a big truck in front of him, so he wasn't going fast at all. Mr. Pace confirmed he saw the white Chrysler convertible, while he was going on Meyers. **He indicated, at first it was parked on the side of the road, but then as he and the big truck passed it, he started to drive, but he was driving on the side of Mr. Pace (p.5).** When asked if the white car tried passing him on the right side, Mr. Pace said, "Yeah. Well yeah he was driving on the side of me to my right." He confirmed the white car was passing through the parking lane. He indicated, when the white car started to pass him, the truck was directly in front of him, so it wasn't that far. He indicated it wasn't enough for a car to get in front of him. Mr. Pace indicated he was behind the truck the whole time they were driving on Meyers, for about a mile or two (p.6).

Mr. Pace confirmed he saw the white car approaching him, he was on the side of him, Mr. Pace had looked over, and the guy must have been listening to music because he started bobbing his head. **Mr. Pace was in the car with his brother and his kid, so he slowed (p.6) down to let him in front of him, instead of him going in front of Mr. Pace, he sped, or he tried to speed up, but the truck had already turned their blinker on, because he was turning into the lot. So, when the guy sped up, he ran into the front of the truck. Mr. Pace indicated the person in the white car was definitely speeding on the side of them.** He explained, as they passed him, he started to drive. So yeah, while they were passing him, he was driving on the side of him. Mr. Pace doesn't know if he was trying to show off because he was in a drop-top, but he was bobbing his head (p.7). Mr. Pace confirmed the white car didn't drop in behind him, he never got behind them and he stayed in the parking lane (p.8).

**When asked if he saw the truck was stopped, as he was approaching it, Mr. Pace indicated the truck never stopped, he turned his blinker on and started to get over.** He confirmed the truck turned his blinker on and then started to get over. Mr. Pace indicated, then the white car sped up, he wasn't even looking forward, he was looking to the side or whatever, bobbing his head, and he tried to stab off. But, as he stabbed off, instead of (p.8) going in front of Mr. Pace, he went straight ahead and hit the truck as he was getting over. He confirmed the driver of the white car was not looking ahead and he was looking at him. Mr. Pace indicated the white car hit the front passenger wheel, or the front bumper part, and the truck was getting over when he was hitting it. He explained, while the white car was speeding through, his car flipped, went towards the entryway of the lot, and he pulled over, jumped out, and he and his brother went over to see if they could pull him out from under the car, but it was on top of his head (p.9).

Mr. Pace confirmed he was driving northbound on Meyers, he passed the white convertible, which was parked on the side of the road, the white convertible started to move forward and was trying to pass him in the parking lane (p.10). He does not know what Mr. McDuffie was doing. He just knows Mr. McDuffie was bobbing his head, so he doesn't know if he was trying to show off because he was in a drop-top or the kind of car he was in. Mr. Pace confirmed he saw the truck slowed down, put his blinker on and started to turn. Then, the white vehicle hit the truck, flipped over and the driver was crushed by the car (11).

#### **DEPOSITION – OFFICER RYAN WILSON – MICHIGAN STATE POLICE CMV ENFORCEMENT OFFICER**

Officer Ryan Wilson spent ten years with the Michigan State Police Department as a commercial vehicle enforcement officer. During that time, he did a two-week post-crash commercial vehicle investigation course, as well as a post-crash investigation course through the Police Technology and Management Institute. He was responsible for post-crash investigations for the Metro Detroit MSP post during his tenure there (p.7). Officer Wilson indicated he has done upwards of around 50 post-crash investigations during his career (p.8).

Officer Wilson indicated, during an inspection, he checks for documentation, registration, insurance, annual inspection, exterior lights, headlights, taillights, turn lights, windshield, windshield wipers, brakes, tires, brake pads, axle rods and push rods. **He indicated the Michigan State Police deem it important to do those inspections after a major crash to find out if any of the equipment violations were a factor to the crash,** such as defective brakes, not being able to stop if the brakes worked, if they didn't work, if push rods were too far out, which means it would delay the time that it would react to stop. If the lighting worked, depending on the time of day,

if it was at nighttime, if the taillights didn't work, or headlights, or, if you're making a turn and the turn signals did not work (p.9).

Officer Wilson confirmed he performed a post-crash investigation on the truck involved in this crash. He did not go to the scene, he wasn't present at the time of the crash, and he has no personal observations that he saw at the time of the crash. He confirmed Exhibit 1 is his report and it is accurate to the best of his knowledge (p.10). Officer Wilson did not take any pictures when he did the inspection and outside of this inspection, he did not do anything else on this case (p.11).

Officer Wilson indicated he found out something happened when he was contacted by Sergeant Lucidi of the Michigan State Police, who is the Metro South accident reconstructionist who routinely, when they have a fatality crash or a serious injury crash, contacts him to complete the post-crash inspection on the commercial motor vehicle. Sergeant Lucidi contacted him, requesting him to assist DPD fatal squad with their post-crash investigation. So, Officer Wilson was in contact with them and responded to DPD's fatal squad yard, where he completed the inspection (p.11). **Officer Wilson confirmed, it was his understanding, directly after the crash the vehicle was secured so it could be inspected. He confirmed the vehicle should have been in the same substantial condition as it was at the time of the crash (p.12).**

Officer Wilson indicated, when he arrived at the yard, the first thing he does when he's doing a post-crash inspection is a walk-around. He sizes up exactly what happened with it, he wasn't told what happened with the crash, he just knows he has the truck to inspect. He walks around the outside looking for any defects or anything as to where the crash may have occurred. At that point, he looks up to find the registration, the insurance and the annual inspection. Once he completes that, he turns all the lights on, starts doing his walk-around where he is checking the headlights, turn signals, brake lights, taillights, windshield, wipers and horn. Once he completes that, he begins to check the brakes, push rod movements, and everything underneath. He checks the quality and condition under (p.13) there (p.14).

Going through his report, Officer Wilson indicated 393.9T- Inoperative Turn Signal, is the Federal Regulations Code. He explained, every part of the Federal Motor Carrier Safety Act is listed as the offense or regulation. So, you go in, just type FMCSA 393.9T, it will bring up turn signal violations and what the requirements with the turn signals are. **Officer Wilson confirmed there is no question that the Federal Motor Vehicle Code and the regulations apply to the truck involved in the accident, that was being operated on the public roadways. It qualifies and is required to follow and abide by all the regulations and laws (p.14). He confirmed, because there are the Federal Motor Carrier regulations, they are the kind of laws or regulations**

that the operator of those trucks are required to comply with, they have a legal duty and the codes are motivated to keep the roadways safe. He confirmed, if they are violated, it can lead to crashes (p.15).

Officer Wilson indicated, while he was checking the turn signals, he found that all four, the front and the rear turn signals lit up, but did not indicate blink. So, when he turned the signal on, it indicated it would turn on, but it would not give an indicator that it was actually blinking. **So, it would be the same as if he hit his brake light and he only had one brake light, it would turn on, but you do not know what else is going on. He confirmed, the turn signals on the truck did not blink as they were required and supposed to (p.15), they were just solid like a brake light. Officer Wilson confirmed, to someone who is not familiar with this particular truck, it would appear that it could have been a brake light that was on.** He explained, if he is looking at the rear of a truck, pulling up from the rear or the side, and he just sees one light come on, that light comes on and he's not familiar with the vehicle, as everyone knows, when you are driving, you will see a turn signal, you know turn signals blink, so he knows this vehicle is going to make a left or right turn. **If he only sees one solid light come on, at least under his belief, he believes that vehicle is going to stop.** So, if he is driving behind a car and he sees just one light turn on, his assumption is maybe they have a brake light out, but they are stopping, not indicating a turn. **He confirmed, with the defect that was present, it could lead a motorist who was behind the truck to believe that the truck was slowing down or braking (p.16). He explained, under normal circumstances, they would believe that it may be stopping (p.17).**

Officer Wilson confirmed he then tried to figure out whether they were defective turn signals, which were all of them and not just one, as a result of the crash or whether they were defective before the crash. He explained, under his training, when it is all four that are not blinking, and the brake lights and headlights work, and where the impact of the crash was- where he could see noticeable damage, **under his training, they were pre-existing conditions. He confirmed, under his training, those lights were not working prior to the crash (p.17). Officer Wilson confirmed the Motor Vehicle Code and due diligence, requires truck operators to do an inspection of the vehicles before they take them on the road.** At the beginning of their shift, before the vehicle goes out on the road, they are required to perform a pre-trip, which requires them to check the lights and the brakes, as well as when they end their day, they are required to check their lights and their brakes. **Officer Wilson confirmed, the inoperable turn signals would have been something that should have been apparent when the truck was taken out on the day of the accident (p.18).**

Officer Wilson indicated he believes the broken hub he found would have been broken as a result of the accident. He found the leaf spring assembly was defective or missing and was unable to determine whether it was caused by the crash or if it was there prior. Officer Wilson explained, the leaf spring assembly is important to have in working condition because you can lose your tire that way (p.19). You can lose an axle, axle can drop off, and the truck can drop to the right (p.20).

When asked what violation 396.3A1- Air Loss Rate Failure means, Officer Wilson indicated a truck should run off air, if you have no air then your brakes are going to lock up. When they test them, if your air pressure drops initially and starts to build back up, it is fine. If it drops significantly and just keeps going down, that means it cannot maintain its air pressure. He indicated he was unable to determine whether this violation was a prior condition or if it was caused by the crash, because the car struck that axle. **He confirmed he placed the brakes out of service because he found five out of six brakes were out of adjustment, which meant that the vehicle was out of service. He explained, these violations do not occur overnight, they are a prolonged thing that a driver should notice when the brakes take longer to apply (p.21).**

**Officer Wilson confirmed it is his opinion, based on his training and experience, five of the six brakes did not meet the safety standards, that was a condition that existed before the crash and the crash had nothing to do with those brakes not working.** Officer Wilson confirmed this is considered a serious safety violation which means the vehicle, **if he were to stop it on a regular traffic stop and complete an inspection, it would be placed out of service until those violations were corrected. He indicated he would do that because it is not safe for the motoring public.** It is essential (p.22) with a truck that big to have working brakes so it does not cause traffics, or a kid could run out in the road, and you have to have safe brakes to stop in time (p.23). **Officer Wilson confirmed there was only one brake on the whole truck that met the safety standards.** He also confirmed, before the crash, the truck had significant defective equipment violations and **they were violations that should have been discovered by a driver who performed a correct pre-trip inspection. Officer Wilson confirmed these violations were serious enough that the truck should not have been on the public roads (p.24).** Officer Wilson indicated previous vehicle inspections or maintenance records would not help to determine whether or not the other defects existed before the crash (p.26).

Officer Wilson indicated, outside of just doing his inspection and ensuring that the cables appeared to be connected, he did not do anything to determine why the turn signals did not blink. He explained he does look to see if the cables are connected, if they came loose or if they disconnected and they did not appear at the time, at least



through his memory, that they had any issues (p.29). When asked whether it is possible a fuse came loose or a fuse came loose while it was being towed, Officer Wilson indicated if that was a possibility, then all the lights would be out because, typically, on most commercial vehicles, all the lights are connected to one fuse (p.30). Officer Wilson indicated there is no difference in braking, if the truck was in first gear and the brakes would still apply the same way if it was in first gear or fourth gear (p.31).

Officer Wilson confirmed he did not document the who the brake manufacturer was for the brakes (p.31), he did not remove anything from the dump truck, he did not collect any evidence from the dump truck, he did not see the chain of custody of the dump truck before he inspected it, and he did not do anything to determine whether there were any recalls on the dump truck. **With respect to his brake-out-of-adjustment determinations, all Officer Wilson can say is that it would increase how long it takes for the vehicle to stop. He explained, that is why the Federal Motor Carrier Safety Act sets guidelines as to what the maximum it can be. If it is over the max, it's out of adjustment and having more than "X" amount of the brakes out of adjustment means the vehicle needs to be taken off the roadway (p.32).**

Officer Wilson confirmed owners and operators of trucks are supposed to maintain records related to the trucks, such as inspection records and driver logs. He explained, they are required to keep all that in a file so if they are audited by the USDOT or audited by the State Police's investigating unit, they can present that documentation (p.49). Officer Wilson confirmed he never requested that documentation from NSS (p.50).

#### **FMCSA SMS DOCUMENTATION- N.S.S. CONSTRUCTION, INC., D/B/A RG BILLS, INC.**

- **SMS- Complete Report (Obtained 9/28/2020)**
  - Vehicle OOS (Out of Service) rate is **100%**; the National Average is 20.7%
  - Number of Vehicles: 7
  - Number of Drivers: 9
  - Unrated as of 09/28/2020
  - Number of Inspections: 4 (from 9/28/18-9/28/2020)
    - 23 Total Violations
      - Unsafe Driving: 5
      - Vehicle Maintenance: 18 (5 of which were OOS)
  - Number of Crashes: 1
- **SaferWeb Report (Obtained 9/28/2020)**
  - Entity Type: Carrier/Shipper

- Operating Status: Active
- USDOT: 1677335
- Power Units: 7
- Drivers: 9
- 2019 Mileage: Blank
- MCS-150 Form Date: 07/23/2007
- Private Property
- Intrastate Operations
- **Cargo:**
  - Construction
- **US Inspections for 24 months prior to 9/27/2020:**
  - Vehicle-2, OOS-2
  - Driver-2
- **US Crashes for 24 months prior to 9/27/2020:**
  - Total: 1 Fatal
- Safety Rating as of 9/27/2020: None
- **Detailed Crash Report 7/17/19 @1145**
  - **Crash Information:**
    - # of Fatalities: 1
    - # of Injuries: 0
    - Towaway: Yes
    - # of Vehicles in Crash: 2
  - **Location:**
    - Meyers; City: Detroit; County: Wayne; State: MI
  - **Reporting Data:**
    - Report State: MI
    - Report #: MI0001754282
    - Reporting Agency: Detroit Police Department
    - Officer Badge #: 3664
    - Federally Recordable: Yes
    - State Recordable: Yes
  - **Crash Environment:**
    - Two-Way Trafficway, Not Divided
    - Road Surface Condition: Dry
    - Weather Condition: No Adverse Conditions
    - Light Condition: Daylight
  - **Driver Information:**
    - Age: 50
    - License State: OH
    - Citation Issued: No
    - Valid License: Yes
  - **Vehicle Information:**
    - VIN: 1FDYU90T5VVA29053
    - Plate Number: AC32797
    - Plate State: MI

