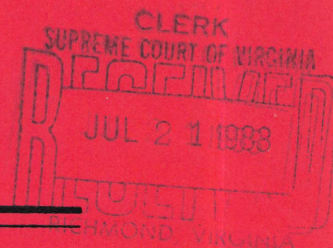


231 Va 289



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

\_\_\_\_\_  
RECORD NO. 821920  
\_\_\_\_\_

GORDON WAYNE WALLEN, M. J. ELDER  
and K. W. JONES,

Appellants,

v.

GREGORY S. ALLEN, an infant who sues by his Mother and  
next best friend, Yvonne B. Allen,

Appellee.

\_\_\_\_\_  
JOINT APPENDIX  
\_\_\_\_\_

William Rosenberger, Jr., Esquire  
1904 Central Fidelity Bank Building  
Post Office Box 1328  
Lynchburg, Virginia 24505

Counsel for Appellants

C. Richard Cranwell, Esquire  
Daniel T. Gallagher, Esquire  
40 Cedar Avenue  
Post Office Box 454  
Vinton, Virginia 24179

Counsel for Appellee



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The plaintiff moves the Court for judgment against the defendants Gordon Wayne Wallen, and M. J. Elder, and K. W. Jones T/A Elder and Jones, on the grounds and in the amount hereinafter set forth;

1. On May 12, 1980, at approximately 7:30 o'clock a.m., the plaintiff was a passenger on a 1973 Ford school bus traveling on Route 460, one half mile west of Sprout Spring.

2. That at the time and place aforesaid the defendant, Gordon Wayne Wallen, was operating a tractor-trailer in a westerly direction on Route 460. Said tractor-trailer was owned by M. J. Elder and K. W. Jones, T/A Elder and Jones, having an office and principal place of business in Charlotte Court House, Virginia. The defendant, Gordon Wayne Wallen, was an employee of the defendants, M. J. Elder and K. W. Jones, T/A Elder and Jones, and at the time and place aforesaid, the defendant Gordon Wayne Wallen was acting within the scope of said employment.

3. At said time and place it was the duty of the defendant, Gordon Wayne Wallen, to operate the tractor-trailer free from negligence and with due regard for the safety of other persons on the highway.

4. That notwithstanding said duties defendant, Gordon Wayne Wallen, did then and there so willfully, wantonly, recklessly, carelessly, and negligently operate the tractor-trailer that it struck the school bus in which plaintiff was a passenger.

5. That at said time and place it was the duty of the defendants, M. J. Elder and K. W. Jones, to allow their tractor and trailer to be driven only by competent, licensed drivers and to place only a tractor and trailer on the road that had been properly

inspected and was in good repair.

6. That notwithstanding said duties, defendants', M. J. Elder and K. W. Jones, willfully, wantonly, recklessly, carelessly, and negligently permitted their tractor and trailer to be operated by the defendant, Gordon Wayne Wallen, an inexperienced improperly licensed operator, and did willfully, wantonly, recklessly, carelessly, and negligently permit a tractor and trailer that was not adequately inspected or kept in adequate repair to be operated upon the highways of the Commonwealth of Virginia.

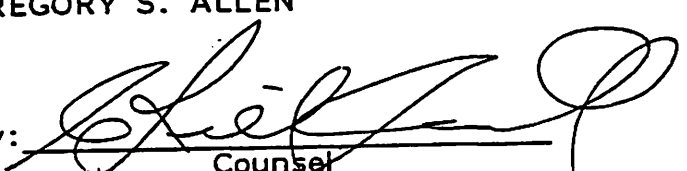
7. That the collision between the tractor and trailer driven by the defendant, Gordon Wayne Wallen, and owned by the defendants, M. J. Elder and K. W. Jones, T/A Elder and Jones, with the 1973 Ford school bus in which the plaintiff Gregory Scott Allen, was a passenger was proximately due to the defendants' violation of their aforesaid duties and their perpetuation of the aforementioned act.

8. That as a direct and proximate result thereof, plaintiff was caused to sustain serious and permanent injuries; has suffered and will continue to suffer great pain of the body and mind; has sustained permanent disability, deformity and loss of future earning capacity; and has incurred, and will incur in the future, doctor, hospital and related bills in the effort to be cured of said injuries.

WHEREFORE the plaintiff demands judgment against the defendants jointly and severally in the amount of;

A. Compensatory damages of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00).

B. Punitive damages TWO MILLION AND 00/100 DOLLARS (\$2,000,000.00).


GREGORY S. ALLEN  
By:   
Counsel

C. Richard Cranwell, p.q.  
GARDNER, CRANWELL & ROCOVICH, P.C.  
P.O. Box 13606  
Roanoke, Virginia 24035



## **MOTION TO STRIKE**

The defendants, Gordon Wayne Wallen, M. J. Elder and K. W. Jones, by counsel, move the Court to strike that part of the motion for judgment that alleges that the defendant, Gordon Wayne Wallen, willfully and wantonly operated the tractor trailer that struck the school bus in which the plaintiff was a passenger; that part which alleges that the defendants, M. J. Elder and K. W. Jones, willfully and wantonly permitted their tractor trailer to be operated on the highway by an inexperienced and improperly licensed operator, without being adequately inspected or kept in adequate repair; and that part of the motion for judgment demanding judgment against the defendants, jointly and severally, for punitive damages of two million dollars for the reason that the conclusions of the pleader are not supported by factual allegations and the conclusions as stated are insufficient to ground an action for punitive damages.

  
Wm. Rosenberger, Jr., Attorney for Defendants  
1904 Central Fidelity Bank Building  
P. O. Box 1328, Lynchburg, Virginia 24505

Baker v. Marcus, 201 Va. 905, 909, 114 S. E. 2d 617 (1960)  
Eubank v. Spencer, 203 Va. 923, 925, 128 S.E. 2d 299 (1962)

**NOTICE OF MOTION**

**TO: C. RICHARD CRANWELL, ESQ., FNEB Building, P. O. Box 13606,  
Roanoke, Virginia 24035**

**TAKE NOTICE, that on the 17th day of August, 1981, at 10:00 o'clock**

**A. M. or as soon thereafter as counsel may be heard, the foregoing motion will  
be brought on to be heard by the Judge of the Circuit Court of Appomattox  
County, Virginia, at the Courthouse thereof in Appomattox, Virginia.**

**Wm. Rosenberger, Jr., Attorney for Defendants  
1904 Central Fidelity Bank Building  
P. O. Box 1328, Lynchburg, Virginia 24505**

**I, Wm. Rosenberger, Jr., attorney for the defendants, hereby certify  
that a copy of the foregoing Notice and Motion was mailed to C. Richard Cranwell,  
Esq., FNEB Building, P. O. Box 13606, Roanoke, Virginia 24035, attorney for  
the plaintiff, on this the 5th day of July, 1981.**

**Wm. Rosenberger, Jr., Attorney for Defendants  
1904 Central Fidelity Bank Building  
P. O. Box 1328, Lynchburg, Virginia 24505**

INSTRUCTION NO. 1~

Your verdict must be based on the facts as you find them and on the law contained in all of these instructions.

