

IN THE CIRCUIT COURT FOR CHARLES COUNTY, MARYLAND

THEODORE ERVIN

v.

CINDY YOUNG, et al.

Defendant

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C-07-1783

La Plata, Maryland

June 23, 2008

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS
CIVIL JURY TRIAL

BEFORE:

HONORABLE Christopher Henderson,

Associate Judge and a Jury

For The Plaintiff:

John B. Bratt, Attorney

For the Defendant:

Francis Ford, Attorney

Andrew T. Stephenson, Attorney

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1 THE CLERK: The Honorable Christopher C.
2 Henderson presiding.

3 THE COURT: Please be seated.

4 THE CLERK: Civil 07-1783; Theodore Ervin vs.
5 Cindy Young, et al.

6 And I need to go get the file, Your Honor.
7 I'll be right back.

8 THE COURT: Okay.

9 As far as strikes, is each Defendant requesting
10 four?

11 MR. STEPHENSON: Yeah.

12 MR. FORD: Yes, Your Honor.

13 THE COURT: Are there cross claims?

14 MR. FORD: Yes.

15 THE COURT: Okay.

16 THE CLERK: Your Honor, it's not in your
17 chambers.

18 THE COURT: Huh?

19 THE CLERK: It's not in your chambers.

20 THE COURT: We really don't need it.

21 THE CLERK: Okay.

22 I'll see if I can find it. It was transferred
23 to you on Friday so it might be in your law clerk's
24 office. Let me check.

25 THE COURT: Yeah, check that.

1 THE CLERK: It was on the shelf, Your Honor;
2 with the dockets and everything.

3 THE COURT: Okay.

4 THE CLERK: Thank you.

5 THE COURT: You can keep it.

6 THE CLERK: Okay.

7 THE COURT: Okay, anything before I bring the
8 jury in?

9 MR. FORD: No, Your Honor.

10 MR. BRATT: No, Your Honor.

11 THE COURT: When do you want to do the
12 stipulations?

13 MR. STEPHENSON: We can do it now if you'd
14 like.

15 THE COURT: Before opening or after?

16 MR. STEPHENSON: Oh, well, now is fine Your
17 Honor just to put it on the record. I think we're gonna
18 be mentioning the stipulations in opening. I think we're
19 in agreement that Baltimore Tank Lines stipulates to the
20 fact that Danny Quade was it's agent at the time of the
21 accident and was operating the vehicle in the scope and
22 course of his employment.

23 And that -- we stipulate that Danny Quade was
24 the only Baltimore Tank Lines driver that could have been
25 within the vicinity at the time of the accident.

1 THE COURT: Okay.

2 Let's bring in the jury panel.

3 (The jurors are brought into the courtroom at
4 10:13 a.m.)

5 THE CLERK: These are the microphones that
6 ya'll need to use, okay, so that they get a good
7 recording on them. Just --.

8 MR. STEPHENSON: For the opening?

9 THE CLERK: For the whole trial.

10 Okay.

11 This is on. Just make sure when you -- they
12 take a recess or you speak to your client that you kind
13 of cover it or take it off. Turn it off when you go to
14 the restroom.

15 MR. STEPHENSON: It -- it -- it only amplifies,
16 it doesn't record?

17 THE CLERK: It records -- (inaudible).

18 MR. BRATT: Interesting.

19 So I'm to wear this thing -- (unintelligible)?

20 THE CLERK: Yes. Yes.

21 And it is on.

22 Just if you need to speak to your client or
23 anything you don't recorded actually you just cover it
24 and -- and take it off when you walk out.

25 MR. BRATT: Thank you.

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THE COURT: Go ahead.

THE CLERK: Call the case again?

THE COURT: Call it; yeah.

THE CLERK: Good morning.

Civil 07-1783; Theodore Ervin vs. Cindy Young,
et al.

Good morning, jury.

Once your number is called if you'd please
raise your right hand and answer here.

Juror Number 2.

A JUROR: Here.

THE CLERK: 4.

Number 4.

A JUROR: Here.

THE CLERK: Juror Number 5.

A JUROR: Here.

THE CLERK: 7 -- 7.

A JUROR: Here.

THE CLERK: 8.

A JUROR: Here.

THE CLERK: 9.

A JUROR: Here.

THE CLERK: 10.

A JUROR: Here.

THE CLERK: 11.

1 A JUROR: Here.
2 THE CLERK: 13.
3 A JUROR: Here.
4 THE CLERK: 14.
5 A JUROR: Here.
6 THE CLERK: 15 -- I'm sorry, 16.
7 A JUROR: Here.
8 THE CLERK: 17.
9 A JUROR: Here.
10 THE CLERK: 18.
11 A JUROR: Here.
12 THE CLERK: 19.
13 A JUROR: Here.
14 THE CLERK: 25.
15 A JUROR: Here.
16 THE CLERK: 26.
17 A JUROR: Here.
18 THE CLERK: 27.
19 A JUROR: Here.
20 THE CLERK: 30.
21 A JUROR: Here.
22 THE CLERK: 32.
23 A JUROR: Here.
24 THE CLERK: 34.
25 A JUROR: Here.

1 THE CLERK: 35.
2 A JUROR: Here.
3 THE CLERK: 36.
4 A JUROR: Here.
5 THE CLERK: 41.
6 A JUROR: Here.
7 THE CLERK: 43.
8 A JUROR: Here.
9 THE CLERK: 47.
10 A JUROR: Here.
11 THE CLERK: 49.
12 A JUROR: Here.
13 THE CLERK: 51.
14 A JUROR: Here.
15 THE CLERK: 52.
16 A JUROR: Here.
17 THE CLERK: 53.
18 A JUROR: Here.
19 THE CLERK: 55.
20 A JUROR: Here.
21 THE CLERK: 56.
22 A JUROR: Here.
23 THE CLERK: 63.
24 A JUROR: Here.
25 THE CLERK: 162.

1 Juror 162.

2 A JUROR: Here.

3 THE CLERK: Is there any jurors' number who I
4 did not call?

5 Thank you.

6 And will you please stand and raise your right
7 hand.

8 You do solemnly promise and declare that you
9 shall true answers make to such questions as the Court
10 shall propound to you.

11 THE JURORS: Yes.

12 THE CLERK: Thank you.

13 Please be seated.

14 THE COURT: Okay, mem -- members of the jury,
15 at this stage we're gonna ask certain questions to see if
16 you're qualified to sit as a juror in this case.

17 We'll use the following procedure. I'll ask a
18 question. If you have an affirmative response please
19 stand. We'll take the responses one by one. Always
20 begin your response with your juror number not your name.

21 Some of the questions we'll take at the privacy
22 of the bench. In those cases line up in the center aisle
23 and we'll bring you up one by one.

24 Now, we also have microphones we're gonna pass
25 out so that your responses can be recorded.

1 This is a civil case. We're here on the issue
2 of liability only. It concerns an automobile collision
3 involving three vehicles that took place on March the
4 13th, 2006 in Charles County, Maryland at or near the
5 intersection of Mattawoman Beantown Road and Leonardtown
6 Road.

7 The accident took place between the Defendants,
8 Cindy Young, Theodore Ervin and Danny Quade who is an
9 employee of Baltimore Tank Lines.

10 Now, has any member of the jury panel read or
11 heard anything about this case or any of the litigants?

12 Let the record reflect there's no response.

13 John B. Bratt is the attorney for Theodore
14 Ervin. Francis Ford is the attorney for Cindy Young and
15 Andrew T. Stephenson is the attorney for Baltimore Tank
16 Lines.

17 Is any member of the jury panel acquainted with
18 any of these attorneys?

19 Let the record reflect there's no response.

20 Now, has any member of the jury panel or member
21 of their immediate family or close personal friend ever
22 been involved in a legal claim even if it did not go to
23 trial as either the party bringing the claim or the party
24 defending the claim.

25 The claims would include any type injury or

1 damage including a car accident, worker's compensation,
2 assault and battery, slip and fall or products
3 malfunction claim.

4 Okay, one this we'll -- if you line up in the
5 center aisle we'll hear from you one by one.

6 (Counsel approaches the bench.)

7 THE COURT: For the record Juror Number 15 was
8 excused because of a conviction.

9 (UNKNOWN ATTORNEY): He was kind of vague but
10 he remembered doing 60 days.

11 THE COURT: Also this morning I had to excuse a
12 grand juror because they raided her house on Sunday
13 morning for drugs.

14 (Laughter.)

15 Yes, ma'am. Come up here.

16 And your juror number?

17 A JUROR: I'm Number 7.

18 THE COURT: And your response.

19 A JUROR: It was a -- it was a slip and fall
20 accident for Giant Food Store back in -- it's been about
21 ten years ago.

22 THE COURT: And what was the result of the
23 case?

24 A JUROR: They gave me like a claim for like
25 maybe \$2,000.00.

1 THE COURT: Okay.

2 And was that here in Charles County?

3 A JUROR: Charles County.

4 It was the Waldorf Giant.

5 THE COURT: Okay.

6 Okay.

7 Did you feel that was adequate compensation?

8 A JUROR: Yes.

9 THE COURT: Okay.

10 In light of that experience do you feel you can

11 be fair and impartial as a juror in this case?

12 A JUROR: I -- I think I can serve as a juror.

13 THE COURT: Well, you said you think. Can you

14 unequivocally state you can be fair and impartial?

15 A JUROR: Ummm.

16 THE COURT: In other words, would your past

17 experience carry over into this case?

18 Or --.

19 A JUROR: Yes.

20 THE COURT: It would carry over?

21 A JUROR: Yes.

22 THE COURT: Okay.

23 I understand.

24 A JUROR: Cause I've been dealt with.

25 THE COURT: What we're gonna do is excuse you.

1 But you'll have to remain here till the other jurors are
2 excused. But don't answer any other questions, okay?

3 A JUROR: Okay.

4 Thank you very much.

5 THE COURT: Thank you.

6 THE BAILIFF: 19.

7 THE COURT: Yes, ma'am.

8 A JUROR: Good morning.

9 Juror Number 19.

10 I had a car accident in '93; was settled out of
11 court in Virginia.

12 THE COURT: Okay.

13 And were you injured in the case?

14 A JUROR: Soft tissue injury.

15 THE COURT: And did you feel you were treated
16 fairly by all the people involved in the case?

17 A JUROR: I'm sorry.

18 THE COURT: Did you feel you were treated
19 fairly by all the people involved in the case?

20 A JUROR: Yes.

21 THE COURT: In light of that experience do you
22 feel you could be fair and impartial as a juror in this
23 case?

24 A JUROR: Yes.

25 THE COURT: Okay.

1 Thank you.

2 A JUROR: Thank you.

3 THE BAILIFF: 16.

4 A JUROR: Good morning.

5 THE COURT: Yes, your response.

6 A JUROR: Just that I'm a manager of a law
7 office in La Plata and my husband and he does a lot of
8 civil and --.

9 THE COURT: He basically does -- a lot of real
10 estate doesn't he?

11 A JUROR: A lot of real estate but a lot of
12 civil too.

13 THE COURT: Okay.

14 A JUROR: And does settlement conferences in
15 the office as well.

16 THE COURT: And are you employed in the office?

17 A JUROR: Um hum. I'm the office manager.

18 THE COURT: Do you feel that that would prevent
19 you from being fair and impartial?

20 A JUROR: No.

21 THE COURT: Any questions?

22 MR. STEPHENSON: Your Honor, may I inquire as
23 to (unintelligible) side of civil action is more
24 plaintiffs or more defendants?

25 THE COURT: He -- he does -- he does a lot --

1 he does a lot of real estate type work. He does --.

2 A JUROR: Some accident cases through
3 settlement conferences but he's a mediator so.

4 THE COURT: He's a mediator; yeah.

5 MR. STEPHENSON: Okay.

6 Got it.

7 Thank you.

8 THE COURT: Okay.

9 A JUROR: Thanks.

10 THE COURT: Yeah, his name is Jim Gorney. He's
11 down here but he's basically a real -- a really top notch
12 real estate.

13 THE BAILIFF: 53.

14 MR. FORD: 53?

15 THE COURT: 53.

16 Yes, ma'am, your response.

17 A JUROR: Yes, I -- my husband was involved in
18 a car accident.

19 THE COURT: And how long ago was that and
20 where?

21 A JUROR: About ten years ago.

22 THE COURT: In Charles County?

23 A JUROR: P.G. County.

24 THE COURT: And was he injured?

25 A JUROR: Yes.

1 THE COURT: What type of injury was it?

2 A JUROR: Back injury.

3 THE COURT: Did the case go to trial?

4 A JUROR: No.

5 THE COURT: Was it settled?

6 A JUROR: Yes.

7 THE COURT: Did everyone feel he was treated
8 fairly throughout the process involving the case?

9 A JUROR: I couldn't -- I guess yes; I really
10 don't know.

11 He hasn't complained about it so I'll say yes.

12 THE COURT: He hasn't.

13 In light of that fact do you feel you can be
14 fair and impartial as a juror in this case?

15 A JUROR: Yes.

16 THE COURT: Okay.

17 Thank you.

18 A JUROR: All right.

19 Thank you.

20 THE BAILIFF: 34.

21 MR. FORD: 34?

22 THE COURT: 34.

23 Yes, sir.

24 A JUROR: I wasn't very clear about the
25 question. I haven't been to court but -- had an accident

1 recently.

2 THE COURT: Okay.

3 A JUROR: Pending court action or pending not
4 necessarily court action but pending -- claim I guess.

5 THE COURT: Okay.

6 And how long ago was that?

7 A JUROR: June 4th.

8 THE COURT: Oh, just June the 4th.

9 And were you injured?

10 A JUROR: Yes.

11 THE COURT: And are you represented by an
12 attorney in the case?

13 A JUROR: Yes.

14 THE COURT: Okay.

15 And in light of that experience do you feel you
16 can be fair and impartial as a juror in this case?

17 A JUROR: Yes.

18 THE COURT: Okay.

19 Thank you.

20 THE BAILIFF: 26.

21 A JUROR: Good morning.

22 THE COURT: Your response.

23 A JUROR: I was in a car accident, 1987.

24 THE COURT: And were you injured?

25 A JUROR: Yes.

1 THE COURT: And what happened with the claim?
2 Did it go to trial or was it settled?

3 A JUROR: It was settled -- it was settled
4 before.

5 THE COURT: Did you feel you were treated
6 fairly by the people involved in the process?

7 A JUROR: Yes.

8 THE COURT: In light of that experience do you
9 feel you can be fair and impartial as a juror in this
10 case?

11 A JUROR: Yes.

12 THE COURT: Okay.

13 Thank you.

14 A JUROR: Um hum.

15 THE BAILIFF: 41.

16 THE COURT: And your response.

17 A JUROR: My stepson was involved in a
18 automobile accident that -- was -- a liable case was
19 brought against him for -- personal injury.

20 THE COURT: Was -- was he injured?

21 A JUROR: No, he -- I guess he was the --
22 defendant.

23 THE COURT: Defendant.

24 What happened with the case?

25 A JUROR: I believe they settled for what the

1 insurance company would pay.

2 THE COURT: Did you feel he was treated fairly
3 by everyone involved in the process?

4 A JUROR: Yes.

5 THE COURT: In light of that fact do you feel
6 you could be fair and impartial as a juror in this case?

7 A JUROR: Yes I do.

8 THE COURT: Okay.

9 Thank you.

10 A JUROR: Thank you.

11 THE BAILIFF: 51.

12 THE COURT: Yes, sir.

13 Your response.

14 A JUROR: Oh, yes -- my father has -- he is in
15 court with the U.S. Government for -- oh what'd they say
16 -- workman compensation.

17 THE COURT: Okay.

18 A JUROR: He hurt his back and then all -- I
19 also appear in court in July for child support if that's
20 part of it.

21 THE COURT: For -- for what?

22 A JUROR: Child support.

23 THE COURT: Okay.

24 Is your father's claim still pending?

25 A JUROR: Yes.

1 THE COURT: Okay.

2 In light of that fact do you feel you could be
3 fair and impartial as a juror in this case?

4 A JUROR: Yes.

5 THE COURT: Okay.

6 Thank you.

7 A JUROR: Um hum.

8 THE COURT: That's it.

9 THE BAILIFF: 43.

10 THE COURT: Was that 43?

11 MR. FORD: 43, I think.

12 THE COURT: Yes, sir.

13 A JUROR: Hi.

14 I was involved in a workmen's comp claim. I
15 believe it was 1995. I had a piece of electrical
16 equipment -- exploded in my face. Had some damage to my
17 eyes but everything was settled.

18 THE COURT: Okay.

19 Did you feel you were treated fairly throughout
20 the process?

21 A JUROR: Yes, sir.

22 THE COURT: In light of that experience do you
23 feel you can be fair and impartial as a juror in this
24 case?

25 A JUROR: Yes, sir.

1 THE COURT: Okay.

2 Thank you.

3 THE BAILIFF: 4.

4 MR. FORD: What?

5 MR. STEPHENSON: 4.

6 THE COURT: 4.

7 Yes, ma'am.

8 A JUROR: My son owns his own dump truck
9 business and he did some damage to a lady's car. I think
10 it was last year or the year before. And they settled
11 and he had to pay for the repairs.

12 THE COURT: Did he feel he was treated fairly
13 by the peoples involved in the pro -- process?

14 A JUROR: Oh, yeah. Very much so.

15 THE COURT: In light of that fact do you feel
16 you can be fair and impartial as a juror in this case?

17 A JUROR: I think so.

18 THE COURT: Well, is there any reason you can't
19 be?

20 A JUROR: No.

21 THE COURT: Okay.

22 Thank you.

23 You're free to go.

24 A JUROR: Okay.

25 THE BAILIFF: 49.

1 THE COURT: Yes, sir.

2 A JUROR: About ten years ago my wife was
3 actually robbed at -- at gunpoint and -- there was a
4 trial for the -- three people that did it and she didn't
5 go or didn't have to participate but.

6 THE COURT: Okay.

7 Did she feel she was treated fairly by the
8 people involved in the process of the case?

9 A JUROR: Yes.

10 THE COURT: In light of that fact do you feel
11 you can be fair and impartial as a juror in this case?

12 A JUROR: Yes.

13 THE COURT: Thank you.

14 Your Number 7 basically is a duplicate of
15 Number 6, isn't it?

16 MR. BRATT: I'm sorry, Your Honor. I don't
17 have a copy (unintelligible).

18 MR. FORD: I don't have a 6.

19 MR. STEPHENSON: I don't have a 6 either.

20 MR. FORD: Oh, I'm sorry. You're talking about
21 -- I thought you meant the jury list.

22 MR. STEPHENSON: Oh.

23 THE COURT: No.

24 MR. BRATT: I would say they're similar enough,
25 Your Honor.

1 THE COURT: Yeah, I'm not gonna ask about it.
2 Okay.

3 Has any member of the jury panel or member of
4 their immediate family or close personal friend ever
5 worked in the legal profession?

6 Okay, once again we'll hand around the
7 microphones and we'll take the responses one by one
8 starting from the front of the jury section.

9 Why don't you stand up if you have an answer.
10 It'll be easier to pass around the --.

11 A JUROR: Juror Number 47. I used to work as a
12 legal secretary.

13 THE COURT: Okay.

14 Thank you.

15 A JUROR: Juror Number 19. I'm an Assistant
16 Public Defender in Prince George's County.

17 THE COURT: Okay.

18 Thank you.

19 A JUROR: Juror Number 43. My wife was --
20 worked in Accounts Payable and Receivable for a law -- a
21 law firm.

22 THE COURT: Okay.

23 Thank you.

24 A JUROR: Juror Number 4. My nephew was an
25 attorney.

1 THE COURT: Okay.

2 A JUROR: My sister, brother and (inaudible).

3 THE COURT: Could you repeat that? I couldn't
4 catch that.

5 A JUROR: Juror Number 26. Brother and sister
6 and cousin are police officers.

7 THE COURT: Okay.

8 Thank you.

9 A JUROR: Juror Number 5. My wife works as a
10 legal secretary.

11 THE COURT: Okay.

12 A JUROR: Juror Number 34. 27 -- military
13 (inaudible).

14 THE COURT: Okay.

15 Thank you.

16 Has any member of the jury panel or member of
17 their immediate family or close personal friend ever
18 worked in the accident investigation profession including
19 work as a claim's adjuster?

20 A JUROR: Oh, 162.

21 I got two nephews that are police.

22 THE COURT: Oh.

23 A JUROR: And I got one niece (unintelligible)
24 work for the FBI.

25 THE COURT: Okay.

1 Thank you.

2 A JUROR: My husband was a -- claim's adjuster
3 for about five years.

4 THE COURT: Okay, and that was juror number?

5 A JUROR: (Inaudible.)

6 THE COURT: Okay.

7 Has any member of the jury panel or member of
8 their immediate family or close personal friend ever
9 worked in or for a police department?

10 If you've previously answered because of the
11 prior questions don't answer again.

12 Okay.

13 A JUROR: Juror Number 47. My husband was a
14 Prince George's police officer for 27 years.

15 THE COURT: Okay.

16 Thank you.

17 A JUROR: Juror Number 19. I have a cousin
18 who's currently a Maryland State Trooper.

19 THE COURT: Okay.

20 A JUROR: Juror Number 13. My sister is a
21 Capitol Hill police officer.

22 THE COURT: Okay.

23 A JUROR: Juror Number 43. My father --
24 (inaudible) Department of Defense.

25 THE COURT: Okay.

1 Has any member of the jury panel ever served as
2 a juror in a trial before?

3 Okay, in this response just give your juror
4 number and say whether it was criminal or civil, okay.
5 So we'll start at the front.

6 A JUROR: Juror Number 35. Civil.

7 A JUROR: Juror Number 17. Civil.

8 A JUROR: Juror Number 52. Criminal.

9 A JUROR: Juror Number 16. Criminal and civil.

10 A JUROR: Juror Number 2. Civil.

11 A JUROR: Juror Number 43. Criminal.

12 THE COURT: Okay.

13 Does any member of the jury panel have any
14 preconceived notations, prejudice or feelings about
15 people who bring lawsuits or make claims for injuries
16 they have sustained arising out of someone else's
17 negligence?

18 Let the record reflect there's no response.

19 Does any member of the jury panel support or
20 are you a member of any group that supports a change in
21 the current law regarding the rights of persons injured
22 due to the negligence of others?

23 Let the record reflect there's no response.

24 Is there any member of the jury panel who feels
25 that they would have any difficulty in following the

1 Court's instructions as to the law?

2 Let the record reflect there's no response.

3 Has any member of the jury panel had any
4 personal experiences that you believe would prevent you
5 from rendering a fair and impartial verdict?

6 Let the record reflect there's no response.

7 Now, we anticipate that this case will be
8 completed today. In the -- in the event that it does
9 carry over until tomorrow is there any member of the jury
10 panel who's been excused from service tomorrow or for
11 whom service would be an extreme hardship?

12 Let the record reflect there's no response.

13 Is there any member of the jury panel who has
14 any bias at all towards the Plaintiff for bringing the
15 lawsuit against the Defendants or any bias towards the
16 Defendants for defending the claim?

17 Let the record reflect there's no response.

18 Is any member of the jury panel related to,
19 acquainted with, know of any other member of the panel
20 either in a business or social relationship?

21 In other words is anyone acquainted with any of
22 the other jurors on the jury panel?

23 Well, narrows it down; go ahead.

24 A JUROR: Juror Number 36. My boss.

25 THE COURT: Okay.

1 Let -- let me guess what the next response is
2 gonna be.

3 Go ahead.

4 A JUROR: Juror Number 4. I'm her boss.

5 (Laughter.)