- Vehicle Configuration: Single-Unit Truck (3 or More Axles)
- Cargo Body: Dump
- Gross Vehicle Weight Range: More Than 26,000 Pounds
- **Detailed Inspection Report 7/23/2019 (Obtained 9/28/2020)**
  - **Report State:** MI
    - Level V- Terminal; Fixed Site
    - Post-Crash Inspection: **Yes**
    - Hazmat Placard Required: No
  - **Vehicle Info:**
    - Truck Tractor: Plate/VIN- AC32797; 1FDYU90T5VVA29053
  - **Carrier Violations:**
    - 393.207(a)- OOS; Axle Positioning Parts Defective/Missing- Result of Crash
    - 393.207(c)- OOS; Leaf Spring Assembly Defective/Missing- Result of Crash
    - 393.47(e)- x5; Clamp or Roto Type Brake Out-of-Adjustment- Multiple Cites
    - 393.53(b)- CMV Manufactured After 10/19/94 Has an Automatic Airbrake Adjustment System That Fails to Compensate for Wear
    - 393.9(a)- x4
      - OOS- x2 Inoperative Turn Signal
      - x2- Inoperative Turn Signal- Vehicle Maintenance
    - 396.3(a)(1)- x3
      - OOS- Inspection Repair and Maintenance of Parts and Accessories- Result of Crash
      - OOS- Brakes Out of Service- Vehicle Maintenance
      - OOS- Tires (General)- Result of Crash
    - 396.5(b)- x2
      - Oil and/or Grease Leak- Vehicle Maintenance
      - OOS- Hubs- Oil and/or Grease Leaking from Hub-Outer Wheel- Result of Crash
- **Detailed Inspection Report 3/20/2019 (Obtained 9/28/2020)**
  - **Report State:** MI
    - Level III- Driver Only; Roadside
    - Post-Crash Inspection: No
    - Hazmat Placard Required: No
  - **Vehicle Info:**
    - Truck Tractor: Plate/VIN- AC32797; 1FDYU90T5VVA29053
  - **Carrier Violations:**
    - 392.2FC; Unit: Driver
      - OOS- No
      - Following Too Close (**Unsafe Driving**)
    - 392.2LC; Unit: Driver

- OOS- No
- Improper Lane Change (**Unsafe Driving**)
- 392.2LV; Unit: Driver
  - OOS- No
  - Lane Restriction Violation (**Unsafe Driving**)
- 392.2SLLSWZ; Unit: Driver
  - OOS- No
  - State/Local Laws- Speeding Work/Construction Zone (**Unsafe Driving**)

### 10/16/20 – SCOTT NEAL ABSTRACT DRIVING RECORD (00278)

- **Ohio Class A Commercial**; Status as of **10/16/20**- Valid; End.: M; Rest.: None; Certified Non-Excepted Interstate
- **Driving Record for Past 36 Months**
  - **Withdrawals**
    - Child Support **Suspension; Start: 2/12/19; End: 3/22/19**; Status: Closed
  - **Convictions**
    - Out-of-State Conviction- Michigan; **Off Date: 8/3/19**; Conv.: 8/19/19; Offense: M14-FTO Sign/TCD (**Failure to Obey Traffic Sign/Traffic Control Device**)
    - Out-of-State Conviction- Michigan; **Off Date: 9/12/18**; Conv.: 9/21/18; Offense: M82-Inattent Dri (**Inattentive Driving**)
    - In-State Conviction- Franklin Municipal Court; **Off Date: 5/18/18**; Conv.: 6/7/18; Offense: Driving in Marked Lanes
      - **Ohio Revised Code 4511.33- Driving in Marked Lanes. (A)**  
*Whenever any roadway has been divided into two or more clearly marked lanes for traffic, or wherever within a municipal corporation's traffic is lawfully moving in two or more substantially continuous lines in the same direction, the following rules apply: (1) A vehicle shall be driven, as nearly as is practicable, entirely within a single lane or line of traffic and shall not be moved from such lane or line until the driver has first ascertained that such movement can be made safely.*
    - In-State Conviction Commercial Driver- Miami County Municipal Court; **Off Date: 5/18/18**; Conv.: 6/7/18; Offense: Fail Control 4511.202
      - **Ohio Revised Code 4511.202- Operation Without Being in Reasonable Control of Vehicle, Trolley, or Streetcar. (A)**  
*No person shall operate a motor vehicle, trackless trolley, streetcar, agricultural tractor, or agricultural tractor that is towing, pulling, or otherwise drawing a unit of farm machinery on any street, highway, or property open to the public for vehicular traffic without being in reasonable control of the vehicle, trolley, streetcar, agricultural tractor, or unit of farm machinery.*
  - **Accidents**

- 5/18/18; County: Warren; BMV Case: 86080716
- 5/18/18; County: Miami; BMV Case: 86079527
- 3/12/18; County: Hancock; BMV Case: 86043053
  - Victim hit & run, OSP Crash 302-0182-32

### **SCOTT NEAL'S PREVIOUS EMPLOYER, HAGGERTY LOGISTICS, INC.'S, SUBPOENA RESPONSE**

Pursuant to my review of Haggerty Logistic, Inc.'s subpoenaed document production, Mr. Scott Neal submitted an application to Haggerty Logistics on 01/14/2016, Haggerty Logistics extended an offer of employment to Mr. Neal on 01/18/2016 and he was to present for orientation on 01/21/2016.

On Mr. Scott Neal's application for employment, he indicated his driving experience spanned between 09/2008-Present (1/14/16). He listed two accidents and five traffic convictions, in the three years prior to the submission of his application. Mr. Neal listed his 10-year employment history as follows:

- 04/2014-Present (01/14/16)- Load One
  - Left for Personal Reasons
  - Was subject to FMCSRs and controlled substances and alcohol testing during this time
- 09/2011-04/2014- A.D. Transport
  - Left for Personal Reasons
  - Was subject to FMCSRs and controlled substances and alcohol testing during this time
- 09/2008-09/2011- Ameri State
  - Left because carrier went out of business
  - Was subject to FMCSRs and controlled substances and alcohol testing during this time

Haggerty Logistics accessed Mr. Neal's initial Motor Vehicle Report on 1/18/16. This showed his Class A CDL was issued on 9/11/12 and expired 11/14/16. His medical certification indicates it was issued on 8/3/15 and expired on 8/3/17. The following violations were found:

- 2/20/15- Violation of Equipment Regulations; Bowling Green, OH
- 3/27/14- FTO Restricted Lane; Indiana
- 9/28/13- FTO Traffic Signal; Virginia

While employed with Haggerty Logistics, Mr. Neal was involved in three separate accidents. They are as follows:

- 5/18/18, at 0133- Miami County Ohio; Single Vehicle Crash

- PD Crash Report Narrative: Unit #1 was traveling southeast on Interstate 75, in the left lane. Unit #1 went off the left side of the roadway, striking concrete barrier.
- Driver/Vehicle Examination Report: Violation 392.2- Failure to maintain lane.
- Haggerty Logistics' Phone Accident Report: "Scott called stated car cut him off on I-75 and to avoid hitting car he rubbed the cement barrier. As I was speaking with Scott a fire truck who seen him pulled on side of road stated police have been called and to wait for them- no injuries or damage to other cars/trucks. Pictures of damage e-mailed."
- 5/18/18, at 0425- Warren County Ohio; Two Vehicle Crash
  - PD Crash Report Narrative: Unit 1 and Unit 2 (Mr. Neal) were traveling on IR-75 NB. Unit 2 drifted outside of its lane of travel and struck Unit 1.
  - Additional Information: Driver of Unit 2 was charged with a marked lanes violation.
  - Scott Neal Written Statement: "Was heading north on I75 at approx. MM 32, felt a bump to the right side of the truck nest was a UPS truck hit me and we were locked together. I had no control at that point and the UPS truck pulled/drag my truck to their right off the road and onto the shoulder. When I stopped, I called 911 and company. I was in the second to right lane when I was struck, and UPS was in the right lane."
  - Haggerty Logistics' Phone Accident Report: "Description: Heading NB and UPS truck came up on right and UPS driver hit Scott in middle lane. Trucks are still locked together. Our truck is stuck in UPS trailer.  
**2<sup>ND</sup> ACCIDENT IN 5 HRS!!!**"
- 3/12/18- Ohio Dept. of Public Safety Crash Report; Two Vehicle Crash (Unit 1- Unidentified, Unit 2- Mr. Neal)
  - PD Crash Report Narrative: Unit 1 and Unit 2 were southbound on Interstate 75. Unit 1 crossed over the dotted line striking Unit 2's mirror.
  - Scott Neal PD Statement: "At about MP 144-145 I was in the left lane south and the other truck came over and struck me. The mirror is broken."
  - Undated Written Statement of Scott Neal: "I was heading south on I75 at approximately MM144 when I was passing another truck. As I was passing this truck, a heavy snow flurry hit and the truck I was passing crossed into my lane hitting my passenger mirror. Damage resulted as cracked mirror glass and back housing of mirror cracked. The other truck kept going and did not stop."



# GOOGLE EARTH/GOOGLE STREET VIEW MAPS

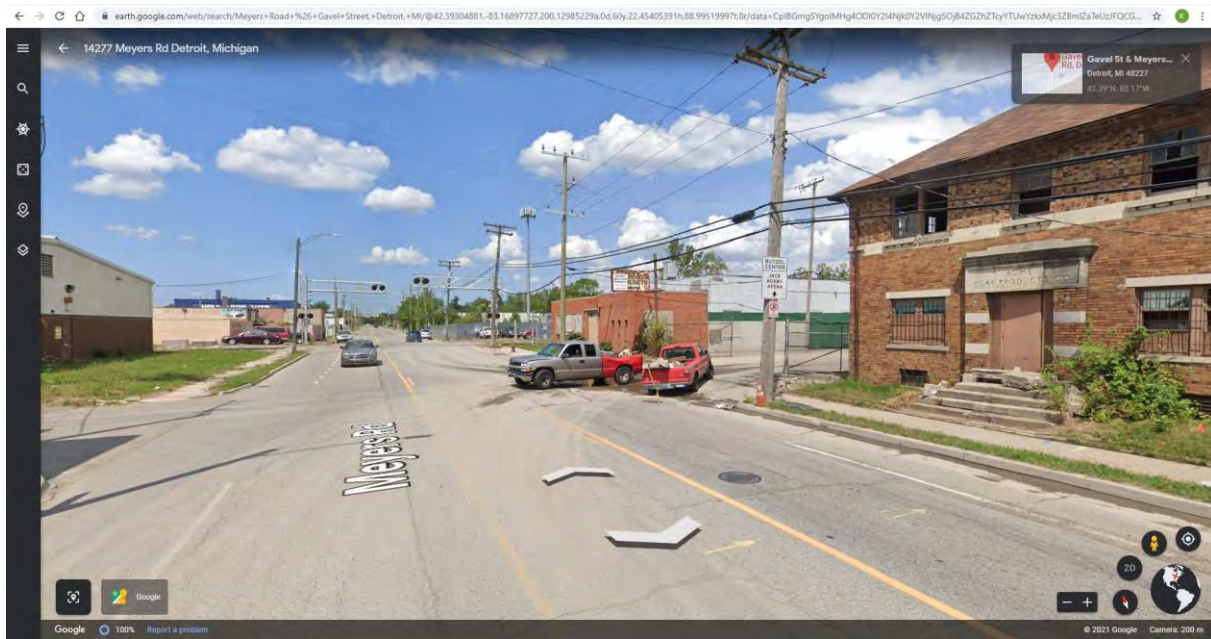


(Google Earth, Aerial View- Meyers Rd., Approximately 500 Feet South of Gavel Street)

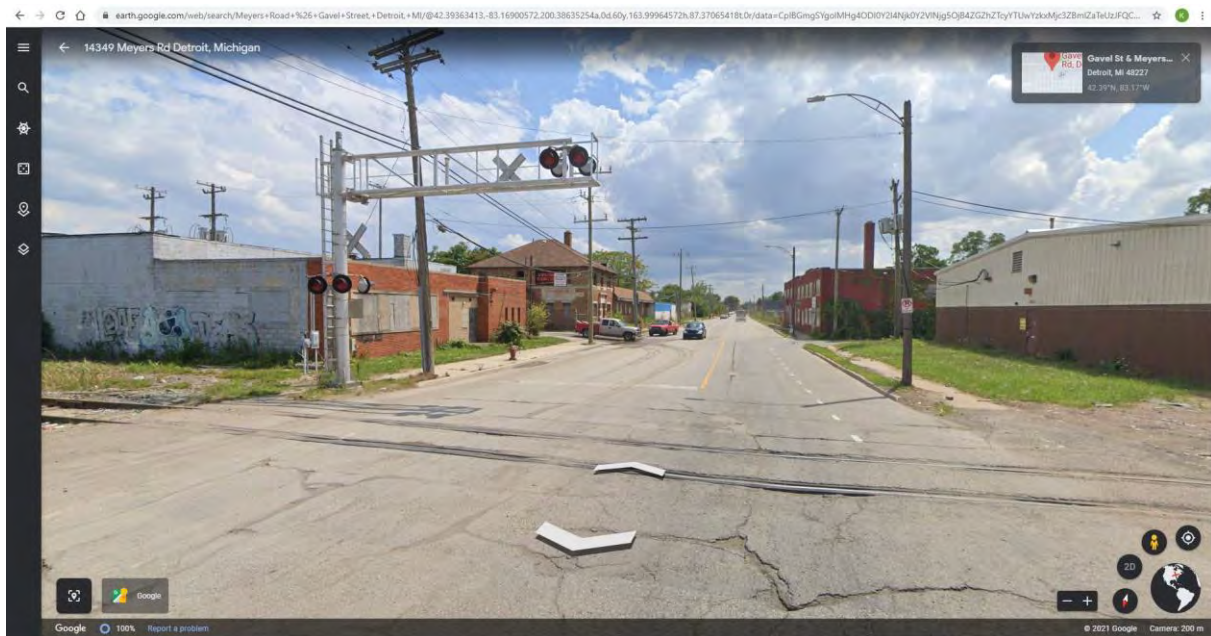


(Google Earth, Street View- Northbound Meyers Rd., Approaching Gavel Street)