The issues in this case are:

(1) The Defendants have admitted liability and the Plaintiff is entitled to recover compensatory damages from them.

This issue has been admitted by the Defendants

(2) The Plaintiff is entitled to recover compensatory damages, but the jury must determine the amount.

On this issue the Plaintiff has the burden of proof

---

(3) Was the Defendant, K. W. Jones, willfully and wantonly negligent?

(4) If K. W. Jones was willfully and wantonly negligent, was such willful and wanton negligence a proximate cause of the accident?

(5) If the Plaintiff is entitled to recover punitive damages from K. W. Jones, what is the amount of such damages?

On these issues the Plaintiff has the burden of proof.

---

Your decision on these issues must be governed by the instructions that follow.



INSTRUCTION NO. 2

"Willful and wanton negligence" is acting intentionally in disregard of another person's rights or acting with a reckless indifference to the consequences to another person when the Defendant, K. N. Jones, is aware of his conduct and is also aware, from his knowledge of existing circumstances and conditions, that his conduct would probably result in injury to another.

INSTRUCTION NO. 5

If you find by the greater weight of the evidence that  
K. W. Jones was:

1. acting intentionally in disregard of another  
person's right, or
2. acting with reckless indifference to the consequences  
to another person when the Defendant, K. W. Jones was aware  
of his conduct and was also aware from his knowledge of  
existing circumstances of conditions that his conduct would  
probably result in injury to another, and further believes by  
a greater weight of the evidence
3. that such acts were the proximate cause of the accident,  
then

You shall find your verdict for the plaintiff against  
K. W. Jones only on the issue of punitive damages.

You shall find your verdict for the Defendant, K. W. Jones,  
if the Plaintiff fails to prove either of the elements above  
or fails to prove that they were the proximate cause of the  
accident.

On this the 22nd day of July, 1982 came the parties and their attorneys and the defendants having heretofore filed responsive pleadings, the plaintiff replies generally thereto and prays that the same be inquired of by the country, and the defendant likewise, and thereupon, said parties demanding a jury, there came a jury, to wit: Cecil Gray Carter, Lacy Jefferson Webb, Jr., Robert G. Fleshman, Walter H. Carson, Beverly Winston Phelps, Bruce Craig Washburn, and Peggy Armes Gallagher who, having been duly summonsed, selected, tried and sworn, according to law, (and the defendants having admitted liability to the plaintiff for compensatory damages and the severity of the injuries sustained by the plaintiff, made a motion in limine to exclude the evidence relative to the details of the collision in which the plaintiff was injured; and the Court having overruled the motion, the defendants, by counsel, objected and excepted for the reasons stated on the record and opening statements of counsel having been made; the plaintiff introduced the evidence of the investigating officer over the objection and exception of the defendants, and the defendants moved the Court to declare a mistrial because of the prejudicial evidence relating to the details of the collision and the photographs of the scene and of the vehicles involved, which motion the Court overruled; and the jury having heard further evidence; and it being time for adjournment, the Court directed the jury to return into Court tomorrow morning at <sup>9:30</sup>~~9:00~~ o'clock a.m. and thereupon the Court was declared in recess until that time.

/s/ J. R. Snoddy, Jr., Judge

TRUE COPY TESTED

Barbara J. H. Williams i. Clerk



~~TRUE COPY: TESTE:~~*Barbara P. Williams, Clerk*  
Circuit Court County of Appomattox*By: Paul L. J. Warren, Deputy Clerk*

On this the 23rd day of July, 1982, came again the parties and their attorneys and the jury heretofore duly sworn for the trial of this case returned into Court as directed by the Court and the jury having heard the evidence of the plaintiff in full, the defendants, by their attorney, renewed the motion for a mistrial which the Court overruled over the objection and exception of the defendants for the reasons stated on the record; and thereupon, the defendants, by their attorney, moved the Court to strike the evidence of the plaintiff relative to punitive damages on the ground that the evidence was insufficient as a matter of law on which to base a verdict for punitive damages and the evidence relating to punitive damages was a not a proximate cause of the collision as a matter of law, and the Court overruled the motion over the objections and exceptions of the defendants for the reasons stated on the record; and the jury having heard the evidence of the parties in full, the defendants renewed their motion to strike the evidence of the plaintiff relative to punitive damages on the ground that it is insufficient as a matter of law to support a verdict for the plaintiff, which motion the Court sustained as to the defendants Gordon Wayne Wallen and M. J. Elder and overruled as to the defendant, K. W. Jones; and the defendants duly objected and excepted for the reasons stated on the record; and thereupon the defendants, by counsel, renewed their motion to declare a mistrial for admitting the evidence relating to the details of the collision, which motion

the Court overruled and the defendants duly objected and excepted for the reasons stated on the record; and the jury having received the instructions of the Court and having heard arguments of counsel were sent to their room to consult and consider of their verdict; and after some time returned into the Court and presented their verdict written in the following words and figures, to-wit: "We the jury on the issues joined find for the plaintiff against the defendants and fix his compensatory damages at \$50,000.00; and we the jury on the issues joined find for the plaintiff against the defendant, K. W. Jones and fix his punitive damages at \$50,000.00. Signed, Lacy Jefferson Webb, Jr., Foreman."

Thereupon, the defendant, by counsel moved the Court to render judgment for the defendant, Kenneth W. Jones, non obstante verdicto as to punitive damages on the ground that the verdict for punitive damages is contrary to the law and the evidence and without evidence to support it, or in the alternative to grant the defendants a new trial as to compensatory and punitive damages for the action of the Court in overruling the motion in limine to exclude any reference to the details of the collision after the defendants had admitted liability as to compensatory damages; for the action of the Court in overruling the motion of the defendants for a mistrial; for the action of the Court in refusing to strike the evidence of the plaintiff at the conclusion of the plaintiff's evidence and at the conclusion of all of the evidence as to punitive damages; for the action of the Court in granting plaintiff's instructions 1, 2, 3 and 5 and for refusing defendant's instruction D; and the Court being of opinion that it is proper in all respects so to do, the Court doth overrule the motions of the defendants and it is considered by the Court that the plaintiff recover of the defendants the sum of \$50,000.00 for compensatory damages, with interest from July 23, 1982 until paid; and that the plaintiff recover of the defendant, K. W. Jones, the sum of \$50,000.00 for punitive damages, with interest from July 23, 1981 until paid, and his costs in this behalf expended; and the defendants, by counsel object and except for the reasons stated on the record; and this action is stricken from the docket.

NOTICE OF APPEAL

TO: THE HONORABLE CLERK OF THE CIRCUIT COURT OF APPOMATTOX COUNTY

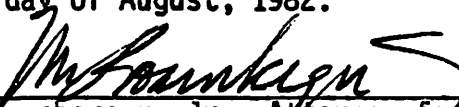
TAKE NOTICE, that pursuant to Rule 5:6 of the Rules of the Supreme Court of Virginia, the defendants, Gordon Wayne Wallen, M. J. Elder and K. W. Jones, file their notice of appeal from the final judgment rendered against them in favor of the plaintiff, Gregory S. Allen, an infant who sues by his mother, and his next best friend, Yvonne B. Allen by the Circuit Court of Appomattox County, Virginia on July 23, 1982, and within thirty days of the date of the final judgment.

