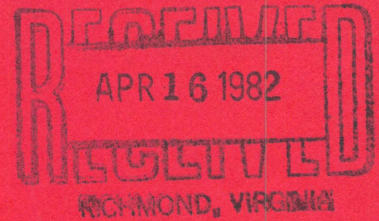


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CLERK  
SUPREME COURT OF VIRGINIA



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IN THE  
**Supreme Court of Virginia**  
AT RICHMOND

RECORD NO. 810965

ROY HARPER, JR.,  
Appellant

v.

B & W BANDAG CENTER, INC.,  
Appellee

JOINT APPENDIX

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J. Darrell Foster  
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Counsel for Appellant

Allan S. Reynolds  
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Norfolk, Virginia 23514  
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4. That the defendant was negligent in the manufacture, assembly and retreading of said tire; in its failure to warn the plaintiff and Lone Star Industries, Inc. of the foreseeable risk of blowout of said tire; in its failure to instruct and advise the plaintiff and Lone Star Industries, Inc. on the foreseeable use of said tire; in its failure to use due care in the testing and inspection of said tire to determine its durability and functionability; and in its failure to warn of defects in said tire.

5. That said negligence on the part of the defendant was a proximate cause of the blowout of said tire, as a result of which the plaintiff was seriously and permanently injured.

6. That as a result of said serious and permanent injuries the plaintiff was caused to suffer, and he will in the future be caused to suffer, great physical pain and mental anguish.

7. That the plaintiff was caused to expend, and he will in the future be caused to expend, large sums of money in an endeavor to be healed and cured of said injuries.

8. That the plaintiff was caused to lose, and he will in the future be caused to lose, large sums of money which he otherwise would have earned.

9. That the plaintiff was caused to be unable, and he will in the future be unable, to perform his necessary and lawful affairs.

#### COUNT II

10. That the allegations contained in paragraphs one through nine are incorporated by reference and realleged as if fully set forth herein.

11. That the defendant expressly and impliedly warranted that the tire in question was of merchantable quality; that said tire was safe and fit for the ordinary purposes for which such products are designed and used; and that said tire was safe and fit for the particular purpose for which it was designed and<sup>2</sup>

purchased, i.e., to be used on a cement truck hauling heavy loads of concrete at varying speeds on the public highways. In purchasing and using said tire, the plaintiff and Lone Star Industries, Inc. relied upon the defendant's judgment and skill and the foregoing warranties.

12. That the defendant breached said warranties in that said tire was not of merchantable quality, was unfit and unsafe for the ordinary purposes for which said products are designed and sold, and was not fit for the particular purpose for which said tire was purchased, including its use on a cement truck hauling heavy loads of concrete at varying speeds on the public highways.

13. That as a result of the defendant's breach of warranties, the plaintiff was caused to be seriously and permanently injured and to sustain the damages as previously alleged.

### COUNT III

14. That the allegations contained in paragraphs one through thirteen are incorporated by reference and realleged as if fully set forth herein.

15. That at the time the tire in question was delivered by the defendant to Lone Star Industries, Inc., it was in a defective condition and was unreasonably dangerous to be used upon the public highways; that if the defendant had properly inspected said tire before delivering same, the defendant would have known the condition thereof and the danger attending its operation; that the defendant failed and neglected to inspect said tire properly.

16. That as a result of the defendant's breach of duty and the defective condition of said tire, the plaintiff was caused to be seriously and permanently injured and to sustain the damages as previously alleged.

WHEREFORE, the plaintiff prays that judgment be entered against the defendant, B & W Bandag Center, Inc., for the sum of Two Million (\$2,000,000.00) Dollars, plus interest and court costs.

ROY HARPER, JR.

By \_\_\_\_\_  
OF Counsel

BANGLL, BANCLL & BANGEL  
Law Building  
Portsmouth, Virginia 23705

FIRST JUDICIAL CIRCUIT  
OF VIRGINIA

WILLIAM H. HODGES, JUDGE  
CHESAPEAKE, VIRGINIA 23320



CIRCUIT COURT OF THE  
CITY OF CHESAPEAKE

March 27, 1981

J. Darrell Foster, Esquire  
505 Court Street  
Portsmouth, Virginia, 23705

Allan S. Reynolds, Esquire  
P. O. Box 3315  
Norfolk, Virginia, 23514

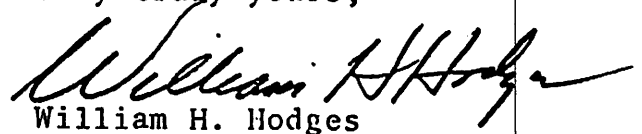
Re: Roy Harper, Jr. v. B & W Bandag Center, Inc.  
Law No. 16202-M

Gentlemen:

I have had an opportunity to read and review the memoranda submitted by you relative to the plaintiff's motion to set aside the jury's verdict and upon consideration thereof and other authorities, the Court is of the opinion that the plaintiff's motion should be denied. By copy of this letter, I am directing that the Clerk spread an appropriate order in accordance herewith noting the plaintiff's exception to the Court's action.