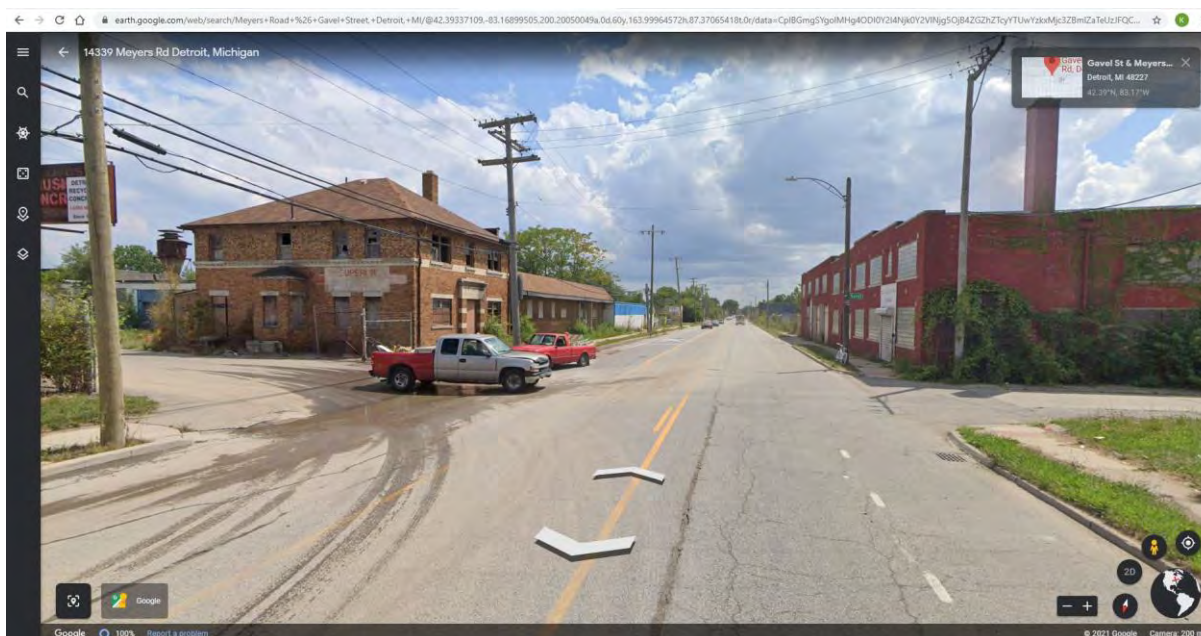




*(Google Earth, Street View- Northbound Meyers Rd., at Area of Impact)*



*(Google Earth, Street View- Southbound Meyers Rd., Approaching Gavel Street)*



*(Google Earth, Street View- Southbound Meyers Rd., at Area of Impact)*

**DOCUMENTS REQUIRED TO BE MAINTAINED BY MOTOR CARRIERS,  
PURSUANT TO THE FEDERAL MOTOR CARRIER SAFETY REGULATIONS**

- Vehicle Inspection, Repair and Maintenance Records (396.3)
  - Annual (periodic) Inspections (396.17)
  - DVIRs (pre-396.13 & post-396.11)
  - Evidence of Annual Inspector Credentials (396.19)
  - Evidence of Brake Inspector Credentials (396.25)
- Drug and Alcohol Policy (40.333/382.401)
- Part 395 HOS
  - Fuel Receipts- IFTA requires 4 years retention
  - 395.1(e)- Short Haul Provisions
- Driver Qualification File
  - Application for Employment (391.21- Application for Employment)
  - Medical Examiner's Certificate (391.43)
  - Previous Employer Inquiries (391.23(f)(1)- Investigation and Inquiries)
  - Initial MVR (391.23(a)(1))
  - Certificate of Road Test (391.31(e))
  - Photocopy of CDL (391.33)
  - Violation & Review Form (391.27)
  - Driver Investigation History File (391.23(d)(e))
  - Authorization for Previous Employer Inquiries, Inquiry Responses (391.53(b)(1), (2))

- Safety Performance histories received from Previous Employers (391.53(c)), must be maintained as long as driver is employed and 3 years thereafter.
- Pre-Employment Drug/Alcohol Testing Results
- Documentation on previous DOT pre-employment tests (40.25(j))
- All Training Documents (380.111)

**CALIBER CONSULTING – MR. TIMOTHY P. ABBO – ACCIDENT  
RECONSTRUCTION REPORT 08/2/2021**

**CONCLUSION**

The following facts appear undisputed in this matter:

1. Scott Neal was operating a 1997 Ford 9000 Dump *Truck* northbound on Meyers Road.
2. Scott Neal intended to turn right into the driveway of 14294 Meyers Road.
3. According to the Michigan State Police, the *Truck* had many violations that would have placed the *Truck* “Out of Service,” meaning the *Truck* could no longer operate upon a roadway until the violations were repaired.
4. According to the State Police Inspection Report and Officer Wilson’s testimony, neither the front nor the rear turn signals on the *Truck* worked properly. The lights would light up, but they would not blink.
5. William McDuffie attempted to pass the *Truck* on the right, utilizing the parking lane.
6. The crash was captured on surveillance video.

Upon watching the video, one can see that McDuffie waited for the *Truck* to pass before pulling away from the curb. Although Neal stated he utilized a turn signal and Pace stated he saw a turn signal no signal can be seen in the video. According to Neal’s testimony, the turn signals on the truck were operating when he did his pre-trip inspection. If accepted as true, that would mean that both the front and rear turn signals all suddenly failed after the *Truck* drove approximately 1920 feet or failed due to the collision. In my opinion, I find either scenario highly unlikely, and in conflict with the physical evidence in this case. Based upon Officer Wilson’s thorough inspection of the *Truck* and the location of damage, it is extremely unlikely the impact of the collision caused the signals to stop blinking. It is my opinion the turn signals were not operating when the *Truck* left the yard and drove upon the roadway.

It is also my opinion that Neal either failed to conduct a proper pre-trip inspection of the *Truck* before he began driving it or knew the turn signals were not working and



decided to operate the *Truck* regardless. Since inoperative turn signals are an out of service violation, the *Truck* should have never been driven upon the roadway until the turn signals, and other violations were repaired.

Therefore, because the signals were defective when Neal approached the driveway and activated the turn signal, the right rear lamp would have illuminated but not blinked. Officer Wilson testified that when the turn signal is activated under those conditions, an individual behind the *Truck* may believe the *Truck* may be stopping. As such, McDuffie, in all likelihood, assumed the *Truck* was slowing or coming to a stop in the middle of the street, which would explain why he began to pass the *Truck* on the right.

Although the parking lane was not considered a travel lane, it was a paved portion of the roadway nonetheless, and McDuffie utilized it to drive around the *Truck*. According to MCL 257.637, the pass was legal to perform since the lane was unoccupied with parked vehicles.

According to MCL 257.647, Neal was required to make the approach for his right turn and the actual right turn as close as practicable to the right-hand curb or edge of the roadway. Upon reviewing the video, it shows Neal violated the statute. According to 257.642, Neal was also required to ascertain that before moving from his lane, he was required to make sure his movement could be made safely. Neal testified he looked in his mirror but admitted he did not see the car, which would have been in a position to be seen.

Therefore, based upon the totality of the circumstances, it is my opinion that Scott Neal is primarily responsible for this collision.

#### **NSS CONSTRUCTION EMPLOYMENT AND SAFETY MANUALS**

##### **NSS Construction Employment Manual (Undated)**

(DEFS' NSS CONSTRUCTION & NEAL- 000011)

##### **4.11 (p.11): Use of Company Vehicle/Heavy Equipment**

- Any employees who operate/drive equipment, must be a licensed driver. Employees are responsible for paying any moving violation tickets and parking tickets. Any tickets that derive from faulty/defective equipment will be the responsibility of NSS Construction granted a pre-trip inspection was done and any defect were properly documented. You must not allow persons not authorized or employed by NSS Construction to operate or ride in a company vehicle or heavy equipment.

##### **NSS Construction Safety Manual (Undated)**

(DEFS' NSS CONSTRUCTION & NEAL- 000024-000127)

- **Policy Statement (000027):**
  - Provisions for a thorough and prompt investigation of every accident to determine its cause, correct the problem and reduce the likelihood of it reoccurring.
- **Manager and Supervisor Responsibilities (000029)**
  - Holding and documenting regular safety meetings.
  - Reporting and investigating incidents, injuries, and serious potential incidents.
- **Use of Equipment and Vehicles (000033)**
  - Employees are required to obey all state and local laws, company policies and procedures while operating vehicles or equipment.
- **Injury and Illness Prevention Program (000039)**
  - It shall be the responsibility of the safety director to ensure that all records required by this procedure are developed and maintained for a period of not less than two years. These records include but are not limited to:
    1. Hazard Assessments
    2. Safety Inspections
    3. Training Documentation (curriculum, materials, tests, rosters, etc.)
    4. Safety Meeting Records (roster of attendees, subjects discussed, etc.)
    5. Accident/Illness/Injury Reports and Investigations.
- **Accident and Incident Investigation (000040)**
  - Purpose: Whenever there is an accident, it is our obligation to investigate that accident and to install measures to prevent a reoccurrence.
  - The reason for answering these seven questions is to determine the root cause of the incident. Without accurate casual determination, proper corrective actions cannot be taken.
- **Field Safety Inspection Report (000126)**
  - Vehicles/Mobile Equipment
    - Lights, brakes, horns, alarms working properly.

## **MICHIGAN COMPILED LAW**

### **257.647 — Turning at Intersection; Violation as civil infraction.**

1. The driver of a vehicle intending to turn at an intersection shall do so as follows:
  - a. Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.



**257.642 — Roadway Divided into 2 or More Marked Lanes; Applicable Rules; Designation as HOV Lane; Restrictions; Exceptions; Violation as civil infraction.**

1. When a roadway has been divided into 2 or more clearly marked lanes for traffic, the following rules in addition to all others consistent with this act apply:
  - a. A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from the lane until the operator has first ascertained that the movement can be made with safety. Upon a roadway with 4 or more lanes that provides for 2-way movement of traffic, a vehicle shall be operated within the extreme right-hand lane except when overtaking and passing but shall not cross the center line of the roadway except where making a left turn.

**257.637 — Overtaking and Passing on the Right of Another Vehicle or Bicycle; Conditions; Violation as civil infraction.**

1. The driver of a vehicle may overtake and pass upon the right of another vehicle only if 1 or more of the following conditions exist:
  - a. When the vehicle has overtaken is making or about to make a left turn.
  - b. Upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for 2 or more lines of moving vehicles in each direction and when the vehicles are moving in substantially continuous lanes of traffic.
  - c. Upon a 1-way street, or upon a roadway on which traffic is restricted to 1 direction of movement, where the roadway is free from obstructions and of sufficient width for 2 or more lines of moving vehicles and when the vehicles are moving in substantially continuous lanes of traffic.
2. The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting the overtaking and passing in safety. The driver of a vehicle shall not overtake and pass another vehicle upon the right by driving off the pavement or main-traveled portion of the roadway.

**OHIO COMMERCIAL DRIVER LICENSE MANUAL****Section 2- DRIVING SAFELY****2.4 — Seeing**

- ✓ To be a safe driver you need to know what's going on all around your vehicle. Not looking properly is a major cause of accidents.

#### 2.4.2 – Seeing to the Sides and Rear

- ✓ It's important to know what's going on behind and to the sides. Check your mirrors regularly. Check more often in special situations.
- ✓ **Mirror Adjustment.** Mirror adjustment should be checked prior to the start of any trip and can only be checked accurately when the trailer(s) are straight. You should check and adjust each mirror to show some part of your vehicle. This will give you a reference point for judging the position of the other images.
- ✓ **Regular Checks.** You need to make regular checks of your mirrors to be aware of traffic and to check your vehicle.
- ✓ **Traffic.** Check your mirrors for vehicles on either side and in back of you. Use your mirrors to spot overtaking vehicles. There are “blind spots” that your mirrors cannot show you. Check your mirrors regularly to know where other vehicles are around you, and to see if they move into your blind spots.
- ✓ **Turns.** In turns, check your mirrors to make sure the rear of your vehicle will not hit anything.

#### 2.5.1 — Signal Your Intentions

- ✓ Other drivers can't know what you are going to do until you tell them. Signaling what you intend to do is important for safety. Here are some general rules for signaling:
  - **Turns.** There are three good rules for using turn signals:
    - ✓ **Signal Early.** Signal well before your turn. It is the best way to keep others from trying to pass you.
    - ✓ **Signal Continuously.** You need both hands on the wheel to turn safely. Don't cancel the signal until you have completed the turn.
  - **Slowing Down.** Warn drivers behind you when you see you'll need to slow down. A few light taps on the brake pedal – enough to flash the brake lights – should warn following drivers. Warn other drivers in any of the following situations:

- ✓ **Tight Turns.** Most car drivers don't know how slowly you have to go to make a tight turn in a large vehicle. Give drivers behind you warning by braking early and slowly gradually.

## 2.7 – Managing Space

- ✓ To be a safe driver, you need space all around your vehicle. When things go wrong, space gives you time to think and to take action. To have space available when something goes wrong, you need to manage space. While this is true for all drivers, it is very important for large vehicles. They take up more space for stopping and turning.

### 2.7.3 – Space to the Sides

- ✓ Commercial vehicles are often wide and take up most of a lane. Safe drivers will manage what little space they have. You can do this by keeping your vehicle centered in your lane and avoid driving alongside others.

### 2.7.6 – Space for Turns.

- ✓ The space around your truck or bus is important in turns. Because of wide turning and off-tracking, large vehicles can hit other objects during turns.
- ✓ **Right Turns.** Here are some rules to help prevent right-turn crashes:
  - Turn slowly to give yourself and others more time to avoid problems.
  - If you are driving a truck or bus that cannot make the right turn without swinging into the other lane, turn wide as you complete the turn. Keep the rear of your vehicle close to the curb. This will stop other drivers from passing you on the right.
  - Don't turn wide to the left as you start the turn. A following driver may think you are turning left and try to pass you on the right. You may crash into the other vehicle as you complete your turn.
  - If you must cross into the oncoming lane to make a turn, watch out for vehicles coming toward you. Give them room to go by or to stop. See Figure 2.12.

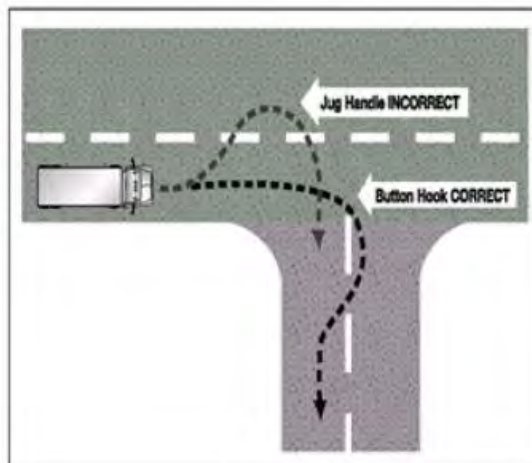


Figure 2.12

## 2.8 – Seeing Hazards

### 2.8.1 – Importance of Seeing Hazards

- ✓ What is a Hazard? A hazard is any road condition or other road user (driver, bicyclist, pedestrian) that is a possible danger.
- ✓ Seeing Hazards Lets You Be Prepared. You will have more time to act if you see hazards before they become emergencies.