The transcript of the proceedings in this action on July 22 and July 23, 1982 will be filed in the office of the Clerk of this Court within 60 days from the date that the final judgment was rendered herein, and made a part of the record in this action, pursuant to Rule 5:9 of the Rules of the Supreme Court of Virginia.



Wm. Rosenberger, Jr., Attorney for the Defendants  
1904 Central Fidelity Bank Building  
P.O. Box 1328, Lynchburg, Virginia 24505

I, Wm. Rosenberger, Jr., attorney for the defendants, hereby certify that a copy of the foregoing Notice of Appeal was mailed to C. Richard Cranwell, Esq., 220 E. Washington Avenue, Vinton, Virginia, attorney for the plaintiff, on this the      th day of August, 1982.



Wm. Rosenberger, Jr., Attorney for the Defendants  
1904 Central Fidelity Bank Building  
P.O. Box 1328, Lynchburg, Virginia 24505

## ASSIGNMENTS OF ERROR

The defendants assign errors as follows:

- A. The verdicts are contrary to the law and the evidence and without evidence to support them; (Tr. 319)
- B. The action of the court in refusing to exclude evidence as to the facts of the accident; (Tr. 22-28, 85, 96-99, 102-104)
- C. The action of the court in admitting the pleas of guilt of Elder and Jones; (Tr. 149, 181-190, 196-197, 229-231)
- D. The action of the court in refusing to grant the motions for a mistrial; (Tr. 96-99, 292)
- E. The action of the court in refusing to strike the evidence of the plaintiff at the conclusion of the plaintiff's evidence and at the conclusion of all of the evidence; (Tr. 270-277; 292-295)
- F. The action of the court in granting plaintiff's instructions 1, 2, and 5; (Tr. 295, 314; 296, 313; 315; 316)
- G. The action of the court in refusing to grant defendants' instruction D; (Tr. 307) and
- H. The verdicts of the jury were excessive (Tr. 319).

1 of the evidence in this case and have been instructed on the  
2 law. You will make up your mind after the Court has turned  
3 the case over to you, and you have gone to the jury room and  
4 deliberated.

5 Again, you all will decide the believability, the  
6 credibility of the witnesses that are on the stand; that's  
7 your prerogative, and you will not make up your mind until  
8 after you have heard all of the evidence in this matter.

9 Right now you will stand up and go to the jury room.  
10 We are going back to the chambers.

11 (The jury retires to the jury room; the Court  
12 and counsel retire to chambers.)

13 (The following proceedings were had in chambers  
14 with Court and counsel.)

15 MR. ROSENBERGER: If Your Honor please, the  
16 Defendants now state on the record-- admit liability for  
17 compensatory damages; that is the pain and suffering and the  
18 losses that this young man has sustained and move to exclude  
19 any evidence relative to the accident because it would be  
20 prejudicial to the Defendants because of all of the publicity  
21 that this has had in the county.

22 We admit that he had a severe fracture of the leg  
23 for which he was treated by Dr. Hopkins, and we are ready to  
24 stipulate that his medical and hospital expenses have totaled  
25 \$9,309.01.

1 THE COURT: You all can give me that figure  
2 when I instruct the jury.

3 MR. ROSENBERGER: In addition to that, Your  
4 Honor, we are advised that this young man's father died  
5 after the accident; that got a lot of publicity, and I be-  
6 lieve Mr. Cranwell has stated that he will ask the mother not  
7 to refer to this father's death in the trial.

8 MR. CRANWELL: I'll do that Your Honor.

9 Your Honor, with respect to the admission of liability,  
10 I would only say that I would respectfully submit to the  
11 Court the exclusion of all of the evidence in the accident is  
12 not proper. One of the elements of damages is the severity  
13 of this boy's injury and the impact itself and the severity  
14 of the impact goes to the severity of the injury. I have  
15 always been accustomed in the past when having an admission  
16 of liability to prove the severity of the impact as it re-  
17 lates to the injury.

18 MR. ROSENBERGER: If Your Honor please, in  
19 this case, it's not a soft tissue injury, and we admit that he  
20 had a severe fracture of the leg, and the doctor will so tes-  
21 tify. It's not a question of going in to determine whether  
22 he got an injury or not; we are admitting that he had this  
23 severe fracture, and that he had \$9,000 worth of medical  
24 and hospital expenses. The hospital was about \$6,000.

25 THE COURT: Don't you think that's enough, Mr.

1 Cranwell, the fact that they are going to admit that there  
2 was a terrible impact?

3 MR. CRANWELL: No, sir. I think that I'm  
4 entitled under the law to show the Commonwealth of Virginia  
5 the impact as it relates to the severity of the injury.  
6 That's what the law is and I respectfully submit to the Court  
7 that I would have a right to show that.

8 THE COURT: What do you think you are entitled  
9 to show?

10 MR. CRANWELL: I think I'm entitled to show,  
11 for example, when the truck struck the back of the bus that  
12 there was no application of brakes prior to that point, and  
13 the impact was so severe that it pushed both the bus and the  
14 truck up in the air, caved in the back of the bus in some  
15 six feet, folded and accordioned the seats to the degree that  
16 the young man's left leg was pinched down between one of the  
17 legs and almost severed by the impact itself.

18 MR. ROSENBERGER: Judge, we have admitted the  
19 severe fracture. We have admitted that and the medical evi-  
20 dence will show that. I don't see that the collision or the  
21 force of collision adds anything more to it.

22 THE COURT: I think that the courts have held  
23 that the impact, the severity of the impact and so forth are  
24 admissible, Mr. Rosenberger.

25 MR. ROSENBERGER: Where the soft tissue injury

1 is concerned and any argument as to the extent of the injury,  
2 I will admit that. There's no question about it. The doctor  
3 is going to testify.

4 THE COURT: Well, I believe he is entitled to  
5 have testimony in there that it was a terrible impact and so  
6 forth. I think the law has held that time and again. You  
7 know that.

8 MR. ROSENBERGER: Your Honor, I know that  
9 where there is a question about the extent of the injury,  
10 but in this case where the tractor-trailer hitting the back  
11 of the school bus, that is immaterial as to the sole issue  
12 of the extent of this young man's damages, and this is irre-  
13 levant, immaterial, and highly prejudicial to hit a school  
14 bus.

15 THE COURT: Well, they all know he hit the  
16 school bus.

17 MR. ROSENBERGER: I know that, and we admit  
18 that he was riding on the school bus when he was injured.

19 MR. CRANWELL: I have been at this not nearly  
20 as long as Mr. Rosenberger has, and he's a good lawyer, and  
21 he's boxing me in right now, I understand that. That is  
22 his prerogative under the law, but he let one wheel skip when  
23 he says there is a question about soft tissue injury. Mental  
24 anguish, anxiety are also elements here. And the severity  
25 of the impact to show the anxiety and the suffering and the



1 fear that occurred at the point of the scene at the time are  
2 relevant to this young man's damages.