6 THE COURT: Thank you.

7 A JUROR: Juror Number 18. We all (inaudible)
8 work for Charles County Public Schools.

9 THE COURT: Okay.

10 Has any member of the jury panel ever testified
11 as a witness in any case whether criminal or civil?

12 Let the record reflect there's no response.

13 Okay, will Counsel approach please.

14 (Counsel approaches the bench.)

15 Plaintiff satisfied with voir dire?

16 MR. BRATT: Yes, Your Honor.

17 THE COURT: Defense?

18 They're basically the same questions -- I mean.

19 MR. FORD: Yeah, (inaudible).

20 THE COURT: Okay.

21 Challenges for cause. We have Number 7 knocked
22 off.

23 Any -- any others?

24 Okay, we'll start from the top. Write down
25 four numbers, give them to the Clerk and then we'll tell

1 you -- we'll pick one alternate just to be safe.

2 Okay.

3 (Counsel returns to trial tables.)

4 THE COURT: Yes, approach sir.

5 Counsel, want to come up?

6 (Counsel approaches the bench.)

7 A JUROR: In response to that --.

8 THE COURT: Wait -- wait a second. I want -- I
9 want to get the attorney's here.

10 Okay. Your Juror Number?

11 A JUROR: 41.

12 I was thinking about it. About 11 years ago I
13 was a witness in a breaking and entering in my own house.
14 Does that count?

15 THE COURT: Yeah it does.

16 In light of that do you feel you could be fair
17 and impartial as a juror in this case?

18 A JUROR: Sure.

19 THE COURT: Okay.

20 Thank you.

21 (Counsel returns to trial tables.)

22 THE CLERK: Jurors as your number is called
23 would you please stand up and have a seat in the box.

24 Juror Number 9.

25 Number 11.

1 Number 16.

2 25.

3 26.

4 27.

5 And Juror Number 30.

6 Is the Plaintiff satisfied with the special
7 panel as now seated?

8 MR. BRATT: Yes, Your Honor.

9 THE CLERK: Is the Defendant Number 1 satisfied
10 with the special panel as now seated?

11 MR. FORD: Yes.

12 THE CLERK: Defendant Number 2 satisfied with
13 the special panel?

14 MR. STEPHENSON: Yes, Madame Clerk.

15 THE CLERK: Thank you.

16 THE COURT: Okay.

17 Those of you who were fortunate enough not to
18 be chosen we'll excuse for the -- today and you'll call
19 at -- is it after 5:00?

20 THE CLERK: Yes, sir.

21 THE COURT: Call after 5:00 to see if you're
22 needed tomorrow.

23 Have a pleasant day.

24 Okay, members of the jury we're gonna take
25 about an eight minute recess. During that eight minutes

1 Mr. Swann, our Bailiff, will show you where the jury
2 deliberation room is located.

3 Additionally if you've left anything in the
4 jury assembly room this would be the time to retrieve it.

5 Number -- Juror Number 16 has been chosen as
6 the Foreman. I ask that she sit in the chair closest to
7 the entry to the jury box. The other jurors can sit
8 where they -- in which ever chairs they feel comfortable
9 in.

10 Mr. Swann, please show them out.

11 (The jurors are excused at 10:47 a.m.)

12 Counsel I would remind you that your
13 microphones are on so if you don't want to be overheard
14 at the counsel table, turn them off.

15 Okay.

16 MR. FORD: I'll never remember it.

17 THE CLERK: All rise.

18 (Court is in session at 11:04 a.m.)

19 THE COURT: Please be seated.

20 Okay, anything before we bring the jury in?

21 MR. BRATT: No, Your Honor.

22 THE COURT: Let's bring them in.

23 (Jurors are brought into the courtroom at 11:04
24 a.m.)

25 Let the record reflect the jury's returned.

1 Please swear the jury.

2 THE CLERK: Okay.

3 Please remain standing and raise your right
4 hand.

5 You do solemnly promise and declare that you
6 shall well and truly try the issues joined between
7 Theodore Ervin and Cindy Young, et al. and true verdict
8 give according to the evidence.

9 THE JURORS: I do.

10 THE CLERK: Thank you. Please be seated.

11 THE COURT: Okay, members of the jury what I'm
12 about to say to you is a brief general introduction of
13 this trial so that you'll be better able to perform your
14 important duty of deciding the facts diligently and
15 conscientiously.

16 If they wish, attorneys may make opening
17 statements. Opening statements are not evidence.
18 They're only statements of what the attorney's expect to
19 prove.

20 At times during the trial objections will be
21 made and I will rule upon them. You should not concern
22 yourself with the objections made by the attorneys or
23 with my ruling on those objections.

24 During the trial and during any recess do not
25 express any opinion about the case. Do not even discuss

1 the case either among yourselves or with any other
2 person. Do not allow yourself to overhear anyone
3 discussing the case.

4 Do not have any contact outside the courtroom
5 with any of the parties, witnesses or attorneys. Do not
6 research or investigate the case on your own. You must
7 base your decision only on the evidence presented in this
8 courtroom.

9 Keep an open mind throughout the case;
10 throughout the trial. At the end of all the evidence
11 I'll explain to you the law that applies to this case.

12 Now we've given you each a notepad and pencil.
13 You're free to make whatever notes you deem appropriate.
14 I would caution you, however, not to let your note taking
15 interfere with listening to the evidence.

16 Now, as I mentioned previously we only have one
17 issue here on liability. We're not here on any monetary
18 damages. Additionally the parties have entered into
19 several stipulations. That means they -- which will be
20 read to you in a minute, that means they have agreed that
21 those facts exist and you should consider them proven.

22 So, who wishes to give the stipulations?

23 MR. STEPHENSON: I'll go ahead.

24 My name is Andrew Stephenson. I represent
25 Baltimore Tank Lines and Mr. Danny Quade here is the

1 driver for Baltimore Tank Lines. We are a tanker trailer
2 -- in -- in this case.

3 We stipulate, in other words, we admit that Mr.
4 Quade was driving a Baltimore Tank Lines tractor and
5 trailer within the scope and course of his employment and
6 that he was the only Baltimore Tank Lines driver who
7 would have been within the vicinity of the accident at
8 the time that it occurred.

9 THE COURT: Okay.

10 Please proceed.

11 OPENING STATEMENTS

12 BY MR. BRATT:

13 Good morning, ladies and gentlemen.

14 THE JURORS: Good morning.

15 Like you've already heard we're here about an
16 automobile collision that happened on March 13th, 2006.

17 There are three vehicles that have roles in
18 what happened that day. As Mr. Stephenson just told you
19 one of them is a Baltimore Tank Lines fuel tanker tractor
20 trailer combo.

21 The second vehicle is driven by Ms. Young who
22 also is a defendant today. That was a Dodge Caravan Mini
23 Van.

24 And the last vehicle is my client, Mr. Ervin's
25 vehicle which was a Honda Accord Coupe.

1 And on the day in question these vehicles were
2 traveling in the vicinity of what I'm showing you as --
3 for demonstrate -- for demonstration -- is Mattawoman
4 Beantown Road -- approaching its intersection with
5 Leonardtown Road.

6 Before we get started I'm gonna tell you a
7 little bit about my client, Mr. Ervin. He's married; has
8 three kids. He's been employed since 1999 by Arrowmark
9 Corporation. What he does for them is he's an
10 Environmental Services Manager.

11 He works in hospitals. Arrowmark's a
12 contractor. They hire Arrowmark to run some of their
13 operations. And what Mr. Ervin does is he supervises the
14 Environmental Services -- crew there which is the folks
15 that are -- they keep that hos -- that whole hospital
16 clean; everywhere from the clinical places, the ER, the
17 operating rooms; all the way to everything that they have
18 there. So part of his job is supervising those folks and
19 making sure they do what they're supposed to do.

20 Like probably a lot of folks in Charles County,
21 Mr. Ervin also -- has some military experience. He is a
22 member of the Navy Reserve. At various times he's been
23 on active duty. He served overseas.

24 And what he's gonna tell you is that on the day
25 that this happened, March 13th, he had gone to Andrew's

1 Air Force Base because as, most people familiar with the
2 military know, you have certain physical training or PT
3 requirements to make sure that you're physically able to
4 carry out your duties. And part of that means that you
5 have to exercise to be able to meet the requirements.

6 What Mr. Ervin liked to do is he liked to ride
7 his bike so what he would do is on days that he was gonna
8 do that he'd drive up to Andrews and ride his 24 speed
9 Greg Lamon bike around the entire perimeter of the base
10 which is about ten miles.

11 And he had -- you'll -- you'll hear him tell
12 you that he had done that on this day. He had gotten up
13 in the morning as he had to work later in the afternoon
14 but not that time.

15 He had gone to Andrews and he had done his
16 exercise and he was on his way back. At the time he'll -
17 - well, he'll tell you where he lived at the time but
18 what you will hear is that in order for him to get home
19 he had to take Mattawoman Beantown Road down to where it
20 intersects with Leonardtown Road.

21 And that Mr. Ervin's gonna tell you he had to
22 make a left and then to get to his house he had to make
23 more or less an immediate right after he made that left
24 hand turn.

25 And what else Mr. Ervin's gonna tell you is

1 that on that day there were some other vehicles in the
2 vicinity. One of them was a Baltimore Tank Lines fuel
3 tanker truck. Just like any kind of tractor trailer
4 combo that you're used to it's gonna have a tractor at
5 the front and then that trailer that it pulls. And in
6 this case it's a tanker trailer.

7 Mr. Ervin recognizes it as a Baltimore Tank
8 Lines vehicle because he had seen it in traffic and it
9 was a marked vehicle. It had their information on it.
10 And at the time his brother actually worked for the
11 company so he'll tell you that it was easy for him to
12 I.D. it as a Baltimore Tank Lines vehicle.

13 And what Mr. Ervin's gonna say about how this
14 accident happened is that Mattawoman Beantown Road as it
15 comes down to Leonardtown Road, starts out with two
16 through lanes; the left and the right lane and they both
17 go in the same direction.

18 As it gets closer to Leonardtown Road as you
19 can see in the diagram, that lane -- those lanes widen
20 out. And what you get is you get two through lanes to
21 the right and two left turn lanes which are the two left-
22 most lanes.

23 And as you can see, as it approaches the
24 intersection where Leonardtown Road is it adds another
25 lane off to the right but that -- we shouldn't hear much

1 talking about that today.

2 And Mr. Ervin's gonna describe to you how this
3 accident took place. And what he's gonna tell you is
4 basically this, if I don't drop it on the floor. This is
5 working out real for me ladies and gentlemen; let's try
6 it this way. It's like I'm doing a video on what not to
7 do during an opening statement. I'm gonna have to
8 apologize for that. I'm usually -- actually that's a
9 lie. I'm always this clumsy.

10 What you're gonna see and what Mr. Ervin's
11 gonna tell you and we realize that there's debate as to
12 how this accident happened. You're gonna hear other
13 testimony. This is what Mr. Ervin's gonna say.

14 What he's gonna tell you is, is that you can
15 see that this is more or less a same section of the
16 diagram you just looked at; it's just zoomed in a little
17 bit. And what this portion is and it's a little tough to
18 see but what it shows you is the portion of Mattawoman
19 Beantown Road where the two turn lanes start to split off
20 to the left side as it approaches Leonardtown Road which
21 would be up here.

22 And Mr. Ervin's gonna tell you that he -- as
23 soon as the turn lanes came into being that he got over
24 to his left at a constant speed, the same speed he'd been
25 going, and began proceeding up to the light.

1 He's gonna tell you that this is a trip that he
2 had made thousands of times. He'd lived there for about
3 six years when this happened. He'd been working up at
4 Andrews. That was his duty station for the Navy Reserves
5 pretty much that entire time. And combined with the
6 periods of his reserve duty and his active duty where he
7 was there all the time, literally he had done this over
8 1,500 times.

9 And he always goes the same way and he had an
10 important reason that he always goes the same way because
11 he knows that to get to his house he has to make a right
12 turn after he makes his left onto Leonardtown Road. So
13 in order for him to do that he's always in the right-most
14 of the two left turn lanes. You know, you've got a left
15 hand left turn lane and a right hand left turn lane. I
16 know that's confusing terminology but all the lawyers
17 talked about it and we couldn't come up with a better way
18 to tell you about these lanes.

19 And so what Mr. Ervin did is, at a constant
20 speed, he immediately merged over into that right-most
21 left turn lane. And that as he came up the, trunk -- the
22 tractor trailer, was next to him at this point. And he
23 was about right here and it's marked with an "H" cause he
24 was driving a Honda. And he was about midway on this
25 truck -- this tractor trailer. This is the tanker

1 portion and this is the track -- the trailer portion.

2 And then as he proceeded up he's gonna tell you
3 that this tractor trailer suddenly came over into his
4 lane and when he did that he had to decide what to do.
5 And what he did is -- the first thing he did is he moved
6 away from that tractor trailer. Why? He's gonna tell
7 you why. Because it's a fuel tanker. He didn't want to
8 get hit by a fuel tanker. Nobody wants to get hit by a
9 tractor trailer but nobody really wants to get by one
10 carrying fuel because it could -- it's a fire hazard.

11 So what he did is he came over into this left
12 lane; he -- he saw nothing in the left lane. When he
13 entered the left lane right afterwards he was struck from
14 the rear by this Dodge driven by Ms. Young, okay.

15 And what you're gonna be asked to determine
16 today is if anybody was negligent in this accident. And
17 negligence, you hear it a lot, but really what it means
18 is it's just a term for did somebody act carelessly. Did
19 somebody not use the degree of care that they should have
20 used operating a motor vehicle that day?

21 Now, what our argument's gonna be when it's
22 time for you to render a verdict is we're gonna ask you
23 to find that the driver of the Baltimore Tank Lines
24 vehicle was negligent by coming over into the lane when
25 the lane wasn't clear and without making sure that the

1 lane was clear.

2 Now, you're also gonna have to determine what
3 to do with Ms. Young. Ms. Young's a party in this case
4 because she was involved in the accident so she's sort of
5 a necessary party. And what you're gonna be asked to
6 determine about Ms. Young is whether -- you know, she in
7 some way failed to exercise due care whether that would
8 have been by going slower or having a chance to see the
9 accident quicker. But you'll have to determine if she
10 did something negligent that caused her car to hit Mr.
11 Ervin's vehicle.

12 And you'll be asked to determine that the
13 driver of the Baltimore Tank Lines vehicle was negligent
14 by failing to make sure that that lane was clear before
15 he got into it.

16 Thanks very much for your attention.

17 THE COURT: Mr. Ford.

18 MR. FORD: Thank you, Your Honor.

19 OPENING STATEMENTS

20 BY MR. FORD:

21 Good morning.

22 THE JURORS: Good morning.

23 I'm Frank Ford. I was previously introduced
24 but I couldn't see you because of the column and you
25 probably didn't see me either.

1 I represent Cindy Young, who's the lady sitting
2 at the -- counsel table.

3 There is a difference from what you just heard
4 -- from Plaintiff's Counsel and what you're hear from me.
5 And that different is this. Ms. Young cannot say
6 anything to you about why Mr. Ervin, the Plaintiff; this
7 gentleman here, suddenly came into her lane. She cannot
8 give you any explanation for that. Mr. Ervin is the
9 gentleman who will have to tell you what happened.

10 All Ms. Young can tell you and its very simple,
11 is that she was driving along approaching Leonardtown
12 Road; she's in the extreme left lane. For those of you
13 who are familiar with this intersection there are two
14 left turn lanes that go up to Leonardtown Road. She's in
15 the extreme left lane when all of a sudden out of the
16 blue Mr. Ervin jumps into her lane; right in front of
17 her.

18 She's going at a speed of about 35 to 40 miles
19 per hour minding her own business when this sudden
20 emergency arises in front of her. Mr. Ervin himself will
21 tell you he did just that. Now, he has an explanation
22 but Ms. Young can't give you that explanation. All she
23 can tell you is that for whatever reason Mr. Ervin jumped
24 into her lane. She hit her brakes but she was unable to
25 avoid hitting him.

1 That's her sole role in this case. This is a
2 motor negligence case. In order for the Plaintiff to
3 prevail against my client, Ms. Young, he must establish
4 to your satisfaction that she did something wrong; that
5 she was negligent.

6 We think you'll be satisfied after you hear
7 from Mr. Ervin, Ms. Young and the driver for Baltimore
8 Tank Lines that Ms. Young did not do anything wrong. She
9 was as much a victim in this accident as anyone when Mr.
10 Ervin jumped into her lane.

11 And let me tell you a little bit about my
12 client. She's married. She has three children. She
13 lives in Charlotte Hall. Her husband is retired
14 military. And she had taken her young daughter, the
15 youngest of their three children, Christa, who was then
16 about age six, up to Andrew's Air Force Base to be
17 checked out. She had an ear infection and they go to
18 Andrew's for their medical needs.

19 They were coming home when this accident
20 occurred. That's why she was on the roadway. She was
21 familiar with this roadway and she will tell you that she
22 had been in that extreme left lane from the time it
23 started up and before that had been in the left lane all
24 the way from 301, down Mattawoman Beantown Road to where
25 this accident happened.

1 She can tell you also that following the
2 accident, Mr. Ervin asked her if she had seen the truck
3 cut him off and she said no, she hadn't. She'll tell you
4 the same thing. She didn't see what happened between Mr.
5 Ervin and the truck. All she can tell you is that she
6 was driving along when suddenly he came into her lane.

7 At the appropriate time I'll have a chance to
8 talk with you again and at that time ask you to find that
9 my client, Ms. Young, was not responsible.

10 Thank you.

11 THE COURT: Mr. Stephenson>

12 MR. STEPHENSON: May I please the Court, Your
13 Honor.

14 OPENING STATEMENTS

15 BY MR. STEPHENSON:

16 Good morning ladies and gentlemen of the jury.
17 My name is Andrew Stephenson. I indicated earlier I
18 represent one of the Defendant's in this lawsuit,
19 Baltimore Tank Lines.

20 And I'd first like to thank you all for being
21 here today and for doing your service; your civic duty as
22 jurors. It's a very important role and my clients
23 certainly appreciate it. I know it's inconvenient in
24 this modern age to have to give up a whole day to be a
25 juror but rest assure we're grateful for it and -- and

1 it's probably gonna be just a one day trial so hopefully
2 it won't be too much of an impact.

3 And -- there's really only three witnesses' in
4 this case. You're gonna hear from my -- client's driver,
5 Mr. Ran -- Danny Quade and you're gonna hear from Ms.
6 Cindy Young and you're gonna hear from the Plaintiff.

7 No expert witnesses, no other witnesses to hear
8 from. There's a few exhibits you'll have the opportunity
9 to review and that's pretty much going to be it.

10 And you -- you're the try or fact in this case.
11 The Judge determines the law but you guys have to
12 determine what the facts are; what happened in this case.
13 And I trust that you'll reserve your judgment until
14 you've heard all the evidence.

15 The Plaintiff in this case has the burden of
16 proof. That means they've got to make, they've got to
17 prove to you that it was more likely so than not that
18 their version of events is true. We don't have that
19 burden.

20 So you're gonna hear, the Plaintiff's gonna put
21 on their case first. Then the Defendant's will have the
22 opportunity to put on their cases thereafter. And we
23 trust that you'll keep an open mind throughout the entire
24 process and reserve your judgment until you've heard all
25 the evidence.

1 And that you'll treat all of the parties as
2 individual parties. I'm -- I'm the only one that
3 represents a company in this case. The other two parties
4 are individuals.

5 Not only do I represent a company but I
6 represent a tractor trailer company. In fact, that's
7 what I do for a living; I just represent tractor trailer
8 companies.

9 In my experience sometimes I find that folks
10 don't like tractor trailers so I just like to be honest
11 about it. Folks don't like tractor trailers. They don't
12 like driving next to them. Not a -- not a popular type
13 of client to have. But I trust that you guys will put
14 any of those types of feelings aside and you'll just
15 weigh the evidence as you receive it.

16 Now, in this case -- Plaintiff's Counsel showed
17 you two exhibits. These are going to actually be --
18 these are blow-ups of exhibits that are gonna be admitted
19 into evidence in his case.

20 After all of the testimony was taken in this
21 case in Deposition I retained an engineer to go out and
22 measure the scene where this accident occurred and we --
23 this -- this -- this is what was produced from those
24 measurements and those diagrams was the exhibits that
25 will be admit -- admitted into evidence.

1 Now, this is -- this is what our engineer has
2 run up and there's a bunch more exhibits and this -- this
3 is another one. But this depiction here where the
4 Plaintiff has put his version of what happened, where
5 he's placed the vehicles on that, that's what they have
6 done with one of our -- exhibits. Where we're not
7 agreeing that that's how the accident happened. In fact
8 we have a very different version of how it happened.

9 It's important that you note that this exhibit
10 where the Plaintiff has indicated this is where the
11 accident happened, that's Slide C. Let's put that down
12 for a second.

13 So in terms of the larger blow-up -- the
14 Plaintiff is indicating Slide C that the in -- the
15 accident happened in and around this area here, okay.
16 It's important that you understand that that's what
17 they're saying here today.

18 But through the course of the trial you're
19 gonna hear testimony. Just so you know that's about 760
20 feet away from Leonardtown Road and you've got a scale
21 here and you can calculate that and work it out when you
22 get the exhibits later on. But I've done the math and
23 it's about 760 feet away from Leonardtown Road.

24 Today during the trial you'll hear that -- we
25 had Depositions taken in the Discovery process. That's

1 the sworn statement under oath where we created written
2 transcripts in this case.

3 And at the Deposition the Plaintiff was asked,
4 where did this accident occur? How far from Leonardtown
5 Road did this accident occur? And he was very specific
6 and very infactic; it was 80 yards. 80 yards is 240
7 feet. He likened it in his Deposition to "about a
8 football field"; "About a football field's distance from
9 Leonardtown Road." I've done the math and you can do it
10 again. You'll have the exhibits. They'll have scales
11 and you can work it out but 240 feet, right about there;
12 right about 500 feet away from where they're saying the
13 accident happened, here today.

14 That's the type of thing you're gonna have to
15 consider in terms of weighing credibility and weighing
16 evidence in this case.

17 You're gonna hear from my client's driver, Mr.
18 Quade. He lives in Clements, Maryland here in Charles
19 County; been a professional truck driver for over 25
20 years; married 20 years; got four kids.

21 He owned the tractor involved this case. He's
22 what they call an owner/operator. He leases his tractor
23 to Baltimore Tank Lines.

24 You're gonna hear, similar to the Plaintiff,
25 Mr. Quade drives down Mattawoman Beantown Road and makes

1 a left turn onto Leonardtown Road every single day.
2 That's how he gets home. He lives in Clements and he
3 drives down that road then takes Leonardtown south to
4 home.

5 You're gonna hear he was very familiar with his
6 tractor. He owned it. It's the same tractor he drove
7 every single day.

8 But here's where our version of events differ.
9 Unlike how the Plaintiff showed the accident happening,
10 Mr. Quade is gonna tell you he drives down Mattawoman
11 Beantown Road -- when there's two through lanes he always
12 stays in the left of the two through lanes.

13 He's gotta make his left hand turn also from
14 the -- the right of the two left turn lanes because he's
15 driving a 60-foot tractor trailer and he can't make that
16 turn from the left of the left turn lane because it's too
17 sharp of a turn. He has to make it from this lane here.

18 And every day he drives down here he does the
19 same thing. He comes down this lane here and merges
20 straight across, straight across into the left lane.