### 2.8.4 – Always Have a Plan

- ✓ You should always be looking for hazards. Continue to learn to see hazards on the road. You look for the hazards in order to have time to plan a way out of any emergency. When you see a hazard, think about the emergencies that could develop and figure out what you would do. Always be prepared to take action based on your plans. In this way, you will be a prepared, defensive driver who will improve your own safety as well as the safety of all road users.

## **FEDERAL MOTOR CARRIER SAFETY REGULATIONS**

### **PART 390- FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL**

#### **§390.3 General Applicability.**

- (b) The rules in Part 383, Commercial Driver's License Standards; Requirements and Penalties, are applicable to every person who operates a commercial motor vehicle, as defined in §383.5 of this subchapter, in interstate or intrastate commerce and to all employers of such persons.

#### **(e) Knowledge of and Compliance with the Regulations**

- (1) Every employer shall be knowledgeable of and comply with all regulations contained in this subchapter which are applicable to that motor carrier's operations.
- (2) Every driver and employee shall be instructed regarding, and comply with, all applicable regulations contained in this subchapter.

## **PART 383-SUBPART G- REQUIRED KNOWLEDGE AND SKILLS**

### **§383.110 General Requirement**

All drivers of CMVs must have the knowledge and skills necessary to operate a CMV safely as contained in this subpart.

### **§383.111 Required Knowledge**

(a) All CMV operators must have knowledge of the following general areas:

- (1) **Safe Operation Regulations:** Driver-related elements of the regulations contained in parts 391, 392, 393, 396 and 397 of this subchapter, such as:
  - (ii) Procedures for safe vehicle operations
- (3) **CMV Safety Control Systems.**
  - (i) Proper use of the motor vehicle's safety system, including lights, horns side and rear-view mirrors, proper mirror adjustments, fire extinguishers, symptoms of improper operation revealed through instruments, motor vehicle operation characteristics, and diagnosing malfunction.
- (4) **Basic Control:** The proper procedures for performing various basic maneuvers, including:
  - (iv) Turning the vehicle, e.g., basic rules, off tracking, right/left turns and right curves.
- (7) **Visual Search:** The importance of proper visual search, and proper visual search methods, including:
  - (i) Seeing ahead and to the sides.
  - (ii) Use of mirrors.
  - (iii) Seeing to the rear.



- (10) **Space Management:** The procedures and techniques for controlling the space around the vehicle, including:
- (i) The importance of space management.
  - (ii) Space cushions, e.g., controlling space ahead/to the rear.
  - (iii) Space to the sides.
- (13) **Hazard Perceptions:** The basic information on hazard perception and clues for recognition of hazards, including:
- (i) Road characteristics.
  - (ii) Road user activities.
- (17) **Vehicle Inspections:** The objectives and proper procedures for performing vehicle safety inspections, as follows:
- (i) The importance of periodic inspection and repair to vehicle safety.
  - (ii) The effect of undiscovered malfunctions upon safety.
  - (iii) What safety-related parts to look for when inspecting vehicles, e.g., fluid leaks, interference with visibility, bad tires, wheel and rim defects, braking system defects, steering system defects, suspension system defects, exhaust defects, coupling system defects, and cargo problems.
  - (iv) Pre-trip/enroute/post-trip inspection procedures.
  - (v) Reporting findings.

## **PART 392 – DRIVING OF COMMERCIAL MOTOR VEHICLES**

### **§392.1 Scope of the Rules in this Part**

Every motor carrier, its officers, agents, representatives, and employees are responsible for the management, maintenance, operation, or driving of the commercial motor vehicles, or the hiring, supervising, training, assigning, or dispatching of drivers, shall be instructed in and comply with the rules in this part.

### **§392.2 Applicable Operating Rules**

Every commercial motor vehicle must be operated in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated. However, if a regulation of the Federal Motor Carrier Safety Administration imposes a higher standard of care than that law, ordinance or regulation, the Federal Motor Carrier Safety Administration regulation must be complied with.

**PART 396 – Inspection, Repair, and Maintenance.****§396.7 Unsafe Operations Forbidden.**

- (a) A motor vehicle shall not be operated in such a condition as to likely cause an accident or a breakdown of the vehicle.

**PART 385 – SAFETY FITNESS PROCEDURES****§385.3 Definitions and Acronyms**

**Preventable Accident** on the part of a motor carrier means an accident (1) that involved a commercial motor vehicle, and (2) that could have been averted but for an act, or failure to act, by the motor carrier or the driver.

**Safety Management Controls** means the systems, policies programs, practices, and procedures used by a motor carrier to ensure compliance with applicable safety and hazardous materials regulations, which ensure the safe movement of products and passengers through the transportation system, and to reduce the risk of highway accidents an hazardous materials incidents resulting in fatalities, injuries and property damage.

**PART 391 – QUALIFICATIONS OF DRIVERS****SUBPART C – BACKGROUND AND CHARACTER*****DOT Interpretations -- §391.25***

**Question 1:** To what extent must a motor carrier review a driver's overall driving record to comply with the requirements of §391.25?

**Guidance:** The motor carrier must consider as much information about the driver's experience as is reasonably available. This would include all known violations, whether or not they are part of an official record maintained by a State, as well as any other information that would indicate the driver has shown a lack of due regard for the safety of the public. Violations of traffic and criminal law, as well as the driver's involvement in motor vehicle accidents, are such indications and must be considered. A violation of size and weight laws should also be considered.

**PART 379 – PRESERVATION OF RECORDS****§379.1 Applicability.**

- (a) The preservation of record rules contained in this part shall apply to the following:

- (1) Motor carriers and brokers;

## **Appendix A to Part 379 – Schedule of Records and Periods of Retention**

### **K. Supporting Data for Reports and Statistics**

- (2) Supporting data for periodical reports of accidents, inspections, tests, hours of service, repairs, etc.....**3 Years.**

Note A: Records referenced to this note shall be maintained as determined by the designated records supervisory official....Companies shall exercise reasonable care in choosing retention periods, and the choice of retention periods shall reflect past experiences, company needs, **pending litigation**, and regulatory requirements.

## **Appendix B to Part 385 – Explanation of Safety Rating Process**

### **VII. List of Acute and Critical Violations**

§390.15 Failing to maintain copies of all accident reports required by State or other governmental entities or insurers (critical).

§391.51(a) Failing to maintain driver qualification file on each driver employed (critical).

§391.51(b)(2) Failing to maintain inquiries into driver's driving record in driver's qualification file (critical).

§391.51(b)(7) Failing to maintain medical examiner's certificate in driver's qualification file (critical).

§395.8(k)(1) Failing to preserve a driver's record of duty status or supporting documents for 6 months (critical).

§395.11(e) Failing to retain supporting documents in a manner that permits the effective matching of the documents to the driver's record of duty status (critical).

§396.3(b) Failing to keep minimum records of inspection and vehicle maintenance (critical).

§396.17(a) Using a commercial motor vehicle not periodically inspected (critical).

**ON GUARD – U.S. DEPARTMENT OF TRANSPORTATION/FEDERAL HIGHWAY  
ADMINISTRATION (FHWA-MC-97-004)**

Recent contacts with truck and bus operators indicate that some, particularly smaller operators, are mistakenly assuming that if a driver possesses a Commercial Driver's License (CDL), he or she is a trained and experienced commercial motor vehicle driver. This is not true and can be a very dangerous mistake. All prospective employers of commercial drivers should be aware of the following facts:

7. A CDL does not indicate that the holder is a trained or experienced truck or bus driver.
8. A CDL merely indicates that the holder has passed the minimal skills and knowledge tests concerning the type of vehicle he or she proposes to drive.
9. A CDL endorsement does not indicate that the holder is trained or experienced in the area covered by the endorsement.
10. A CDL endorsement merely indicates that the holder has passed a minimal knowledge test concerning the area covered by the endorsement.
11. **It is incumbent upon a prospective employer of a commercial vehicle driver to ensure that driver is properly trained to operate that employer's trucks or buses and to handle that employer's freight or passengers.**

Title 49 CFR 391.11(b)(3) (Qualification of Drivers) requires that **a driver must be able, by reason of experience, training or both, to safely operate the commercial motor vehicle he or she drives. This requirement is not met by simply ascertaining that a prospective driver holds a CDL.**

Although the CDL Tank (T) and Hazmat (H) endorsements may satisfy part of the hazmat training requirements of Title 49 CFR Part 172 (subpart H), possession of these endorsements do not relieve the employer of the responsibility for providing Hazmat training.

**DOCUMENTS REVIEWED**

- UD-10 (2)
- Complaint, w-Exhibits (12).
- Neal and NSS Ans., Aff. Def., Reliance On Jury (9)
- Dft. Memberselect's Ans. to Complaint (11)
- Dft's Resp. to Plt's Interrogs & RFP (32)
- Documents to be Produced (279)
- Camera 9 Clarified Video Evidence (1)

- SMS Documents
- Supplemental Document Production (235)
- Larry Baareman Affidavit (5)
- SMS Documentation- N.S.S. Construction
- Caliber Consulting- Timothy P. Abbo Reconstruction Report (14)
- Champlain Construction Correspondence (1)
- Google Earth/Street
- LARA- Corporations Online Filing System
- Michigan Compiled Law
- U.S. Department of Transportation/Federal Highway Administration
- Michigan Commercial Driver's License Manual
- Federal Motor Carrier Safety Regulations

#### Depositions:

- Scott Neal- Defendant
- Nick Schubeck- Owner of NSS Construction
- Matthew Pace- Witness
- Officer Ryan Wilson- Investigating Officer
- Timothy Abbo- Accident Reconstructionist

#### OPINIONS

I base these opinions on over 45 years of experience in the transportation industry having served in roles such as truck driver, transportation manager, and safety manager. I have taught state and federal motor carrier regulations for over 25 years and I am also a State of Michigan License Driving Instructor. I also have 28 years of experience as a State of Michigan certified Commercial Driver's License Examiner. I hold these opinions to a reasonable degree of professional certainty.

1. I was provided NSS Construction, Inc.'s undated Employment Manual and undated Construction Safety Manual. It is unknown whether or not these manuals actually existed at the time Mr. Scott Neal was employed by NSS Construction, Inc., or whether Mr. Neal had been provided these manuals upon his hiring at NSS Construction, Inc. NSS Construction, Inc., nor Mr. Nick Schubeck were able to provide any proof Mr. Neal was provided either of these manuals.
2. Mr. Scott Neal violated **Michigan Compiled Law 257.642** for moving his commercial motor vehicle from his lane, without first ascertaining that his movement could be made safely. This violation, by Mr. Neal, is the cause of this accident and the cause of Mr. McDuffie-Connor's fatal injuries.

3. Mr. Scott Neal violated **Michigan Compiled Law 257.647** for failing to make his approach for a right turn, and the right turn, as close as practicable to the right-hand curb or edge of the roadway.
4. Mr. Scott Neal failed to abide by industry standards and guidance provided by the **Michigan Commercial Driver's License Manual**. In particular, Mr. Neal failed to abide by sections **2.4-Seeing, 2.4.2-Seeing to the Sides and Rear, 2.5.1-Signal Your Intentions, 2.7-Managing Space, 2.7.3-Space to the Sides, 2.7.6-Space for Turns, 2.8-Seeing Hazards, 2.8.1-Importance of Seeing Hazards, 2.8.4-Always Have a Plan**. Furthermore, Mr. Neal violated Federal Motor Carrier Safety Regulation **§383.111-Required Knowledge and §396.7-Unsafe Operations Forbidden**, for failing to safely operate his CMV, for operating his CMV in such a condition likely to cause an accident, for failing to check his mirrors to see to the sides and rear of his vehicle, for failing to regularly check his mirrors for traffic to the sides and rear, for failing to slow down and warn drivers he was making a right-hand turn, for failing to manage the space around his vehicle, for turning wide to the left as he started his turn, for failing to recognize and see hazards prior to turning, and for failing to be a prepared and defensive driver.
5. Mr. Scott Neal and NSS Construction, Inc. violated Federal Motor Carrier Safety Regulation, **Part 390.3 (b) & (e)-Applicability and Knowledge of and Compliance with the Regulations**, along with **§392.1-Scope and §392.2-Applicable Operating Rules**, for failing to be knowledgeable, and for failing to instruct its employees and/or agents to be knowledgeable, of the Federal Motor Carrier Safety Regulations.
6. NSS Construction, Inc. violated Federal Motor Carrier Safety Regulation, **Part 379-Preservation of Records, Appendix A (K)(2)- Supporting Data for Reports and Statistics and §379.3-Records Required to be Retained**, for failing to maintain and preserve its motor carrier records for the minimum retention period of 3 years. As noted in Appendix A, records referenced shall be maintained, and the choice of retention periods shall reflect... pending litigation. The following are records NSS Construction, Inc. was required, by the Federal Motor Carrier Safety Administration, to maintain and preserve:
  - a. **Vehicle Inspection, Repair and Maintenance Records (§396.3)**
    - i. **§396.3(c)- Record Retention**. The records required by this section shall be retained where the vehicle is either housed or maintained for a period of 1 year and 6 months after the motor vehicle leaves the motor carrier's control.
  - b. **Alcohol Misuse and Controlled Substances Use Prevention Programs (382.401)**
    - i. **(b)(1)- Five Year**: Positive tests, refusals to test, driver evaluation and referrals, a copy of each annual calendar year summary, and



records related to the administration of the testing program, including records of all driver violations

- ii. **(b)(3)- One Year:** Records of negative and canceled controlled substances test results and alcohol test results with a concentration of less than .02 shall be maintained for a minimum of one year.
- iii. **(b)(4)- Indefinite Period:** Records related to the education and training of breath alcohol technicians, screening tests technicians, supervisors and drivers shall be maintained by the employer while the individual performs the functions which require the training and for two years after ceasing performing those functions.

**c. Driver Qualification File (§391.51)**

- i. **(c)-** Except as provided in paragraph (d) of this section, each driver's qualification file shall be retained for as long as a driver is employed by that motor carrier and for three years thereafter.