3 THE COURT: I think they are too, Mr. Rosen-  
4 berger. I think they are.

5 MR. ROSENBERGER: I have given, Your Honor,  
6 all my reasons and I think there are sound. We are going in-  
7 to these things, and we are in a very sensitive area with  
8 this school bus.

9 THE COURT: I understand that, but we have  
10 gone into that on the Voir Dire. Everyone of these jurors  
11 out there know about this matter, and they have been seated  
12 as good jurors, and I do not feel that this is going to pre-  
13 judice your case in any way.

14 I believe they are entitled to know that this was  
15 a very severe accident.

16 MR. ROSENBERGER: Judge, I think they even  
17 had this-- I'm pretty sure-- had pictures on T.V.

18 THE COURT: I don't recall. This was two  
19 years ago.

20 MR. ROSENBERGER: I know, and you see we are  
21 admitting, they already know, they know this collision was  
22 with a school bus, how much of a collision, it's obviated  
23 on the grounds that he has had a severe fracture.

24 THE COURT: What witnesses do you expect to  
25 show this accident by?

1 MR. CRANWELL: The State Trooper and Betty  
2 Rotenhizer.

3 MR. ROSENBERGER: The State Trooper wasn't  
4 there when it happened.

5 THE COURT: All the trooper can testify to is  
6 what he found. There's no question about that, and I don't  
7 think anything he would say would prejudice you, Mr. Rosen-  
8 berger.

9 MR. ROSENBERGER: What does he add to it?  
10 We have admitted liability.

11 MR. CRANWELL: Your Honor, he did the work  
12 on the school bus, and he would testify that the force of the  
13 impact crumpled the left-hand side in six feet, reduced the  
14 side of the bus six feet and indicated it was a rather sub-  
15 stantial impact.

16 THE COURT: I don't think that would hurt your  
17 case; I'm going to allow it.

18 Now, Mrs. Rotenhizer, did she see it?

19 MR. CRANWELL: Yes, sir. She will testify  
20 that when they made contact that the impact was such that it  
21 forced them both straight up in the air.

22 THE COURT: I will allow you to go into that,  
23 but don't go beyond that, Mr. Cranwell.

24 MR. CRANWELL: Your Honor, I'm going to try to  
25 stay--

1 THE COURT: Try to stay within the law, because  
2 I know you want it if you get a verdict.

3 MR. CRANWELL: I don't want any reversible  
4 errors.

5 THE COURT: And I don't want any in it either.

6 MR. ROSENBERGER: Your Honor, we respectfully  
7 object to the Court's decision for the reasons stated, and I  
8 would like it understood my objection stands without any em-  
9 phasis before the jury. We object to the testimony--

10 THE COURT: All you have to say is you object.

11 MR. ROSENBERGER: Well, I didn't want to be  
12 put in a position out there when you already know what my  
13 objections are.

14 THE COURT: All right. The Court will note  
15 your objections.

16 What else, gentlemen?

17 MR. CRANWELL: Your Honor, does the motion  
18 still stand on punitive damages?

19 MR. ROSENBERGER: Oh, yes. In light of this  
20 admission, and in light of the allegations of the pleadings,  
21 and we say that there is insufficient evidence to support a  
22 verdict for punitive damages, and we have admitted he is en-  
23 titled to compensatory damages.

24 MR. CRANWELL: Your Honor, the weight of au-  
25 thority in the United States is to the effect that an employer

1 may be liable to third persons when hiring and retaining  
2 their services who's incompetent or unfit. Now the Virginia  
3 case to support this is Davis v. Merrill which is 133 VA 69,  
4 which is a railroad case.

5 Now the employer can be negligent for hiring or re-  
6 taining an incompetent employee. One that he knows is likely  
7 to cause injury to the public.

8 Also the case law is very clear that an innocent or  
9 negligent act by an employee may involve misconduct of the  
10 employer so that the latter, that would be the employer, will  
11 then incur liability for exemplary damages for his own wrong.

12 Your Honor, I don't think that Mr. Wallen in this  
13 case was probably guilty of wanton negligence. But I think  
14 the two men that own the truck was guilty of wanton negli-  
15 gence.

16 I think their wanton negligence was hiring Mr. Wallen.  
17 The evidence will be that he did not have a Virginia Chauff-  
18 feur's license which you had to have to operate this vehicle.

19 The evidence will show that both Mr. Jones and Elder  
20 were familiar with the Interstate Commerce Commission's  
21 regulations that require him to have a physical examination,  
22 a road test, and a written test before driving that vehicle,  
23 that they maintained numerous other employees to drive trucks  
24 and they did not administer that test to any of them. If  
25 they had administered that test, they would have known he

1 did not have a Virginia Chauffeur's license.

2 The evidence in this case is going to also be that  
3 they pleaded guilty in the United States District Court,  
4 Western District of Virginia, guilty of these criminal vio-  
5 lations for knowingly and willfully failing to get that in-  
6 formation.

7 Now, the facts in this case are going to be such that  
8 the jury can assume or could reasonably infer that the reason  
9 this accident happened was because they had an incompetent  
10 man who was driving this tractor-trailer.

11 The evidence is going to be that he didn't have but  
12 three months experience driving a tractor-trailer ever before  
13 getting into this thing and running up and down the road.

14 The law of the Commonwealth requires that he take a  
15 road test and have 500 miles driving experience. The ICC  
16 requires him to take a test with a competent approved driver  
17 to see that he is competent to drive. It requires him to  
18 file a job application. If they had made him file a job  
19 application, they would have found he didn't have a Chauff-  
20 feur's license because it's required right on the application,  
21 and I have got the form right here from the ICC regs that  
22 says he had to have a Chauffeur's license. He could have  
23 avoided the road test, which the ICC regs require, had he  
24 produced a Virginia Chauffeur's license.

25 The evidence is also going to show that they put this

1 truck out on the road with improper equipment; the air hoses  
2 that ran to the brakes were burnt through, the brakes' rods  
3 that go into the front of the truck were worn through, and  
4 the brake was inoperative on the truck.

5 Now, Your Honor, if that's not willful wanton reck-  
6 less disregard for the safety of the people on the highway,  
7 I don't know what is.

8 MR. ROSENBERGER: If Your Honor please, I will  
9 take them up in order.

10 This man did not have a Chauffeur's license that  
11 would qualify him to operate for other people. The license  
12 that he had would qualify him to drive the tractor-trailer  
13 if he owned it. So, we say the license does not affect his  
14 ability to drive.

15 In addition, he did have a road test. He had been  
16 driving for 90 days. He had been driving this company's  
17 equipment. So, those two items had absolutely nothing to do  
18 with this accident.

19 Now, with regards to the brakes. There was no plea  
20 of guilty to any charge by the Federal Government relative to  
21 the condition of the tractor-trailer. They were dismissed.  
22 There were four counts.

23 MR. CRANWELL: Nol pros.

24 MR. ROSENBERGER: So I'm saying there was no  
25 plea of guilty as to defective equipment; absolutely none.

1           In addition, we have evidence that they found a bro-  
2       ken rod in one chamber on the trailer. The trailer still  
3       with that would operate. That brake chamber would operate  
4       and we have the evidence here that it would.