With very kindest regards, I am

Very truly yours,

  
William H. Hodges

WHH/mlc

TESTIMONY OF  
RONALD SCHOONOVER  
(transcript pages 239-240)



VIRGINIA: In the Circuit Court of the City of Chesapeake.

ROY HARPER, JR.,

Plaintiff,

vs

At Law No. 16202-M

B & W BANDAG CENTER, INC.,  
a Virginia corporation,

Defendant.

O R D E R

The Court having previously heard the evidence and argument of counsel and having taken the matter under advisement, it is considered by the Court that the motion of the plaintiff to set aside the verdict of the jury entered on January 14, 1981, is hereby overruled and judgment is entered for the defendant.

ENTER:

3-31-81

  
\_\_\_\_\_  
Judge

ASSIGNMENT OF ERROR

The court erred in refusing to grant Instruction 11 as offered by the plaintiff.

TESTIMONY OF  
WILLIAM T. FAVILLE  
(transcript pages 47-48, 61-63)



1 at least picked up and towed away.

2 Q. All right. What, in fact, was done  
3 with the wreckage of the truck?

4 A. It was taken back to our Campostella  
5 plant on Kimball Terrace.

6 Q. Did the truck wreckage remain there?

7 A. It remained there until the following  
8 day when it was taken out to Mack Truck on Bulldog  
9 Drive.

10 Q. All right, sir. What about the tire  
11 itself that blew out, what was done with that tire?

12 A. It was taken off of the truck and put  
13 under lock and key in the storeroom at our plant on  
14 Kimball Terrace.

15 Q. All right, sir. Was the rim also put  
16 under lock and key?

17 A. Yes, sir.

18 Q. All right. Let me ask you this, Mr.  
19 Faville: Did you have occasion to retrieve any of  
20 the loose pieces of tread rubber from along the  
21 highway when you were at the accident scene?

22 A. Yes, sir.

23 Q. All right. Do you know whether you  
24 got all the pieces of rubber or not?

25 A. No, sir, I do not. I picked up what

1 I could see.

2 Q. What did you do with the pieces that  
3 you did secure?

4 A. Put them in the cab of my truck and  
5 took them back to the plant.

6 Q. What was done with them when they  
7 were brought back to the plant?

8 A. They were put with the tire and the  
9 rim in the store -- in the warehouse.

10 Q. All right, sir. My understanding  
11 would be then the tire, the rim and the tread pieces  
12 you found were kept together in a storeroom locked  
13 up?

14 A. Yes, sir.

15 Q. Okay. Do you know how long they  
16 remained locked up at your premises?

17 A. I do not know. I don't recall the  
18 date that they were picked up.

19 Q. All right, sir. Who would have that  
20 information?

21 A. Mr. Holden has that.

22 Q. Mr. Holden is also a Lone Star  
23 employee?

24 A. He's the shop foreman.

25 Q. All right, sir, fine. Do you have







1 some vise grip pliers as you go around to pound it  
2 onto the rim, isn't that right?

3 A. A maul, yes, sir.

4 Q. Now, you don't keep any records of  
5 repairs to tires, do you?

6 A. No, sir.

7 Q. So whether or not this tire after it  
8 came back to Bandag might have been on a truck,  
9 needed some repairs, had been taken off, repaired  
10 and put back on, you have no record and no knowledge  
11 to tell us, do you?

12 A. Not to my knowledge, no, sir.

13 Q. You don't have any knowledge one way  
14 or the other?

15 A. That's correct.

16 MR. REYNOLDS: Okay. Thank you.

17

18

19 REDIRECT EXAMINATION

20

21

22 BY MR. FOSTER:

23 Q. Mr. Faville, one additional question.

24 During the time that this tire was under lock and  
25 key in your storeroom, was there any effort to test

1 or inspect the tire or do anything with it to  
2 determine the cause of its failure?

3 A. None to my knowledge.

4 Q. All right, sir. Was the tire  
5 tampered with or marked up in any way?

6 A. No, sir.

7 MR. FOSTER: Thank you very much.

8

9

10 RECROSS EXAMINATION

11

12

13 BY MR. REYNOLDS:

14 Q. Let me ask you about that. You say  
15 the tire was kept in a storeroom. What's the  
16 storeroom used for?

17 A. We put -- I guess it's more of a  
18 warehouse. We have tires, we have chutes, liners,  
19 flaps.

20 Q. So it's a room that's in use, isn't  
21 it?

22 A. It is not in constant use, but, yes,  
23 it is gone into, yes, sir. It is gone into.

24 Q. You wouldn't say from your own --  
25 you're not able to say from your own personal

1 knowledge that maybe the people who work in your  
2 tire shop may have gone in there to look at this  
3 tire and check it over? You wouldn't say they  
4 didn't do that, would you?