7. Pursuant to Federal Motor Carrier Safety Regulation **Part 385-Safety Fitness Procedures, Appendix B**, NSS Construction, Inc. committed the following Critical Violations of the Federal Motor Carrier Safety Regulations:

- a. **§390.15** Failing to maintain copies of all accident reports required by State or other governmental entities or insurers (critical).
- b. **§391.51(a)** Failing to maintain driver qualification file on each driver employed (critical).
- c. **§391.51(b)(2)** Failing to maintain inquiries into driver's driving record in driver's qualification file (critical).
- d. **§391.51(b)(7)** Failing to maintain medical examiner's certificate in driver's qualification file (critical).
- e. **§395.8(k)(1)** Failing to preserve a driver's record of duty status or supporting documents for 6 months (critical).
- f. **§395.11(e)** Failing to retain supporting documents in a manner that permits the effective matching of the documents to the driver's record of duty status (critical).
- g. **§396.3(b)** Failing to keep minimum records of inspection and vehicle maintenance (critical).
- h. **§396.17(a)** Using a commercial motor vehicle not periodically inspected (critical).

8. Pursuant to the Federal Motor Carrier Safety Regulations, and On Guard (FHWA-MC-97-004), NSS Construction, Inc. negligently entrusted Mr. Scott Neal to operate a commercial motor vehicle under their DOT authority. It is incumbent upon a prospective employer of a commercial vehicle driver to ensure the driver is properly trained to operate that employer's truck.

Furthermore, a driver must be able, by reason of experience, training or both, to safely operate the commercial motor vehicle he drives. "This requirement is not met by simply ascertaining that a prospective driver holds a CDL."

9. NSS Construction, Inc. failed to enact Safety Management Controls, as defined by Federal Motor Carrier Safety Regulation **§385.3-Safety Management Controls**, by not implementing and executing safe and proper systems, policies, programs, practices, and procedures to ensure compliance with applicable safety regulations and to reduce the risk of incidents resulting in fatalities, injuries and property damage for the general motoring public.
10. NSS Construction, Inc., and its operations, violated numerous Federal Motor Carrier Safety Regulations. As interpreted by the Department of Transportation, NSS Construction, Inc. was required to consider as much information about Mr. Scott Neal's experience, as reasonably available, prior to allowing him to operate a CMV upon the public roadway.
11. This accident was a Preventable Accident, as defined by Federal Motor Carrier Safety Regulation **§385.3-Preventable Accident**, but for the action(s) and/or inaction(s) of Mr. Scott Neal and NSS Construction, Inc.

I reserve the right, at my discretion, to change, amend and/or modify my opinions, at any point in time, should additional information and/or documentation be provided to me, or become available for my analysis, at any time.



Larry Baareman

# **EXHIBIT 26**

**Forest Labs., Inc. v. Caraco Pharm. Labs., Ltd.**

United States District Court for the Eastern District of Michigan, Southern Division

April 14, 2009, Decided; April 14, 2009, Filed

Civil Action No. 06-CV-13143

**Reporter**

2009 U.S. Dist. LEXIS 31555 \*; 2009 WL 998402

FOREST LABORATORIES, INC., et al., Plaintiffs, vs. CARACO PHARMACEUTICAL LABORATORIES, LTD., et al., Defendants.

**Prior History:** [\*Forest Labs. v. Caraco Pharm. Labs.\*, 2009 U.S. Dist. LEXIS 145437 \( E.D. Mich., Feb. 13, 2009\)](#)**Core Terms**

---

tapes, spoliation, backup, duty to preserve, documents, destroyed, destruction, parties, culpable state of mind, adverse inference, anticipated, trigger, relevant evidence, sanctions, disaster, bad faith, inaccessible, e-mail, destruction of evidence, spoliation of evidence, intentionally, culpability, preserved, occurs

**Counsel:** [\*1] For Forest Laboratories, Incorporated, Forest Laboratories Holdings, Limited, H. Lundbeck A/S, Plaintiffs: Gerald J. Flattmann, Jr., LEAD ATTORNEY, Kirkland & Ellis, New York, NY; Jordan S. Bolton, LEAD ATTORNEY, Clark Hill, Detroit, MI; Ronald A. King, LEAD ATTORNEY, Clark Hill, Lansing, MI; Aaron O. Matthews, Clark Hill, Okemos, MI.

For Caraco Pharmaceutical Laboratories, Limited, Defendant: Moheeb H. Murray, LEAD ATTORNEY, Richard W. Paige, Robert A. Kaatz, Bush, Seyferth & Paige, PLLC, Troy, MI; Derek J. Sarafa, Samuel S. Park, Winston and Strawn, Chicago, IL.

For Sun Pharmaceutical Industries, Limited, Defendant: Derek J. Sarafa, Samuel S. Park, Winston and Strawn, Chicago, IL; Moheeb H. Murray, Richard W. Paige, Robert A. Kaatz, Bush, Seyferth & Paige, PLLC, Troy, MI.

For Caraco Pharmaceutical Laboratories, Limited, Counter Claimant: Robert A. Kaatz, Bush, Seyferth & Paige, PLLC, Troy, MI; Samuel S. Park, Winston and Strawn, Chicago, IL.

For H. Lundbeck A/S, Forest Laboratories, Incorporated, Forest Laboratories Holdings, Limited, Counter Defendants: Aaron O. Matthews, Clark Hill, Okemos, MI; Jordan S. Bolton, Clark Hill, Detroit, MI.

For Caraco Pharmaceutical Laboratories, Limited, [\*2] Counter Claimant: Moheeb H. Murray, LEAD ATTORNEY, Robert A. Kaatz, Bush, Seyferth & Paige, PLLC, Troy, MI; Samuel S. Park, Winston and Strawn, Chicago, IL.

For Sun Pharmaceutical Industries, Limited, Counter Claimant: Moheeb H. Murray, Robert A. Kaatz, Bush, Seyferth & Paige, PLLC, Troy, MI; Samuel S. Park, Winston and Strawn, Chicago, IL.

For H. Lundbeck A/S, Forest Laboratories, Incorporated, Forest Laboratories Holdings, Limited, Counter Defendants: Jordan S. Bolton, LEAD ATTORNEY, Clark Hill, Detroit, MI.

**Judges:** HON. BERNARD A. FRIEDMAN, SENIOR UNITED STATES DISTRICT JUDGE.**Opinion by:** BERNARD A. FRIEDMAN**Opinion**

---

## **OPINION AND ORDER GRANTING DEFENDANTS' MOTION FOR HEARING ON SPOILIATION OF EVIDENCE**

This matter is presently before the Court on Defendants' Motion for Hearing on Spoliation of Evidence [docket entry 141] ("Spoliation Motion"). This matter has been extensively briefed by the parties and the Court has had an opportunity to thoroughly examine the motion papers and the documents attached thereto. For the reasons that follow, the Court will grant Defendants' Spoliation Motion and order a hearing on spoliation.

### **I. DEFENDANTS' SPOILIATION MOTION**

Defendants filed their Spoliation Motion on March 3, 2009. Defendants [\*3] allege that Plaintiffs have intentionally or recklessly destroyed or rendered unsearchable key electronic records (referred to as "backup tapes") containing documents -- particularly, internal e-mail correspondence -- tending to show that Plaintiffs' drug, escitalopram, did not produce unexpected results and therefore is obvious. In their Spoliation Motion, Defendants ask the Court to take the following three actions: (1) "hold a one-day hearing to create a record of Forest's spoliation of evidence," (2) "forbid Forest from claiming at trial that escitalopram produced unexpected results (and thus was not 'obvious')," and (3) "require Forest to pay Caraco's attorney fees." (Spoliation Motion at 19.) Plaintiffs deny that they engaged in any such misconduct because they "preserved e-mails on [their] active file server and continued [their] standard operating procedures in good faith," see Pls.' Resp. at 5, and request that the relief sought by Defendants be denied.

### **II. ANALYSIS**

"Spoliation is the destruction or significant alteration of evidence, or the failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation." [\*West v. Goodyear Tire & Rubber Co.\*, 167 F.3d 776, 779 \(2d Cir. 1999\)](#). [\*4] "[S]poliation is not a substantive claim or defense but a 'rule of evidence,' and thus is 'administered at the discretion of the trial court.'" [\*Hodge v. Wal-Mart Stores, Inc.\*, 360 F.3d 446, 450 \(4th Cir. 2004\)](#) (quoting [\*Vodusek v. Bayliner Marine Corp.\*, 71 F.3d 148, 155 \(4th Cir. 1995\)](#)). The Sixth Circuit has recently recognized that federal law governs spoliation sanctions in all federal court cases, thereby bringing the case law in the Sixth Circuit "in line with other courts of appeals." [\*Adkins v. Wolever\*, 554 F.3d 650, 652 \(6th Cir. 2009\)](#) (*en banc*). As the Sixth Circuit has explained, there are two reasons for applying federal law with regard to spoliation issues:

First, the authority to impose sanctions for spoliated evidence arises not from substantive law but, rather, "from a court's inherent power to control the judicial process." Second, a spoliation ruling is evidentiary in nature and federal courts generally apply their own evidentiary rules in both federal question and diversity matters.

*Id.* (citations omitted). As articulated by the Second Circuit,

a party seeking an adverse inference instruction based on the destruction of evidence must establish (1) that the party having [\*5] control over the evidence had an obligation to preserve it at the time it was destroyed; (2) that the records were destroyed "with a culpable state of mind"; and (3) that the destroyed evidence was "relevant" to the party's claim or defense such that a reasonable trier of fact could find that it would support that claim or defense.

[\*Residential Funding Corp. v. Degeorge Fin. Corp.\*, 306 F.3d 99, 107 \(2d Cir. 2002\)](#) (quoting [\*Byrnie v. Town of Cromwell\*, 243 F.3d 93, 107-112 \(2d Cir. 2001\)](#)). "The burden is on the party seeking to use the evidence to show the existence of each criterion." See [\*Jandreau v. Nicholson\*, 492 F.3d 1372, 1375 \(Fed. Cir. 2007\)](#). The Court will discuss each element of the *Residential Funding* test, in turn, below.

#### **A. Duty to Preserve**

Defendants must first show that Plaintiffs "had an obligation to preserve [the allegedly spoliated evidence] at the time it was destroyed." See [\*Residential Funding\*, 306 F.3d at 107](#). "It goes without saying that a party can only be sanctioned for destroying evidence if it had a duty to preserve it." [\*Zubulake v. UBS Warburg LLC\*, 220 F.R.D. 212, 216 \(S.D.N.Y. 2003\)](#). "If [Plaintiffs] had no such duty, then [they] cannot be faulted. See *id.* "The [\*6] obligation to preserve evidence arises when the party has notice that the evidence is relevant to litigation or when a party should

have known that the evidence may be relevant to future litigation." [\*Fujitsu Ltd. v. Fed. Express Corp.\*, 247 F.3d 423, 436 \(2d Cir. 2001\)](#). See also [\*Silvestri v. Gen. Motors Corp.\*, 271 F.3d 583, 591 \(4th Cir. 2001\)](#) ("[t]he duty to preserve material evidence arises not only during litigation but also extends to that period before the litigation when a party reasonably should know that the evidence may be relevant to anticipated litigation"). Thus, the first step in the analysis is to determine the "trigger date," or "the date a party is put on notice that it has a duty to preserve evidence." See [\*Clark Constr. Group, Inc. v. City of Memphis\*, 229 F.R.D. 131, 136 \(W.D. Tenn. 2005\)](#). "Any destruction of potentially relevant evidence that occurs before the trigger date would be harmless, since the party was unaware of a need to safeguard evidence. The destruction of documents and evidence after the trigger date, however, is not allowed." [\*Id.\*](#)

Defendants do not clearly explain when they believe Plaintiffs' duty to preserve evidence related to the '712 patent arose. [\*7] On the one hand, Defendants state that Plaintiffs "should have known by the late 1990s, when it first began developing escitalopram, that litigation over the '712 patent was inevitable." (Spoliation Mot. at 16.) Yet, Defendants also argue that "[a]t the very latest, Forest knew by September 2003--when Ivax [Pharmaceuticals, Inc. ("Ivax")] notified Forest of its intent to market generic escitalopram--that its e-mails discussing the effectiveness of this 'new' drug 'may be relevant to future litigation.'" (*Id.*) Plaintiffs take the position that they "reasonably anticipated litigation with Ivax in September 2003" and that "September of 2003 . . . [was] the earliest time at which Lundbeck arguably had a duty to preserve documents for its potential litigation with Ivax." (See Pls.' Resp. at 8.)

The Court finds that Plaintiffs' obligation to preserve relevant evidence related to the '712 patent arose in August 2003, when Plaintiffs received notice that Ivax had filed an Abbreviated New Drug Application containing the first Paragraph IV certification against Lexapro.<sup>1</sup> It was at this time that Plaintiffs had a duty to preserve all relevant evidence concerning the '712 patent for use in the [\*8] imminent litigation with Ivax and in any "anticipated litigation," such as the present matter. Defendants offer no evidence in support of their position that Plaintiffs "should have known by the late 1990s, when [they] first began developing escitalopram, that litigation over the '712 patent was inevitable." (Spoliation Mot. at 16.) In [\*Zubulake\*](#), the court considered how early the duty to preserve might arise. See [220 F.R.D. at 216-217](#). There, the court determined that the duty arose in April 2001--before the complaint was filed and before the spoliating company (UBS) instructed its employees to preserve evidence potentially relevant to the litigation--when (1) UBS employees began titling e-mails pertaining to *Zubulake* "UBS Attorney Client Privilege" and (2) a UBS employee admitted in his deposition that he feared litigation from as early as April 2001. *Id.* The court noted that

[m]erely because one or two employees contemplate the possibility that a fellow employee might sue does not generally impose a firm-wide duty to preserve. But in this case, it appears that almost everyone associated with *Zubulake* recognized that possibility that she might sue.

[\*Id.\* at 217](#). Thus, the court concluded [\*9] based on the two pieces of evidence above that "the relevant people at UBS anticipated litigation in April 2001" and that the duty to preserve therefore arose at that time. *Id.*

Unlike in [\*Zubulake\*](#) where the party moving for relief on spoliation offered evidence demonstrating that the duty to preserve arose well before the complaint was filed, Defendants in the present case have offered no evidence which could support a finding that the duty to preserve arose in "the late 1990s." In particular, Defendants have offered no proof that anyone under Plaintiffs' control had reason to anticipate, or actually did anticipate, litigation in the late 1990s.<sup>2</sup> To the extent Defendants seek relief related to any alleged spoliation of evidence occurring before August 2003, such relief is not cognizable because "[a]ny destruction of potentially relevant evidence that occurs before the

---

<sup>1</sup> Roughly six weeks later, on September 22, 2003, Plaintiffs brought suit against Ivax in the District of Delaware alleging infringement of the '712 patent, the same patent at issue in the present case.