5           Number two; we have evidence that we did not know--  
6       these two owners did not know of it.

7           We also know that following the accident the brakes  
8       locked up so tight that the wrecker could not move the  
9       tractor-trailer. They had to take those loose to get that  
10      thing to move.

11           THE COURT: I think you are entitled to put  
12      all that evidence on.

13           MR. ROSENBERGER: Well, then I'm saying that  
14      this is prejudicial-- it would not bind, Your Honor. They  
15      are suing the driver and the owners.

16           The principal is not liable for any punitive damages  
17      of an employee unless they ratified it.

18           MR. CRANWELL: I agree to that. I'm not su-  
19      ing them for the employee's punitive damages, I'm suing them  
20      for having an incompetent person on the road.

21           MR. ROSENBERGER: The fact that they let him  
22      drive would not be sufficient to come within the definition  
23      of punitive damages.

24           THE COURT: Show me some law.

25           MR. ROSENBERGER: There is no case in Virginia

1 that has held that. On the contrary, they have held that  
2 the principal is not liable only. We always go as to the act  
3 at the time. There is nothing to show that his inexperience  
4 caused this accident. The sole thing he was saying, that he  
5 did not see the lights come on this school bus in time to  
6 get his brakes to operate. That's the long and the short of  
7 it. There's nothing aggravated about it, but it's prejudi-  
8 cial if we start to go into all this punitive damages, Your  
9 Honor. Our Court has said it must be willful and wanton.  
10 It is getting around to an intentional act.

11 Now, I'm, of course, representing the insurance com-  
12 pany and they are not responsible for punitive damages, and  
13 I might be wasting my time, as far as we are concerned; but  
14 I'm also representing these two owners and so is Mr. Abbitt  
15 representing them, and there can be absolutely no grounds  
16 for going to the jury on punitive damages in this case.  
17 If this sort of evidence comes in, then we can't get a fair  
18 and impartial trial dealing on the compensatory.

19 It prejudices the whole case.

20 MR. CRANWELL: Your Honor, the parallel to  
21 what we are talking about here is replete in Virginia law.  
22 Denby v. Davis, 212 VA 836. Your Honor, those are the  
23 negative entrustment cases, and I'm sure the Court is fami-  
24 liar with that. In the Denbeigh case, that is where the  
25 owner had entrusted his car to a person who had a visual and



1 physical impairment. The Court said the liability is for  
2 the owner because he knew or had reason to know or cause to  
3 know that he was entrusting his car to an unfit driver likely  
4 to cause injury to others. Now, that is what I would have to  
5 prove to prove negligence on their part.

6 Then I would have to go a step further, as I point  
7 out, if you want me to go back and cite the cases that are  
8 referred to there that an innocent act by an employee can  
9 constitute such misconduct on the part of the owner and they be  
10 responsible for all damages. Now, this was, in fact, an  
11 improper entrustment. There is no question about that. The  
12 question was whether it was a wantonly wrong entrustment.

13 I am going to show the jury that it was. They put defective  
14 equipment on the road, they didn't care about their equip-  
15 ment, they didn't inspect it, they put a guy on the road that  
16 wasn't licensed, they didn't test him, they didn't give him  
17 a physical exam, he didn't have any experience. The evidence  
18 is going to show that this guy had three hours sleep before  
19 he got in that truck at six a.m. in the morning and drove  
20 down here and hit these kids on the school bus. I don't  
21 think an experienced driver would have done that, and they  
22 are responsible for putting those kinds of people on the  
23 road.

24 The other leading case in Virginia on the entrustment  
25 is Crowwell v. Duncan, 145-489, but there is a whole series

1 of cases if the Court would like for me to give you all of it.  
2 Flanagan V. Kellam, 187 VA 754; Laughlin v. Rose, 200 VA 127;  
3 I gave you the Denby v. Davis; McNeill v. Spindler 191 VA 685.  
4 I will be glad to give you an article on punitive damages  
5 in automobile cases if you would like to see that.

6 THE COURT: I'd like to see it. I'm going to  
7 have to rule on this now. I'm going to allow him, and I be-  
8 lieve he states now, that Mr.-- that he doesn't think the  
9 man was wanton--

10 MR. CRANWELL: I don't think Mr. Wallen was  
11 guilty of willful wanton negligence, but I do think the two  
12 owners were guilty of willful and wanton negligence in putting  
13 him on the highway.

14 THE COURT: I'll allow you to put that evidence  
15 in as to the owners.

16 MR. ROSENBERGER: We respectfully object your  
17 decision, Your Honor, on the grounds that we have represented  
18 to you that our evidence will be that they did not know of any-  
19 thing wrong with this equipment.

20 THE COURT: If he can show me-- of course, I  
21 will strike his evidence if he does not have sufficient evi-  
22 dence.

23 MR. ROSENBERGER: But, Judge, when he gets in,  
24 you are not going to be able to cure it with the jury, and we  
25 get so prejudiced that we cannot get a fair and impartial

1 trial from this jury.

2 MR. CRANWELL: Your Honor, my evidence will be  
3 that the ICC regulations for both of these men require a  
4 daily inspection of this vehicle before driving, and if they  
5 had done the inspection they would have found all of this.

6 MR. ROSENBERGER: The tractor, on Saturday  
7 before this thing happened on Monday, was driven by the  
8 mechanic.

9 MR. CRANWELL: Did he examine the trailer be-  
10 fore going out?

11 MR. ROSENBERGER: He didn't have that trailer  
12 going out at that time, but the mere violation of a regula-  
13 tion is not sufficient to show any wanton willful result.

14 MR. CRANWELL: In this case my evidence will  
15 show, I think, they violated the laws of the Commonwealth,  
16 the ICC laws, and they pleaded guilty to willful conduct.

17 MR. ROSENBERGER: Judge, this gets down to  
18 if I'm on the road operating a vehicle, and I don't have an  
19 Operator's license, that that is evidence of the fact that  
20 I'm an incompetent driver. This man has been driving a trac-  
21 tor-trailer for 90 days; he hadn't had any accidents, there  
22 is no evidence that he had had any accidents.

23 MR. CRANWELL: Those are all arguments you  
24 can make to the jury.

25 MR. ROSENBERGER: What help is it going to

1 have to say, look. The license he had authorized him to drive  
2 a tractor-trailer, but not somebody else's tractor-trailer.  
3 That's what it gets down to, Judge.

4 THE COURT: That's the law.

5 MR. ROSENBERGER: Well, that doesn't say that  
6 he--

7 MR. CRANWELL: The law doesn't allow him to  
8 drive his own tractor-trailer in interstate commerce until  
9 he takes a physical examination--

10 MR. ROSENBERGER: He wasn't driving interstate  
11 commerce at this time.

12 MR. CRANWELL: Your clients have admitted  
13 and pleaded guilty to that.

14 MR. ROSENBERGER: To other tractor-trailers  
15 going in interstate commerce, but not this time.

16 MR. CRANWELL: They pleaded guilty to this  
17 one right here on this date in question. I have got the  
18 plea out there with me; a certified copy of it.