21 This isn't the type of inter -- this is exactly
22 why I went out and had engineers prepare these detailed
23 diagrams. Because I don't want you to misunderstand that
24 this is the type of road where -- where you got two
25 through lanes here and then it widens off to the left for

1 the left turn lanes. That's not what happens here. This
2 is a merge situation. There's no lane change involved.
3 He drives straight into the lane he needs to go into.
4 And he'll testify he just has to keep his steering wheel
5 straight.

6 In fact, if he wanted to stay in one of the
7 through lanes, as he'll testify, he would actually near -
8 - need to steer to the right to remain in that lane.
9 There's no lane change.

10 Now, according to the Plaintiff you got Mr.
11 Quade coming down the through lanes, going off into the
12 right through lane, coming back over. He's got -- he's
13 got my client coming over here, making a lane change
14 here. In other words, he's suggesting that Mr. Quade
15 would have ignored the merge, ignored the merge, come all
16 the way around totally (unintelligible, 2 words), and
17 then made a lane change.

18 Mr. Quade will say he never does that. That's
19 absolutely inconsistent with his regular routine
20 practice.

21 Now, there's salient facts in his case. And
22 here is the first one. This is probably the most
23 important fact in this case. The Plaintiff has admitted,
24 and I assume he's gonna testify consistent today with his
25 Deposition transcript, that he was driving behind the

1 tractor trailer. All the way down from 301 he's
2 following behind, behind, behind.

3 He admits he was directly behind the tractor
4 trailer all the way. Tried to get ahead of him back at
5 the turn, whatever, but he was behind him for at least a
6 mile prior to this occurring.

7 So if he's behind the tractor trailer how is it
8 then that he gets into this scenario that they have
9 described here where he's getting ahead of the tractor
10 trailer. The only explanation I think that you can reach
11 in terms of the evidence that will be presented today is
12 that Mr. Ervin tried to speed around and overtake the
13 tractor trailer on the inside as he was merging; left
14 himself with no room and then cut out in front of Ms.
15 Young. And apparently applied his brakes too at that
16 point. He didn't accelerate on when he moved into this
17 left of the left turn lanes because he was rear-ended by
18 Ms. Young who was, by her own testimony which is
19 undisputed, going about 35 miles per hour.

20 That's the first most salient point; that he
21 admits he was driving to the rear of the tractor trailer
22 all the way down.

23 The second most salient point in this case
24 you're gonna hear, I think you've already heard it from
25 Mr. Ford. Ms. Young's gonna testify that despite this

1 close scenario here that the Plaintiff's alleged that
2 happened at -- understand that "D" there is for Dodge.
3 That's Ms. Young's vehicle, the Dodge. "H" is for Honda.
4 That's the Honda Accord that Mr. Ervin was driving.

5 Despite this situation here where a tractor
6 trailer is -- by -- by Mr. Ervin's testimony, cutting
7 across down on top of the Honda forcing him into the
8 lane. Ms. Young's gonna testify, never saw it, never saw
9 it happen; absolutely inconsistent with normal human
10 experience and perception. You'll ask yourselves that;
11 60-foot shiny tanker trailer with a silver tank coming
12 down on top of you and she didn't see it. She would have
13 been five -- let -- five or ten feet away from this
14 tractor trailer during this entire scenario and she
15 didn't see it.

16 Now, Mr. Quade is gonna testify he has no
17 knowledge of an accident. We admit that we looked at the
18 record and yeah, Mr. Quade, he lives in Clements. He was
19 -- he was the most likely person to be -- this lawsuit
20 and claim is our first notice that we're allegedly
21 involved in the accident.

22 He has no recollection of seeing an accident
23 and certainly it is undisputed there was never any
24 contact between the Baltimore Tank Lines tractor trailer
25 and any of the other vehicles. That is not even in

1 dispute. He's gonna testify he has no recollection of an
2 accident having ever occurred.

3 So that is the evidence you're gonna hear today
4 and I think that you will find in weighing that, that
5 it's more likely so than not or you can't make a decision
6 if the scales of justice are evenly balanced in your mind
7 that he hasn't met the burden of proof and tipped them in
8 his favor. It's more likely so than not that the tractor
9 trailer did the obvious, easiest thing by just merging
10 straight into the right of the two left turn lanes which
11 is what he did everyday and what he needed to do in order
12 to get home.

13 And that if the Plaintiff, by his own
14 testimony, was driving behind the tractor trailer there
15 is no possible way that this accident scenario that
16 they've concocted in this exhibit could have occurred.

17 With that I thank you again and -- look forward
18 to closing this trial up today.

19 THE COURT: Please call your first witness.

20 MR. BRATT: Your Honor, I'd like to move that -
21 - the witnesses be sequestered. I think there's one non-
22 party witness, Mr. Quade.

23 THE COURT: We'll approach on that.

24 (Counsel approaches the bench.)

25 THE COURT: Is Mr. Quade the corporate

1 representative?

2 MR. STEPHENSON: I'm not gonna lie to you and
3 tell you he is -- Your Honor, but he's the guy I've got
4 here on behalf of BTL today; yes.

5 THE COURT: Well, he's the representative.
6 Isn't he allowed to stay?

7 MR. BRATT: Understood, Your Honor.

8 THE COURT: As I understand it Mr. Quade
9 basically says, I have no knowledge of what happened but
10 this is what I normally do.

11 MR. STEPHENSON: Right.

12 MR. BRATT: Correct.

13 THE COURT: So, but they're -- they're entitled
14 to have a corporate representative.

15 MR. STEPHENSON: Okay.

16 MR. BRATT: Thank you, Your Honor.

17 THE COURT: Okay.

18 (Counsel returns to trial tables.)

19 MR. BRATT: I'd call the Plaintiff, Mr. Ervin,
20 Your Honor.

21 THEODORE ERVIN,

22 a witness, produced on call of the Plaintiff,
23 first having been duly sworn according to law, was
24 examined and testified as follows:

25 DIRECT EXAMINATION

1 BY MR. BRATT:

2 THE CLERK: Thank you. Please be seated.

3 Please state your name, address, and occupation
4 for the record.

5 A: Theodore Ervin, 1067 Gardenview Loop,
6 Woodbridge, Virginia.

7 My occupation, Operations Manager,
8 Environmental Services, Fairfax Hospital.

9 THE CLERK: Thank you.

10 Q: How old are you Mr. Ervin?

11 A: I'm 45.

12 Q: And you're married?

13 A: Yes, I am.

14 Q: Could you tell the jury about our family.

15 A: I have three boys ages 13, 17 -- 17 and 23.
16 And a wife.

17 Q: And what's your wife's name Mr. Ervin?

18 A: Jacqueline.

19 Q: And is she here today?

20 A: Yes, she is.

21 Q: Now, could you tell the jury about your
22 educational background?

23 A: Sure. I attended Johnson C. Smith
24 University in Charlotte, North Carolina.

25 Q: And what did you study there?

1 A: Business Management.

2 Q: How long did you go to school there?

3 A: Three years there.

4 Q: Did you graduate?

5 A: No, not from Johnson C. Smith.

6 Q: How far do you -- have you done anything
7 else towards your degree besides that education?

8 A: Sure, I've gone -- well for -- other than
9 military training; yes.

10 Q: In what?

11 A: Military training in basic supply.

12 Q: Now, how close are you to graduating with
13 your Bachelor's?

14 A: I would say about a semester and a half.

15 Q: And you testified that you are now employed
16 by Arrowmark as an Environmental Services Manager?

17 A: That is correct.

18 Q: And is that the same job that you had at
19 the time this accident happened in March of '06?

20 A: That is correct.

21 Q: Could you explain to the jury what your job
22 entails?

23 A: As an Operations Manage -- Operations
24 Manager at Enova Fairfax Hospital, I -- I manage a crew
25 that cleans the hospital. And we're responsible for

1 making sure everything from the front door to the
2 operating rooms to non -- clinical and non-clinical areas
3 are -- are cleaned and that we prevent any hospital given
4 infections from happening to patients.

5 Q: And how many folks do you supervise?

6 A: Approximately 50.

7 Q: And how do you do your job?

8 A: I do a lot of walking on my job. I -- I
9 have to be observant of all the surroundings around me.

10 Q: Why?

11 A: It's very important to keep the hospital
12 clean.

13 Q: And so what sorts of things are you
14 typically looking for?

15 A: I look -- I'm looking in corners and edges
16 for dirt. I'm looking in the ceilings for dust on vents.
17 I make sure that bathrooms are clean. I make sure that
18 the operating rooms are clean so that the next surgery
19 comes in it -- that -- that occurs -- there's no
20 infections involved in there.

21 Q: And do you have any military service, Mr.
22 Ervin?

23 A: Yes, I do.

24 Q: Could you describe that to the jurors?

25 A: I'm a Reservist -- part time in the Navy.

1 I also have volunteered to go on Active Duty during the
2 time of the -- the last Iraqi war.

3 Q: And what is your specialty in the military?

4 A: Supply.

5 Q: And specifically what do you do?

6 A: I'm in a unit where we have five aircraft
7 that are constantly -- hauling anywhere from a Humvee
8 equip -- Humvee vehicle to -- to -- a unit -- a -- Marine
9 Unit or whatever -- wherever they need to go around the
10 world, and those planes have to be on -- they -- those
11 planes have to be ready to fly whenever they're called
12 upon.

13 My job is to make sure that they have all the
14 supplies and parts that they need. With them constantly
15 flying, a lot of maintenance is required so my job is to
16 make sure that we have the supplies to keep them in the
17 air.

18 Q: And in the course of your military duties
19 have you had occasion to serve overseas?

20 A: Yes, I have.

21 Q: When and where?

22 A: I've spent over --.

23 MR. STEPHENSON: Your Honor, I'd like to note
24 objections to relevance at this point.

25 THE COURT: Approach please.

1 (Counsel approaches the bench.)

2 How is this relevant?

3 MR. BRATT: Well, Your Honor, this is relevant
4 as to his background and credibility as --.

5 THE COURT: Well, you -- you -- he --.

6 MR. BRATT: His case rests on his credibility.

7 THE COURT: He basically covered his -- his --
8 well you've covered his pedigree but as far as going into
9 five planes flying around the world and putting parts on
10 them, I don't think that -- that's a little bit too far.

11 MR. BRATT: But, that was actually the last
12 question I was gonna ask anyway.

13 THE COURT: Oh, well.

14 Objection is moot.

15 (Counsel returns to trial tables.)

16 Q: Now, Mr. Ervin, where were you living on
17 March 13th, 2006?

18 A: 12 -- 12447 Turtle Dove Place in Waldorf.

19 Q: And when did you move there?

20 A: I moved there approximately -- the date was
21 -- December 28, 2 -- 1999 actually. No, I'm sorry; 2000.

22 Q: And from December of 2000 until the date of
23 this accident did you live there continuously?

24 A: Yes, I did.

25 Q: Now, in the course of your military duties

1 where was your job station?

2 A: Andrews Air Force Base.

3 Q: Okay.

4 And when did you join the Navy Reserves?

5 A: I joined the Navy Reserve.

6 MR. STEPHENSON: Objection, Your Honor.

7 THE COURT: Sustained.

8 A: I joined the Navy Reserves in 19 --.

9 THE COURT: Whoa. Whoa.

10 Next question.

11 Sustain the objection.

12 Q: When did you begin -- when were you first
13 stationed at Andrews?

14 A: Right after the 911 incident with the --
15 the bombing of the -- the blowing up of the -- World
16 Trade Center and the -- Pentagon.

17 Q: Okay.

18 Now, did you -- had you ever had occasion to
19 travel from your home to Andrews Air Force Base and back
20 before March 13th?

21 A: Yes.

22 Q: How many times?

23 A: Well over 1,500.

24 Q: And could you describe to the jury the
25 route that you took on March 13th.

1 A: I was just leaving Andrews Air Force Base.
2 I came out the back out which is the Virginia Gate. It
3 comes out onto -- Alexander Ferry Road. I made a right
4 turn and I went up two traffic lights to Coventry Way and
5 made a left turn.

6 From Coventry Way I went onto Branch Avenue
7 which is a left lane going Route 5 south. I proceeded
8 into -- Charles County and made a left turn onto
9 Mattawoman Beantown Road.

10 Q: Okay.

11 Now, on March 13th what was -- what caused you
12 to go to Andrews that day?

13 A: I wanted to do my required physical
14 training. I usually exercise about two to three times a
15 week. My preferred -- the preferred way I like to --
16 work out is by riding my bicycle.

17 So I went to Andrews Air Force Base to ride my
18 bicycle around the base.

19 Q: And what time did you leave to go to
20 Andrews that day?

21 A: About 10:15, 10:30 that day.

22 Q: Could you tell the jury what you did from
23 when you left home that morning until you arrived at the
24 scene?

25 A: I -- left my house which is not even a

1 block away from the intersection of Leonardtown Road --
2 Leonardtown and Mattawoman Beantown and I went down to
3 Andrews Air Force Base, took my bicycle out the back of
4 my car -- out of the trunk of my car. And -- I rode it
5 around the base, the perimeter of the base. And once I
6 finished I put the bicycle back in the car and left the
7 base. It usually takes me about a hour to make that
8 ride.

9 Q: And about what time did you leave the base
10 that day?

11 A: About 11:30.

12 Q: And how long of a trip is it to get back
13 home?

14 A: 20 -- 25 minutes to a half hour.

15 Q: And you were driving a vehicle?

16 A: I was driving my car.

17 Q: And what kind of car was that?

18 A: It's a Honda Accord.

19 Q: Now, were you involved in an accident on
20 March 13th?

21 A: I was.

22 Q: Can you tell the jury what happened?

23 A: As I was coming down -- Maryland Route 5,
24 Branch Avenue, it'd be right before I turned onto -- to --
25 -- Leonard -- I mean to Mattawoman Beantown Road.

1 I did observe a Baltimore Tank Line truck and
2 what made it stand out so much was my brother was working
3 for Baltimore Tank Line at the time.

4 So at the light, the intersection light right
5 there where you make the turn is a three lane turn, I
6 looked up and I just noticed -- I didn't see the tractor
7 or anything until I got -- until we pulled up next to
8 each other. And I noticed that it was a -- a Caucasian
9 man driving the truck and I said definitely not my
10 brother.

11 And I just started to go down -- down
12 Leonardtown Road. We were right at the light together
13 next to each other. At some point he turn -- he went
14 past -- he drove past me and that is a two lane -- that
15 is a two lane highway. I was in the left lane at first.
16 He was in the right lane. And later on he did pass me
17 and get over to the right lane.

18 As we approached Leonardtown Road and the lanes
19 -- the lanes start to open up and merge I got over
20 immediately. As -- the driver kept going straight and I
21 though he was gonna keep going straight where it goes
22 down to Charles -- Charles -- St. Charles Parkway.

23 And as he kept going straight I pulled up on
24 the side of him about to approach my left lane, my left
25 turn. I was in the far most -- the -- the -- lane number

1 two of the left, of the left turn.

2 Q: May I approach the witness, Your Honor?

3 THE COURT: Sure.

4 Q: Would you mark this for identification for
5 me please.

6 (Diagram was marked as
7 Plaintiff's Exhibit Number 1 for
8 identification.)

9 Your Honor, may I ask the witness to approach
10 the easel?

11 THE COURT: Certainly.

12 Q: Thank you.

13 Mr. Ervin, could you come on over here with me?

14 A: Sure.

15 Q: The way this courtroom's set up it's a
16 little clunky to do this any other way so I apologize for
17 putting you on display.

18 Now, can you take a look at what's been marked
19 for identification as Plaintiff's Exhibit 1? Do you know
20 what this is a diagram of?

21 A: This is diagram of -- Bean -- Mattawoman
22 Beantown Road as it approaches with Leonardtown.

23 Q: And does this diagram fairly and accurately
24 represent the way that road was laid out on the day this
25 accident happened?

1 A: That is correct.

2 Q: Can you show me where you were when you
3 first observed that -- tractor trailer?

4 A: I was back here somewhere.

5 Well, when I first observed it way down -- way
6 down on Route 5.

7 Q: So you had seen him for the first time
8 sometime before you arrived at the area that's shown on
9 the exhibit?

10 A: That is correct.

11 Q: Using the exhibit can you show the ladies
12 and gentlemen of the jury how the accident happened.

13 A: Well, as I say -- stated -- I was coming
14 down Maryland Route 5, Mattawoman Beantown Road. At
15 about this point right here I know the road -- the lane
16 turn -- merges for you to get over. I always get over
17 right here.

18 At about right up in this area the Baltimore
19 Trank -- Tank Line came over. I was already over in the
20 lane somewhere around here where the second -- well, this
21 turn lane here starts.

22 So I was about right here. There's a hill
23 right over here. And at that time I saw the tanker
24 coming over and as I -- as I saw him coming over I
25 immediately got in this lane.

1 Just as soon as I got in this lane I was rear-
2 ended. The accident happened somewhere around here
3 because the State Trooper came along and when he took my
4 -- my bumper off my car he put it over here on the hill.
5 And I asked him was that okay. He said --.

6 MR. STEPHENSON: Objection.

7 A: He said someone --.

8 THE COURT: Approach please.

9 Q: When somebody says objection you gotta stop
10 talking till the Judge decides, okay?

11 (Counsel approaches the bench.)

12 THE COURT: What's the response gonna be?

13 MR. BRATT: I don't really have one, Your
14 Honor. I didn't really need to -- for him to tell me
15 what the officer said in the first place.

16 MR. STEPHENSON: I -- I don't suggest he did.
17 I just wanted to make sure we don't have any inadvertent
18 hearsay.

19 THE COURT: I thought he says is it okay to put
20 the bumper over here. I mean is this relevant to
21 anything?

22 MR. BRATT: Not really.

23 THE COURT: Well, then.

24 MR. BRATT: And I wasn't gonna ask him anything
25 else the officer said either.

1 THE COURT: Okay.

2 The other thing I've got to warn you about, I
3 don't know if is this is gonna be -- go up on appeal. It
4 doesn't sound like it's a case you want to.

5 But in any event if he's pointing to this
6 diagram they'll be nothing in the record to show what
7 he's pointing to.

8 So, if you want to -- you know, draw something
9 on there or so forth but otherwise they won't know what -
10 - in Annapolis they won't know what happened, okay?

11 MR. BRATT: I -- maybe I ought to clean that up
12 with the next exhibit, Your Honor.

13 THE COURT: Okay.

14 (Counsel returns to trial tables.)

15 Q: So, so we're clear for the record, Mr.
16 Ervin, what you're pointing to, the area where the
17 accident took place, is Section C of what's been marked
18 as Exhibit 1, correct?

19 A: That is correct.

20 Q: Okay.

21 Now, I'd like to show you something else.

22 If I can get this marked for I.D. as well,
23 please.

24 Thanks.

25 THE CLERK: Um hum.

1 (Diagram was marked as
2 Plaintiff's Exhibit Number 2 for
3 identification.)

4 Q: Now, Mr. Ervin, I'm gonna show you what's
5 been marked for identification as Plaintiff's --
6 Plaintiff's Exhibit 2. Have you seen this diagram
7 before?

8 A: Yes, I have.

9 Q: What is it?

10 A: It's a diagram that actually I created by
11 passing -- pasting all the vehicles involved and how the
12 accident actually occurred.

13 Q: Okay.

14 So, you used the diagram that was produced as
15 part of this litigation by the defense, correct?

16 A: That is correct.

17 Q: And you didn't -- didn't do it on this size
18 but you used a smaller piece and then I've had it blown
19 up, right?

20 A: That is correct.

21 Q: Okay.

22 Could you tell the jury what this diagram that
23 you made shows?

24 A: It shows the location of the - the vehicles
25 and how I perceived them as -- as the accidents happened.

1 Q: And so we're clear, this frame, Exhibit 2,
2 is Part C of the main diagram, correct?

3 A: That is correct.

4 Q: Okay.

5 Why don't you tell the jury what you're
6 illustrating here.

7 A: I'm illustrating the three lane -- the
8 three vehicles involved; the Dodge Caravan, the Honda
9 Accord and the tractor trailer.

10 As I also stated back here, I merged over into
11 this lane and stayed in this lane. And this is where the
12 next turn lane begins.

13 As I'm going up here I see the tractor trailer
14 coming over. He was in this lane at first. So, with my
15 vehicle right here I didn't see any -- any -- and I could
16 still see his head -- come up here. I didn't see any
17 turn signals at all.

18 So when I saw him coming over from the
19 peripheral of my vision, I hurried up -- I -- I -- just
20 reacted and got over because I knew he was -- well I
21 thought he was carrying fuel knowing that Baltimore Tank
22 Line carries fuel. That's from my knowledge of my
23 brother and that's the type of work that he was doing.

24 So, I got over in this lane and as I got over
25 in this lane right here I was rear-ended by the Dodge

1 Caravan. And the tractor trailer just kept going
2 straight. He didn't stop or any --.

3 Q: All right.

4 Now, did you take any measurements or anything
5 like that of the scene?

6 A: No, I didn't.

7 Q: And so what did you base your placement of
8 these vehicles on?

9 A: The hill.

10 Q: And that's what you're saying is your
11 knowledge of the hill you testified about earlier?

12 A: That is correct.

13 Q: And so is -- would it be fair to say this
14 is your estimate of where the vehicles were to illustrate
15 how the accident happened?

16 A: That is correct.

17 Q: Okay.

18 You can take your seat again.

19 Now, Mr. Ervin, you testified that you had
20 initially seen the Baltimore Tank Lines trailer some
21 distance down -- Mattawoman Beantown Road, correct?

22 A: That's correct.

23 Q: Can you describe your observations of that
24 vehicle from there until the accident took place?

25 MR. STEPHENSON: Objection.

1 THE COURT: Overrule.

2 Continue.

3 A: Well, as I stated earlier, we were coming
4 off of 301 and 5; where 301 and 5 merge. We had just
5 crossed -- the street where the 7-11 and -- and the --
6 the -- Wa-Wa Gas Stations are right across from each
7 other.

8 And right -- as soon as you pass there there's
9 a -- another traffic light. That traffic light is
10 Mattawoman Beantown Road and Crain Highway. And at that
11 time we pulled up next to each other. I was on the
12 inside lane. He was on the outside line making --
13 outside lane making a turn.

14 There's three turns right there. There's three
15 lanes right there. And that's when I looked to the side.
16 Well, I had first noticed him when I was coming up and I
17 was behind him and I saw the BTL on the back of his
18 truck.

19 Q: Okay.

20 And you turned onto Mattawoman Beantown Road,
21 correct?

22 A: I made a left turn on Mattawoman Beantown
23 Road.

24 Q: And after you make that left turn onto
25 Mattawoman Beantown Road, what -- what does Mattawoman

1 Beantown Road look like there in terms of the lanes?

2 A: Up until you get cross the train tracks
3 right there, there's three lanes.

4 Q: And then what happens after you cross the
5 tracks?

6 A: They become two lanes.

7 Q: And that's two through lanes on Mattawoman
8 Beantown Road?

9 A: That is correct.

10 Q: And after that turn happened where were you
11 in relation to the tractor trailer?

12 A: I was in the left lane. We were at one
13 time side by side but he accelerated past me. The speed
14 limit on that -- that route is 45 miles an hour. I was
15 doing 45 miles an hour.

16 MR. STEPHENSON: Objection, Your Honor.

17 THE COURT: Approach please.

18 (Counsel approaches the bench.)