<sup>2</sup> Defendants state only that "[g]iven the nature of the Hatch-Waxman litigation framework and the fact that Forest was seeking, in the '712 patent, to claim a known compound, it should have known by the late 1990s, when it first began developing escitalopram, that litigation over the '712 patent was inevitable." (Spoliation Mot. at 16.) The Court rejects this argument, as a rule requiring large corporations such as Plaintiffs to retain backup tapes whenever future litigation is merely possible would be "crippl[ing]." See [Zubulake](#), [220 F.R.D. at 217](#).



trigger date would be harmless, since the party was unaware of a need to safeguard evidence." See [Clark Constr. Group, 229 F.R.D. at 136](#). [\*10] However, to the extent Defendants seek relief for any spoliation occurring in or after August 2003, such relief is potentially cognizable. Plaintiffs concede that they did not halt all recycling of backup tapes until May 2005. (See Pl.'s Resp. at 6 n.3.) As Plaintiffs failed to preserve backup tapes after the trigger date, the spoliation analysis must proceed to the next step.

Having determined that potentially relevant evidence was destroyed after the trigger date, the next step is to determine whether the spoliated evidence falls within the scope of evidence that must be preserved. "A party is under no duty to 'preserve every shred of paper, [\*11] every e-mail or electronic document.'" [Clark Constr. Group, 229 F.R.D. at 136](#) (quoting [Zubulake, 220 F.R.D. at 217](#)). However, "[a] party or anticipated party must retain all relevant documents (but not multiple identical copies) in existence at the time the duty to preserve attaches, and any relevant documents created thereafter." [Zubulake, 220 F.R.D. at 218](#). As articulated by the *Zubulake* court,

[t]he scope of a party's preservation obligation can be described as follows: Once a party reasonably anticipates litigation, it must suspend its routine document retention/destruction policy and put in place a "litigation hold" to ensure the preservation of relevant documents. As a general rule, that litigation hold does not apply to inaccessible backup tapes (e.g., those typically maintained solely for the purpose of disaster recovery), which may continue to be recycled on the schedule set forth in the company's policy. On the other hand, if backup tapes are accessible (i.e., actively used for information retrieval), then such tapes would likely be subject to the litigation hold.

*Id.* Thus, if the backup tapes destroyed after the trigger date were "inaccessible," Plaintiffs were under no duty [\*12] to preserve them under the general rule. If they were "accessible," however, they were subject to a litigation hold and Defendants are potentially entitled to relief under the spoliation rule if the other two elements of the *Residential Funding* framework are satisfied.

The parties disagree as to the accessibility of the backup tapes. Plaintiffs contend that "[i]t is undisputed that Lundbeck's backup tapes were full system backups created and 'maintained solely of the purpose of disaster recovery,' and are therefore 'inaccessible.'" (Pls.' Resp. at 10.) For support, Plaintiffs point to the testimony of Michael Vasa Skanstrom, Lundbeck's Vice President of Information Technology, who testified that "the purpose of a . . . disaster backup tape, is in case your system disappears, you can restore it" and that "[t]he e-mail server backup tapes and the file server backup tapes are for the purpose of a recovery in a disaster situation." (See Pls.' Resp. at Ex. 10, p. 58.) Mr. Skanstrom further agreed with counsel's characterization of the backup tapes as "a catastrophic backup system." (See *id.* at p. 122.) Plaintiffs also point to the testimony of Michael Heslop, Defendants' spoliation expert, [\*13] who testified that "[d]isaster recovery is the act of backing up all data . . . in systems to backup tapes . . . so the data can be restored at a future point in time if a disaster occurs" and that "the reason for backup tapes" is "for backing up of the primary storage of information." (See *id.* at Ex. 13, p. 66.)

On the other hand, Defendants assert that "the tapes were accessible . . ." (See Defs.' Reply at 4) (emphasis in original). However, Defendants have not demonstrated an understanding of what the word *accessible* means in the context of this spoliation analysis because they offer no evidence that the tapes in question were maintained for any purpose other than disaster recovery. In fact, Defendants do not even argue that the backup tapes were used for primary storage or some purpose other than disaster recovery. Therefore, Plaintiffs' evidence stands un rebutted. As a matter of law, then, the Court finds that the backup tapes were inaccessible.<sup>3</sup>

---

<sup>3</sup> Again, the rule is that the "litigation hold does not apply to inaccessible backup tapes . . . which may continue to be recycled on the schedule set forth in the company's policy." [Zubulake, 220 F.R.D. at 218](#) (emphasis added). Defendants [\*14] contend that Lundbeck overwrote certain backup tapes in contravention of its standard operating procedure, which called for the preservation of backup tapes for at least three months. (See Spoliation Mot. at 11.) In support of their argument, Defendants cite the deposition testimony of Mr. Heslop, who testified that "some [backup] tapes were overwritten before even the three-month time frame was up." (See *id.* at Ex. K, p. 84.) However, it is not clear from Mr. Heslop's testimony whether any backup tapes were improperly overwritten *after* the trigger date. At the upcoming hearing, the Court will permit Defendants to offer evidence that Plaintiffs overwrote backup tapes in contravention of their standard operating procedures, but only to the extent that any failure to preserve occurred after the trigger date.

The inquiry, however, does not end despite the Court's determination that the backup tapes are inaccessible. As stated in *Zubulake*, "it does make sense to create one exception to this general rule" that there is no duty to preserve inaccessible backup tapes beyond the time mandated in the company's policy. See [220 F.R.D. at 218](#). The exception is as follows:

If a company can identify [\*15] where particular employee documents are stored on backup tapes, then the tapes storing the documents of "key players" to the existing or threatened litigation should be preserved if the information contained on those tapes is not otherwise available. This exception applies to *all* backup tapes.

*Id.* (emphasis in original). The exception therefore contains three distinct requirements. First, the alleged spoliator must be able to "identify where particular employee documents are stored on [the] backup tapes." Second, the tapes must "stor[e] the documents of 'key players' to the . . . litigation." Third, "the information contained on [the] tapes" must not be "otherwise available." The parties scarcely discuss these three requirements in their briefs.<sup>4</sup> The Court believes that whether a duty to preserve exists in this particular matter hinges entirely on whether the *Zubulake* exception applies. The Court will decline to issue a ruling on the application of the *Zubulake* exception at this time and will instead permit the parties to address the application of the exception at the upcoming hearing.

#### B. Culpability

According to the Sixth Circuit, "failures to [\*17] produce relevant evidence fall 'along a continuum of fault-ranging from innocence through the degrees of negligence to intentionality' . . ." [Adkins, 554 F.3d at 652](#) (quoting [Welsh v. United States, 844 F.2d 1239, 1246 \(6th Cir. 1988\)](#), overruled in part on other grounds by [Adkins, 554 F.3d at 652](#)). "Once the duty to preserve attaches, any destruction of [evidence] is, at a minimum, negligent." [Zubulake, 220 F.R.D. at 220](#). Therefore, "[t]he three possible states of mind that satisfy [the culpability] requirement are [1] bad faith destruction, [2] gross negligence, and [3] ordinary negligence." [Sampson v. City of Cambridge, Md., 251 F.R.D. 172, 179 \(D. Md. 2008\)](#). The *Residential Funding* court has explained why ordinary negligence is sufficient in some circumstances to satisfy the "culpable state of mind" requirement:

The sanction of an adverse inference may be appropriate in some cases involving the negligent destruction of evidence because each party should bear the risk of its own negligence. As Magistrate Judge James C. Francis, IV aptly put it,

[The] sanction [of an adverse inference] should be available even for the negligent destruction of documents if that is necessary to further [\*18] the remedial purpose of the inference. It makes little difference to the party victimized by the destruction of evidence whether that act was done willfully or negligently. The adverse inference provides the necessary mechanism for restoring the evidentiary balance. The inference is adverse to the destroyer not because of any finding of moral culpability, but because the risk that the evidence would have been detrimental rather than favorable should fall on the party responsible for its loss.

[Turner v. Hudson Transit Lines, Inc., 142 F.R.D. 68, 75 \(S.D.N.Y.1991\)](#). See generally [Kronisch v. United States, 150 F.3d 112, 126 \(2d Cir. 1998\)](#) (stating that an adverse inference instruction serves the remedial purpose, "insofar as possible, of restoring the prejudiced party to the same position he would have been in absent the wrongful destruction of evidence by the opposing party").

---

<sup>4</sup> Plaintiffs, however, do discuss the third element of the *Zubulake* exception in some detail. Plaintiffs [\*16] state that the data contained on the backup tapes is cumulative of that which is already on the server and argue that Caraco "has not and cannot demonstrate that a single document or e-mail is missing." (Pls.' Resp. at 19.) Thus, Plaintiffs suggest that the information contained on the backup tapes is otherwise available. It appears to be undisputed that "each backup tape contains a duplicate copy of data that resides on the server at the time the tape is created." (See Pls.' Resp. at 6.) According to Mr. Heslop, "[t]he backup tapes should contain a forensic copy of the data on the server at that point in time," but "do [] not contain deleted files." (See Pls.' Resp. at Ex. 13, p. 67.) Defendants argue that whether the backup tapes are cumulative, as Plaintiffs suggest, "is impossible to know" because "it is quite likely that information was purposefully deleted [by the users]." (See Defs.' Reply at 6) (emphasis omitted). Taking Defendants at their word that they do "not need additional discovery about spoliation," see Defs.' Reply at 6, the Court will afford Defendants the opportunity to prove this allegation at the hearing.

Residential Funding, 306 F.3d at 108. Thus, "a court need not find bad faith or intentional misconduct before sanctioning a spoliator." Klezmer ex rel. Desyatnik v. Buynak, 227 F.R.D. 43, 50 (E.D.N.Y. 2005). See also Doe v. Norwalk Cmty. Coll., 248 F.R.D. 372, 379 (D. Conn. 2007) ("a culpable state of mind is established [\*19] by ordinary negligence"). However, "the more culpable state of mind [bad faith or intentional misconduct] lessen[s] the burden of showing relevance." Equal Employment Opportunity Comm'n v. LA Weight Loss, 509 F. Supp.2d 527, 538-539 (D. Md. 2007). In other words,

[t]he more culpable the state of mind, the easier it is for the party seeking a spoliation adverse inference instruction to demonstrate the third element [of the *Residential Funding* framework] - relevance. "When evidence is destroyed in bad faith (i.e. intentionally or willfully), that fact *alone* is sufficient to demonstrate relevance. By contrast, when the destruction is negligent, relevance must be proven by the party seeking the sanctions."

Thompson v. United States Dep't of Hous. & Urban Dev., 219 F.R.D. 93 (D. Md. 2003) (quoting Zubulake, 220 F.R.D. at 220) (emphasis added).

Plaintiffs argue that there is no evidence that they spoliated evidence in bad faith or intentionally and that Defendants therefore cannot meet their burden of demonstrating a "culpable state of mind." (See Pls.' Resp. at 17-18.) Plaintiffs' argument, however, is flawed because Plaintiffs have not considered that "a culpable state of mind is established [\*20] by ordinary negligence," see Doe, 248 F.R.D. at 379, and that "[o]nce the duty to preserve attaches, any destruction of [evidence] is, at a minimum, negligent," Zubulake, 220 F.R.D. at 220.

If, and only if, Defendants demonstrate at the hearing that Plaintiffs had a duty to preserve the backup tapes in question, the Court will hear evidence as to whether Plaintiffs acted with a "culpable state of mind" and if so, to what extent.

### C. Relevance

"The burden falls on the 'prejudiced party' to produce 'some evidence suggesting that a document or documents relevant to substantiating his claim would have been included among the destroyed files.'" Byrnie, 243 F.3d at 108 (2d Cir. 2001) (quoting Kronisch, 150 F.3d at 128).

"[R]elevant" in this context means something more than sufficiently probative to satisfy Rule 401 of the Federal Rules of Evidence. Rather, the party seeking an adverse inference must adduce sufficient evidence from which a reasonable trier of fact could infer that "the destroyed [or unavailable] evidence would have been of the nature alleged by the party affected by its destruction." Kronisch, 150 F.3d at 127; Byrnie, 243 F.3d at 110.

Residential Funding, 306 F.3d at 108-109 (footnote [\*21] omitted). The Fourth Circuit, for example, "describes the test for relevant evidence necessary to impose sanctions as that evidence which would 'naturally have been introduced into evidence.'" Sampson, 251 F.R.D. at 179-180 (quoting Vodusek, 71 F.3d at 156). However,

[c]ourts must take care not to "hold [] the prejudiced party to too strict a standard of proof regarding the likely contents of the destroyed [or unavailable] evidence," because doing so "would subvert the . . . purposes of the adverse inference, and would allow parties who have . . . destroyed evidence to profit from that destruction." Kronisch, 150 F.3d at 128; Byrnie, 243 F.3d at 110.

Residential Funding, 306 F.3d at 109. Moreover, as discussed above,

[w]hen evidence is destroyed in bad faith (i.e., intentionally or willfully), that fact alone is sufficient to demonstrate relevance. By contrast, when the destruction is negligent, relevance must be proven by the party seeking the sanctions.

Zubulake, 220 F.R.D. at 220 (footnote omitted).

### III. INSTRUCTIONS TO THE PARTIES REGARDING THE UPCOMING HEARING

The sole purpose of the upcoming hearing will be to determine whether the *Zubulake* exception applies and if so, whether Plaintiffs [\*22] acted with a culpable state of mind and whether the spoliated evidence is relevant. The Court will conduct the hearing in two parts. During part one, the Court will hear evidence related to the duty question only. The relevant inquiry is whether the *Zubulake* exception applies. Specifically, whether (1) "the information contained on [the] tapes" is "otherwise available," (2) the alleged spoliator can "identify where particular employee documents are stored on [the] backup tapes," and (3) the tapes "stor[e] the documents of 'key players' to the . . . litigation. See [Zubulake, 220 F.R.D. at 218](#). If, and only if, the Court determines that the exception applies, the Court will conduct part two of the hearing, during which the Court will hear evidence related to culpability and relevance. See [Residential Funding, 306 F.3d at 107](#).

At the hearing, the parties need not offer evidence related to issues that have already been determined by the Court herein. This means that the parties should not discuss whether Plaintiffs allegedly spoliated evidence prior to the trigger date, nor should Defendants address the accessibility of the backup tapes. Moreover, the parties need not address the numerous [\*23] extraneous matters discussed in their briefs. The Court is concerned only with whether the legal test for spoliation has been satisfied under the law discussed herein.

Each side will have two hours to present their arguments, starting with Defendants. Defendants may reserve time for rebuttal, if they choose.

#### IV. CONCLUSION

Accordingly,

IT IS ORDERED that Defendants' Motion for Hearing on Spoliation of Evidence [docket entry 141] is granted. The date and time of the hearing will be determined during the teleconference currently scheduled for April 15, 2009, at 2:30 p.m. The trial date in this matter will remain unchanged.