5 A. No, I can't say that, no, sir.

6 MR. REYNOLDS: Okay. Thank you.

7 MR. FOSTER: No further questions.

8 THE COURT: All right. Going to need  
9 this witness further?

10 MR. FOSTER: No, sir.

11 THE COURT: Any objection to him  
12 being excused?

13 MR. REYNOLDS: No, sir.

14 THE COURT: Thank you very much, Mr.  
15 Raville. You are at liberty to leave. Who do you  
16 have next?

17 MR. FOSTER: Mr. Henry Holden.

18

19

20

21

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25

HENRY R. HOLDEN,  
called as a witness, having been  
first duly sworn, was examined  
and testified as follows:

\*\*\*

TESTIMONY OF  
HENRY R. HOLDEN  
(transcript pages 67-69, 72-73)

\*\*\*

1 A. On the front.

2 Q. Mr. Holden, when did you first  
3 receive knowledge as to the accident which Roy  
4 Harper was involved on December the 6th, 1978?

5 A. Shortly after the accident.

6 Q. Did you go to the accident scene, sir?

7 A. No, sir.

8 Q. All right. Was the wreckage of the  
9 truck brought back to the Campostella plant?

10 A. Yes, sir.

11 Q. Do you know what was done with the  
12 tire and the rim?

13 A. Put under lock and key.

14 Q. All right, sir. Was that under your  
15 supervision?

16 A. Yes, sir.

17 Q. All right. What about the tread  
18 pieces that were picked up by Mr. Faville, was that  
19 also put with the tire and the rim?

20 A. Yes, sir.

21 Q. All right, sir. Now, was the tire  
22 and the tread pieces eventually turned over to  
23 someone from our office?

24 A. Yes, sir.

25 Q. Do you know when that took place?



1 A. 25th of December.

2 Q. All right, sir.

3 A. No, 15th of December. Excuse me.

4 Q. 1978?

5 A. Right.

6 Q. And up until that date the tire  
7 itself and these other pieces were kept under lock  
8 and key, as you indicate?

9 A. Yes, sir.

10 Q. All right. Mr. Holden, I would like,  
11 if you would, sir, if you would come down here and  
12 take a look at this particular tire that we have,  
13 and tell me whether this is the same tire that was  
14 turned over to our office on the 15th of December.

15 A. Yes, sir.

16 Q. How can you make that determination?

17 A. By serial number that was recorded.

18 MR. BANGEL: Speak a little louder.

19 THE WITNESS: This serial number got  
20 recorded on a piece of paper when they picked it up.

21

22

23 BY MR. FOSTER:

24 Q. Your record indicates it was picked  
25 up on December 15th?

1 A. Yes, sir.

2 Q. Is that a receipt that you made at  
3 that time?

4 A. Yes, sir.

5 Q. Were the tread pieces picked up with  
6 the tire?

7 A. Yes, sir.

8 Q. Now, when was the rim picked up?

9 A. It was picked up in January, the 25th  
10 of January, 1979.

11 Q. And was that also picked up by  
12 someone from our office?

13 A. Yes, sir.

14 Q. Okay. Between the time of the  
15 accident, Mr. Holden, and the time that these items  
16 were secured by our office, to your knowledge was  
17 there any effort made by Lone Star to exam the tire,  
18 to make an inspection of the tire or otherwise to  
19 determine the cause of its failure?

20 A. No, sir.

21 Q. To your knowledge, was the tire  
22 tampered with, marked up or otherwise dealt with?

23 A. No, sir.

24 Q. How many pounds of pressure do you  
25 put in these tires when they are on the front axle?

\*\*\*



## CROSS EXAMINATION

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BY MR. REYNOLDS:

Q. Mr. Holden, you say you did not go to the scene, am I correct?

A. That is right.

Q. And were you there when the truck was brought back?

A. Yes, sir.

Q. How did they bring it back and when did they bring it back?

A. Brought it back that evening by wrecker.

Q. And was the tire on the rim, do you recall?

A. Yes, sir.

Q. And did the tire and rim remain on the wheel when it was first brought back?

A. Yes, sir.

Q. When was the rim removed from the wheel?

A. We took it off immediately after the truck got back, and put it under lock and key.

Q. So you're saying it was taken off

1 that evening of the accident?

2 A. Yes, sir.

3 Q. And was the tire removed from the rim  
4 then?

5 A. I don't really recollect. Wasn't  
6 that much problem to take it off.

7 Q. I take it you didn't do it yourself?

8 A. No, sir.

9 Q. And you don't recall exactly when it  
10 was done?

11 A. Not -- not over this period of time,  
12 I'm not sure, no, sir.

13 Q. When whoever it was from Mr. Bangel's  
14 office came to pick it up, were you there at the  
15 time?

16 A. Yes, sir.

17 Q. Do you recall whether at that time  
18 the tire was on the rim?

19 A. They were separate.

20 MR. REYNOLDS: Okay. Thank you.

21 THE COURT: Are you going to need Mr.  
22 Holden any further?

23 MR. FOSTER: No, sir.

24 THE COURT: All right. Thank you  
25 very much. You are excused and you are at liberty

\*\*\*

TESTIMONY OF

RICHARD W. BROCKWELL

(transcript pages 95, 100-104, 388, 397-399, 409-413)



\*\*\*

1 inspectors?