19 THE COURT: Okay.

20 MR. STEPHENSON: Your Honor, this is exactly
21 why I objected initially because they're trying to --
22 offer testimony of some alleged improper driving by my
23 client prior to the accident which is clearly
24 impermissible under Maryland law.

25 This has no relevance to what happened at the

1 accident. Now he's trying to suggest that my client was
2 speeding prior to the accident so as to prejudice the
3 jury.

4 THE COURT: What's the response gonna be?

5 MR. BRATT: Your Honor, my response is, is that
6 the objection can be sustained. That's not why I asked
7 him that. All I asked him was -- to describe where the
8 truck was and he was in relation to the lanes.

9 THE COURT: Didn't we cover this once before?

10 MR. FORD: Early.

11 THE COURT: Earlier.

12 MR. BRATT: It's a -- it's a long road. It
13 gets a little confusing.

14 Well, I'll make you a bet. Every pet -- member
15 of the jury has been on that left turn all the way down
16 to 5 at least a dozen times. I mean, it's a major
17 thoroughfare.

18 Well, first of all we'll sustain the objection.
19 But I think you've basically covered this.

20 MR. BRATT: Okay.

21 THE COURT: Haven't you?

22 MR. BRATT: Thank you, Your Honor.

23 (Counsel returns to trial tables.)

24 Q: So, Mr. Ervin, at some point you ended up
25 behind the tractor trailer?

1 A: Yes, I did.

2 Q: What lane were you in on Mattawoman
3 Beantown Road then?

4 A: I was in the left lane.

5 Q: Okay.

6 And what happened next?

7 A: After we cross -- I can't get the names of
8 the streets in my mind right now, but once we crossed
9 that last light before we approached -- before we
10 approached Mattawoman -- Leonardtown Road, I was behind
11 the B -- the BTL truck.

12 Q: Okay.

13 And at that point were you approaching the area
14 where -- where it turns to four lanes?

15 A: That is correct?

16 Q: How fast were you going?

17 A: I was doing 35 miles an hour.

18 Q: What, if anything, did you do as you
19 approached the area where the road widens to four lanes?

20 A: I merged over to that first turn lane.

21 Q: And when you say the first turn lane, if
22 we're going from left to right, this road has a left turn
23 lane all the way to the left side of the road -- a left
24 turn lane to the right of that lane and then there are
25 two through lanes that continue going straight, right?

1 A: Correct.

2 Q: Okay.

3 And when you say you were in the -- the right
4 lane are you talking about the right sided left turn
5 lane?

6 A: The right sided left turn lane.

7 Q: What happened next?

8 A: I start traveling a few yards and then
9 another turn -- the next turn lane begins. And that's
10 when -- the Baltimore Tank Line started to merge over so
11 that he can make that turn as well.

12 Q: And as you went from the portion of the
13 road that was two lanes to your place in the right sided
14 turn lane, did your speed change?

15 A: No.

16 Q: What happened next?

17 A: At that point I saw, from my peripheral
18 vision I saw the Baltimore Tank Line truck coming over.
19 And that's when I -- on sudden reaction I just got out of
20 his way and moved over to the very far left turn lane.

21 Q: Now, when -- right before you saw that
22 tractor trailer start to come over did you see any turn
23 indicators?

24 A: No, I did not.

25 Q: Did you see any other signals or brake

1 lights?

2 A: No, I did not.

3 Q: How -- can you describe how fast it came
4 over?

5 A: It was -- it was sudden.

6 Q: And so you immediately went into the -- the
7 next sided turn lane to your left, correct?

8 A: That is correct.

9 Q: What happened next?

10 A: Suddenly I was rear-ended.

11 Q: Okay.

12 What, if anything, did you do before getting
13 over into that lane?

14 A: I don't recall.

15 Q: And how quickly did you switch lanes into
16 that left turn lane?

17 A: Very sudden. It -- seconds.

18 Q: And what happened immediately next?

19 A: I -- I was rear-ended.

20 Q: Okay.

21 Now, did you -- did you see the vehicle that
22 rear-ended you?

23 A: No, not at first.

24 Q: Okay.

25 Did you subsequently see the vehicle?

1 A: After it hit me.

2 Q: And what kind of vehicle was it?

3 A: It was a green Dodge Caravan.

4 Q: Did you have an opportunity to look to your
5 left before changing lanes?

6 A: I'm sorry, I didn't hear you.

7 Q: Did you have a chance to look to your left
8 before you changed lanes?

9 A: No.

10 Q: About how long did that lane change take?

11 A: Seconds.

12 Q: And what was the position of your vehicle
13 in the far left lane after you switched over?

14 A: After I switched over I was in -- in the
15 immediate lane.

16 Q: And how was your car oriented within that
17 lane?

18 A: It was straight.

19 Q: And the vehicle, the Dodge that hit you,
20 what part of that vehicle hit what part of your vehicle?

21 A: My left rear corner was hit. And if I'm
22 not mistaken, the -- center of the Dodge had hit me.

23 Q: What happened after that -- strike that.

24 Was there any collision between your car and
25 the tractor trailer?

1 A: None.

2 Q: And do you know why not?

3 A: I had got -- I have got out of that lane
4 before it could occur.

5 Q: Now, what happened after the Dodge struck
6 the rear of your vehicle?

7 A: I suddenly stopped.

8 Q: And what happened next?

9 A: I just cleared my head for a second and I
10 immediately called my brother.

11 Q: Why?

12 A: Because I knew that he would give me some
13 information on what -- since the Baltimore Tank Line
14 truck didn't stop, I couldn't see the number or anything
15 so I can report it. So I called him for the dispatcher's
16 number to see if they can give me any information of who
17 the driver was or anything.

18 Q: . And did he -- did he give you that
19 information.

20 MR. STEPHENSON: Objection.

21 THE COURT: Approach please.

22 (Counsel approaches the bench.)

23 Okay.

24 MR. STEPHENSON: First of all, Your Honor, its
25 hearsay. Second of all we have admitted that the driver

1 was the only driver in the vicinity of the accident and
2 the accident location when it occurred.

3 They're now trying to imply or inject some sort
4 of cover up or we didn't provide information that was
5 necessary. None of this is relevant to how the accident
6 happened, Your Honor.

7 MR. BRATT: All I asked him was if his brother
8 gave him the phone number. I'm not taking him through
9 whatever conversations he may have had subsequently to
10 that. We're not trying to interject anything. I'm just
11 trying to show the course of events that happened from
12 collision to the after the collision.

13 THE COURT: Well, after the collision basically
14 it's all over, right?

15 MR. BRATT: Well there's -- there's another
16 conversation that he has with Ms. Young, the other
17 Defendant.

18 THE COURT: Oh.

19 MR. BRATT: And that's where I'm going.

20 THE COURT: Okay.

21 Well, I'll sustain the objection. We don't
22 need to know about the brother.

23 MR. BRATT: I'm -- I'm not gonna ask him that,
24 Judge.

25 (Counsel returns to trial tables.)

1 Q: And Mr. Ervin, after you talked to your
2 brother did you talk to anybody else?

3 A: Well, I called the Baltimore Tank Line.

4 Q: No, the -- let me strike that.

5 Did you speak with Ms. Young?

6 A: Yes, we did.

7 Q: What, if anything, did you say to Ms.

8 Young?

9 A: I think the first thing that I asked her
10 was did you see that truck run me out of my lane.

11 Q: And what, if anything, did she say back?

12 A: She said she didn't see it.

13 Q: Did you have any other conversation with
14 Ms. Young at the scene?

15 A: We asked each other where -- was everybody
16 -- were -- were we both okay.

17 Q: Okay.

18 And, what happened after that conversation with
19 Ms. Young?

20 A: Afterwards we called the police. The
21 police came to the scene. We exchanged information.

22 Q: And did you talk to the police officer?

23 A: We talked to the police officer.

24 Q: What, if anything, did you personally say
25 to the officer?

1 A: Well, I told him how I -- how the accident
2 happened.

3 Q: What did you say to him?

4 A: I told him how I was traveling in the
5 direction that I was and how the tractor trailer had run
6 me out of my lane. And -- and that was it.

7 Q: Okay.

8 And just -- so we're clear for the record the -
9 - what I had shown you is -- what was I -- identified as
10 Plaintiff's Exhibit Number 2, the diagram you had
11 prepared. Does that fairly and accurately to the best of
12 your recollection represent the area of the collision and
13 what happened?

14 A: Yes.

15 Q: Your Honor, I'd ask that what's been I.D.'d
16 as Plaintiff's 1 and 2 be admitted into evidence.

17 MR. STEPHENSON: No objection.

18 MR. FORD: No objection.

19 THE COURT: It'll be received.

20 Q: And I have no further questions for Mr.
21 Ervin.

22 THE COURT: Why don't we take our lunch and
23 recess now; it's almost 12:00.

24 Members of the jury we'll give you one hour.
25 If you'd be back in the jury at five of one we'll start

1 with cross examination.

2 Mr. Swann, please show them out.

3 Can I see Counsel at the bench, please?

4 You can step down, sir.

5 (Counsel approaches the bench.)

6 Okay, we're not gonna have any expert testify,
7 right?

8 MR. FORD: Right.

9 MR. STEPHENSON: No.

10 THE COURT: As far as giving the principle
11 agent independent contractor, we don't need that either
12 do we?

13 MR. STEPHENSON: No.

14 MR. FORD: Right.

15 THE COURT: Someone requested spoliation.

16 MR. STEPHENSON: Not me.

17 MR. BRATT: Not me.

18 MR. STEPHENSON: (Unintelligible, 3-4 words).

19 THE COURT: Somebody did.

20 MR. STEPHENSON: No, it's not relevant.

21 THE COURT: Normally I don't give the Allen
22 Charge unless it's -- there's a problem, okay.

23 MR. STEPHENSON: Unless -- yeah.

24 MR. BRATT: Right.

25 THE COURT: Okay.

1 Other than that we got everything here.

2 Are you both -- I know Mr. Ford's familiar.

3 Are you both familiar with where to eat in La Plata;
4 lunch?

5 MR. STEPHENSON: Oh lunch.

6 No, where's good?

7 THE COURT: Casey Jones which is down Route 6
8 by the railroad tracks but they're kinda slow.

9 There's a Green Turtle -- if you go out the
10 front of the courthouse on the -- St. Mary's Avenue and
11 then also if you're going toward the railroad tracks on
12 the left there's kind of a Mexican-Spanish restaurant.
13 Those are the quickest ones.

14 Okay?

15 MR. FORD: Thank you.

16 MR. BRATT: Thank you, Your Honor.

17 MR. STEPHENSON: Thank you.

18 THE COURT: Thank you.

19 Okay, we'll be back in an hour.

20 THE BAILIFF: All rise.

21 THE CLERK: All rise.

22 THE BAILIFF: All rise.

23 (Court recesses at 12:02 p.m.)

24 (Court is in session at 1:06 p.m.)

25 THE COURT: Please be seated.

1 Anything before the jury comes in?

2 MR. FORD: No, Your Honor.

3 MR. BRATT: No, Your Honor.

4 THE COURT: No.

5 Let's bring them in.

6 (The jurors are brought into the courtroom at
7 1:06 p.m.)

8 Okay, let the record reflect the jury has
9 returned. I guess we're up to cross examination of Mr.
10 Ervin.

11 THE CLERK: I just remind you you're still
12 under oath.

13 Mr. Ervin, if you'd please state your name once
14 again for the record.

15 MR. ERVIN: Theodore Ervin.

16 THE CLERK: Thank you.

17 CROSS EXAMINATION

18 BY MR. FORD:

19 Q: Mr. Ervin, I have a few questions.

20 You indicated that just prior to the happening
21 of this -- accident that the tractor tanker, the tanker
22 truck, suddenly came over into your lane. Is that
23 correct?

24 A: That is correct.

25 Q: And you further said that as a result of

1 that sudden movement, he ran you out of your lane. Is
2 that correct?

3 A: Correct.

4 Q: I take it then that the movement, and we
5 weren't there so you have to tell us, that the movement
6 that you said was made by the tanker truck was very
7 abrupt.

8 A: Correct.

9 Q: And you acted or reacted just as abruptly.
10 Is that correct?

11 A: That is correct.

12 Q: And when the tanker truck came over into
13 your lane you immediately went over into the lane to your
14 left. Is that correct?

15 A: That is correct.

16 Q: And immediately thereafter you were struck?

17 A: Correct.

18 Q: All of this in a split second?

19 A: Correct.

20 Q: You also said that the truck driver, the
21 tanker truck driver, did not give a signal.

22 A: That's correct.

23 Q: You didn't give a signal either.

24 A: No, I did not.

25 Q: Did you ever blow your horn?

1 A: No, I did not.

2 Q: Did you -- when you saw the truck coming
3 over did you apply your brakes?

4 A: No, I did not.

5 Q: So the only thing you did when the truck
6 came over as you say it did, was you immediately went
7 over into the left lane; the lane to your left (clapping
8 sound), and there's an accident.

9 A: Correct.

10 Q: Thank you, sir.

11 That's all I have.

12 THE COURT: Okay.

13 CROSS EXAMINATION

14 BY MR. STEPHENSON:

15 Q: Mr. Ervin, just wanted to be clear in a
16 couple of things.

17 In conjunction with the tractor trailer, this
18 is a big 60-foot long tractor and tanker trailer,
19 correct?

20 A: Correct.

21 Q: In conjunction with that vehicle, where
22 were you in relation to the length of that vehicle when,
23 as you say, it commenced to come into your lane?

24 A: I was along the tractor. I was on his -- I
25 was -- he was on my right hand side so I was on his left.

1 Q: Okay.

2 A: And I -- like I said I had merged over into
3 that first -- the right turn left turn lane, and I was
4 riding along side of him at that time.

5 Q: Okay.

6 And my question to you is, okay, where
7 alongside the tractor and the tanker trailer were you
8 when he commenced to come into your lane as you suggest?

9 Where -- what part of the tractor and trailer
10 were you in conjunction with when that occurred?

11 A: I was more in conjunction with the trailer
12 more so than the tractor.

13 Q: Okay.

14 Now, it's a long trailer, right?

15 A: That is correct.

16 Q: Were you more -- was your vehicle closer to
17 the rear tandem wheels of the trailer or was it closer to
18 the middle of the trailer?

19 A: Closer to the middle of the trailer.

20 Q: Closer to the middle of the trailer.

21 Q: Closer to the middle of the trailer?

22 Okay.

23 I've got your Deposition transcript in front of
24 you there, sir. If you could please draw your attention
25 to Page 67.

1 Pardon me, if you go to Page 66, Line 22 which
2 is the last line on Page 66. Let me know when you're
3 there.

4 A: What page -- which line number?

5 Q: The very last line of Page 66; Line 22.

6 You see that?

7 A: Um hum.

8 Q: Okay.

9 I'm gonna read with you so I want you to make
10 sure that I'm reading this accurately. Beginning Page
11 66, Line 22, I asked you, question, "Now, in terms of
12 where you were in conjunction with the BTL trailer, when
13 you say it came into your lane were you about half way
14 down the trailer or were you back where the rear tandems
15 are?" Your answer was "Back near the rear tandems",
16 right?

17 A: That's correct.

18 Q: Next question, "So, further towards the
19 back of the trailer than the middle?" Your answer,
20 "That's correct."

21 That was your testimony at your Deposition?

22 A: That is correct.

23 Q: Okay.

24 Does that refresh your recollection that that's
25 in fact -- this Deposition was taken back on the 7th of

1 November, 2007?

2 A: I do remember that Deposition.

3 Q: Okay.

4 Do you agree that your Deposition testimony is
5 -- is accurate?

6 A: Yes.

7 Q: Okay.

8 Did you ever progress further than the rear
9 tandems of the trailer? Did you ever progress forward,
10 further than that point, after he commenced to come into
11 your lane?

12 A: I can't recall.

13 Q: Okay.

14 So the rear tandems back at the rear of the
15 tanker, that's as far forward in terms of the tractor
16 trailer that you got in conjunction with this entire
17 event?

18 MR. BRATT: Objection.

19 THE COURT: Overrule.

20 A: Correct.

21 Q: Okay.

22 Showing you what's been marked as Plaintiff's
23 Exhibit Number 2, do you agree that in terms of
24 Plaintiff's Exhibit Number 2 your vehicle is the vehicle
25 designated with the letter "H" for Honda?

1 A: That is correct.

2 Q: And do you agree that in conjunction with
3 this exhibit you have placed your vehicle up near the
4 rear wheels of the tractor?

5 A: That is correct.

6 Q: Far further forward than the rear tandems
7 which are back here, right?

8 A: Yes.

9 Q: That's different than your testimony today,
10 correct?

11 A: Correct.

12 Q: I believe today in court during your direct
13 examination you were asked by Plaintiff's Counsel whether
14 you checked -- you -- looked -- checked in the left lane;
15 checked your mirrors to see whether there was anything in
16 the left left turn lane before you made your lane change.

17 And your testimony today, correct me if I'm
18 wrong, was that you didn't look cause you didn't have the
19 time. Is that correct?

20 A: That is correct.

21 Q: Okay.

22 Drawing your attention to Page 34 of your
23 Deposition transcript. I apologize, Page 33, Line 19.
24 Let me know when you're there.

25 A: I'm there.

1 Q: Line 19, I asked you, "Before making the
2 move did you look in your mirror or side view mirror,
3 your rear view mirror, to see if there was any traffic in
4 that lane."

5 Page 34, answer, "I had a split second to see
6 that." Question, "Did you look?" Answer, "Yes, I had a
7 split second to see that." Question, "And what did you
8 see in that split second?" Answer, "I saw that I had
9 just a split second to jump in the next lane."

10 Question, "Did you see anything in that lane?"
11 Answer, "No." Question, "How long did you look?"
12 Answer, "It was a split second."

13 Do you agree your Deposition testimony
14 indicates that you did check to see if there was anything
15 in the left lane but you didn't see anything?

16 A: That is correct.

17 Q: Your testimony today in court is -- correct
18 me if I'm wrong on that, following the collision between
19 the Dodge and the rear of your vehicle, you immediately
20 came to a stop, correct?

21 A: After the accident.

22 Q: After the accident.

23 A: Correct.

24 Q: There was a rear-end collision and then you
25 came to a stop essentially right --.

1 A: It wasn't a sudden. I rolled a couple of
2 feet and then stopped.

3 Q: Couple of feet.

4 In fact in your Deposition on Page 36 you --
5 you recall you indicated you -- you traveled probably 5
6 or 10 yards and then you stopped, correct?

7 A: Correct.

8 Q: Okay.

9 It's your testimony today that Ms. Young's
10 vehicle is green?

11 A: Correct.

12 Q: Okay.

13 Sir, you do agree that as you were approaching
14 where the lanes change from two lanes to three and then
15 four lanes, you were traveling behind the BTL tanker
16 trailer the whole time? Do you agree with that?

17 A: Yes.

18 Q: Can we say, just for arguments sake, for at
19 least a quarter of a mile you're traveling behind that
20 tractor trailer in the left through lane?

21 A: That's correct.

22 Q: Okay.

23 And he's traveling in front of you, right?

24 A: He's in front of me.

25 Q: Okay.

1 What speed are you going throughout that period
2 of time?

3 A: The speed limit.

4 Q: Okay.

5 And when the opportunity comes for you to -- to
6 -- when -- when the lanes change from two lanes to -- to
7 four, you -- you -- your testimony is you immediately
8 went into the left, to the turn lanes, correct?

9 A: Correct.

10 Q: Okay.

11 Could the tanker trailer have done that?

12 A: No.

13 Q: Why not?

14 A: He could have squeezed in there but he
15 didn't.

16 Q: No, I'm talking about before -- you know as
17 -- as he's travel -- he's traveling in front of you, he
18 could taken the same path and gone into those merge lanes
19 as well.

20 A: He -- he could have.

21 Q: He could have, right.

22 Just like you did.

23 A: Just like I did.

24 Q: And do you agree with me, you heard me in
25 Opening Statement, do you agree that when you're

1 traveling down Mattawoman Beantown Road and you're in the
2 two through lanes and the turn lanes are coming up, if
3 you want to get into one of those turn lanes you
4 essentially just go straight into it. Do you agree with
5 that?

6 A: That is correct.

7 Q: Okay.

8 There's no real turning over to the left,
9 right? You just stay where you are and it automatically
10 filters you straight into that left turn lane.

11 A: That's the way it's supposed to be.

12 Q: Right.

13 That's the way it was for you on the date of
14 the accident, right?

15 A: That was the way for me.

16 Q: Okay.

17 But it's your testimony that the tanker truck
18 instead of staying straight and filtering right into that
19 left turn lane it went off to the right to follow the --
20 the through lane; the left through lane.

21 A: He stayed straight.

22 Q: Do you agree that that tractor trailer that
23 you saw, the tanker trailer; do you agree that it
24 ultimately did make a left turn on Leonardtown Road?

25 A: Yes, I do agree with that.

1 Q: Do you agree that it ultimately made the
2 left turn from the right left turn lane?

3 A: Ultimately.

4 Q: Okay.

5 When you were change -- when you were filtering
6 into the left turn lane -- ultimately -- well you were --
7 previously you were behind the tractor trailer. What was
8 the distance between the front of your vehicle and the
9 rear of the tanker trailer as you were approaching where
10 the lanes open up into the -- into the turn lanes?

11 A: I can't recall.

12 Q: Okay.

13 But you agree that you got from wherever you
14 were at that point up to a point where you're next to the
15 rear tandem wheels of the tanker trailer? You agree with
16 that, right?

17 A: Yes.

18 Q: Did you accelerate up to that point?

19 A: No.

20 Q: Did the tanker trailer decelerate back to
21 that point?

22 A: He could have but I -- I don't recall.

23 Q: Okay.

24 Was the tanker trailer accelerating or
25 decelerating at the time that it entered, as you say, it

1 entered into your lane?

2 A: I can't recall.

3 Q: Okay.

4 Do you know how fast Ms. Young was going in her
5 Honda?

6 A: No, I don't.

7 She didn't have a Honda.

8 Q: Sorry -- in -- in her Dodge. I do
9 apologize. You're quite correct. Thank you for clearing
10 that up for me so the record is clear.

11 Do you know how fast she was going in her
12 Dodge?

13 A: No, I don't.

14 Q: Okay.

15 When you changed lanes, as you described
16 abruptly, into the left lane -- into the lane that Ms.
17 Young was in did you accelerate or did you decelerate or
18 did you maintain your constant speed?

19 A: It happened so abruptly I don't recall.

20 Q: Do you recall whether you applied the
21 brakes as you made the lane change into the left lane?

22 A: I don't recall.

23 Q: Okay.

24 But up until that point you do recall that you
25 were traveling at a constant speed at the speed limit up

1 until the point that you made the abrupt lane change to
2 the left?

3 A: Yes.

4 Q: Okay.

5 But whether or not you accelerated or
6 decelerated or braked or whatever, you have no knowledge
7 in terms of the lane change?

8 A: I just can't remember.

9 Q: Okay.

10 But you do remember you didn't indicate?

11 A: Correct.

12 Q: And you do remember you didn't sound your
13 horn when you saw a tanker trailer coming into your lane?

14 A: I do remember that.

15 Q: Okay.

16 A: I remember just getting out of his way.

17 Q: Okay.

18 In terms of the distance from Leonardtown Road
19 to the point where the accident occurred, what -- what
20 was that distance?

21 A: In my original statement I said I recall --
22 I used a football field to kind of judge it. So I said
23 it was about 80 yards.

24 Q: Okay.

25 I -- I believe you're referring to your

1 Deposition transcript where you said, using a football
2 field as -- as a yardstick you thought it was less than a
3 football field's distance, right?