IT IS FURTHER ORDERED that Plaintiffs' "Motion to Strike Declaration of Michael Heslop" [docket entry 160] is denied as moot, as the Court did not rely on it.

Dated: April 14, 2009

Detroit, Michigan

/s/ Bernard A. Friedman

BERNARD A. FRIEDMAN

SENIOR UNITED STATES DISTRICT JUDGE

# **EXHIBIT 27**



Neutral

As of: October 22, 2024 10:59 PM Z

**Applebaum v. Target Corp.**

United States District Court for the Eastern District of Michigan, Southern Division

March 9, 2015, Decided; March 9, 2015, Filed

Case No. 11-cv-15035

**Reporter**

2015 U.S. Dist. LEXIS 192238 \*; 2015 WL 13021688

Lorie Applebaum, Plaintiff, v. Target Corporation et al., Defendants.

**Prior History:** [Applebaum v. Target Corp., 2012 U.S. Dist. LEXIS 198641 \( E.D. Mich., June 8, 2012\)](#)**Core Terms**

---

bike, repaired, bicycle, brakes, summary judgment, assembly, express warranty, destroyed, spoliation, adverse inference, interrogatory, injuries, wheel, rear, warranty, seller, reasonable care, material fact, culpability, sanctions, hearsay, selling, verbal, tag

**Counsel:** [\*1] For Lorie Applebaum, Plaintiff: Mark R. Bendure, Bendure & Thomas, Grosse Pointe Park, MI.

For Target Corporation, Defendant: Mark D. Willmarth, Flint, MI.

**Judges:** Hon. JUDITH E. LEVY, United States District Judge. Mag. Judge Michael J. Hluchaniuk.**Opinion by:** JUDITH E. LEVY**Opinion**

---

**OPINION AND ORDER DENYING DEFENDANT'S [54] MOTION FOR SUMMARY JUDGMENT**

This is a negligence case. Plaintiff Lorie Applebaum brings this suit against defendant Target Corp. for negligently selling her a bicycle with faulty brakes. Applebaum alleges the brakes malfunctioned, causing her to fall from the bike and suffer injuries. Before the Court is defendant Target Corporation's ("Target") Motion for Summary Judgment. The Court heard oral argument on January 14, 2015. For the reasons set forth below, the Court will deny the motion.

**I. Factual background**

In February 2009, Applebaum attempted to buy a Schwinn mountain bike at the Target store in West Bloomfield, Michigan, but was told the model was sold out. (Dkt. 57-2, Ex. 1 to Pl.'s Resp., Applebaum Dep. 80-81, 91-92 [hereinafter Applebaum Dep.].) She was told a bike was available at the Farmington Hills, Michigan store, but it had been returned because of a brake problem and needed repair. [\*2] (*Id.* at 93-4.) Applebaum called the Farmington Hills store to verify they had the bike. (*Id.* at 97-9.)



Target contracted with Impact Resources Group to assemble and repair bicycles at its stores, including the Farmington Hills store. The contract apparently included an indemnification agreement, although the contract itself has not been submitted to the Court. The relationship between Impact and Target ended at some point before July 2009. (Applebaum Dep. 155.) According to Target, Impact was still assembling and repairing bikes at the Farmington Hills store in February 2009. (Dkt. 54-5, Ex. D to Pl.'s Br., Smith Aff. ¶ 4.)

Applebaum purchased the bike on February 24, 2009. (*Id.* at 108-09.) Before going to the Farmington Hills store, Applebaum called and spoke with Sean Bryan, who allegedly told her the bike was "all perfect, all fixed, ready to go." (*Id.* at 100.) Appelbaum did not see Bryan at the store, and does not recall who brought the bike out for her. (*Id.* at 109-10.)

Applebaum did not use the bike until July 4, 2009, when she went riding with her friend, Kathryn Kennedy, at a nearby park. (*Id.* at 118-21.) Soon after beginning their ride, the rear brakes on the bike locked up, causing Applebaum to fall on her left shoulder. (*Id.* at 122-32.) The rear bike wheel [\*3] would not turn after the accident. (*Id.* at 140.) A passerby helped Applebaum get the bike to her car by doing something to the rear brakes to release the wheel. (*Id.* at 141.)

Applebaum testified that she later called the store and spoke with Sean Bryan. (Applebaum Dep. 154-55.) She told him about the incident and that the brakes did not work on the bike. (*Id.* at 155.) Bryan told her he would have to call her back, because the company that worked on Target's bikes was no longer working for the store. (*Id.*) Bryan called Applebaum back and asked her to bring the bike in. Appelbaum took the bike to the store, where Bryan filled out an incident report based on information given by Applebaum. (*Id.* at 162-64.) Applebaum testified that Bryan promised to destroy the bike at her request. (*Id.* at 167.)

Bryan took photographs of the returned bike. (See Dkt. 54-11, 54-12, & 54-13, Exs. J, K, L to Def.'s Br.) The bike was then thrown out on the authorization of a leader on duty (LOD) at the Farmington Hills store. (Dkt. 57-13, Ex. 12 to Pl.'s Resp. 2.)

Applebaum filed suit against Target, Impact Resources Group, and National Product Services on October 18, 2011 in Oakland County Circuit Court. (Dkt. 1.) Her complaint includes one negligence count against [\*4] each defendant, as well as one count of vicarious liability against all defendants. (*Id.*) The case was removed to the Eastern District on November 14, 2011, and originally assigned to Judge Julian Abele Cook. Default judgment was entered against Impact on July 15, 2013 for failing to appear at a scheduling conference. (Dkt. 39.)

The case was reassigned to this Court on October 3, 2014.

## II. Standard of Review

Summary judgment is required where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." [Fed. R. Civ. P. 56\(a\)](#). A dispute about a material fact is genuine if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." [Anderson v. Liberty Lobby, Inc.](#), 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). The Court "views the evidence, all facts, and any inferences that may be drawn from the facts in the light most favorable to the nonmoving party." [Pure Tech Sys., Inc. v. Mt. Hawley Ins. Co.](#), 95 F. App'x 132, 135 (6th Cir. 2004) (citing [Skousen v. Brighton High Sch.](#), 305 F.3d 520, 526 (6th Cir.2002)).

## III. Analysis

### A. Relevant law

Michigan law provides that:

In a product liability action, a seller other than a manufacturer is not liable for harm allegedly caused by the product unless either of the following is true:

- (a) The seller failed to exercise reasonable care, including breach of any implied warranty, with respect [\*5] to the product and that failure was a proximate cause of the person's injuries.
- (b) The seller made an express warranty as to the product, the product failed to conform to the warranty, and the failure to conform to the warranty was a proximate cause of the person's harm.

Mich. Comp. Laws § 600.2947(6). To establish liability under (a), a plaintiff must show that the seller knew or should have known of the alleged defect in the product. Kraft v. Dr. Leonard's Healthcare Corp., 646 F. Supp. 2d 882, 888 (E.D. Mich. 2009).

Applebaum maintains Target is liable under both (a) and (b). As to (a), Applebaum claims Target knew the bike had a brake defect, but failed to exercise reasonable care in insuring that the brake defect had been repaired before selling her the bike. Target thus should have known that the bike's brakes were still defective at the time the bike was sold to Applebaum. As to (b), Applebaum testified that Target employee Sean Bryan made an express warranty that the bike had been repaired and was "perfect," rendering Target liable for her injuries.

## B. Target's motion for summary judgment

Target moves for summary judgment on the ground that, under Michigan law, it cannot be held liable as a retailer for a defect in a product it sold. (Dkt. 54, Def.'s Mot. 13.) That is an incorrect statement [\*6] of the law, because Target may indeed be held liable under theories of negligence or express warranty. Mich. Comp. Laws § 600.2947(6).

### 1. Evidentiary issues

Several evidentiary issues must be addressed at the outset. First, Target challenges the admissibility of certain statements made by Impact's counsel and of Impact's responses to interrogatories and requests for production in this case. Second, Applebaum seeks spoliation sanctions for Target's failure to preserve the bicycle. At a minimum, Applebaum asks the Court for an adverse inference instruction to the jury.

#### a. Admissibility of statements by Impact

Rule 56 does not require a party opposing summary judgment to "produce evidence in a form that would be admissible at trial to avoid summary judgment." Celotex Corp. v. Catrett, 477 U.S. 317, 324, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). But that party must produce evidence that "will be admissible at trial" to establish a genuine dispute of material fact. Alexander v. CareSource, 576 F.3d 551, 558 (6th Cir. 2009). Accordingly, hearsay evidence "must be disregarded" in deciding a motion for summary judgment. Alpert v. United States, 481 F.3d 404, 409 (6th Cir. 2007) (citation omitted); accord Shazor v. Prof'l Transit Mgmt., Ltd., 744 F.3d 948, 960 (6th Cir. 2014).

In an email dated November 23, 2009, Impact's General Counsel, Richard Mitchell, wrote to Target's claims adjuster, Katherine Kacner, that "[Impact] researched our records and found that there were no bike repairs done by Impact [\*7] at Target 611 during the month of February, 2009." (Dkt. 57-7, Ex. 6 to Pl.'s Resp.) Similarly, in a letter dated November 2, 2011, Impact's outside counsel, Peter Korneffel, wrote to Kacner that "IMPACT denied this claim [sc. for indemnification] previously because it had no record of providing the repair services that were alleged in the complaint and because Target apparently disposed of the bicycle after the incident." (Dkt. 57-8, Ex. 7 to Pl.'s Resp.)

Finally, in their responses to Applebaum's first set of interrogatories, Impact and National Resources Group state that they "have no record of any involvement in the assembly, maintenance, and/or repair of the bicycle alleged by Plaintiff to have been at issue" and "as of the present date [sc. September 6, 2012] have received insufficient information to determine if they had any contact with the bicycle at issue." (Dkt. 57-9, Ex. 7 to Pl.'s Resp. 3-4.) Impact and National Resources Group further responded to Applebaum's request for production of documents related to repair of the bicycle by stating that "these Defendants can locate no work orders, invoices or other documents which pertain to the assembly, requested assembly, repair [\*8] or requested repair of the unidentified bicycle at issue." (*Id.* at 9.)

The statements of Impact's counsel in the email and letter are out of court statements offered to prove the truth of the matter — that Impact had no record of bike repairs done at the Farmington Hills store in February 2009 — and clearly fall within the definition of hearsay. See [Fed. R. Evid. 801](#). Applebaum identifies no exception that renders the statements admissible. [Fed. R. Evid. 803\(7\)](#) creates an exception to the rule against hearsay in certain circumstances for evidence that a matter is not included in a business record. But it is not clear whether that exception could apply here; among other things, both statements were made in the context of Target seeking indemnification from Impact. See [Fed. R. Evid. 803\(7\)\(C\)](#) (admissibility hinges in part on the opponent's failure to show "that the possible source of the information or other circumstances indicate a lack of trustworthiness"). Based on the record before it, the Court concludes these statements are inadmissible and are not properly considered in determining Target's motion. See [Shazor, 744 F.3d at 960](#).

Impact's responses to interrogatories and requests for production are likewise hearsay and do not appear to fall within a recognized exception. [\*9] See [Kirk v. Raymark Indus., Inc., 61 F.3d 147, 167-68 \(3d Cir. 1995\)](#) (finding "an interrogatory response of a co-defendant who is seeking to avoid liability lacks the 'circumstantial guarantees of trustworthiness' that are contemplated by [Rule 803\(24\) of the Federal Rules of Evidence](#)"; [United States v. Martoma, No. 12-973, 2014 U.S. Dist. LEXIS 152926, 2014 WL 5361977, at \\*5 \(S.D.N.Y. Jan. 8, 2014\)](#) ("[E]ven the most truthful of discovery or trial declarations still cannot escape the reality that they are prepared with the incentive to set forth the facts in a light most favorable to the declarant" (citation and internal quotation marks omitted); Wright, Miller & Kane, 8B Federal Practice & Procedure § 2180 (3d ed.) ("The interrogatory answers of one defendant are, therefore, not admissible as against another defendant, unless they fall within some exception to the hearsay rule.")). Impact's responses are thus not admissible against Target and cannot be considered in deciding this motion. See [Shazor, 744 F.3d at 960](#).

b. Spoliation

Federal law governs whether spoliation sanctions are appropriate here. [Adkins v. Wolever, 554 F.3d 650, 652 \(6th Cir. 2009\)](#). The Sixth Circuit has established that:

a party seeking an adverse inference instruction based on the destruction of evidence must establish (1) that the party having control over the evidence had an obligation to preserve it at the time it was destroyed; (2) that the records were destroyed "with a culpable state of mind"; and (3) that [\*10] the destroyed evidence was "relevant" to the party's claim or defense such that a reasonable trier of fact could find that it would support that claim or defense.

[Beaven v. United States DOJ, 622 F.3d 540, 553 \(6th Cir. 2010\)](#). The party seeking to use the evidence has the burden of showing each factor is met. [Chrysler Realty Co., LLC v. Design Forum Architects, Inc., No. 06-11785, 2009 U.S. Dist. LEXIS 121411, 2009 WL 5217992, at \\*3 \(E.D. Mich. Dec. 31, 2009\)](#). The severity of any sanction should correspond to the relevant "party's degree of fault under the circumstances," determined through a "fact-intensive inquiry." [Beaven, 622 F.3d at 554](#).

Applebaum maintains Target (1) knew of a potential indemnification claim against Impact, and of possible litigation, and (2) destroyed the bike in order to conceal evidence of the improper repair. (Dkt. 57, Pl.'s Resp. 7.)

i. Obligation to preserve

It is undisputed that Target had control over the bike at the time of its destruction. The remaining question under this factor is whether Target also had an obligation to preserve the bike at that time. Such an obligation "arises when the party has notice that the evidence is relevant to litigation or when a party should have known that the evidence may be relevant to future litigation." [Chrysler Realty, 2009 U.S. Dist. LEXIS 121411, 2009 WL 5217992, at \\*3](#) (quoting [Fujitsu Ltd. v. Fed. Express Corp., 247 F.3d 423, 436 \(2d Cir. 2001\)](#)).