2 A. Yes, sir.

3 Q. Now, these gentlemen who are  
4 designated as inspectors, are they the ones who go  
5 through the casings at your facility when they  
6 arrive there?

7 A. That's correct.

8 Q. And the purpose of these gentlemen is  
9 to look for deficiencies or defects in the tires?

10 A. That's right.

11 Q. They look for them, they mark them,  
12 they get them repaired?

13 A. Or rejected, whichever the case might  
14 be.

15 Q. All right, sir. As they do this they  
16 go through and they take a yellow crayon and mark  
17 whatever defects they may see?

18 A. Yes, sir. Could be yellow or white.  
19 We use both.

20 Q. All right, fine. Now, suppose during  
21 this inspection procedure, Mr. Brockwell, that one  
22 of these inspectors does, in fact, find a cut in the  
23 tire, would that cut then have to be repaired prior  
24 to the retreading?

25 A. Yes, it would.

\*\*\*

\*\*\*

1 A. No, sir.

2 Q. If you find that the tire that is  
3 received from them is not of sufficient quality to  
4 justify recapping, do you return that tire to them?

5 A. Yes, sir, we return it to them.

6 Q. All right. And now do you charge  
7 Lone Star? On what basis do you make charges to  
8 Lone Star for your work?

9 A. I charge them for all the recaps that  
10 we do. I don't charge them for the ones that we  
11 don't do.

12 Q. Is it so much per recap then?

13 A. Yes, sir.

14 Q. Now, with regard to this particular  
15 type tire, the one that's been shown here and  
16 introduced in evidence in court, what use do you  
17 assume that that tire is going to be used for by  
18 Lone Star?

19 A. I assume they are going to use it on  
20 a mixer truck or dump truck.

21 Q. What axle do you assume --

22 A. On the steering axle.

23 Q. That's the front axle?

24 A. Yes, sir.

25 Q. And if you found a cut in the inner

1 liner of one of these tires -- not just any tire,  
2 but one of these tires that you were assuming was  
3 going to be put on the front axle of a cement mixer --  
4 would you recap it?

5 A. No, we would not.

6 Q. Okay. Now, in the inspection process,  
7 can you tell us how that's done? In other words,  
8 how do you inspect the tire when it first comes?  
9 what does the inspector do?

10 A. Well, the first thing you do, you put  
11 it on a spreader. It picks the tire up and spreads  
12 it open. And you got lights you can look in it and  
13 you turn it around and you look inside and outside  
14 visually to see if there's any cut, any nick,  
15 anything.

16 If it is, you mark it and get it  
17 repaired. But on this particular tire, if you find  
18 anything wrong with them, we do not even cap them,  
19 we send them back. We do not put nail hole repairs  
20 in them, do nothing to this size tire for the use  
21 it's going to be in.

22 Q. Okay.

23 A. Then we preheat them two hours at 212  
24 degrees and then we visually put them on the machine  
25 and check them again.

1 Q. All right. Now, just let me  
2 interrupt to ask you, how do you preheat them?  
3 where do you put them?

4 A. We have chambers where we usually  
5 cure them. We put them in there and preheat them up  
6 to 212 for two hours.

7 Q. What's the purpose of doing that?

8 A. The purpose of that is to find out if  
9 you have any built-in separation that you couldn't  
10 see by eye because heat will make it show up,  
11 balloon up.

12 Q. And how does it do that? What is the  
13 physical process that's going on?

14 A. Well, what it is, if it's a  
15 separation in there, you've got a little pocket of  
16 air trapped and if you heat that air it's going to  
17 expand. And therefore, it will buckle the liner,  
18 the inner part of that tire, which we call the liner.  
19 It will just buckle it and make it stand out where  
20 you can see it.

21 Q. Okay. Now, in your opinion, based on  
22 your experience in recapping these tires since 1972,  
23 if you attempted to do the Bandag process of  
24 retreading with a cut in the liner, what would  
25 happen during the retreading process to the tire?

1           A.       It would separate and -- well,  
2 actually balloon up.

3           Q.       Would it be then visible?

4           A.       Yes, it would be visible.

5           MR. REYNOLDS: That's all I have at  
6 this time, your honor. I reserve the right to  
7 recall him as part of our case.

8           THE COURT: All right, sir. you wish  
9 to inquire?

10          MR. FOSTER: Just one further  
11 question, Your honor.

12          THE COURT: All right.

13

14

15                   REDIRECT EXAMINATION

16

17

18          BY MR. FOSTER:

19           Q.       Mr. Brockwell, I want to make sure I  
20 understand something you stated in response to Mr.  
21 Reynolds' question. When you're dealing with this  
22 size tire and knowing that it's applicable use will  
23 be the front axle of a cement mixer, your testimony  
24 is if there is discovered a cut in the inner liner  
25 of the tire, the tire should not be recapped at all

1 but should be discarded as junk?