19 THE COURT: If he can show me that, I'll allow  
20 it.

21 MR. ROSENBERGER: This thing was in route from  
22 Charlotte Court House to Big Island which is not interstate  
23 commerce.

24 THE COURT: But you say you have it for that  
25 date?

1 MR. CRANWELL: Yes, sir. Do you want to see  
2 it?

3 THE COURT: Yes.

4 MR. ABBITT: What Mr. Rosenberger is trying  
5 to say is that none of these violations that they were charged  
6 with contributed to the accident or had anything to do with  
7 it.

8 MR. CRANWELL: That's the question of proximate  
9 cause. That's what the negative entrustment cases say. The  
10 negative entrustment cases say exactly the point you are  
11 talking about. When they say they let somebody have their  
12 car and didn't have their driver's license; in one of the  
13 cases they say it wasn't proximate cause that he didn't have  
14 his driver's license. In the other case they went through  
15 and the fact that they knew the guy wasn't a good driver, he  
16 said proximate cause, bang, liability.

17 (An off-the-record discussion was had by Court  
18 and counsel.)

19 (The Court and counsel return to courtroom.)

20 (All witnesses are in witness room.)

21 MR. CRANWELL: Your Honor, we call Dr. J. E.  
22 Hopkins to the stand.

23 THE COURT: Do you want to make opening state-  
24 ments?

25 MR. CRANWELL: I'm sorry, Your Honor, I thought

1 THE COURT: The Court declares Dr. Hopkins  
2 an expert in the field of orthopedic surgery.

3 BY MR. CRANWELL:

4 Q Dr. Hopkins, I would like to take you to the  
5 date of May 12, 1980; did you have an occasion on that day  
6 to see Gregory Scott Allen?

7 A I did.

8 Q Where did you see him?

9 A In the Emergency Room at Lynchburg General  
10 Hospital.

11 Q Did you obtain a history from him?

12 A I did.

13 Q What was the history?

14 A He had been in an accident; was on a school  
15 bus that was evidently hit by a tractor-trailer truck.

16 Q You say you first saw Gregory in the Emergency  
17 Room?

18 A Yes, sir.

19 Q Can you describe his appearance when you first  
20 saw him?

21 A He was brought into the Emergency Room; had  
22 multiple abrasions, lacerations to face, arms, things like  
23 this, and had a very unstable fracture of the left lower leg,  
24 tibia and fibula, just past halfway down the leg.

25 Q Did you then have an occasion to examine him?

1           A       I did.

2           Q       Could you tell us what the examination revealed?

3           A       Well, he was examined by a general surgeon who  
4 was checking the other injuries. I was asked to see the  
5 orthopedic injuries which was primarily the leg. He had an  
6 unstable fracture which the leg moved freely back and forth.  
7 The foot, distal to the fracture, was pale and cool and the  
8 fracture was open. Hence, the soft tissue was torn and  
9 there was a large wound across the front of the leg.

10          Q       What bones were fractured?

11          A       The tibia and the fibula.

12          Q       What is the tibia?

13          A       That's the largest bone in the lower leg run-  
14 ning from the knee to the ankle.

15          Q       What's the fibula?

16          A       That's the small bone on the outside.

17          Q       Now, you say there was an open wound?

18          A       Yes, sir.

19          Q       Where was that wound?

20          A       Overlying the fracture area itself.

21          Q       What portion of the leg did it cover, do you  
22 recall?

23          A       It was the front portion coming across the leg  
24 roughly about this manner.

25          Q       What type of fracture is that called, Doctor?

1           A       This type is called a compound which means  
2 open, and comminuted which means multiple pieces.

3           Q       Were some X-rays taken of the fracture?

4           A       Yes, sir.

5           Q       I'm going to show you an X-ray and a photo-  
6 graph. If you will tell me what that is I will appreciate  
7 it very much.

8           A       This is a-- this particular picture is an  
9 arteriogram of a lower leg, and the fracture is an unstable  
10 fracture of the tibia and fibula and conjunction of the dis-  
11 tal third.

12          Q       Would you look at the photograph?

13          A       Um-hum.

14          Q       Is that a photograph of that X-ray?

15          A       It appears to be, yes.

16               MR. CRANWELL: Your Honor, we would like to  
17 offer the photograph as Plaintiff's Exhibit.

18               THE COURT: You have seen this, haven't you?

19               MR. ROSENBERGER: No, I haven't.

20               Did the Doctor take the X-ray? Did you take that  
21 X-ray?

22               THE WITNESS: It was taken at the hospital.

23               MR. ROSENBERGER: Do you know that that's his?

24               THE WITNESS: I presume so, but that's the  
25 type of fracture that he had.



1 MR. ROSENBERGER: We have no objection.

2 THE COURT: All right. That's Plaintiff's

3 Exhibit No. 1.

4 (Photograph marked Plaintiff's Exhibit No. 1.)

5 BY MR. CRANWELL:

6 Q Doctor, would you point out on the photograph  
7 where the fracture actually occurs and hold it up to the jury?

8 A This is the lower leg. This point is the knee  
9 and the ankle. This is the large bone, tibia, and is broken  
10 right across here with several pieces. This is the segment  
11 that belongs underneath it. This on the outside is the fibula,  
12 the small bone, and this is the distal segment. These are  
13 offset approximately an inch.

14 Q Dr. Hopkins, what caused the wound on the leg?

15 A That comes from the injury itself. When you  
16 fracture, you can either tear the soft tissue, skin, tendons,  
17 nerves, whatever is there by the injury itself where it cuts  
18 into it, or what more commonly happens when the bones break  
19 and particularly with high velocity or high amount of force  
20 injure the bones, and they will rip through soft tissue, tear  
21 the structures-- skin above.

22 Q This particular wound, can you tell us how  
23 wide it was? For example, did you measure it?

24 A It was not mentioned-- I didn't make that par-  
25 ticular mention of it, but it was probably 10 centimeters;

1 3 or 4 inches across and very jagged.

2 Q Let's talk about the foot. What was the con-  
3 dition you said the foot was in?

4 A The foot was pale and cool.

5 Q Is that what you would call cold foot?

6 A Yes.

7 Q Could you tell us what that means in--

8 A What that means is the circulation to the foot  
9 has been interrupted or was not normal.

10 Q Now, is that the reason you did the arterio-  
11 gram?

12 A Right.

13 Q Now, what does the arteriogram, in fact, show  
14 that caused the cold foot?

15 A It showed us that the two major vessels going  
16 down that part of the leg that supply the foot and everything  
17 distal to it showed us that one of them was in half and the  
18 other one the circulation stopped in-- the anterior vessel  
19 stopped just proximal to the fracture site.

20 Q Can you see that plain on the photograph?

21 A It's an artery that we are looking for. It  
22 should-- the one that's stopped has stopped up in this por-  
23 tion. This is probably not the arteriogram picture that you  
24 would need to show it.

25 ~~MR. ROSENBERGER: This picture doesn't have~~

1 a name on it, Mr. Abbitt subsequently objected and so  
2 we should object.