4 A: Yes.

5 Q: 80 yards and that would be about 240 feet,
6 right?

7 A: I don't know the math.

8 Q: Okay.

9 If there are three feet in a yard, three times
10 80; 240. You're not familiar with the -- the three feet
11 in a yard?

12 A: Not that quick as you.

13 Q: Okay.

14 (Laughter.)

15 A: I don't have a law degree and I didn't --
16 math wasn't my thing.

17 Q: All right.

18 MR. BRATT: I have one but I can't do it.

19 Q: When you were next to the rear tandem
20 wheels of the tanker trailer and you perceive for the --
21 the first moment that you perceived that it was coming
22 into your lane as you suggest why didn't you hit the
23 brakes?

24 A: It was a sudden decision. I didn't have
25 time to think that quick. It was abrupt.

1 I didn't -- my first thought was I don't want
2 to get hit by this -- this truck carrying fuel.

3 Q: Right, but were you aware that there were
4 any vehicles directly behind you in that lane that would
5 have -- would have presented a danger if you applied your
6 brakes?

7 A: I was trying to get out of the way of this
8 humungous truck.

9 Q: Okay.

10 It's a very -- it was a very noticeable thing,
11 right? It's right next to you. It's very large and it's
12 -- you -- you can see it, right?

13 A: You're correct.

14 Q: You -- you even say as you indicate you
15 caught it out of your peripheral vision, right?

16 A: Correct.

17 Q: Okay.

18 Hard to miss?

19 A: Correct.

20 Q: Cause it's a lot taller than the vehicle
21 you're in, right?

22 A: Correct.

23 Q: Okay.

24 And just so we're clear, it's a big shiny
25 silver tank, right?

1 A: Correct.

2 Q: Okay.

3 Your brother, Dewayne, that you refer to -- is
4 he gonna be here today to testify?

5 A: No.

6 Q: Okay.

7 The police officer that you spoke to, is he
8 coming to testify today?

9 A: No.

10 Q: Now, you told the police officer that you
11 had been run off the road by a tanker trailer. Did you
12 ask him to go and radio ahead and stop the BTL tanker
13 trailer on the highway?

14 A: No, I did not.

15 Q: Okay.

16 Do you have a police report here today with
17 you?

18 A: They didn't make a police report.

19 Q: Prior to making your lane change to the
20 left did you think or did -- were you aware that there
21 were any vehicles ahead of you in the left, the
22 furthest left left turn lane, that it would have
23 presented a danger for you to accelerate and move to the
24 left?

25 A: I didn't recall any vehicles ahead of me.

1 Q: Okay.

2 Just want to -- go back to the Exhibit Number
3 2; Plaintiff's Exhibit Number 2, that you compiled.

4 Why is it in Plaintiff's Exhibit Number 2 you
5 put my client's vehicle not only in the left through lane
6 but he's also encroaching on the right through lane?

7 A: Well, actually I was a cut and paste. I
8 didn't have all the engineering tools that you had to
9 paste it together. It was the tools that you provided to
10 me so I cut by hand and placed them there. And they were
11 just blown up from that.

12 Q: Okay.

13 But you're not suggesting by this that you saw
14 or you have knowledge that my client veered into the
15 right turn?

16 A: No.

17 Q: Right through lane?

18 A: By -- by no means.

19 Q: Okay.

20 You'd been following that tractor trailer for a
21 while, Mr. Ervin, hadn't 'cha?

22 A: About two miles probably.

23 Q: Okay.

24 And I guess given that it's a tanker truck it
25 would have stopped completely in advance of the railroad

1 tracks. Do you remember that? And you probably would
2 have to stop behind it?

3 A: No.

4 Q: You don't recall that?

5 A: No, well if that's the case, as I stated
6 there were three lanes. He turned in the furtherest
7 right lane. So I may have been in front of him by that
8 time and he passed me at one point.

9 Q: And were you getting frustrated with the
10 tractor trailer driver?

11 A: No.

12 Q: I don't have any further questions.

13 THE COURT: Re-direct.

14 RE-DIRECT EXAMINATION

15 BY MR. BRATT:

16 Q: Mr. Ervin, when the tractor trailer came
17 into your lane and you jumped into the lane to your left
18 did you have time to signal?

19 A: No.

20 Q: Did you have time to blow your horn?

21 A: No.

22 Q: Did you have time to hit the brakes?

23 A: No.

24 Q: Did you have time to do something besides
25 what you ultimately did?

1 A: No.

2 Q: Did you have to work the day of this
3 accident?

4 A: I did.

5 Q: What time did you have to be at work?

6 A: 2:00.

7 Q: What time did the accident happen?

8 A: Approximately 12:00.

9 Q: When the accident happened how far were you
10 from home?

11 A: Not far at all. Soon as I made my right
12 turn I was at home.

13 Q: In minutes how long would it take you
14 ordinarily to get home from where this accident happened?

15 A: Less than a minute.

16 Q: Were you in a hurry?

17 A: No.

18 Q: Were you trying to pass this tractor
19 trailer?

20 A: There was no need -- no.

21 Q: Why?

22 A: I wasn't in a rush. I was home soon as I
23 made that turn.

24 Q: Do you know -- can you tell us about how
25 far in distance it would have been? After -- after you

1 made that left turn onto Leonardtown Road how did you
2 have to drive before you turned right?

3 A: Less than a quarter mile.

4 Q: And how long would it take you to travel
5 that far?

6 A: At 35 miles an hour, 20, 30 seconds maybe.

7 A min -- less than a minute.

8 Q: Are there lane markings where this -- where
9 -- where Mattawoman Beantown Road comes out to four
10 lanes?

11 A: Yes.

12 Q: And I'd like to direct your attention to
13 what we've already marked as Exhibit 1 if I can remember
14 where it is.

15 And again I'm gonna show you Exhibit 1. Now,
16 do these lane markings look like what you remember the
17 lane markings looking like?

18 A: Yes, the do.

19 Q: Thank you ladies and gentlemen.

20 Can I walk over to the jury, Your Honor?

21 THE COURT: Certainly.

22 Q: Ladies and gentlemen, I just want to show
23 you what I'm showing Mr. Ervin. I was showing him the
24 lane markings. As you can see there are lane markings
25 indicated on the diagram here and that these are the same

1 markings that he remembers being there at the scene and
2 I'm gonna talk a little more about that later.

3 I don't have any more questions, Your Honor.

4 THE COURT: Re-cross?

5 MR. FORD: No, Your Honor.

6 MR. STEPHENSON: Just briefly, Your Honor.

7 THE COURT: Okay.

8 RE-CROSS EXAMINATION

9 BY MR. STEPHENSON:

10 Q: Mr. Ervin, you didn't have time to hit your
11 brakes. You didn't have time to sound your horn, right?

12 A: Correct.

13 Q: But you did have time to check your mirrors
14 and make a decision that you were gonna make a lane
15 change to the lane to the left and to complete that lane
16 change, correct?

17 A: Split second; abruptly.

18 Q: Okay. Okay.

19 Would it have taken you any more time to apply
20 your brakes?

21 A: I don't know.

22 Q: Because that's the decision that you made
23 under the circumstances?

24 A: Yes.

25 Q: Okay.

1 No further questions.

2 MR. BRATT: Nothing based on that, Your Honor.

3 THE COURT: Thank you, sir. You may step down.

4 MR. BRATT: And -- Your Honor, I would like to
5 call Ms. Young as the next witness.

6 THE COURT: Okay.

7 MR. BRATT: With the Court's -- with the
8 Court's permission as she's an adverse party do I have
9 permission to lead this witness?

10 THE COURT: Well, approach please.

11 (Counsel approaches the bench.)

12 Any objection Mr. Ford?

13 MR. FORD: Well, it depends on the questions.

14 THE COURT: Well, I'll -- I'm gonna allow it.
15 I mean technically they're adverse so to speak but not
16 hostile.

17 MR. FORD: Right.

18 THE COURT: Okay.

19 MR. BRATT: I would never say hostile, Your
20 Honor.

21 THE COURT: A lot of people do.

22 (Counsel returns to trial tables.)

23 CINDY YOUNG,

24 a witness, produced on call of the Plaintiff,
25 first having been duly sworn according to law, was

1 examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. BRATT:

4 THE CLERK: Thank you. Please be seated.

5 Please state your name, address and occupation
6 for the record.

7 A: Cindy Young, 7805 Trailey (sp) Lane,
8 Charlotte Hall, Maryland and I'm a stay at home mom.

9 THE CLERK: Thank you.

10 Q: Good afternoon, Ms. Young.

11 Now, you -- you -- on March 13th, 2006 you were
12 unfortunate enough to be involved in an automobile
13 accident weren't you?

14 A: Yes.

15 Q: And this happened about 12:00?

16 A: Um hum.

17 Q: And at that time you were traveling down
18 Mattawoman Beantown Road, correct?

19 A: Correct.

20 Q: And you were headed towards Mattawoman
21 Beantown Road's intersection with Leonardtown Road?

22 A: Correct.

23 Q: And as -- correct me if I'm wrong, that
24 road widens at that point from two -- two through lanes
25 to two through lanes and then two lanes that turn left at

1 Leonardtown Road, right?

2 A: Correct.

3 Q: If I'm going too fast say so.

4 And you intended to make a left turn onto
5 Leonardtown Road too didn't you?

6 A: Yes.

7 Q: And you got as -- as you came down
8 Mattawoman Beantown Road you ultimately got into the far
9 left turn left, correct?

10 A: Correct.

11 Q: And while you were traveling in that far
12 left turn lane at some point Mr. Ervin's vehicle appeared
13 in your lane, correct?

14 A: Correct.

15 Q: And you struck the back of his vehicle,
16 right?

17 A: Yes.

18 Q: Okay.

19 And right before this accident happened you
20 were going about 35 or 40 miles an hour. Is that true?

21 A: Correct.

22 Q: And it's a -- the -- the speed limit on
23 that road to the best of your memory is 45 miles an hour?

24 A: Yes.

25 Q: And this happened on a clear day around 12

1 noon, correct?

2 A: Yes.

3 Q: And the first time you ever saw Mr. Ervin's
4 vehicle was when it came in your lane wasn't it?

5 A: Yes.

6 Q: And when he did come over into your lane he
7 was at least ten feet ahead of you wasn't he?

8 A: Approximately, yes.

9 Q: But you don't know whether he used a turn
10 signal do you?

11 A: I didn't see one; no.

12 Q: And you don't know if his brakes lights
13 activated?

14 A: No.

15 Q: You don't know whether he slowed down
16 before he came over?

17 A: No.

18 Q: Before Mr. Ervin came into your lane had
19 you ever seen his vehicle on the road that day?

20 A: Not that I recall; no.

21 Q: Now, prior to this accident, prior to the
22 collision happening, had you -- had you seen a Baltimore
23 Tank Lines tanker truck?

24 A: Not that I recall; no.

25 Q: And you hadn't seen in the roadway at that

1 time, correct?

2 A: No.

3 Q: And you talked to Mr. Ervin after the
4 accident didn't you?

5 A: Yes.

6 Q: And its true isn't it that the first thing
7 he said to you was did you see the truck that cut me off?

8 A: Yes.

9 Q: And you told him that you hadn't seen that
10 truck, right?

11 A: Right.

12 Q: But you did see that truck after the
13 accident didn't you?

14 A: And that was when Mr. Ervin pointed it out
15 to you, correct?

16 A: Correct.

17 Q: And by then it was stopped up ahead at the
18 light?

19 A: Yes.

20 Q: And did that -- did that truck ultimately
21 make that left turn onto Leonardtown Road?

22 A: Yes.

23 Q: And you didn't have any trouble seeing the
24 truck when Mr. Ervin pointed it out to you?

25 A: No.

1 Q: Okay.

2 And where -- your eyes were looking straight
3 ahead right before this accident happened weren't they?

4 A: Yes.

5 Q: Okay.

6 Were you -- afterwards are you able to say what
7 other vehicles were in the vicinity?

8 A: Not -- no.

9 Just that there was traffic in the area. Three
10 wasn't specifically a -- any vehicle that stuck out in my
11 mind.

12 Q: And -- and even though there was at least
13 ten yards between your vehicle and Mr. Ervin's vehicle.

14 MR. FORD: Objection.

15 It's not the testimony.

16 THE COURT: That's true.

17 Q: What'd I get wrong?

18 MR. FORD: You said ten yards.

19 Q: Oh.

20 MR. FORD: Ten feet.

21 Q: I'm sorry. I'm sorry. I -- I wasn't
22 trying to trick you. I just forgot what the measurement
23 was.

24 It -- there was at least ten feet between the
25 two vehicles, right?

1 A: Yes.

2 Q: And despite that you weren't able to avoid
3 hitting the back of his car?

4 MR. FORD: Objection; argumentative.

5 THE COURT: Sustain on that basis.

6 Q: Were you able -- was there anything you
7 could do to avoid hitting Mr. Ervin's vehicle?

8 A: No.

9 Q: Did you have time to avoid the collision?

10 A: No.

11 Q: I don't have any more questions, Your
12 Honor.

13 THE COURT: Cross.

14 MR. FORD: No questions at this time.

15 MR. STEPHENSON: Your Honor, briefly.

16 CROSS EXAMINATION

17 BY MR. STEPHENSON:

18 Q: Ms. Young, do you -- are you -- do you wear
19 glasses?

20 A: No.

21 Q: Do you have good vision?

22 A: Yes.

23 Q: Do you have any problem with your
24 peripheral vision?

25 A: No.

1 Q: Did you remember you did that test down at
2 the MVA where you put your head up at the thing and they
3 checked your eyesight?

4 A: Yes.

5 Q: You passed?

6 A: Yes.

7 Q: Okay.

8 You're going 35 to 40 before Mr. Ervin comes in
9 your lane, correct?

10 A: Yes.

11 Q: Okay.

12 You did jam on your brakes prior to the
13 collision, correct?

14 A: Yes.

15 Q: As soon as you saw him coming in your lane
16 you hit the brakes?

17 A: Yes.

18 Q: So the brakes actually were engaged on your
19 vehicle prior to the collision?

20 A: Yes.

21 Q: But your vehicle still collided with his
22 vehicle nonetheless, correct?

23 A: Yes. Yes.

24 Q: So his vehicle must have been going at a
25 speed less than the 35 to 40 that you were traveling

1 before you applied the brakes?

2 MR. BRATT: Objection.

3 THE COURT: Overrule. Can you answer that?

4 A: I don't know how fast he was going.

5 Q: Could you describe the severity of the
6 impact between your vehicles?

7 A: It was moderate. My daughter had a
8 seatbelt melk -- mark on her chest from going forward so.

9 Q: I'm gonna show you this Defendant's Exhibit
10 Number 2 -- Plaintiff's rather; Plaintiff's Exhibit
11 Number 2.

12 Your testimony here today was that you didn't
13 see the -- Honda, Mr. Ervin's vehicle, at any time prior
14 to the time he came into your lane, correct?

15 A: No.

16 Q: Okay.

17 This first part of Plaintiff's Exhibit Number
18 2, he's got your Dodge which is the "D" directly behind
19 Mr. Ervin's Honda with the "H". Is that consistent with
20 your recollection?

21 A: No.

22 Q: Is -- is any of this diagram consistent of
23 your recollection as to how the accident occurred?

24 A: No, I would have seen the truck if it was
25 right beside me.

1 Q: You would have seen the truck if it was
2 right beside you.

3 I don't have any further questions.

4 THE COURT: Any other questions?

5 RE-DIRECT EXAMINATION

6 BY MR. BRATT:

7 Q: Ms. Young, at some point Mr. Ervin's
8 vehicle was right beside you as well wasn't it?

9 A: Beside me, no; not that I recall.

10 Q: It would have been in the lane to your
11 right, correct?

12 A: Ahead of me.

13 Q: But it was within a reasonable distance to
14 your vehicle, wasn't it?

15 A: Yes.

16 Q: And you never saw that vehicle before the
17 collision did you?

18 A: No.

19 Q: Nothing else, Your Honor.

20 MR. FORD: Nothing.

21 THE COURT: Thank you, ma'am. You may step
22 down.

23 A: Thank you.

24 MR. BRATT: That'll be the Plaintiff's case,
25 Your Honor.

1 THE COURT: Okay.

2 MR. FORD: Can we approach?

3 THE COURT: Yes.

4 (Counsel approaches the bench.)

5 MR. FORD: I keep forgetting about that mike.

6 Sure I gotta turn it off, Your Honor?

7 THE COURT: Well, we had one attorney who went
8 to the restroom with it -- with it on.

9 MR. BRATT: Must have been funny.

10 THE COURT: Oh, it was; yeah.

11 Okay.

12 MR. FORD: At this time, Your Honor, I would
13 move for judgment on behalf of the Defendant, Cindy
14 Young, on the grounds that a prima facia case of
15 negligence has not been made out against her.

16 The evidence viewed in a light most favorable
17 to the Plaintiff would indicate that Mr. Ervin was
18 proceeding in his lane when according to him he was --
19 caused to jump out of his lane and move into the lane in
20 which my client was proceeding because, as he claims, a
21 truck -- Baltimore Tank Lines trac -- tanker truck came
22 into his lane very abruptly causing him to just as
23 abruptly shift over into the lane in which my client was
24 proceeding; and immediately being hit.

25 There is no testimony of any antecedent

1 negligence on the part of my client. The testimony --
2 indicates that this was a sudden, abrupt movement by Mr.
3 Ervin for whatever reason without any signal of any kind
4 and the accident ensued.

5 I think the evidence is such that the issue of
6 my client's negligence has not been made out and the
7 Court should direct a verdict in her favor.

8 THE COURT: Response.

9 MR. BRATT: Your Honor, this is essentially the
10 same Motion that was made at Summary Judgment.

11 THE COURT: Um hum.

12 MR. BRATT: The -- the argument is, is that
13 based on -- looking at the evidence in the most light --
14 light most favorable to Mr. Ervin there are certainly
15 permissible inferences that can be drawn. For example,
16 Ms. Young says she was looking straight ahead but she
17 never saw the Ervin vehicle or the tractor trailer.

18 There was ten feet in-between the vehicles but
19 she wasn't able to slow to avoid it.

20 THE COURT: It's interesting. You know how
21 long -- if you're doing 35, how many feet per second that
22 is?

23 MR. STEPHENSON: So (inaudible, 2 words). Give
24 me the question again, Your Honor.

25 THE COURT: She said she was doing 35 to 40.

1 MR. STEPHENSON: Yeah.

2 THE COURT: Use 35 miles per hour it's 51.3
3 feet per second.

4 MR. STEPHENSON: Right.

5 (Unintelligible), I was gonna say 45.

6 Yeah.

7 THE COURT: Yeah.

8 But, go ahead.

9 MR. BRATT: But at -- at -- at a minimum it --
10 it generates a permissible inference. Its -- it is
11 possible for the jury to make that determination so it's
12 enough to defeat a Motion for Judgment, Your Honor.

13 THE COURT: Well, once again I have to draw all
14 inferences in favor of the Plaintiff so at this point,
15 I'm gonna have to deny it.

16 I'm also very happy I'm not the tryer of fact
17 in this one!

18 MR. BRATT: That's why we're here.

19 THE COURT: Do you have a Motion?

20 Okay.

21 Okay.

22 Are you gonna call your client back or?

23 MR. FORD: Okay.

24 THE COURT: Okay.

25 MR. BRATT: Thank you.

1 MR. FORD: Call Ms. Young, Your Honor.

2 THE COURT: Okay.

3 THE CLERK: Just to remind you you're still
4 under oath and if you could please state your name once
5 again for the record.

6 MS. YOUNG: Cindy Young.

7 THE CLERK: Thank you.

8 MS. YOUNG: Um hum.

9 CINDY YOUNG,
10 a witness, produced on call of the Defendant,
11 is reminded of previous oath.

12 DIRECT EXAMINATION

13 BY MR. FORD:

14 Q: Ms. Young, I'm not gonna go through what
15 we've already -- heard from you but I -- I would like to
16 have a little bit of background for the jury's sake.

17 You've indicated you live in Charlotte Hall.
18 Is that correct?

19 A: Correct.

20 Q: And you're married?

21 A: Yes.

22 Q: And do you have any children?

23 A: I have three children.

24 Q: What are their ages?

25 A: 16, 15 and 8.

1 Q: And the eight year old that's Christa, is
2 it?

3 A: Yes.

4 Q: And Christa was in the car with you at the
5 time of the accident, correct?

6 A: Correct.

7 Q: Would you just explain to the members of
8 the jury where you had been that day and where were you
9 going at the time of the accident.

10 A: We had been to Andrews Air Force Base where
11 we go for our medical treatment. My daughter had an --
12 ended up being an ear infection. So after the doctor's
13 office we headed back home to Charlotte Hall.

14 Q: So you had been up at Andrews to have her
15 checked out and you were --?

16 A: Correct.

17 Q: Going back to your home in Charlotte Hall?

18 A: Correct.

19 Q: Was this a route that you are familiar
20 with?

21 A: Yes.

22 Q: For how long have you lived in Charlotte
23 Hall?

24 A: At the time, two years.

25 Q: All right.

1 And as of that time and even as of today, with
2 what frequency would you use Mattawoman Beantown Road?

3 A: At least two or three times a week.

4 Q: That's all I have.

5 Thank you.

6 THE COURT: Cross.

7 MR. BRATT: None, Your Honor.

8 MR. STEPHENSON: No, thank you.

9 THE COURT: Thank you, ma'am. You may step
10 down.

11 A: Thank you.

12 MR. FORD: That's the -- Defendant's case, Your
13 Honor.

14 THE COURT: Okay.

15 MR. STEPHENSON: May I please the Court, Your
16 Honor.

17 Defendant BTL would like to offer into evidence
18 Defendant BTL's Exhibits A through O which we have
19 previously marked.

20 Your Honor, at this time we're offering into
21 evidence Defendant's Exhibit A, B, C, D, E, F, I, J, K,
22 L, and M.

23 (Photographs were previously
24 as Defendants Exhibits A, B, C,
25 D, E, F, I, J, K, L, and M.)

1 THE COURT: Any objection?

2 MR. BRATT: Can I just take a -- a brief second
3 to look through them?

4 I don't have any objection of these Your Honor.

5 THE COURT: Okay, they'll be received.

6 MR. STEPHENSON: Your Honor, we would like to
7 call Mr. Quade to the stand.

8 THE COURT: Okay.

9 DANIEL QUADE,

10 a witness, produced on call of the Defendant,
11 first having been duly sworn according to law, was
12 examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. STEPHENSON:

15 THE CLERK: Thank you. Please be seated.

16 Please state your name, address and occupation
17 for the record.

18 A: Daniel Quade, 23475 Grant Road, Clements,
19 Maryland.

20 THE CLERK: Thank you.

21 MR. STEPHENSON: Mr. Quade, by whom are you
22 employed?

23 A: Baltimore Tank Lines.

24 Q: And what do you do for Baltimore Tank
25 Lines?

1 A: I pull fuel oil, gas; tanker -- tanker
2 work.

3 Q: Okay.

4 Are you a CDL, Commercial Driver's License,
5 Class A -- licensed driver?

6 A: That's correct.

7 Q: Okay.

8 How long have you been a professional truck
9 driver?

10 A: Almost 25 years.

11 Q: Okay.

12 And you lived here in Maryland all that time?

13 A: All my life; yeah.

14 Q: Here in Charles County?

15 A: Yes -- well it's St. Mary's County.

16 Q: Okay.

17 And are you married?

18 A: Yes, I am.

19 Q: How long have you been married?

20 A: Almost 20 years.

21 Q: Okay.

22 Got kids?

23 A: Yeah, I got four.

24 Q: Four kids?

25 A: Yes, sir.

1 Q: Well, how old are they?

2 A: One's 2. One's just getting ready -- go on
3 -- go on -- go 6 and one's 18 and one's 17.

4 Q: Okay.

5 And back in March 13th, 2006 which is the --
6 the date that this accident is supposed to have occurred,
7 were you working for Baltimore Tank Lines at that time?