2 A. That's right.

3 Q. And this is something that your  
4 inspectors would determine?

5 A. Yes.

6 Q. And they would mark that to show that  
7 there was a defect and the tire should not be used?

8 A. They would circle it, mark it on the  
9 outside of the tire, and it will go back outdoors.

10 MR. REYNOLDS: You may come down.

11 THE COURT: Who do we have next?

12 MR. BANGEL: Doctor Loxley.

13 THE COURT: All right. Call Doctor  
14 Loxley.

15

16

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25

SIDNEY S. LOXLEY, MD,  
called as a witness, having been  
first duly sworn, was examined  
and testified as follows:

\*\*\*

\*\*\*

1 person was at each particular station that that tire  
2 went through?

3 A. well, yes, imagine I could, I'd just  
4 have to go through the employment records and see  
5 who we had working at that time. I know what job  
6 they were performing at that time.

7 Q. All right. but you have not been  
8 able to, for instance, tell who the inspector was on  
9 that tire?

10 A. No.

11 Q. Now, what is the nature of the  
12 inspection? You may have already touched on this.  
13 but tell me how you do it. Physically what do you  
14 do?

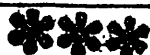
15 A. Okay. Physically we have a machine  
16 which is a machine which is a spreader machine with  
17 arms that come in and spread the tire apart. We  
18 pick it up off the floor and put it on these and it  
19 spreads it out.

20 you have lights overhead and you have  
21 your hand light and just visually just stick your  
22 head in the tire and turn it around and check it all  
23 the way on the inside and outside.

24 Q. Can the spreader itself turn?

25 A. Yes.

\*\*\*



1 after the tread was placed on it, what would you do  
2 with that tire?

3 A. Then we would cut the Department of  
4 Transportation number off the tire. If it was  
5 necessary where we could rerun it -- if we could  
6 rerun it, we would rerun it. If it wasn't, we cut  
7 our code number off, send the tire back to the  
8 customer and show him why we didn't charge him for  
9 it and what was wrong with it.

10 Q. All right. Now, in your business, do  
11 you have any standard marking that you use as far as  
12 to indicate defects in tires?

13 A. Yes, you do. You have -- we always  
14 take a section -- that would be a straight line  
15 connected at the bottom, like a P.

16 Q. What is a section repair?

17 A. That means if you've got to put a  
18 section in a tire, like remove some of the cord --  
19 say you've got a hole in it that big, you can repair  
20 that and recap it, but not in this tire.

21 Q. So would you use that type of symbol  
22 in this type of tire?

23 A. Yes, if you -- if you did anything  
24 like that to that type tire, but you couldn't do  
25 anything to that type tire.



1 Q. my question is this type tire.

2 A. This type tire, the only thing you  
3 would do is put a circle on something you had a  
4 question about till it got to the repair room. Then  
5 that man would determine whether he was going to cap  
6 it, fix it or put it back outdoors.

7 Q. All right. Now, you told us about  
8 two types of symbols, you used a circle and a  
9 straight line with another line running into it.

10 A. Yes.

11 Q. is there any other type of symbol  
12 that you use?

13 A. Yes, there's like a little block  
14 that's for a nail hole.

15 Q. All right.

16 A. Two straight lines up and two running  
17 across it.

18 Q. Do you ever use a straight line to  
19 indicate a defect?

20 A. No.

21 Q. You've heard the testimony and seen  
22 the mark that's inside of this tire on the two inch  
23 or two and a half inch cut which is near the break,  
24 haven't you?

25 A. Yes, sir.

1 Q. You've seen that mark?

2 A. Yes, sir.

3 Q. Is that the type of mark you would  
4 use in your shop?

5 A. No, sir, it's not the type of mark  
6 I've ever used in any recapping shop.

7 Q. Okay. Now, in connection with your  
8 study to become a Bandag dealer, have you had any  
9 kind of training in recapping tires?

10 A. Yes, sir, I certainly have. I've  
11 been to school in Muscoteen, Iowa. I went through  
12 the complete process of Bandag. When we went to  
13 school we wore work clothes because we did the whole  
14 works.

15 Q. Have you had any training in regard  
16 to failure analysis?

17 A. Yes, that is part of it. We spend a  
18 half a day going through scrap piles and saying why  
19 tires failed.

20 Q. Have you had any experience in making  
21 failure analysis on other tires that have gone  
22 through your shop in the course of the year?

23 A. Yes.

24 Q. Have you had an opportunity to  
25 examine this particular tire?

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1 size that is significant.

2 Q. The size. But you did not know the  
3 ply rating?

4 A. Right.

5 Q. And there's no way to know the load  
6 range without knowing the load rating, is that true?

7 A. You're right.

8 MR. FOSTER: Your Honor, I have a  
9 photocopy of that sheet in the manual. Rather than  
10 pull it out of the manual, I would simply like to  
11 offer this into evidence at this time.