3 THE COURT: I think they are entitled to object  
4 unless you can show that this one is his X-ray, I  
5 think you understand, Mr. Cranwell, that I will have  
6 to rule that way.

7 BY MR. CRANWELL:

8 Q What did the arteriogram reveal to you, Dr.  
9 Hopkins?

10 A It showed us that one vessel was open and that  
11 it was probably in spasm. The other vessel, the anterior  
12 vessel, the dye stopped just proximal before the fracture site  
13 itself.

14 Q What medical problem does that present for you  
15 or what do you look for in a situation like that?

16 A Well, you know, to keep a part of your body a-  
17 live requires circulation, and if the circulation has been  
18 cut off then you are running the potential of that part dying  
19 or not being able to survive.

20 Q When you say not being able to survive, was  
21 that a concern of yours with respect to Greg's leg?

22 A It sure was.

23 Q How about the nerve structure? Did you have  
24 an occasion to look at the nerve structure?

25 A In testing him, the nerve to the part of the

1 foot that lifts the foot up and lifts the toes up, it's called  
2 the perineal nerve, was not functioning at the time he came  
3 into the hospital-- the Emergency Room.

4 Q Were you able to ascertain why it was not func-  
5 tioning?

6 A No. Short of seeing the ends of the nerves  
7 at surgery, there would be no way of knowing. Usually we  
8 assume that most of these things, what we call stretch pauses,  
9 the nerve is stretched at the time of impact and functioning  
10 shut off.

11 Q Would you tell us what medical procedures  
12 or what you felt necessary to do after you completed your  
13 initial examination of Greg?

14 A Well, the major thing that you have to do is  
15 you have got to clean up the wound; any debris, any dirt has  
16 to be thoroughly cleaned out. Dead tissue needs to be re-  
17 moved. Any tendons, anything that needs to be repaired can  
18 be repaired, and then we try and get the bone ends back to-  
19 gether and stabilized so that they won't move and do any fur-  
20 ther damage.

21 Q Did you have to do a surgical procedure in  
22 order to do that?

23 A To do that you have to take him to the Opera-  
24 ting Room and put him to sleep.

25 Q Will you describe the operating procedure?

1           A           Basically what you do is take them to the  
2           Operating Room, put them to sleep, he will put a tourniquet  
3           on the leg so he can control any bleeding or-- so that you  
4           have control of any bleeding that may occur, and then you basi-  
5           cally sterilize the area and then go about cleaning up the  
6           wound itself and exploring to see what you have.

7           Q           What did you find when you explored?

8           A           It was a fair amount of soft tissue damage  
9           which required removal of sections of dead muscle, dead skin.  
10          There was a tendon or two that were cut that could be re-  
11          paired.

12                 When we straightened the leg and put the bones back  
13          together, the foot started to pink up which means that the  
14          circulation came back at that point and probably meant that  
15          the blood vessels were being stretched or were in spasms  
16          like shock when a serious injury had clamped down.

17          Q           What-- were you able to stabilize the fracture  
18          itself?

19          A           Right. I put the fracture together which was  
20          very unstable, and we put a pin across it.

21          Q           What kind of pin?

22          A           A metal pin called a Steinmann pin.

23          Q           Would you tell us how you put a Steinmann pin  
24          in Greg's leg?

25          A           With a drill. You have a power drill to drill

1 across.

2 Q Like a little Black & Decker drill?

3 A Yes.

4 Q What do you do? How do you get the pin in?  
5 Drill a hole?

6 A Usually the pin has a sharp end on it and usu-  
7 ally you drill it directly into the bone with a power drill,  
8 then holding the fracture stable, you drill it out the other  
9 side so that hopefully with one pin you can hold the frac-  
10 ture together. Usually if you just hold the large bone, that's  
11 enough to do it. The small bone you don't have to worry about.

12 Q Now, I'm going to show you a photograph and ask  
13 you if you will look at the name on the top.

14 A It says Gregory Allen, 5-13-80.

15 MR. ROSENBERGER: We have no objection, Your  
16 Honor, to that one or this other one.

17 BY MR. CRANWELL:

18 Q Now, I'll ask you if these two photographs  
19 are photographs of those X-rays?

20 A Certainly appear to be.

21 Q Tell us what they show?

22 THE COURT: Let's get the number on them.

23 MR. CRANWELL: I'm sorry, Your Honor. That is  
24 Plaintiff's Exhibit 2 and Plaintiff's Exhibit 3.

25 (Photograph marked Plaintiff's Exhibit No. 2  
and Plaintiff's Exhibit No. 3.)

1 BY MR. CRANWELL:

2 Q Plaintiff's Exhibit No. 2; will you tell us  
3 what that is?

4 A It's a lateral X-ray of this fracture taken  
5 after the operation the next day with the pin in place, the  
6 fracture reduced, and a half cast on the back of the leg.

7 Q What with respect-- are the fragments visible  
8 in that photograph?

9 A Um-hum. The fracture is right across here and  
10 multiple fragments here. This is the tibia, large bone, and  
11 the small bone here.

12 This is the same thing looking from the front and  
13 fracture fragments together with a pin across holding it,  
14 and the small bone here.

15 Q Dr. Hopkins, how long did Greg remain in the  
16 Operating Room that first day, do you recall?

17 A No, I don't recall. It usually takes anywhere  
18 from an hour to two and a half hours to do all of this.

19 Q Did you put Greg's leg in a cast?

20 A Right. We used a half cast; posterior splint.

21 Q What is a posterior splint?

22 A A half cast that goes around the back of the  
23 leg.

24 Q How come you didn't put a complete cast on  
25 Greg's leg?

1           A           A couple of reasons. You needed to control  
2 any swelling. With an injury like this you create a great deal  
3 of swelling. If you had a complete circumferential cast as  
4 opposed to a partial, you would have trouble with that.

5                       Secondly, we wanted to be able to look at the wound  
6 which was a major concern.

7           Q           How does the posterior splint actually work?  
8 Can you explain that to me?

9           A           Just like a cast. It's a half cast. You put  
10 a cast on and then you cut it in half and you have a posterior  
11 cast.

12           Q           How long did you leave the posterior cast on  
13 Greg's left leg?

14           A           A couple of days.

15           Q           Why did you remove it?

16           A           The multiple dangers from fractures like this  
17 are many. Probably two most common things that can happen  
18 with this type of injury, you can develop an infection at  
19 the fracture itself called osteomyelitis, and that's a seri-  
20 ous problem.

21                       The other thing that can happen is the fracture may  
22 not heal. If there is enough damage, the blood supply gets  
23 cut off, and the fracture does not heal for some reason. So,  
24 this particular fracture has always been a very difficult  
25 problem. It has a high incidence of complications, infections,



1 things like that. So, it's called a very troublesome frac-  
2 ture. What we try and do is stabilize it without having  
3 any kind of metal or hardware across the fracture itself.  
4 If its stable by itself, you can put it back in place and  
5 it's stable by itself, ideally you can treat it with a cast.