Applebaum's bike accident occurred on July 4, 2009. She reported the alleged brake defect and her injury to Target on July 7, 2009. (Dkt. [\*11] 54-6, Ex. 5 to Def.'s Br.) Target employees threw the bike away sometime thereafter. (Dkt. 57-13, Ex. 12 to Pl.'s Resp.) Less than one week later, on July 13, 2009, Target's claims adjustor

characterized Applebaum's report as "a claim for a product defect." (Dkt. 57-5, Ex. 4 to Pl.'s Resp.) Target thus knew or should have known on July 7, 2009 that the bike may have been relevant to future litigation.

ii. Culpability

Target insists "[n]o adverse inference can arise where there is no showing there was an intent to conceal the truth." (Dkt. 54, Def.'s Br. 18.) That is not the law. Rather, "[t]he 'culpable state of mind' factor is satisfied by a showing that the evidence was destroyed knowingly, even if without intent to breach a duty to preserve it, or *negligently*." [\*Beaven\*, 622 F.3d at 554](#). And "[o]nce the duty to preserve attaches, any destruction of evidence is, at a minimum, negligent." [\*Forest Labs., Inc. v. Caraco Pharm. Labs., Ltd.\*, No. 06-13143, 2009 U.S. Dist. LEXIS 31555, 2009 WL 998402, at \\*5 \(E.D. Mich. Apr. 14, 2009\)](#).

Here, Target acted knowingly in destroying the bicycle: it was thrown out on authorization of a leader on duty at the Farmington Hills store.<sup>1</sup> (Dkt. 57-13, Ex. 12 to Pl.'s Resp.) Whether Target intended to breach its duty to preserve the bicycle is irrelevant. [\*Beaven\*, 622 F.3d at 554](#). The culpability factor is met here.

iii. Relevance

The relevance [\*12] criterion "means something more than sufficiently probative to satisfy [\*Rule 401 of the Federal Rules of Evidence\*](#)." [\*Forest Labs.\*, 2009 U.S. Dist. LEXIS 31555, 2009 WL 998402, at \\*6](#) (quoting [\*Residential Funding Corp. v. DeGeorge Fin. Corp.\*, 306 F.3d 99, 108-09 \(2d Cir. 2002\)](#)). However,

[c]ourts must take care not to hold[ ] the prejudiced party to too strict a standard of proof regarding the likely contents of the destroyed or unavailable evidence, because doing so would subvert the . . . purposes of the adverse inference, and would allow parties who have . . . destroyed evidence to profit from that destruction.

*Id.* (citation and internal quotation marks omitted). Relevance is presumed when the evidence is destroyed in bad faith — i.e., intentionally or willfully. [\*Chrysler Realty\*, 2009 U.S. Dist. LEXIS 121411, 2009 WL 5217992, at \\*4](#).

Even if relevance is not presumed here, the bicycle was clearly of more than minimal probative value to Applebaum's claim. Applebaum's counsel argued at the hearing that inspection of the bicycle might have yielded direct evidence of the bike's repair or non-repair. It may also have been possible to recover identifying information, such as a serial number, that could have helped in tracing the history of the bicycle's assembly or repair.

Target attempts to minimize the bicycle's relevance by arguing the bicycle's brakes were "altered" by the unknown person who helped Applebaum immediately following her accident. [\*13] (Dkt. 54, Def.'s Br. 19.) But Applebaum testified that the man who helped her "unhook[ed]," "released," or "detached" the brake. (Applebaum Dep. 141, 143-44.) He used no tools, nor did he bend the brake assembly. (*Id.* at 143-44.) This is insufficient to show that the brakes were "altered" to such an extent that the bicycle is not relevant for purposes of the spoliation analysis.

iv. Sanction

"[A] proper spoliation sanction should serve both fairness and punitive functions." [\*Adkins v. Wolever\*, 554 F.3d 650, 652 \(6th Cir. 2009\)](#) (further noting that a proper sanction will "serve the purposes of leveling the evidentiary playing field and . . . sanctioning the improper conduct"). While a range of potential sanctions is available to a district court, including dismissal, granting summary judgment, or an adverse inference jury instruction, the severity of the sanction should generally be proportional to the spoliating party's degree of culpability. [\*Id.\* at 652-53](#).

Other courts in this district have dismissed claims where spoliation of evidence effectively prevented a party from demonstrating the cause of a product defect. See, e.g., [\*Chrysler Realty Co., LLC v. Design Forum Architects\*, 2008 U.S. Dist. LEXIS 42721, 2008 WL 2245396, at \\*4-5 \(E.D. Mich. May 30, 2008\)](#), remanded in part on other grounds, [\*341 F. App'x 93 \(6th Cir. 2009\)\*](#). Before dismissing a claim or granting summary judgment on spoliation grounds,

---

<sup>1</sup> Applebaum's testimony that she asked Bryan to promise to destroy the bike does not affect this conclusion: Target itself decided, with knowledge of a product defect claim and of potential litigation, to destroy the bike. (See Applebaum Dep. 167.)

however, a court must [\*14] consider whether lesser sanctions would level the playing field and punish improper conduct. [\*Chrysler Realty, 2008 U.S. Dist. LEXIS 42721, 2008 WL 2245396, at \\*4\*](#). Here, the Court finds that an adverse inference instruction is appropriate, in part because Applebaum did not submit evidence that the rear brakes were the subject of the alleged repair by Impact. Accordingly, Applebaum is entitled to an instruction that the jury may infer that inspection of the bicycle would have shown the brakes were not repaired by Impact.

For purposes of this motion, however, Applebaum has produced sufficient evidence, independent of any adverse inference, to defeat summary judgment.

2. Liability under § 600.2947(6)(a)

Target contends Applebaum has presented no evidence of Target's failure to exercise reasonable care in selling the bike. Specifically, Applebaum has produced no evidence that the bike was improperly repaired, or that Target knew the bike had been improperly repaired. (Dkt. 54, Def.'s Mot. 14.) Target further maintains that Applebaum has produced no evidence of causation in fact — that the alleged failure to repair the bike caused Applebaum's injuries. (*Id.* at 16-17.)

As evidence that the bicycle was, in fact, repaired by Impact, Target submits an affidavit of Travis Smith, the Hard Lines [\*15] Team Leader at the Farmington Hills store at the time Applebaum purchased the bike. (Dkt. 54-5, Ex. D to Def.'s Br.) Smith states that Impact was the exclusive assembler and repairer of bicycles at the Farmington Hills store in February 2009. (*Id.* ¶ 4.) But Smith also states that the store did not keep a record of Impact employee attendance or of the bicycles repaired or assembled by Impact at the store. (*Id.*)

Target's LOD Investigation Report, prepared by Sean Bryan, also indicates that a "vendor" was involved in the incident, and that Impact was the vendor. (Dkt. 54-6, Ex. E to Def.'s Br.) Likewise, Target's Electronic Incident Report, also prepared by Bryan, states that the bicycle "had been repaired by IMPACT for brake issues." (Dkt. 54-7, Ex. F to Def.'s Br.)

a. Negligence

The evidence that Target was negligent in selling Applebaum the bike consists of testimony concerning the Farmington Hills store's vendor sign-in sheet, Target's interrogatory responses, Bryan's deposition testimony, and Applebaum's accident.

i. Evidence that the brakes had not been properly repaired

Applebaum's evidence that the bike was not, in fact, repaired, is her testimony regarding her bicycle accident. Applebaum [\*16] testified that, when she pressed the brake handles on the bike's handlebars, she "couldn't ride, couldn't steer . . . I just kept trying to steer and pedal and I didn't know why, I couldn't, it didn't work." (Applebaum Dep. 126-27.) Even after she let go of the brake handles, Applebaum could not pedal or steer the bike. (*See id.* at 129.) She fell on her left side while still atop the bike. (*Id.* at 127.) Immediately after the accident, Applebaum saw that the rear brake was locked to the wheel, preventing the rear wheel from turning. (*Id.* at 129.) Applebaum's testimony is sufficient — albeit barely — to create a genuine dispute as to whether the bicycle was properly repaired, or repaired at all, by Impact.

ii. Evidence that Target failed to exercise reasonable care

There is no evidence before the Court that Target knew the bicycle's brakes were defective at the time it sold the bicycle to Applebaum. But Applebaum has produced sufficient evidence to raise a question of material fact as to whether Target should have known the brakes had not been properly repaired. *See Kraft, 646 F. Supp. 2d at 888.*

First, Applebaum has produced evidence that Target did almost nothing to keep track of whether Impact employees actually repaired bicycles at the Farmington [\*17] Hills store. Bryan testified that the store maintained a sign-in sheet for outside vendors who worked in the store. (Dkt. 57-4, Ex. 3 to Pl.'s Resp., Bryan Dep. 32-33 [hereinafter Bryan Dep.].) He further testified that the sign-in system was not strictly enforced and that he was unsure whether it applied to Impact. (*Id.*) Target's interrogatory responses and Travis Smith's affidavit confirm that the Farmington



Hills store did not keep records of Impact employees' presence at the store or of the bikes assembled and repaired by Impact. (Dkt. 57-12, Ex. 11 to Pl.'s Resp., Answer to Interr. No. 1; Smith Aff. ¶ 4.) Target further confirmed that it searched for and found no records of which Impact employees assembled and repaired bicycles at the Farmington Hills store. (Dkt. 57-10, Ex. 9 to Pl.'s Resp.).

Bryan also testified to the measures Target regularly took when a bicycle was returned for repair. A tag would be placed on the bicycle to indicate that it was to be repaired. (Bryan Dep. 34.) The Target employee tagging the bicycle had discretion whether to write a description of the problem on the tag. (*Id.* at 35.) The bicycle would then be placed in an open, unsecured stockroom. (*Id.* at 36.) No one from [\*18] Target was responsible for the bicycle at that point. (*Id.* at 36-37.) Impact was responsible for removing the tag following repair of the bicycle, but no one from Target would confirm that the repair had, in fact, occurred. (*Id.* at 37, 39.) Any untagged bike could be sold to a Target customer. (*Id.* at 39.)

On the record before the Court, then, Target's efforts to ensure repair of a bicycle consisted of placing a tag on the bike and leaving it in an unsecured stockroom. Target made no apparent attempt to schedule repair of a given bike with Impact or to determine whether the specific repairs had been completed. Target did not require its employees to communicate to Impact any information about a bicycle's specific problems. In this case, Target knew the bicycle had been returned for brake repairs, but placed itself in a position where it had little chance of knowing whether those repairs had been done properly, or had even been done at all. Accordingly, Applebaum has presented sufficient evidence to raise a question of material fact as to whether Target failed to exercise reasonable care in selling her the bicycle.

b. Causation in fact

Target further maintains Applebaum has failed to produce evidence that her injuries [\*19] were caused by defective brakes. (Dkt. 54, Def.'s Br. 17.) According to Target, Applebaum's position that the brakes were defective at the time of her accident depends solely on Applebaum's testimony that the rear wheel would not turn after the accident. (See *id.*) And Target believes its expert has established that the wheel's failure to turn was a result, not a cause, of the accident. (*Id.*; Dkt. 54-8, Ex. G to Def.'s Br.)

The wheel's failure to turn, however, is not the only evidence that defective brakes caused Applebaum's injuries. As described above, Applebaum testified that she couldn't steer or pedal the bike after she pressed the brake handles — that is, that the brakes locked up. (Applebaum Dep. 126-27.) A jury could reasonably infer from the fact that the bicycle had been returned for brake repairs, and from Applebaum's testimony regarding the cause of her accident, that the brakes had not been properly repaired and that the defective brakes caused Applebaum's injuries. See [\*Doe v. Clairborne Cty., Tenn.\*, 103 F.3d 495, 505 \(6th Cir. 1996\)](#) (noting "a party may rely upon circumstantial and inferential evidence to defeat a . . . summary judgment motion"); [\*Sundberg v. Keller Ladder\*, 189 F. Supp. 2d 671, 680 \(E.D. Mich. 2002\)](#) (finding that "under Michigan law, a plaintiff need only provide a logical sequence of [\*20] cause and effect from which a reasonable jury could infer a defective product"); [\*Holloway v. Gen. Motors Corp. Chevrolet Div.\*, 403 Mich. 614, 271 N.W.2d 777, 781 \(Mich. 1978\)](#) (holding that, on motion for directed verdict, plaintiffs "did not have the burden of proving that the accident could only be attributable to a manufacturing defect . . . [i]t was enough that they indicated a logical sequence of cause and effect . . . notwithstanding the existence of other plausible theories with or without support in the evidence").

Target has not shown it is entitled to summary judgment on Applebaum's negligence theory of liability. Target's motion is therefore denied.

2. Liability under § 600.2947(6)(b)

Target's motion must be denied for a second, independent reason: it has failed to show entitlement to summary judgment on an express warranty theory of liability. In fact, Target does not address this theory of liability in its motion and briefs.

Applebaum contends that Target, through its employee Sean Bryan, expressly warranted that the bike had been repaired and was in "perfect" condition. Bryan did so verbally, in a telephone conversation with Applebaum.



At the hearing on this motion, Target suggested that an oral statement cannot constitute an express warranty. Under Michigan law, at least, that is [\*21] incorrect. See, e.g., [\*Gurn v. Murray\*, 288 Mich. 143, 284 N.W. 676 \(Mich. 1939\)](#) (affirming judgment on breach of express verbal warranty); [\*Uganski v. Little Giant Crane & Shovel, Inc.\*, 35 Mich. App. 88, 192 N.W.2d 580, 585-86 \(Mich. Ct. App. 1971\)](#) (affirming finding of breach of express warranty based on verbal contract); [\*Carpenter v. Alberto Culver Co.\*, 28 Mich. App. 399, 184 N.W.2d 547, 548-49 \(Mich. Ct. App. 1970\)](#) (finding verbal statements did not constitute express warranty, but not on ground that statements were verbal).

Michigan law provides that "[a]n affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise." [\*Mich. Comp. Laws § 440.2313\(1\)\(a\)\*](#). However, "an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty . . ." *Id.* [\*§ 440.2313\(1\)\(c\)\(2\)\*](#). On this definition, Bryan's statements to Applebaum constitute an express warranty. His statements were factual — that the bike had, in fact, been repaired, and that it was functioning properly — not opinions. Bryan's deposition was taken in this case; at least in the portions submitted to the Court, he was not asked if he disputed making these statements. (See Bryan Dep., *passim*.)

Applebaum has also presented her testimony that the bike's brakes failed to conform to the warranty. [\*22] As to the third element, proximate cause, the Court's analysis regarding [\*§ 600.2947\(6\)\(a\)\*](#) applies equally here. Applebaum has thus presented sufficient evidence of Target's liability under a theory of express warranty to avoid summary judgment.

#### IV. Conclusion

Accordingly, defendant's Motion for Summary Judgment (Dkt. 54) is DENIED.

IT IS SO ORDERED.

Dated: March 9, 2015

Ann Arbor, Michigan

/s/ Judith E. Levy

JUDITH E. LEVY

United States District Judge