12 THE COURT: All right. Be received  
13 and marked as P-30.

14

15

16 (whereupon, the document referred  
17 to was marked Exhibit P-30.)

18

19

20 BY MR. BROCKWELL:

21 Q. Mr. Brockwell, how many inspectors  
22 did you have working for your company in September  
23 of 1970?

24 A. I would say three.

25 Q. What were their names?

1 A. I would have to go back and check the  
2 records. I can not tell you off the top of my head.

3 Q. You have no idea as to the names of  
4 the three gentlemen?

5 A. No.

6 Q. Have you made any effort to determine  
7 who the inspectors were at the time?

8 A. No, I don't think I have. But one of  
9 them I'm sure is still there is Harry Smith. He's  
10 my shop foreman. I know he's still there.

11 Q. Mr. Smith would be one of three tire  
12 inspectors that were working for you at that time?

13 A. Yes, sir.

14 Q. Would there be or is there, when you  
15 say inspection of tire casing, any way of  
16 determining which inspector looked at it?

17 A. Well, I said three because, see  
18 you've got one that is going to inspect it when it  
19 comes in, you've got one that's going to finally  
20 inspect it, and then you've got Mr. Smith which  
21 inspects tires all through the shop all during the  
22 day periodically.

23 Q. Let me make sure I understand.

24 There's an initial inspector --

25 A. Right.

1 Q. -- at the beginning of the process  
2 whose name we do not know?

3 A. I could find out probably.

4 Q. There is another inspector at the end  
5 of the process --

6 A. That's correct.

7 Q. -- whose name we do not know?

8 A. Right.

9 Q. And then there is Mr. Smith who is  
10 kind of a periodical inspector?

11 A. Right. He goes around through the  
12 shop and makes sure everything is being done right.

13 Q. He's the shop foreman and he  
14 supervises the other men?

15 A. That's correct.

16 Q. He doesn't inspect every tire  
17 personally?

18 A. No, sir.

19 Q. All right, sir. Now, these other two  
20 inspectors, we don't know who they are at this time?

21 A. Right.

22 Q. And apparently you have not made any  
23 effort to determine who they are at this time?

24 A. At this time, right.

25 Q. Now, Mr. Brockwell, certainly you've

1 known about this litigation for a number of months,  
2 have you not?

3 A. Yes, sir.

4 Q. As a matter of fact, your discovery  
5 deposition was taken on September the 8th, 1980, was  
6 it not?

7 A. If that's the date, yes.

8 Q. You recall your deposition being  
9 taken, however?

10 A. Yes, sir.

11 Q. You remember this same question being  
12 asked of you at that time as to who your inspectors  
13 were in this time in 1978?

14 A. No, but if it's there, I'm sure you  
15 asked it.

16 Q. All right, sir. But even since that  
17 time there's been no effort on your part to  
18 determine who these gentlemen are?

19 A. No. Nobody said that we needed them.

20 Q. I take it you have had a chance to  
21 look at this tire. You said Monday was the first  
22 time you saw it.

23 A. Yes.

24 Q. But you've had a chance to look at it  
25 during the recess and things to examine the tire?

1 A. Yes.

2 Q. Is there anything on this tire that  
3 appears to you -- that would indicate in any way who  
4 inspected the tire at your company?

5 A. No.

6 MR. FOSTER: I have no further  
7 questions.

8  
9  
10 REDIRECT EXAMINATION

11  
12  
13 BY MR. REYNOLDS:

14 Q. Mr. Brockwell, as far as whether or  
15 not that tire had a sufficient load range to be used  
16 on a cement mixer, what did you know about that?

17 A. I don't -- well, the bulletin which  
18 just said the size, that is sufficient size for a  
19 mixer truck, 15 by 22.5.

20 Q. Had they been using it on the mixers?

21 A. I assumed that it came off of a mixer.  
22 It came from Lone Star to me to be recapped.

23 Q. Did you ever go to Lone Star --

24 A. Not --

25 Q. -- in connection with your work?



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1                   he cut through -- he cut through that  
2 and the knife then extended a short distance beyond  
3 but not completely through anything, and then marked  
4 it with the yellow crayon so that appropriate steps  
5 could be taken to do what they felt they needed to  
6 do with this casing. Now, this in and by itself  
7 renders the tire not fit for front axle use.

8                   Q.       Why is that, Mr. Schoonover?

9                   A.       Because it has ply separation. You  
10 should never put a tire on the front axle that has a  
11 ply separation.

12                  Q.       All right, sir. If the tire were to  
13 be put -- would it be possible to use the tire for  
14 anything else if you had a cut of that nature?

15                  A.       Oh, yes, they could repair that and  
16 sell the tire to someone that would use it, say, in  
17 a gravel pit or something like that. Off the  
18 highway use.

19                  Q.       All right, sir. We know, of course,  
20 that this tire was retreaded. Was that cut repaired?