8 A: That's correct.

9 Q: Okay.

10 Now, when you work for Baltimore Tank Lines do
11 you -- do you own any of the vehicles involved in that
12 operation?

13 A: My tractor.

14 Q: You own the truck?

15 A: My -- my own truck.

16 Q: Okay.

17 A: Pull their trailer.

18 Q: Okay.

19 So you're an owner/operator?

20 A: Lease; that's correct.

21 Q: And did you own the tractor back on March
22 13th, 2006?

23 A: That's correct.

24 Q: What kind of tractor did you have?

25 A: A '93 Peterbilt.

1 Q: Okay.

2 How long had you had it as of March 13th, '06?

3 A: How long have I had that?

4 Q: Yeah, how long had you had it as of March
5 13th, '06?

6 A: About three years.

7 Q: Were you familiar with the vehicle?

8 A: Yes.

9 Q: Any problems with the vehicle?

10 A: No.

11 Q: Okay.

12 And I guess you're pulling different tanker
13 trailers everyday?

14 A: Yeah, they're approximate -- they're about
15 40 feet long or so, so it's about sixty feet altogether;
16 yeah. About -- all the trailers are about the same.

17 Q: Okay.

18 And were you familiar with the trailer you were
19 hauling that day?

20 A: Yes, sir.

21 Q: Okay.

22 And is it common that you find yourself on
23 Mattawoman Beantown Road on any given day?

24 A: I travel it everyday in the mornings and
25 the evenings; coming home, going up; going to work and

1 coming home in the evenings.

2 Q: Why do you travel Mattawoman Beantown Road?

3 A: It's a shorter way to go up 5 instead of
4 going through Waldorf; through town.

5 Q: Do you live somewhere in -- in the general
6 vicinity of the -- the -- where the accident occurred?

7 A: About 45 minutes south of there.

8 Q: Okay.

9 A: Or east.

10 Q: If you're -- if you're working up in
11 Baltimore and you're coming down from points north, do
12 you always use the Mattawoman Beantown Road?

13 A: That's correct.

14 Q: Okay.

15 And you --.

16 A: Unless it's a accident somewhere and I have
17 to go cross 210 or something and come straight through
18 Waldorf. That's the only time I don't.

19 Q: Okay. Okay.

20 Are you familiar with the layout of the roadway
21 down in that area?

22 A: Yes, sir.

23 Q: Okay.

24 And you've been here present. You've heard all
25 the testimony here today, right?

1 A: That's correct.

2 Q: Now, before you get to the area where the
3 lanes open and the turn lanes commence, how many lanes of
4 travel are there on Mattawoman -- Mattawoman Beantown
5 Road?

6 A: Well, you first get on Mattawoman Bean Road
7 -- it's actually two lanes but it's a third lane over to
8 -- to merge in at the railroad tracks; after the railroad
9 tracks.

10 Q: Okay.

11 A: It goes to two lanes.

12 Then at the end which it goes to four lanes
13 which is two turning lanes to the left.

14 Q: Okay.

15 A: And two straight going to the right.

16 Q: Okay.

17 Well, that two straight they're just the
18 through lanes, right?

19 A: That's correct.

20 Q: Okay.

21 They're not turn lanes to the right. They're -
22 -.

23 A: Well, one of them -- one of them are. When
24 you come up you don't have to merge to the left. If
25 you're in that -- if you're in -- there's two lanes;

1 right and a left. If you're in this left lane you do not
2 have to merge over. That -- that stays into a turning
3 lane.

4 Q: Okay.

5 A: You got one over -- further over.

6 Q: Okay.

7 Well, before we get there -- before you arrived
8 at the location where the accident took place you would
9 have gone over railroad tracks?

10 A: That's correct.

11 Q: Okay.

12 And prior to that how many lanes of travel were
13 there at that location?

14 A: That's -- that's two.

15 Q: Okay.

16 Do you have to stop at the railroad tracks?

17 A: Yes, I do.

18 Q: Even if there's no train coming?

19 A: Doesn't -- regardless I gotta stop.

20 Q: Why do you gotta stop?

21 A: Well, because I had Hazmat on the trailer.

22 If I had any -- Hazmat -- all Hazmat's gotta -- stop at
23 the railroad tracks.

24 Q: Go to -- come to a complete stop and then -

25 -?

1 A: That's correct. With your flashers on.

2 Q: Gotta put your flashers on then you gotta
3 proceed over the tracks in low gear, right?

4 A: That's correct.

5 Q: Okay.

6 Did you do that in this case?

7 A: Like I normally do.

8 MR. BRATT: Objection.

9 Q: Now -- now -- just so we're clear.

10 THE COURT: Overrule.

11 Q: Just -- just so we're clear do you have any
12 recollection of being involved in an accident on March
13 13th, 2006?

14 A: No, sir.

15 Q: Did you hear an accident occurring next to
16 you at any point in time on Mattawoman Beantown Road any
17 time in March of '06?

18 A: No, sir.

19 Q: Did you witness an accident occur where
20 somebody got rear-ended in the left left turn lane on
21 Mattawoman Beantown Road any time in March of '06?

22 A: No, sir.

23 Q: Okay.

24 In terms of your regular routine procedure when
25 you're approaching where the two lanes merge into four,

1 which of the two left turn lanes do you use as you
2 approach Leonardtown Road?

3 MR. BRATT: Objection.

4 THE COURT: Approach please.

5 (Counsel approaches the bench.)

6 THE COURT: Basis?

7 MR. BRATT: It's -- it's not relevant, Your
8 Honor. What he ordinarily does has no bearing because --
9 .

10 THE COURT: Yeah it is -- it's --.

11 MR. BRATT: He doesn't know what he did on this
12 particular day.

13 THE COURT: It's -- its habit. He
14 (unintelligible) prove it but he has to use the word
15 usually. You're making it sound like he's remembering
16 and --.

17 MR. BRATT: And -- and he's offering it to show
18 that he -- because that's what he ordinarily does he
19 would have acted (unintelligible) this time but --.

20 THE COURT: Well.

21 MR. BRATT: I -- he doesn't -- there has --
22 there's no relevance to this action because what he
23 ordinarily does doesn't matter unless it's what he did
24 this day.

25 THE COURT: You can --.

1 Do you wish to be heard on the Motion -- or the
2 objection?

3 MR. FORD: This is a fight between these two
4 dogs.

5 THE COURT: Yeah.

6 I think he can bring it in to show habit. Now
7 on cross you can say you don't remember anything that
8 happened on March the 13th. But I think he -- he can
9 show that this is how I normally do it but I don't
10 remember what happened.

11 MR. STEPHENSON: I'll -- I'll make that clear.

12 THE COURT: But make it clear.

13 MR. STEPHENSON: Right.

14 THE COURT: Because it sounded like he was
15 remembering.

16 MR. BRATT: Thank you, Your Honor.

17 (Counsel returns to trial tables.)

18 Q: Mr. Quade, I just want to make it clear to
19 you, when I'm asking you the next series of questions
20 about what you usually do at this location I just want to
21 clarify, you don't have any specific recollection as to
22 what you did or didn't do on March 16th -- March 13th,
23 1006, right?

24 A: That's correct.

25 Q: Okay.

1 You're -- I'm just asking questions about what
2 your normal habit is in conjunction with how you proceed,
3 okay? Does that -- are we clear?

4 A: Okay.

5 Q: Okay.

6 In terms of -- there's two left turn lanes,
7 right?

8 A: That's correct.

9 Q: Which of the two left turn lanes do you use
10 when you're turning onto Leonardtown Road?

11 A: The outside left lane.

12 Q: Okay.

13 A: The outside would be the right and be a
14 left.

15 Q: Okay.

16 So you got the right left hand and the left
17 left hand turn lane, right?

18 A: But you -- I cannot turn in the other lane
19 because I can't make the turn. I gotta be on the
20 outside.

21 Q: Okay.

22 As you approach the area where the two lanes
23 split up how do you get from the two lanes through --
24 well, let me ask you this. Which lane do you approach
25 the split in, in the through -- through lanes? Do you

1 approach it in the right through lane or the left through
2 lane?

3 A: The left cause I'm in the left lane.

4 Q: Okay.

5 As you were --.

6 A: I -- I merge into it.

7 Go ahead. I'm sorry.

8 Q: Okay.

9 As -- as you're approaching from the left
10 through lane how do you get from that point into the
11 right left hand turn lane?

12 A: I merge into it. I don't have to turn into
13 it. I'm already in that lane. It goes in the turning
14 lane. The other ones have to go all the way over to the
15 -- to the left to make the turn. There's two turning
16 lanes.

17 Q: Okay.

18 A: The one that I'm in I stay right there. I
19 don't have to go all the way over cause I can't turn from
20 that lane.

21 Q: Okay.

22 Let's assume theoretically that you wanted to
23 stay in the left through lane. Let's just assume you
24 weren't gonna make a turn on Leonardtown Road but you
25 were gonna stay in the through lane, okay?

1 MR. BRATT: Objection.

2 THE COURT: Overrule.

3 Continue.

4 Q: You understand my question. I -- you
5 understand my hypothetical -- let's assume you were gonna
6 stay in the through lane, okay, hypothetically speaking.

7 A: Okay.

8 Q: In order for you to remain in that left
9 through lane, you're not going in the turn lanes, you're
10 staying in the left through lane, what would you have --
11 which direction would you have to steer the tanker
12 trailer to remain in the left through lane?

13 A: I'd have to go straight.

14 I'd have to go straight into St. Charles.

15 Q: Okay.

16 But would you have to?

17 A: It's not a turning lane.

18 Q: Would you have to maneuver your tractor
19 trailer if you wanted to stay in that through lane?
20 Would you have to maneuver it to the right or could you
21 just keep going straight?

22 A: Just keep going straight.

23 Q: Okay.

24 And in terms of getting into the left turn lane
25 do you just keep going straight into that?

1 A: That's correct because that lane merges
2 into that lane.

3 Q: Okay.

4 I'm gonna show you what we've marked for
5 identification purposes as Defendant's Exhibits N, O, H,
6 and G.

7 I'm gonna ask you to review those documents;
8 Exhibits N, O, H, and G. Take your time. Have a look at
9 those.

10 (Photographs were previously
11 marked as Defendant Exhibits N,
12 O, H, and G for identification.)

13 A: That's how you turn right there; those two
14 turning lanes on the outside lane there.

15 Q: Okay.

16 Well, have a look at all the exhibits.

17 Can you explain what those exhibits depict?

18 A: Now what was the question again?

19 Q: Yeah, and what do those exhibits depict?
20 What do they show in terms of your --?

21 A: They show I'm -- I'm in the -- making a
22 left turn.

23 Q: Okay.

24 A: It's -- it's the turning lane.

25 Q: Do -- does the placement of the vehicles on

1 those exhibits, does that fairly and accurately depict
2 how you usually merge from the two lanes into the left
3 turn lane?

4 A: That's correct.

5 Q: That's how you do it?

6 A: That's correct.

7 I don't have to -- I don't move -- move over
8 from one lane to the other.

9 Q: Okay.

10 A: I think all of them's the same.

11 Q: You can give me those.

12 At this time, Your Honor, we'd offer into
13 evidence Defendant's G N, O and H.

14 MR. BRATT: No objection, Your Honor.

15 THE COURT: Be received.

16 Q: Showing you the Plaintiff's Exhibit Number
17 2, is that representative of how you would normally
18 proceed down Mattawoman Beantown if you were heading to
19 make a left turn onto Leonardtown Road?

20 A: No, that would have been a -- I'd have to
21 be over here. I wouldn't be over there.

22 Q: Okay.

23 A: This mark -- this goes straight out to the
24 turning lane. You don't have to move from here to here.

25 Q: Okay.

1 A: I wouldn't have no business being over in
2 the right lane. I travel it everyday so I wouldn't be
3 over there.

4 Q: Okay.

5 You -- you said you wouldn't have any business
6 being over at --?

7 A: That is correct unless I'm going into St.
8 Charles.

9 Q: Okay.

10 A: I wouldn't be going into St. Charles.
11 That's a -- parkway or whatever. (Unintelligible, 2-3
12 words.)

13 Q: Right.

14 But if you were going into St. Charles you
15 wouldn't ultimately be making a left turn onto
16 Leonardtown Road.

17 A: That is correct.

18 Q: Right.

19 Okay.

20 I have no further questions.

21 THE COURT: Cross.

22 CROSS EXAMINATION

23 BY MR. BRATT:

24 Q: Mr. Quade, you talked a little bit about
25 what your ordinary practice is when you go down this

1 roadway. Isn't it true that, as you sit here today, you
2 can't tell this jury that you did that day what you just
3 said you ordinarily do, can you?

4 A: What do you mean? That's -- I do that
5 everyday.

6 Q: But you can't say whether you did that or
7 not on March 13th, 2006 can you?

8 A: Yeah, yeah -- yep, cause that's the way I -
9 - I approach that intersection in that lane.

10 Q: So, correct me if I'm wrong. I thought you
11 testified that you have no independent recoll --
12 recollection of what happened on March 13th, 2006.

13 A: I don't. I don't.

14 Q: And you don't have any re -- recollection
15 of their being an accident that day?

16 A: I don't.

17 Q: And you don't have any recollection of
18 seeing Mr. Ervin's vehicle that day?

19 A: No, I had no idea about this accident. I
20 didn't find out this accident till I don't know when. I
21 mean it was -- you know -- the suit case came up.

22 Q: So -- so do you recall what the movements
23 of your truck were on March 13th, 2006?

24 A: Where would -- I don't have no -- I have no
25 idea. What -- what are you -- this is where I make my

1 turn to go home. That's -- if that's correct.

2 Q: But you -- you can't tell us if you did
3 that on this day though, can you?

4 MR. STEPHENSON: Asked and answered, Your
5 Honor.

6 THE COURT: Well, can you answer that, sir?

7 A: It's the way I turn to go home.

8 THE COURT: Okay.

9 Q: Thank you, Your Honor.

10 THE COURT: Any other cross?

11 Q: No questions.

12 THE COURT: Re-direct?

13 MR. STEPHENSON: No, thank you, Your Honor.

14 THE COURT: Thank you, sir. You may step down.

15 THE COURT: Rebuttal?

16 MR. BRATT: None, Your Honor.

17 THE COURT: Okay, Counsel approach.

18 (Counsel approaches the bench.)

19 Motions?

20 MR. FORD: On behalf of the Defendant, Your
21 Honor, I would again move for -- judgment and I would
22 adopt the argument that I made at the close of the
23 Plaintiff's case.

24 THE COURT: Response.

25 MR. BRATT: I -- I'd make the same response,

1 Your Honor.

2 THE COURT: Are you gonna have a Motion Mr.
3 Stephenson?

4 MR. STEPHENSON: I -- I'm gonna let this go to
5 the jury, Your Honor.

6 THE COURT: Well, as I said before I'm glad I'm
7 not the tryer of fact cause this really is gonna hang on
8 credibility in my opinion. And I think Mr. Ford you're
9 close but you're -- can't do it. Can't pull the switch
10 because of the inferences.

11 So, I think the Verdict Sheet should be done
12 and what I do is I give them several written instructions
13 which are duplicative, oral ones like what negligence is,
14 preponderance, clocation and probably contributory will
15 be the ones we have here.

16 Any objection to that procedure?

17 MR. BRATT: No, Your Honor.

18 MR. STEPHENSON: No.

19 THE COURT: Motion is denied.

20 MR. BRATT: I have one request.

21 THE COURT: What?

22 MR. BRATT: If -- if we could have a brief
23 recess before we close.

24 THE COURT: We're going to get a recess; yeah.

25 MR. BRATT: Thank you.

1 (Counsel returns to trial tables.)

2 THE COURT: Okay members of the jury. That
3 concludes the evidentiary portion of the trial. We're
4 gonna take a break of about 15 minutes so I can get
5 together the jury instructions and the Verdict Sheet.

6 So Mr. Swann please show them out.

7 (Jurors are excused at 1:59 p.m.)

8 Okay.

9 THE CLERK: All rise.

10 (Court recesses at 1:59 p.m.)

11 (Court is in session at 2:26 p.m.)

12 THE COURT: Please be seated.

13 Who's our alternate? What number is that?

14 THE CLERK: I'm sorry, Your Honor.

15 THE COURT: The alternate number?

16 THE CLERK: Alternate; Number 30.

17 THE COURT: All right.

18 Thank you.

19 Anything before we bring the jury in?

20 Nope.

21 Let's bring them in.

22 (The jurors return to the courtroom at 2:26
23 p.m.)

24 Okay, let the record reflect the jury has
25 returned.

1 Members of the jury on each of your chairs are
2 two packets. One is your individual Verdict Sheet. I'd
3 ask the Foreman not make any stray markings on hers
4 because that will be provided to the Clerk after you've
5 reached a verdict.

6 Additionally, there -- there's another packet
7 of I think four pages. Those are written instructions.
8 They're duplicate of my oral instructions. I'm merely
9 giving those to you in written form to cut down on your
10 note taking.

11 COURT'S INSTRUCTIONS

12 Now the time has come for the Court to give you
13 its instructions with respect to the law which is
14 applicable in this case.

15 You must apply the law as I explain it to you.
16 Any comments I may make about the facts are only to help
17 you and you are not required to agree with them. It is
18 your function and responsibility to decide the facts.
19 You must base your finding only upon the testimony,
20 exhibits received, and the stipulations of the party
21 including any conclusions which may be fairly drawn from
22 that -- that evidence.

23 Opening statements and arguments of the
24 attorneys are not evidence in this case. If your memory
25 of the testimony, of any of the testimony, is different

1 from any statement that I may make during the course of
2 these instructions or that Counsel may make in argument
3 you must rely on your own memory.

4 During the course of trial it's been my duty to
5 rule on a number of questions of law such as objections
6 to the admissibility of evidence, the form of questions
7 and other legal points. You should not draw any
8 conclusions from these rulings either as to the merits of
9 the case or as to my views regarding any witness, party,
10 or the case itself.

11 It is the duty of an attorney to make
12 objections which that attorney believes are proper. You
13 should not be influenced by the fact that these
14 objections were made no matter how I ruled upon them.

15 You must disregard any evidence which I have
16 order -- ordered stricken. You must consider and decide
17 this case fairly and impartially. All persons including
18 corporations stand equal before the law and are entitled
19 to the same treatment under the law.

20 You should not be prejudice for or against the
21 person because of that person's race, color, religion,
22 political or social views, wealth or poverty. You should
23 not even consider such matters. The same is true as to
24 prejudice for or against and sympathy for any party.

25 You should not draw -- or you should conclude

1 from any conduct or (unintelligible) of mine that I favor
2 one party or another or that I believe or disbelieve the
3 testimony of any witness. You, not I, are the sole
4 judges of believability of witnesses and the weight of
5 the evidence. You must not be influenced in any way by
6 my conduct during the course of the trial.

7 Now the party who asserts a claim or
8 affirmative defense has the burden of proving it by what
9 we call the preponderance of the evidence. In order to
10 prove something by preponderance of the evidence a party
11 must prove that it is more likely so than not so. In
12 other words, a preponderance of the evidence means such
13 evidence which when considered and compared with the
14 evidence opposed to it has more convincing force and
15 produces in your minds a belief that it is more likely
16 true than not true.

17 In determining whether a party has met the
18 burden of proof you should consider the quality of all
19 the evidence regardless of who called the witness or
20 introduced the exhibit and regardless of the number of
21 witnesses which one party or the other may have produced.

22 If you believe that the evidence is evenly
23 balanced on an issue then your finding on that issue must
24 be against the party who has the burden of proving it.

25 Now, if you look on your Verdict Sheet you'll

1 count Sections 1 and 2. Those concern the allegations by
2 the Platen that one or both -- of the Defendants were
3 negligent. That burden is on the Plaintiff to prove.

4 On Question 3 which deals with contributory
5 negligence, each of the Defendants is saying well, if we
6 were negligent so was the Plaintiff. The burden of
7 proving contributory negligence will be on the Defense.

8 Now any person who testifies including the
9 party is a witness. You're the sole judges of whether
10 testimony should be believed. In making this decision
11 you may apply your own common sense in everyday
12 experiences. In determining whether a witness should be
13 believed you should carefully judge all the testimony and
14 evidence and the circumstances under which each witness
15 has testified.

16 Among the factors you should consider the
17 following. The witness's behavior on the stand and way
18 of testifying. The witness's opportunity to see or hear
19 the things about which testimony was given. The accuracy
20 of the witness's memory. Did the witness have a motive
21 not to tell the truth? Does the witness have an interest
22 in the outcome of the case? Was the witness's testimony
23 consistent? Was the witness's testimony supported or
24 contradicted by other evidence. And whether and the
25 extent to which the witnesses testimony in the courtroom

1 differed from statements made by the witness on any
2 previous occasion.

3 You need not believe any witness even though
4 the testimony is uncontradicted. You may believe all,
5 part or none of the testimony of any witness.

6 Now, negligence is doing something that a
7 person using reasonable care would not do or not doing
8 something that a person using reasonable care would do.

9 Reasonable care means that caution, attention
10 or skill a reasonable person would use under similar
11 circumstances.

12 In order for the Plaintiff to recover damages
13 the Defendant's negligent must be a cause of the
14 Plaintiff's injury. There may be more than one cause of
15 an injury. That is several negligent acts may work
16 together. Each person whose negligent act is the cause
17 of an injury is responsible.

18 The driver of a motor vehicle must use
19 reasonable care. Reasonable care is that degree of
20 caution and attention which a person of ordinary skill
21 and judgment would use under similar circumstances. What
22 constitutes reasonable care depends on the circumstances
23 of a particular case.

24 A reasonable person changes conduct according
25 to the circumstances and the danger that is known or

1 would be appreciated by a reasonable person. Therefore,
2 if the foreseeable danger increases a reasonable acts
3 more carefully.

4 When the driver of a motor vehicle is faced
5 with a sudden and real emergency which was not created by
6 the driver's own conduct, the driver must exercise
7 reasonable care for his or her own safety and for the
8 safety of others.

9 The reasonableness of the driver's actions must
10 be measured by the standard of the acts of other drivers
11 of ordinary skill and judgment faced with the same
12 situation. A driver is not required to use the same
13 coolness or accuracy of judgment which is required of a
14 person who has an ample opportunity fully to exercise
15 judgment.

16 Now, the violation of the statute which is a
17 cause of the Plaintiff's injuries is evidence of
18 negligent. In this respect I've taken judicial notice of
19 certain sections of the Transportation Article of the
20 Annotated Code of Maryland.

21 The first is 21-303(B); the driver of a vehicle
22 overtaking another vehicle that is going in the same
23 direction shall pass to the left of the overtaking
24 vehicle at a safe distance.

25 Next is Section 21-309(A) (B), on any roadway

1 that is divided into two or more clearly marked lanes for
2 vehicular traffic, the following rules in addition to any
3 others consistent with them apply. A vehicle shall be
4 driven as nearly as practical entirely within a single
5 lane. It may not be moved from that lane or moved from a
6 shoulder or bikeway into a lane until the driver has
7 determined that it is safe to do so.