21                  A.       No.

22                  Q.       All right. What was the effect of  
23 the cut when the tire was put into operation?

24                  A.       Well, you have -- when you have an  
25 opening in a tubeless tire like this, the air inside



1 the tire will get into that opening and wick around  
2 through the plies of the tire and that cut and that  
3 leads to ply separation and tread separation.

4 And that cut was, I feel, a  
5 contributing factor to the failure of this tire  
6 along with the other problems it has.

7 Q. Now, would you explain to the jury  
8 why, analyzing that cut, it is your opinion that it  
9 was made with a knife as opposed to some other means  
10 or it occurring?

11 A. It's very sharp. Had it -- and the  
12 ends of the cords that you can see are very sharp.  
13 Had it been done by, say, during run flat and the  
14 tire hit something, you wouldn't cut the cord, you  
15 would break them. And then the ends of the cord  
16 would be nubby and frayed. They wouldn't be sharp  
17 like these are.

18 Q. Are there other cuts in the inner  
19 liner that you feel came during the run flat?

20 A. Yes.

21 Q. Would you show those to the jury and  
22 point out the difference in their appearance, please?

23 A. Here's a large break.

24 Q. Can y'all stand up a minute?

25 A. That's a result of hitting something

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TESTIMONY OF  
OSCAR EDWARD KURT  
(transcript pages 299-300)

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1 hurt, to a cut that occurred during the run flat  
2 following blowout?

3 A. No.

4 Q. Why not?

5 A. It's too clean and sharp.

6 Q. All right. Do you have an opinion as  
7 to the origin of that cut?

8 A. Yes.

9 Q. What is that opinion?

10 A. I think some person examined the  
11 condition of the tire there, and in order to examine  
12 it, wanted to know what was underneath that little  
13 bump or hump and so cut into it, looking for either  
14 separation or foreign material.

15 Now, the way I can lift up the  
16 material at the cut, there is separation between the  
17 first and second plies.

18 Q. All right, sir. Was that cut  
19 repaired?

20 A. No, it was not.

21 Q. Okay. Should it have been?

22 A. It should have been repaired if this  
23 tire was going to be retreaded and put into service.  
24 It would be up to the retreader to decide whether --  
25 even whether that should be done, because even

1 making that repair, the tire would not necessarily  
2 be suitable for all kinds of service.

3 Q. Would it have been suitable for use  
4 on the front end of a cement mixer?

5 A. In my opinion, no.

6 Q. Now, what is the effect of having  
7 that cut at the inner liner once the tire is put  
8 into operation?

9 A. Air would wick through the cut.  
10 First the air would go through the cut and then wick  
11 in the fabric. Wicking we mean it follows the cord  
12 paths.

13 These cords have many many filaments,  
14 so they have little spaces between the filaments.  
15 And we run tests where we inject air into the tire  
16 and we put soap solution on the tire and wherever  
17 there is a hole in the outer rubber, bubbles appear  
18 almost immediately.

19 Air wicks through the tire very  
20 rapidly and then builds up pressure in the body of  
21 the tire and this will force the tread off. This is  
22 a common type of failure for regular tubeless truck  
23 tires.

24 And to avoid that they drill holes at  
25 the factory, as many as at least four holes on each

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TESTIMONY OF  
ROBERT M. HILL  
(transcript pages 462-464)

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1 THE COURT: All right, sir, be  
2 received as P-31.

3  
4 (whereupon, the document  
5 referred to was marked P-31.)  
6  
7

8 BY MR. FOSTER:

9 Q. Mr. Hill, again listening to your  
10 testimony on direct examination, I understood you to  
11 say that in your opinion had that cut been in the  
12 inner liner prior to the retreading procedure and  
13 had it been found, then the entire casing would have  
14 been scraped and discarded?

15 A. It would either have been scraped or  
16 discarded or it would have been repaired. And I  
17 think that probably in a tire of this size and this  
18 particular configuration, most probably would have  
19 been scraped.

20 Q. All right, sir. Is that because it  
21 would present a hazard to put such a tire on the  
22 front axle of a cement truck for that application in  
23 the event that you had that type of damage in the  
24 inner liner?

25 A. If you have this type of damage in

1 the inner liner and it has occurred before the tire  
2 came in for retreading so that it has been running  
3 with that sort of damage, either it should have  
4 loosened up the tread or for some reason it occurred  
5 relatively recently and it was loosening the tread  
6 from the carcass.

7                   It it occurred at any other time and  
8 was not repaired, it is likely to lead to air  
9 defusing through the carcass and allow the tread to  
10 be thrown from the carcass itself.

11                   Usually in a very high percentage of  
12 the time, I would say 99 percent or some figure such  
13 as that, that the tread will be thrown off the  
14 carcass without destroying the carcass so that the  
15 tire doesn't actually blowout.

16                   It still would not render  
17 satisfactory service and it's not a very comfortable  
18 feeling to have the tread thrown off the tire even  
19 if the carcass doesn't lose air.

20                   Q.       So then if the cut had been in their  
21 prior to retreading at a minimum, it should have  
22 been repaired?

23                   A.       Yes, sir.

24                   Q.       And probably the latter part would  
25 have been to scrap the entire casing?

1 A. Yes, sir.

2 Q. Is it important --

3 A. The other thing is if this cut had  
4 been in there during the operation of this tire I  
5 would expect to see some accumulation of dust, dirt  
6 inside this cut. It's relatively clean in there.

7 Q. With regard to these protrusions of  
8 rubber -- I guess I've been calling them cones --  
9 that we see --

10 A. Okay.

11 Q. -- on these tread pieces, you've  
12 indicated that these were formed, as I understand it,  
13 when the tread slab was placed over the shoulder  
14 area and during the curing process, the rubber and  
15 compound melted down into those voids, is that  
16 correct, sir?

17 A. Moved into, extruded it, yes, sir.

18 Q. Now, you notice these are all very  
19 smooth?

20 A. Yes, it didn't stick to it.

21 Q. That indicates to you there was no  
22 adhesion?

23 A. There was no adhesion. That's right.  
24 Not at that point. Wasn't intended to be.

25 Q. Do you consider it important, Mr.





TESTIMONY OF  
THOMAS BAKER  
(transcript pages 510-511)

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1 a significant finding that the cut had been marked?

2 A. I assumed that the cut had been  
3 marked by a person peering into the tire after the  
4 accident, lifting that apex back and all he could  
5 see in there was that one cut and he marked it.

6 Q. All right, sir.

7 A. That's all.

8 Q. Now, is it your opinion that that cut  
9 occurred during the run flat following the blowout?

10 A. Yes, it is.

11 Q. Let's assume for a moment, Mr. Baker,  
12 that that cut was, in fact, in the inner liner of  
13 this tire before it was retreaded. Would it have  
14 been proper to go ahead and retread this tire  
15 without repairing that cut?

16 A. No, the cut should definitely have  
17 been repaired before the tire was ever inflated.

18 Q. And if, in fact, the retreader knew  
19 that the tire was going to be used on the front axle  
20 of a cement mixer, should it even have been  
21 retreaded at all --

22 A. Probably not.

23 Q. -- if that cut were in place?

24 A. No. I think that the retreader  
25 should not retread a tire with a cut in it like that

1 because by his doing so he's jeopardizing the success  
2 of his own product. I don't believe he would ever  
3 do that.

4 Q. And if -- again I ask you to assume  
5 this, Mr. Baker. If we had had the situation of  
6 cutting into the plies and thereby weakening the  
7 tire and separation beginning, would a cut in the  
8 inner liner have furthered that separation by air  
9 wicking in through that cut during the operation of  
10 the tire?

11 A. Yes it would.

12 Q. Now, I understood you to say you made  
13 an assumption apparently that probably in your  
14 opinion this marking of this cut was done after the  
15 accident had happened?

16 A. Yes.

17 Q. That's your opinion?

18 A. Yes, it is.

19 Q. Now, that is not the only cut that we  
20 find in the inner liner of this tire, is it, Mr.  
21 Baker?

22 A. No, there are several others.

23 Q. Did you find any markings on any of  
24 the others?

25 A. No.



16202-M

# COMMONWEALTH OF VIRGINIA

## SUBPOENA FOR DEFENDANT

Emporia

TO THE SHERIFF, CITY OF CHESAPEAKE, GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON

R. W. Brockwell, President

B & W Bandag Center

701 North Main St.

Emporia, Va. 23847

Harry Smith

c/o B & W Bandag Center

701 North Main St.

Emporia, Va. 23847

to appear before the Circuit Court of the City of Chesapeake, at the Courtroom No. 1

at Great Bridge on the 12 day of January, 1981, promptly at 10 o'clock  
A. M., to testify and the truth to say on behalf of the Defendant, in a certain matter of con-  
troversy in our said Court depending and undetermined, between

Roy Harper, Jr.

and

B & W Bandag Center, Inc.

Plaintiff

Defendant.

And this the witness shall in no wise omit under the penalty of \$300; and have then and there  
this summons.

Witness, Irene W. Walker, Clerk of our said Court at his office, this 5th

day of January, 1981, in the 205th year of our Commonwealth.

Irene W. Walker

Clerk of Court

CG-4011-R/73-A

By:

*Louis Basler*

D.C.

Allan S. Reynolds, Atty.

1-12-81

*W*

Executed on the 6 day of JAN, 1981, in the City of Emporia,  
Virginia, by delivering a true copy of the above mentioned papers attached to each  
other, to HARRY SMITH in person.

E. L. GRIZZARD

Sheriff, City of Emporia

By A. K. FAYEN

Deputy City Sheriff

Deputy City Sheriff

Sheriff, City of Emporia

in person.

Executed on the 7 day of JANUARY, 1981, in the City of Emporia,  
Virginia, by delivering a true copy of the above mentioned papers attached to each  
other, to R. W. BROCKWELL