8 And Section 6 or 21604(C); a person may not if
9 another vehicle might be affected by the movement, turn a
10 vehicle until it gives an appropriate signal in the
11 manner required by the subtitle.

12 And Section 21-801(A) (B); a person may not move
13 a vehicle on a highway at a speed that with regard to the
14 actual and potential dangers existing is more than that
15 which is reasonable and prudent under the conditions. At
16 all times the driver of a vehicle on a highway shall
17 control the speed of the vehicle as necessary to avoid
18 colliding with any person or any vehicle or any other
19 conveyance that in compliance with legal requirements and
20 the duty of all persons to use due care is on or entering
21 the highway.

22 And then we have Section B of the -- okay, this
23 is 21-801.1(A) (B)4; unless there is a special danger that
24 requires a lower speed to comply with Section 21-801 of
25 the subtitle. The limit specified in this section or

1 otherwise established under the subtitle are maximum
2 speed limits. A person may not drive a vehicle on a
3 highway at a speed that exceeds these limits except as
4 otherwise provided in the section the maximum speed
5 limits are 50 miles and hour on undivided highways in
6 other locations.

7 Now a Plaintiff cannot recover if the
8 Plaintiff's negligence is a cause of the injury. The
9 Plaintiff has the burden of proving by preponderance of
10 the evidence that the Plaintiff's negligent was the cause
11 of the Plaintiff's injury.

12 An employer or a principle is responsible for
13 injuries or damages caused to others by acts of employees
14 or agents if the acts causing the injuries or damages
15 were within the scope of employment. The Defendant's are
16 -- the Defendant's suit as employer to employee.

17 Now in this case we have the Defendant who is
18 Mr. -- Danny Quade but he's technically not a Defendant.
19 But it has been stipulated that he was an employee of
20 Baltimore Tank Lines at the time of the alleged
21 collision. So the employer is responsible if you find
22 that Mr. Quade was negligent and his negligence was the
23 cause of the injury.

24 In this case it will be your duty to return
25 your verdict in the form of written questions to the

1 written -- or written answers to the written questions
2 which are submitted to you by the Court. Your answers
3 will constitute your verdict. Each answer is to be
4 written in the space provided after each question.

5 Before making each answer all of you must agree
6 upon it. In other words your verdict must be unanimous.
7 It is your duty to answer each of these questions in
8 accordance with the evidence in this case.

9 Counsel approach please.

10 (Counsel approaches the bench.)

11 Is the Plaintiff satisfied?

12 MR. BRATT: No, Your Honor. I have one issue.

13 THE COURT: What?

14 MR. BRATT: I -- I think the Court mixed the
15 words up on the contrib instruction. I think what Your
16 Honor said was the Plaintiff has the burden to -- to
17 prove whether the Plaintiff's negligence was a cause of
18 the injury.

19 THE COURT: Didn't I say the Defendant?

20 MR. BRATT: No.

21 THE COURT: Okay, I've given that one to them
22 in writing but I'll correct it again.

23 MR. BRATT: Thank you, Your Honor.

24 THE COURT: I'm sorry about that.

25 MR. FORD: Nothing.

1 THE COURT: Defense.

2 MR. STEPHENSON: (Inaudible.)

3 (Counsel returns to trial tables.)

4 Okay, members of the jury, when I gave you the
5 instruction on contributory negligence which is also
6 covered in the written instructions, it's the Defendant
7 has the burden of proving by preponderance of the
8 evidence that the Plaintiff's negligent was the cause of
9 an injury.

10 If I said it was the Plaintiff's burden I
11 apologize.

12 Now, at the end of all argument I'll have some
13 housekeeping instructions for the jury.

14 Please proceed.

15 MR. BRATT: Thank you, Your Honor.

16 CLOSING ARGUMENTS

17 BY MR. BRATT:

18 Good afternoon.

19 You can make an accident sound pretty
20 complicated if you try really hard, right? I don't
21 really think this is one of those situations. I don't
22 think this is a complicated accident. I don't think that
23 you should think this was a complicated accident.

24 You've heard exactly one version of how this
25 accident happened today. The only person who said

1 anything about how it happened is the Plaintiff, Mr.
2 Ervin. Why? Because Ms. Young testified that before
3 this collision between her vehicle and the Plaintiff's
4 she never saw his vehicle and she never saw the truck.

5 And the driver of the only Baltimore Tank Lines
6 vehicle in that area says that he has absolutely no
7 memory at all of what he did that day. Now he spent some
8 time trying to tell you all what he normally does and
9 from that they'd like you to decide that on this
10 particular he did what he ordinarily does even though he
11 wasn't even able to tell -- tell you that himself, okay.

12 There are a lot of things everybody agrees
13 about about this accident. Everybody agrees that this is
14 how Mattawoman Beantown Road is laid out. Everybody
15 agrees that it goes from two lanes to four, okay.

16 Now, what you've heard is the Court instruction
17 about how we make these kind of decisions and basically
18 the standard is what's the preponderance of the evidence;
19 what is more likely to have happened than not likely to
20 have happened, okay.

21 And Mr. Ervin has the burden to show that one
22 or both of these Defendant's was negligent; Baltimore
23 Tank Lines and Ms. Young.

24 Now, what do we know about Baltimore Tank
25 Lines. We know that they admit that Mr. Quade was their

1 employee at the time this accident happened. They admit
2 that he was acting within the scope of his employment
3 with them on this particular day. And they admit that he
4 was the only driver that they had that was in the
5 vicinity of this intersection and this accident at the
6 time of this accident; around 12:00.

7 And what's Mr. Quade tell you? That yes, he
8 could have been in this area because he goes through
9 there all the time. He lives right by there. That's how
10 he goes home. He can tell you that he usually comes
11 through this intersection but he can't tell you if that's
12 what he did on March 13th, 2006.

13 He can't tell you if he went straight on March,
14 2000 -- March 13th. He can't tell you if he used a turn
15 signal on March 13th. He can't tell you whether Ted
16 Ervin's car was there on March 13th. He can't tell you
17 if Ms. Young's car was there on March 13th.

18 Mr. Quade has nothing to say about how this
19 accident happened other than what he normally does which
20 he can't say happened in -- on this day.

21 And the reason I'm talking about that is is you
22 just heard the instructions that the Court gave. The
23 Judge talked about witness testimony and how do ya -- how
24 do you evaluate that. And the instructions the Court
25 gave don't tell you what to decide but they give you some

1 guidelines for making those kind of decision.

2 And what I want you to think is who had an
3 opportunity to observe how the accident happened. Mr.
4 Ervin did.

5 Did Mr. Quade observe how the accident
6 happened? No. Did Ms. Young observe how it happened?
7 No. She doesn't know anything that happened before there
8 was a car in her lane.

9 Now, let me look at my notes because as much as
10 I'd love to be able to remember all this stuff
11 (unintelligible) I can't quite do it.

12 Now, what Mr. Ervin told you he did is that he
13 started out here at some point behind this BTL truck.
14 That as he traveled down the road at a constant speed of
15 about 35 miles and hour, these two through lanes kept
16 going through and then as you can see on the diagram, the
17 two left turn lanes came into pos -- into existence.

18 Mr. Ervin said that he -- started out in this
19 lane. That as soon as he was able to merge over into the
20 turn lane he did so. And that he was in the outermost of
21 the two turn lanes, our clunky dialog for them is the
22 left turn left -- left left turn lane and the right left
23 turn lane.

24 He had to be in the right left turn lane
25 because after he goes through this intersection, he makes

1 this left turn and then less than a quarter mile he has
2 to make a right turn to get into where he lived.

3 Now, he testified that he had to work the day
4 of this accident but that he had to be at work at 2:00.
5 Accident happened at 2:00 in the afternoon and he was
6 only about a quarter mile from his house so Mr. Ervin had
7 no reason to be in a hurry. He had no reason to try to
8 pass this vehicle because no matter what he did he was
9 gonna be home in five minutes. Either way all he had to
10 do was make it to the light, turn left and then turn
11 right right away.

12 He wasn't trying to pass the vehicle. Nobody's
13 testified that he was. When you have these kinds of
14 questions what you need to do is, is you need to decide
15 if Mr. Ervin has shown you more likely than not that a
16 Baltimore Tank Lines vehicle came into his lane and
17 caused the accident.

18 Now, you're gonna also have to look at --
19 excuse me, when Mr. Ervin was cross examined he got asked
20 a lot of questions about distances and exactly where he
21 was and you saw the manner in which he answered those
22 questions. He was straight forward. Mr. Ervin wasn't
23 trying to say that his testimony at Deposition was
24 anything other than what it was. Or that he really
25 changed what he testified about.

1 All he said was is that he had to estimate the
2 distances because he's not an engineer and he didn't have
3 access to the exact measurements. But that when he did
4 have a chance to look at the diagrams that were produced,
5 he did the best he could to illustrate for you what
6 happened.

7 Now, Mr. Ervin never told you that everything
8 he has shown you on this diagram is exact to the foot and
9 inch. But what he did do is, is he did use the diagram
10 to show you what happened. And just like he testified,
11 what he has here is he's got his vehicle, the Honda, and
12 it's in -- established in his turn lane. He's already
13 driving in that lane when the tractor trailer comes over
14 into his lane.

15 Now, he said his brother worked for Baltimore
16 Tank Lines so he knew what their trucks looked like. And
17 more importantly, he knew that Baltimore Tank Lines hauls
18 oil. Everybody knows that oil is dangerous. Everybody
19 knows that a tractor trailer with an oil tanker on it is
20 dangerous because in addition to the regular danger that
21 you would have from any kind of a collision with a big
22 vehicle like a tractor trailer, you've also got the added
23 fire or explosion danger if that tanker had something in
24 it.

25 And what Mr. Ervin said he did is he did, and

1 again we're back to the instructions that the Judge gave,
2 he did what a reasonable person would have done. He was
3 traveling at a constant speed in his turn lane when a
4 very large vehicle that he thought was full of a
5 flammable liquid came over. He did what a reasonable
6 person would do which is he went in the opposite
7 direction of that oil tanker as quickly as he could.

8 Be -- because he knew that it presented an
9 immediate danger to him. And he testified that he didn't
10 have time to see what was in the other lane because of
11 the danger. And what the Judge told you about evaluating
12 whether somebody was reasonable or not is, is that you
13 have to look at the reasonableness of what they did in
14 light of the situation that they were in.

15 And Mr. Ervin was in a situation where a large,
16 dangerous vehicle came into his lane and he had to decide
17 the best thing to do right away (fingers snapping) like
18 that. He didn't have time to sit and think about it so
19 he did what a reasonable person would do. He steered to
20 the left in the opposite direction as quickly as he
21 could.

22 Now, it turns out that there was another
23 vehicle in that lane. Ms. Young is in the unfortunate
24 position of being a party to this case because she
25 happened to be in one of -- driving one of the cars that

1 was involved in this accident. You're gonna have to
2 determine whether there's something she could have done
3 to have avoided the accident. I -- I -- I can't guide
4 you on that. You're gonna have to make that decision
5 based on looking at her testimony.

6 And again, Ms. Young doesn't tell us anything
7 about how the accident happened but she does tell us a
8 few things that are important.

9 Mr. Young, the main thing that he -- Mr. Ervin,
10 the main thing that he told you was this truck came over
11 into his lane all of a sudden and he -- he had to get
12 away from it.

13 Now, you can see that the distance where his
14 truck is along the side of this tractor trailer, it -- it
15 looks like a different position here than it does there.
16 Again, he testified that he didn't measure it out; he
17 gave his best estimate.

18 But what he -- what he is sure about is, is
19 that he was somewhere in the middle of this tractor
20 trailer whether it's closer to the front of it or closer
21 to the back of it, but either way his car was next to
22 this tanker as it came over into his lane.

23 And he testified to you that the first thing he
24 said to Ms. Young when he talked to her at the scene was
25 did you see the truck that just cut me off. And when I

1 talked to Ms. Young the main thing that I really wanted
2 to get across to you folks is that she backed up what Mr.
3 Ervin said. I asked her flat out, you know, isn't it
4 true that the first thing he said to you was did you see
5 the tractor trailer that cut me off. And she admitted
6 that that is exactly what he had said. Mr. Ervin said
7 the same thing to the police when they showed up; a
8 tractor trailer cut me off.

9 Now, what's more likely than not. I think Mr.
10 Ervin's version is more likely than not. He's a
11 gentleman who's on his way home to get ready for work,
12 something comes into his lane. He immediately goes in
13 the opposite direction and then right at the scene the
14 first thing that he says to the only other person that
15 was right there and that stopped is, did you see that
16 truck.

17 You know, he didn't sit and think of how the
18 accident happened. He didn't sit there for 20 minutes
19 and try to come up with a reason. He said exactly what
20 had just happened to him moments before. You know, it's
21 the one thing that Ms. Young clearly remembers about this
22 accident is, is that Mr. Ervin said that immediately
23 afterwards.

24 Now, Mr. Quade, he can't tell you for sure
25 what, if anything, he did or what Mr. Ervin or Ms. Young

1 did. He has nothing to say about this accident other
2 than he hopes you'll believe that he didn't do anything.
3 But he hasn't offered any proof of it.

4 And the only proof as to what the actions of
5 this trailer was are Mr. Ervin's story of how it happened
6 and the comment that he made right afterwards to somebody
7 who's also a Defendant in the case. Ms. Young doesn't
8 have any reason to say that that's what Mr. Ervin said
9 unless he said it. She has nothing to gain by supporting
10 his version of the events in that respect.

11 So I -- I would submit to you that what she
12 said that he said to her is very, very reliable because
13 she has no reason to make it up. It happened right after
14 the accident. She was very clear that that's what Mr.
15 Ervin said.

16 And again there's been some discussion about
17 what you actually have to do physically with your vehicle
18 as you go through here. Mr. -- Mr. Quade's trying to say
19 that you can just continue with -- from here -- that you
20 just continue with your vehicle in a straight line and
21 that as long as you don't do anything, you somehow will
22 end up in this lane.

23 But I think the diagram that everybody has
24 agreed is an accurate representation of the road doesn't
25 support that. As you can see -- you know, if you -- if

1 you're gonna -- if you're gonna get into one of these
2 turn lanes you've gotta cross that dividing line. You've
3 gotta go from a through lane into a turn lane. And the
4 instructions the Court just gave you say that when you
5 have to do that you can (unintelligible) change lanes
6 here when it's safe to do so. You gotta make sure it's
7 safe to do so before you do it.

8 And what's more likely than not that happened
9 in this accident is that the driver of the Baltimore Tank
10 Lines vehicle didn't exercise due care. How we know they
11 didn't exercise due care is because the driver didn't
12 make sure that that turn lane was clear of vehicles
13 before he got into it.

14 And Mr. Ervin testified that as soon as he was
15 able he got into this clear lane and continued on. And
16 that had that vehicle not come over into his lane he
17 would have gone up to the light, made his turn and gone
18 home.

19 And that's the long and the short of what
20 happened here. I think that it's common knowledge that
21 nobody has exact recall of anything particularly
22 something that happened two years ago.

23 But what's material, what's important, the
24 important parts all make sense because if a tractor
25 trailer didn't come into Mr. Ervin's lane why would he

1 jump over into the next lane. He'd have no reason to do
2 that and if he was gonna get into that lane he would be
3 in the wrong place because he has to make a right after
4 he makes this turn.

5 So Mr. Ervin's got no reason to ever be in this
6 left-most lane unless something forces him into it which
7 would be the truck that Ms. Young didn't see before the
8 accident but when Mr. Ervin pointed it out to her at the
9 light she saw it and she admitted that too.

10 So, we know that a Baltimore Tank Lines vehicle
11 was there. We know that it came into Mr. Ervin's lane
12 and we know that that caused the accident. I'd submit to
13 you that that's what more likely than not and I'd ask you
14 when you fill out that Verdict Sheet what it should say,
15 it should say that Baltimore Tank Lines was negligent and
16 that Baltimore Tank Lines negligence was a -- a cause of
17 this accident.

18 And conversely, it should say that Mr. Ervin
19 was not negligent. Why? Because like you heard the
20 Judge instruct you right at the end, the burden's change.
21 The person that's asserting a claim or defense has the
22 burden of establishing it beyond -- within the -- with --
23 by the preponderance of the evidence.

24 In terms of his claim of negligence against
25 Baltimore Tank Lines or Ms. Young, Mr. Ervin has the

1 burden to show that that's more likely than not if the
2 accident happened the way he says it did.

3 If any of the Defendant's want to argue that
4 Mr. Ervin was contributorily negligent, that burden
5 shifts to them. They have to show you by preponderance
6 of the evidence that he was contributorily negligent.
7 And I submit to you that they can't do that because
8 nobody saw what happened except for Mr. Ervin. And in
9 the absence of any direct evidence that he was negligent
10 you should find that he wasn't.

11 So I'm gonna ask you to render a verdict that
12 Baltimore Tank Lines was negligent and that their
13 negligence was a cause of the accident. And I'm gonna
14 ask you to render a verdict that Mr. Ervin was not
15 negligent.

16 And I'm gonna let you decide whether Cindy
17 Young was negligent because it's a close call. You'll
18 have to -- looking at the circumstances, decide whether
19 there was enough time for Ms. Young to decide to do
20 something else. If there was time for her to do
21 something else then maybe she was negligent. If there
22 wasn't time then maybe she's not. But you'll have to
23 make the decision.

24 But what the evidence does show is that
25 Baltimore Tank Lines vehicle caused this accident and

1 there's nothing that contradicts it.

2 Thank you ladies and gentlemen.

3 THE COURT: Mr. Ford.

4 MR. FORD: Thank you, Your Honor.

5 Madame Forelady and ladies and gentlemen, I'm
6 just gonna take a -- a very brief time. You've heard
7 lawyers say this I'm sure but I will be brief.

8 There are two pages on your Verdict Sheet and I
9 respectfully suggest to you that the very first question
10 has to do with my client, Cindy Young, and that your
11 answer should be a quick no. She was not negligent. She
12 did not cause this accident.

13 Let me take a moment to tell you that what you
14 just heard from Plaintiff's Counsel is interesting
15 because he is saying that Baltimore Tank Lines through
16 its operator should be responsible for this accident for
17 two reasons. One, the operator of that truck abruptly
18 changed lanes right in front of Mr. Ervin without a
19 signal and caused an accident.

20 It's interesting to note that that same
21 scenario that he describes as being the basis for his
22 claim against Baltimore Tank Lines is exactly what Mr.
23 Ervin's did so far as my client is concerned.

24 He abruptly changed lanes right into her path
25 without a signal, without applying his brakes, without a

1 horn. Why? I can't answer the why. Mr. Ervin's has
2 given you an explanation as to why he did it but the fact
3 is he did it. Was he forced over? I can't answer that
4 question. That is his contention. My client did not see
5 the tanker truck. She can't tell you whether he was
6 forced over or why he went over.

7 But the fact remains that Mr. Ervin came
8 directly into the path of my client's car and as he said
9 within a split second was hit. There is no proof that my
10 client did anything wrong.

11 She's driving home from the doctor's visit with
12 her six year old child when all of a sudden for whatever
13 reason Mr. Ervin comes into her lane. There is nothing
14 she could do.

15 Plaintiff's Counsel suggested to you that maybe
16 you could conclude that there was something else she
17 could have done to avoid this accident. And I suggest to
18 you would the right thing for her to do to veer over into
19 what would be the opposite lane of traffic as Mr. Ervin's
20 veered into her lane?

21 I respectfully suggest to you that would not be
22 the right thing to do. Ms. Young tried to get stopped
23 but couldn't through no fault of her own.

24 Whatever you decide as to why Mr. Ervin's came
25 over into that lane whether it was because he was forced

1 over as he said or for some other reason, I suggest to
2 you that has nothing to do with my client. The fact is
3 he came right into the path of her car. She should be
4 held not negligent and I respectfully ask that you answer
5 no.

6 Thank you.

7 MR. STEPHENSON: May I please the Court, Your
8 Honor.

9 THE COURT: Proceed.

10 MR. STEPHENSON: Ladies and gentlemen of the
11 jury, there are certain exhibits that have been admit --
12 admitted into evidence and I'm holding them here --
13 Defendant's Exhibits have been marked BTL in various
14 letters and you'll be having the opportunity to take
15 these back with you and to review these in conjunction
16 with your deliberations.

17 And these are all scaled engineering drawings
18 prepared by -- an engineer including scales drawings of
19 the vehicles and you'll note the scale is at the bottom
20 of -- of the pictures; I just want you to note that. And
21 you'll note the A, B, C, D, -- which are broken down. If
22 you look at the scale section you'll see the letters that
23 -- that you can interpret that. I just bring all that to
24 your attention.

25 And a lot of the pictures don't have any

1 pictures of trucks on them and then some of them do. And
2 these are the Exhibits G, N, O, and H. And these are the
3 Exhibits that Mr. Quade testified to that are
4 representative of his usual practice; how he travels down
5 Mattawoman Beantown Road and changes into the -- the turn
6 lane. That's what he testified to.

7 Now, in conjunction with the Plaintiff's case,
8 if you are to believe Mr. Ervin's version of events you
9 must accept and believe that Mr. Quade failed to do what
10 he does every single day.

11 You must accept that he did something different
12 than he usually does because if he did on the date of
13 this (unintelligible) what he did every single day
14 there's no way the Plaintiff, who was traveling behind
15 the tanker trailer, could have gotten around and he
16 (unintelligible) changed lanes into him as he described.
17 It couldn't have happened, it's physically impossible.

18 So you must accept for some reason or another
19 Mr. Quade just didn't do what he usually does.

20 You must also accept, if you are gonna accept
21 the Plaintiff's version of events, that Mr. Quade did
22 something which was totally counter intuitive. Instead
23 of just filtering straight into the left turn lane, the
24 right left turn lane, straight shot -- straight in there,
25 instead of doing that you'd have to accept that he said

1 nah, I'm gonna make life difficult for myself today. I'm
2 not gonna filter straight into that left turn lane. I'm
3 gonna stay on this side of the dividing line. I'm gonna
4 travel down here -- down here on the through lane, on the
5 left through lane, I'm not gonna bother filtering. I'm
6 just gonna change lanes somewhere down the line; make
7 life difficult for myself.

8 It's completely counter intuitive. Moreover,
9 he would have had to have steered to the right to avoid
10 the merge. The merge is just a straight shot. You come
11 straight down into it. It doesn't make any sense.

12 So I would -- would respectfully submit to you
13 that his testimony was very important and is very
14 significant in this case. It's his routine behavior.

15 Moreover, after that you have the testimony of
16 Ms. Young who testified -- I didn't pull it out of her.
17 It just came out of her when she said; you think I would
18 have seen the tanker truck. She volunteered that during
19 her testimony. It's exactly my point. You think she
20 would have seen.

21 I -- I just to make something very clear in
22 case I didn't make this clear in Opening Statement.
23 We're not pointing our finger at Ms. Young. We're not
24 pointing our finger at (unintelligible). I'm not
25 suggesting that she's done anything wrong in this case.

1 We're not suggesting that she's at fault in this case.
2 We're not adverse to her in this case. I'm not
3 suggesting that at all.

4 You heard her testify, you think I would have
5 seen the tanker trailer and yes you certainly would of.
6 Because the only way that Mr. Ervin could have gotten to
7 where he said he was when the tractor trailer began to
8 enter his lane is from the position of being behind him
9 as if he came up and came around the left side of the
10 tractor trailer. And that raised a very interesting
11 point in his testimony.

12 They presented this diagram here which everyone
13 else testified as completely inconsistent with their
14 normal -- approach here and not consistent with Ms.
15 Young's testimony. And now we find out it's not even
16 consistent with Mr. Ervin's testimony.

17 I asked him specifically, where were you in
18 conjunction with the tractor and tanker trailer when it
19 commenced to enter your lane. He said, at the rear
20 tandems. He never progressed any further forward than
21 the rear tandem wheels. He was behind it; he came up
22 around the inside of it. But he never got past the rear
23 tandems.

24 You see in this diagram he's placed himself
25 right up here beside the -- beside the drive axles of the

1 tractor. He admitted -- he testified to that today
2 completely inconsistent with his Deposition testimony.
3 This does not depict what he testified to at his
4 Deposition.

5 Moreover, he's got the tanker trailer going in
6 the right through lane. Why has he got that there going
7 in the right through lane? I'll tell you why. Because
8 if he placed this properly in the lane it wouldn't make
9 sense. It would emphasize the fact that there's no room
10 and there shouldn't be room for any other vehicles to try
11 and overtake him on the left side of the tractor trailer
12 if they're originally traveling behind.

13 Ladies and gentlemen, you hear -- we've heard a
14 lot today about oh, the tractor's so dangerous, it's so
15 flammable, its danger -- don't want to touch the tanker
16 trailer.

17 Well, as a jury you'll draw on your common
18 experience. I'm gonna guess a couple of you on the jury
19 have probably traveled Mattawoman Beantown Road just a
20 few times in your life; you're familiar with this
21 location. You ask yourself, you're following behind a
22 tanker trailer full of flammable fluid.

23 You're coming down the through lanes behind it
24 and it's merging into a turn lane. Do you try and whip
25 around the left side of it and overtake it? Draw on your

1 common experience. It's completely inconsistent with
2 what makes sense for Mr. -- Quade to have done at the
3 time.

4 If you are inclined to find that Mr. Ervin's
5 version of events is more likely so than not,
6 (unintelligible) that they have the burden. That's it's
7 more -- if you say you know what, I just don't know who's
8 more likely than not. I'm kinda here. I'm kinda there.
9 He testified to this. He testified to that. I don't
10 know.

11 If that is the state the scales of justice are
12 evenly balanced and you have to find in favor of the
13 Defendants because that's mean they haven't met their
14 burden of proof.

15 But if they do meet their burden of proof and
16 you find, I'm gonna answer yes to Question 2 as to
17 Baltimore Tank Lines, he was negligent. Mr. Quade was
18 negligent and yes that he caused the accident, when you
19 get to Question 3 irrespective surely you are gonna find
20 at a minimum that Mr. Ervin was at least contributorily
21 negligent towards the collision. That's important.

22 The question is, "Was the negligence of
23 Theodore Ervin a cause of the collision between him and
24 Ms. Young on March 13th, 2006?" Not was his contributory
25 negligence a cause of the lane change or anything to do

1 with the tanker trailer, was his contributory negligence
2 a cause of the collision. And I would submit to you the
3 overwhelming weight of evidence clearly shows he was
4 contributorily negligent at a minimum.

5 He's only at the rear tandem wheels of the
6 tanker trailer. But he never chooses to hit the brakes;
7 hit the brakes, pull back. You're trying -- you -- you
8 come from a position behind him. You're trying to
9 overtake him on the -- on the inside, hit the brakes;
10 ease off. No, doesn't do that.

11 Instead what he does is he checks his mirror
12 which he admitted he did and he sees nothing in the left
13 lane. He makes a decision, a mistaken decision, to make
14 that lane change to the left. He missed Ms. Young. He
15 didn't see her. He made a mistake.

16 And not only did he change lanes to the left
17 but we've gotta account for this differential of speed.
18 Now, Ms. Young said she's going 35, 40 miles an hour. We
19 know that. We know Ms. Young applied her -- jammed on
20 her brakes as she testified and applied them prior to the
21 collision. So we know that she slowed down substantially
22 prior to the collision.

23 We've got Mr. Ervin testifying he's going 35.
24 40. Well now, I'm no advanced physicist but I understand
25 you need to have speed differential in order for a

1 collision to take place. In other words Mr. Ervin has to
2 have been going at a rate of speed slower than Ms. Young
3 in order for the collision to have occurred.

4 Well, if she's going 35, 40 and she's hit the
5 brakes and slowed down but a collision still occurs what
6 do you think happened? Mr. Ervin went in the left lane
7 and hit the brakes.

8 He testified there was no one in the left lane
9 ahead of him, the left turn lane. He could have
10 accelerated into the left turn lane. But instead -- you
11 know, when I asked him, you remember I asked him, what
12 happened when you went in the left lane. Did you
13 accelerate? Did you decelerate? Did you hit the brakes?
14 Don't know. Don't recall. Don't recall. That was his
15 testimony.

16 Well, we know a collision took place. We know
17 that she did everything she could to avoid that collision
18 and managed to jam the brakes on before it happened.
19 There must have been a substantial decrease in the rate
20 of speed from Mr. Ervin's vehicle. At a minimum you'll
21 find the answer to Question 3 was T -- Theodore Ervin
22 negligent on March 13th; yes.

23 Was his negligence (unintelligible) cause of
24 the collision? Yes, it was. Could have sounded his
25 horn; didn't do it. Could have engaged his left turn

1 indicator; didn't do it. That's all violations of
2 Statute; it's negligence.

3 I don't have a second opportunity to address
4 you. The Plaintiff will have a second opportunity. We
5 don't get to do a rebuttal that's cause it's their burden
6 of proof.

7 So I would just like to finish by thanking you
8 again for your time today and -- please bear in mind when
9 the Plaintiff's attorney gets back up to present his
10 rebuttal, view his rebuttal through the prism of
11 skepticism bearing in mind all the points that I've made.

12 Ask yourself, what point would Mr. Stephenson
13 point to in response to that.

14 Thank you for your time.

15 THE COURT: Rebuttal.

16 CLOSING STATEMENTS

17 BY MR. BRATT:

18 One thing I want to be clear about, you've
19 heard all of talk about burden of proof. And some
20 lawyers deal with it everyday but it's not something that
21 everybody else does.

22 And what I want to make sure you absolutely,
23 clearly understand about the burden of proof as it exists
24 in this case, is that it cuts both ways.

25 Mr. Ervin has to prove if one or both of these

1 Defendant's was negligent and if that negligence -- or --
2 and -- and if that negligence was a cause of this
3 collision.

4 What Mr. Ervin does not have to prove is that
5 he wasn't negligent. If you're gonna find that he's
6 contributorily negligent, the Defense has the burden of
7 proof of showing beyond -- I'm sorry -- that the Defense
8 has to show that it's more likely than not that my client
9 was negligent in what he did.

10 And you heard the Judge instruct you as to how
11 you evaluate Mr. Ervin's decision making process. You
12 can't evaluate Mr. Ervin's decision making process
13 through the lens that we have here today of six
14 uninvolved people who are Monday morning quarterbacking
15 what somebody did in a split second when faced with a --
16 an obvious and serious danger.

17 The instructions the Court gave are that you're
18 to evaluate Mr. Ervin's conduct in light of the immediate
19 and serious danger that was apparent to him that he was
20 trying to avoid.

21 This isn't a situation where Mr. Ervin had time
22 to look at the situation, stop for a few minutes, check
23 everything out and decide what to do. He had to react
24 because if he didn't he was gonna have a tractor trailer
25 hit him. A tractor trailer pulling a fuel tank.

1 What he did is what a reasonable person would
2 have done. He swerved away from it as quickly as
3 possible.

4 And he told you straight up; I didn't have time
5 to think about this. It was a split second decision;
6 split second (fingers snapping). Quick.

7 He didn't have time to think about the horn.
8 He didn't have time to tell you whether he used the brake
9 or not. And he didn't say he didn't use the brake. I
10 want to be very clear about that. What he said was he
11 couldn't remember if he used the brake or not.

12 Well, let's think about that. Look at the lens
13 we're viewing this through. A man who's faced with a
14 danger who's remembering what he did two years later. He
15 didn't tell you that he didn't hit the brake. What he
16 told is he didn't remember if he did or not. But that
17 what he was certain about was that he immediately swerved
18 to the left because to him at the time and light of what
19 he saw that was the most direct way to get away from that
20 danger.

21 Now, when you look at any evidence that Mr.
22 Ervin was negligent in light of the burden that the
23 Defense had, the Defense can't ask you to guess or
24 speculate that Mr. Ervin was negligent. There has to be
25 some affirmative evidence to show that he was. And there

1 isn't any.

2 Ms. Young can't say whether Mr. Ervin was
3 negligent or not because she never saw him until he
4 appeared right in front of her. Mr. Quade can't say if
5 Mr. Ervin was contributorily negligent or not because he
6 never saw him. He has no recollection of this day.

7 What -- what do you have? You've heard Counsel
8 making an argument about well, Mr. Ervin's placement of
9 his vehicle alongside of the tractor trailer isn't exact.
10 Well, okay, maybe it's not exact. And maybe it's a
11 little farther here than it is there. What is consistent
12 about it looking at that? What's consistent is that both
13 times he's shown where his car was next to a big tanker
14 trailer and that it came into his lane.

15 He can't tell you exactly to the foot how close
16 he was up or down the side of it. He told you that he
17 couldn't tell you the exact feet and distance of where he
18 was on the road but he told you what happened in the
19 accident.

20 And so far out of everything you've heard
21 today, he's the only person that's told you what happened
22 in the accident. He's the only person.

23 Let's look about what's more likely than not,
24 okay. What Baltimore Tank Lines wants you to believe is
25 that this driver did what he said he ordinarily does.

1 Well, everything that happened for this accident to have
2 occurred has to show that this driver didn't do what he
3 ordinarily did. Does he ordinarily cause an accident on
4 his way home? I'm gonna assume that he doesn't.

5 So the fact that there was an accident shows
6 that he did something that he didn't ordinarily do --
7 didn't ordinarily do -- that sounded right.

8 Now, how can it have happened? How could this
9 vehicle have gotten closer to where Mr. Ervin was if in
10 fact it would have been easier for him to just coast
11 through straight.

12 Maybe the driver wasn't paying attention.
13 Maybe the driver drifted over a little bit. Maybe he'd
14 been working a long time and wasn't as alert as he had
15 hoped to be.

16 MR. STEPHENSON: Objection.

17 MR. BRATT: Maybe he decreased his speed.

18 THE COURT: Overrule.

19 MR. BRATT: Maybe he decreased his speed. We
20 don't know how that tractor trailer got there. And you
21 know what; neither does the guy driving the tractor
22 trailer.

23 But what Mr. Ervin does know is that he knows
24 what he did. And he knows that he went over right into
25 this lane as soon as he was able to. His speed remained

1 constant at 35 or 40 miles an hour and that's consistent
2 with what Ms. Young said. She said she was going 35 or
3 40 miles an hour and that she had been in the back -- you
4 know -- along this time.

5 There's nothing inconsistent about Mr. Ervin's
6 version of this accident. And when you look at how --
7 the Defense had asked for you to speculate as to what Mr.
8 Ervin may have done that could have resulted in this
9 situation. I'm not asking you to speculate about what
10 somebody did.

11 I'm asking you to use the evidence that was
12 given to you by the only eye witness to the accident as
13 to what happened. And it's not unsupported evidence.
14 It's not Mr. Ervin just saying that this is what
15 happened. Ms. Young, she said that she never saw this
16 car, this -- this tractor trailer before the accident.

17 And Mr. Stephenson asked you to think well,
18 okay, she would have had -- she said -- he even quoted
19 her testimony that she said she would have had to -- you
20 would think she would have seen something as big as that.
21 You would think somebody would see something as big as
22 that.

23 But you know what else, it isn't unusual for
24 Ms. Young not to be able to tell you exactly where the
25 vehicle was because what else didn't she see? She didn't

1 see the white Honda either which would have been right
2 next to the big truck she didn't see. Her testimony is,
3 is that she didn't see the tractor trailer and she didn't
4 see the Honda. But what she did, was emphatic about, is
5 is that the first thing that was said to her is did you
6 see the truck that cut me off. And that at the scene she
7 saw the truck after the accident; that it was up by the
8 light.

9 So, so far what we have here is, the Defense is
10 asking you to speculate as to what Mr. Ervin may have
11 done that could have resulted in this situation. Mr.
12 Ervin isn't asking you to speculate. He told you what he
13 did and he told you what the tractor trailer did.

14 Now, he couldn't tell you how it is that the
15 tractor trailer got into the position next to his car
16 that it was because he wasn't driving the tractor
17 trailer. So he can't tell you whether the driver of that
18 vehicle braked or whether he did anything else other than
19 what he did tell you that the driver of that vehicle did.
20 That the vehicle came into his lane and that in order for
21 him to get away from it he had to swerve.

22 Now, one of the great things about having
23 common sense is that it cuts both ways just like
24 everything else does. And you do bring your common
25 experience to this courtroom. And when I look at this

1 diagram what I see, what I think is what most likely
2 happened, is I think that most likely these vehicles came
3 in a position somehow where Mr. Ervin was in this tractor
4 trailer's blind spot. And I think the tractor trailer
5 never saw him. I think the tractor trailer started to
6 come into his lane. And I think because Mr. Ervin was
7 alert enough to swerve away from it and have it not
8 contact him. I think the tractor trailer kept on going
9 and never realized what the heck happened because he was
10 in the blind spot and he just kept on trucking right down
11 the road.

12 Now, that's what most likely to have happened
13 in this case; is that Mr. Ervin had to react quickly in a
14 dangerous situation and he reacted appropriately as a
15 reasonable person would by taking the most immediate
16 route away from the danger.

17 He testified that he didn't -- that he didn't
18 see Ms. Young was there. Of course he didn't. He didn't
19 have time. But it was a split second decision that he
20 had to make. Because of that I'm gonna ask that you view
21 the negligence of the tractor trailer driver in the light
22 that it should be viewed in.

23 You have primary direct evidence as to what
24 happened. It's supported by Ms. Young's comments that
25 that is exactly what he said at the scene. You should

1 answer question -- the question pertaining to Baltimore
2 Tank Lines that one, the Baltimore Tank Lines vehicle was
3 negligent. And two, that that negligence was the cause
4 of the accident.

5 You should evaluate Mr. -- what Mr. Ervin did
6 as you're required to under the law through the light of
7 the situation he was in a clear and present serious
8 danger right there to him. He did what a reasonable
9 person would do in trying to get away from it. And we
10 can't Monday morning quarterback what he did from our
11 comfortable position in the courtroom.

12 Also, he doesn't have the burden to show that
13 he didn't do something negligent. The Defense has the
14 burden to show that he did and you've heard no evidence
15 that he did anything negligent.

16 Thank you, ladies and gentlemen.

17 THE COURT: Okay.

18 At this stage we'll release our alternate who
19 is Juror Number 30. Thank you for your participation
20 today. If you'd call the jury commissioner after 5:00
21 they'll let you know if you're needed tomorrow.

22 30; yeah.

23 Okay, swear the Bailiff please.

24 THE CLERK: You do solemnly promise and declare
25 that you shall well and truly keep this jury together in

1 some convenient room. You shall not permit anyone to
2 speak to them. Neither shall you speak to them yourself
3 unless it be to ask them whether they have agreed upon
4 their verdict without leave of the Court.

5 THE BAILIFF: I will.

6 THE COURT: Okay.

7 If during your deliberations you have any
8 questions put them in written form, give them to the
9 Bailiff and we'll respond as best we can.

10 When you've reached a verdict send out a note
11 to that effect. We'll bring you in. I'll ask the
12 Foreman if the verdict's been reached. The response is
13 yes. The Clerk will call your individual juror numbers
14 and ask you collectively whether or not you've reached a
15 verdict. The response is yes.

16 She'll then say who shall speak for you. The
17 response is our Foreman. The Clerk will then interrogate
18 the Foreman as to the verdict.

19 So, Mr. Swann show them to the deliberation
20 room. The Clerk will bring -- bring the exhibits in in a
21 minute.

22 (The jurors retire to deliberate at 3:18 p.m.)

23 Okay, can I see Counsel in chambers please?

24 THE CLERK: Counsel needs --.

25 I'm sorry. Could Counsel and me go over the --

1 exhibits before I take them back?

2 THE BAILIFF: All rise.

3 (Court is in session at 5:07 p.m.)

4 THE COURT: Okay.

5 We have a note that says the jury has reached a
6 decision. Not a verdict but a decision.

7 Let's bring them in.

8 (The jurors are brought into the courtroom at
9 5:08 p.m.)

10 Let the record reflect the jury has re --
11 returned.

12 VERDICT

13 THE COURT: Madame Foreman, has the jury
14 reached a verdict?

15 THE FOREMAN: Yes, we have.

16 THE COURT: Madame Clerk, please proceed.

17 Ladies and gentlemen of the jury as your
18 numbers are called would you please rise and remain
19 standing.

20 Juror Number 16.

21 Number 9.

22 Number 11.

23 Number 25.

24 26.

25 And 27.

1 Ladies and gentlemen of the jury, have you
2 agreed upon your verdict?

3 THE JURORS: Yes we have.

4 THE CLERK: Who shall say for you?

5 THE JURORS: The Foreman.

6 THE CLERK: Madame Foreman, on Number 1, was
7 Cindy Young -- I'm sorry -- Number 1-A, Was Cindy Young
8 negligent on March 13th, 2006; yes or no?

9 THE FOREMAN: Yes.

10 THE CLERK: Madame Foreman, on 1-B, Was the
11 negligence of Cindy Young a cause of the collision on
12 March 13th, 2006; yes or no?

13 THE FOREMAN: Yes.

14 THE CLERK: Madame Foreman, on Number 2-A, Was
15 Baltimore Tank Lines negligent on March the 13th, 2006;
16 yes or no?

17 THE FOREMAN: Yes.

18 THE CLERK: Madame Foreman, on Number 2-B, Was
19 the negligence of Baltimore Tank Lines a cause of the
20 collision on March the 13th, 2006; yes or no?

21 THE FOREMAN: Yes.

22 THE CLERK: Madame Foreman, on Number 3-A, Was
23 Theodore Ervin negligent on March the 13th, 2006; yes or
24 no?

25 THE FOREMAN: No.

1 THE COURT: Okay.

2 Anything further for the jury?

3 MR. FORD: May the jury be polled, Your Honor?

4 THE COURT: Okay.

5 THE CLERK: Will the jurors please be seated.

6 Thank you.

7 As your name is called -- I'm sorry, as your
8 number is called please rise and remain standing.

9 Juror Number 16.

10 Madame Foreman, you announced that the verdict
11 is Number 1-A, Was Cindy Young negligent on March 13th,
12 2006; yes.

13 Number 1-B, Was Cindy Young -- was -- I'm sorry
14 -- was the negligence of Cindy Young a cause of the
15 collision on March 13th, 2006; yes.

16 Number 2-A, Was Baltimore Tank Lines negligent
17 on March the 13th, 2006; yes.

18 2-B, Was the negligence of Baltimore Tank Lines
19 the cause of the collision on March 13th, 2006; yes.

20 And 3-A, Was Theodore Ervin negligent on March
21 the 13th, 2006; no.

22 Is that your individual verdict?

23 A JUROR: Yes.

24 THE CLERK: Thank you.

25 Juror Number 9.

1 Do you agree with the verdict as announced by
2 your Foreman?

3 A JUROR: Yes.

4 THE CLERK: Thank you.

5 Juror Number 11.

6 Do you agree with the verdict as announced by
7 your Foreman?

8 A JUROR: Yes.

9 THE CLERK: Thank you.

10 Juror Number 25.

11 Do you agree with the verdict as announced by
12 your Foreman?

13 A JUROR: Yes.

14 THE CLERK: Thank you.

15 Juror Number 26.

16 Do you agree with the verdict as announced by
17 your Foreman?

18 A JUROR: Yes.

19 THE CLERK: Thank you.

20 And Juror Number 27.

21 Do you agree with the verdict as announced by
22 your Foreman?

23 A JUROR: Yes.

24 THE CLERK: Thank you.

25 THE COURT: Harken.

1 THE CLERK: Do you want me to harken?

2 Ladies and gentlemen of the jury, harken your
3 verdict as the Court has recorded it. Your Foreman says
4 the verdict of 1-A, Was Cindy Young negligent on March
5 2006; yes. Was the negligence of Cindy Young a cause of
6 the collision on March 13th, 2006; yes.

7 2-A, Was the Baltimore Tank Lines negligent on
8 March 13th, 2006; yes.

9 2-B, Was the negligence of Baltimore Tank Lines
10 a cause of the collision on March 13, 2006; yes.

11 And was Theodore Ervin negligent on March 13th,
12 2006; no.

13 And so say you all.

14 THE JURORS: Yes.

15 THE CLERK: Thank you.

16 THE COURT: Okay.

17 Thank you for your participation today. You
18 can either take your notes with you or you can leave them
19 and they'll be destroyed so no one can read them.

20 Should they call in when they get home?

21 THE CLERK: Yes.

22 THE COURT: Yeah, if you could call the jury
23 commissioner when you get home they'll let you know if
24 you're needed for tomorrow.

25 So Mr. Swann please show them out.

1 (The jurors are released at 5:12 p.m.)

2 Could we close the door now?

3 Okay, the exhibits can be returned?

4 MR. FORD: As far as I'm concerned; yes.

5 MR. BRATT: Same.

6 THE COURT: Okay, how do you want to handle
7 this on the docket? I know you have a stipulation as to
8 damages.

9 (UNKNOWN ATTORNEY): Jointly and severly is the
10 --.

11 MR. FORD: No, we can't do that.

12 THE COURT: Can't do it.

13 MR. FORD: Not (unintelligible) a stipulation.

14 I think what you could probably do
15 (unintelligible) part of the stipulation of the parties
16 judgment is enter in favor of the favor -- in favor of
17 the Plaintiff against the Defendant Young for 20 and --
18 and the Defendant -- Baltimore Tank Lines for 30.

19 THE COURT: Okay.

20 Did you get that Madame Clerk?

21 THE CLERK: No sir I did not.

22 THE COURT: Okay.

23 We're gonna enter a judgment in the amount of
24 \$20,000.00 in favor of the Plaintiff and against the
25 Defendant Cindy Young. And \$30,000.00 in favor of the

1 Plaintiff against Baltimore Tank Lines -- is it Inc. or
2 Corporation?

3 MR. STEPHENSON: Baltimore Tank Lines comma
4 Inc. period.

5 THE COURT: Okay.

6 What about costs? Is there any -- was that
7 addressed in the stipulation?

8 MR. FORD: No.

9 THE COURT: Okay.

10 Okay.

11 MR. FORD: Thank you, Judge.

12 THE COURT: Yeah.

13 MR. STEPHENSON: Thank you, Your Honor.

14 THE BAILIFF: All rise.

15 (Whereupon, this hearing was concluded at 5:14
16 p.m.)

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CERTIFICATE OF TRANSCRIBER

I hereby certify that the proceedings in the matter of Theodore Ervin vs. Cindy Young, et al., C-07-1783, heard in the Circuit Court for Charles County, Maryland, on June 23, 2008, were recorded by means of audiotape.

I further certify that, to the best of my knowledge and belief, page numbers 2 through 189 constitute a complete and accurate transcript of the proceedings as transcribed by me.

I further certify that I am neither a relative to nor an employee of any attorney or party herein, and that I have no interest in the outcome of this case. In witness thereof, I have affixed my signature this 20th day of November, 2008.


Sharon K. Gallagher
Transcriber