6 If it is unstable, then you need some kind of device  
7 to hold the fragment in position so it gets early healing.

8 We use to have to treat these either with casts and  
9 accept whatever position you got, or we would open it, put  
10 it together, put plates and screws across it to hold it in  
11 place. The problem with that is you had hardware which is  
12 a foreign body right across the fracture site. So we now  
13 are using a device called an external fixater which allows  
14 you to hold the fracture together, gives you access to the  
15 wound, but there is no hardware directly across the fracture  
16 site itself.

17 Q Did you recommend that device for Greg?

18 A I sure did.

19 Q What is that called?

20 A It is called a Hoffmann device.

21 MR. ROSENBERGER: I have seen it all the morn-  
22 ing.

23 BY MR. CRANWELL:

24 Q Is this a Hoffmann device?

25 A It is.

1 Q Does that look like the one on Greg's leg?

2 A Um-hum, sure does.

3 Q Would you explain to us how you actually attach  
4 the Hoffmann's device to Greg's leg?

5 A What you have to do is these pins that-- there  
6 are a group of three here and here. They have a sharp point  
7 on them and threads in the middle portion. What you do is  
8 you drill them by hand transversely through the bone, both  
9 sides of the bone, and through the skin on either side. You  
10 put on a special jig so they are all staggered in the right  
11 position across and all in line, and then you do the same  
12 thing below the fracture and then you attach these outriggers.  
13 These clamps come apart and these slide on and tighten on.  
14 What it does is it allows you-- like an erector set. You have  
15 this all around the fracture. The leg with the wound is  
16 sitting down here which can be open and the fracture is held  
17 together without any metal crossing the fracture site.

18 Now, it also has an infinite number of ways for  
19 changing alignment. For tightening, it squeezes it together  
20 changing the angulation slightly backwards and forwards, and  
21 it's an ingenious device. It saves us a lot of trouble on  
22 these difficult fractures. It looks terrible, but really  
23 does a terrific job.

24 Q Did you have to drill holes in Greg's leg?

25 A Yes. You have to drill each of the holes in

1 through the skin, across the bone, and out the other side.

2 Q How many holes did you drill in Greg's leg?

3 A You have six pins, skin holes on each side, and  
4 bone holes on each side.

5 MR. CRANWELL: Your Honor, we would like to  
6 offer this as Plaintiff's Exhibit 4.

7 THE COURT: All right.

8 MR. ROSENBERGER: Your Honor, I have no ob-  
9 jection to it, but I don't see any reason to clutter  
10 the record with it.

11 MR. CRANWELL: All right. I'll offer that it  
12 be displayed to the jury.

13 THE COURT: They can all look at it and take  
14 it back.

15 BY MR. CRANWELL:

16 Q Did this entail a surgical procedure?

17 A Yes, sir.

18 Q When did this occur?

19 A A couple of days later on the 14th of May.

20 Q Were you able to affect alignment of the frac-  
21 ture by using the Hoffmann's device?

22 A We were.

23 MR. ROSENBERGER: No objection. They are all  
24 named.

25 THE COURT: This is Plaintiff's Exhibit No. 4.

(Photograph marked Plaintiff's Exhibit No. 4.)

BY MR. CRANWELL:

Q Will you tell us what that is?

A This is a picture of the fracture after we put the Hoffmann's device on, and it shows the position that we have it in.

Q Does it show the pins?

A It shows pins above and below.

Q Is this a photograph of that X-ray?

A It appears to be.

Q I'll ask you if you will tell us what that is?

A This is a lateral X-ray shot from the side of the same fracture with the Hoffmann's device in place. Most of the details are obscured by the device itself.

Q Is this a photograph of that?

A It appears to be.

Q Can you point out the fracture to us?

A The fracture is right across here.

(Photograph marked Plaintiff's Exhibit No. 5.)

MR. ROSENBERGER: No objection.

BY MR. CRANWELL:

Q I'll ask you if that is a photograph of Gregory Scott Allen?

A It is.

Q Is that in the Lynchburg General?

A Certainly appears to be.

1 Q Is the Hoffmann's device on his leg?

2 A It is.

3 Q I notice the leg is covered in that photograph.  
4 What is that?

5 A This is gauze, the sterile dressing, that covers  
6 the wound and is circumferentially around it.

7 MR. CRANWELL: Your Honor, we offer this as  
8 Plaintiff's Exhibit 6.

9 THE COURT: Plaintiff's Exhibit No. 6.

10 (Photograph marked Plaintiff's Exhibit No. 6.)

11 BY MR. CRANWELL:

12 Q How did Greg tolerate these very surgical pro-  
13 cedures?

14 A He did fine with the surgery.

15 Q Did he have any other problems?

16 A Well, he had the facial lacerations and lacera-  
17 tions of the arm that were sutured at the time of the first  
18 operation.

19 Q Did he have any problems with anxiety?

20 A In the period that he was in the hospital fol-  
21 lowing the accident, yes; he had problems with anxiety.

22 Q What is anxiety?

23 A Well, it's a nervous feeling where you have  
24 an intense feeling of insecurity, feeling that things aren't  
25 going to go right or things aren't totally under your control.

1 Q Is it normal for a child of Greg's age with  
2 the type of injury to experience that?

3 A Oh, sure. This is a major injury-- to do that  
4 type of damage takes a major force, and so, you know, the  
5 force was really-- was through the whole body so the injury  
6 itself could be quite traumatic.

7 Q Did you recommend any medication or treatment  
8 for that situation?

9 A We used some mild sedatives at the time, and  
10 then his problems seemed to persist a bit. We called in a  
11 child psychiatrist to help him deal with the trauma.

12 Q Did that seem to help?

13 A It did.

14 Q How long did Greg remain in the hospital, do  
15 you recall, the first day?

16 A The first time he was in 12 days.

17 Q Did he receive any other treatment or anything  
18 while he was in the hospital?

19 A He went to physical therapy. We got him up  
20 on crutches following application of the Hoffmann's device;  
21 started him walking and got him trying to use the muscles  
22 and tendons to get them moving.

23 Q Why did you want him to get up and be ambula-  
24 tory?

25 A It is very important. We have found that with

1 people with major injuries like this part of the problem is  
2 with the injuries themselves, and part of the problem comes  
3 from what we call disuse atrophy. The muscles begin to  
4 deteriorate because of nonuse, so we try to mobilize these  
5 people as quickly as we can to cut down on disuse atrophy,  
6 loss of muscle tone, and to cut down on complications which  
7 can occur by being in bed; such as blood clots, kidney trou-  
8 ble, and things like that.

9 Q Was he still having some foot-drop problems?

10 A He was.

11 Q What is foot-drop?

12 A The nerve that supplies the muscles that pull  
13 the foot up and the toes up; this type of motion, is called  
14 the perineal nerve and that was out at the time of the injury  
15 and stayed out following the injury.

16 Q What treatment did you recommend for that?

17 A What you do is you put some type of support  
18 to keep the foot from dropping down and then you usually  
19 wait it out. Much of the time this function will return  
20 in time. The injury is more of a stretch than a complete  
21 severing of the nerve.

22 Q Did Greg receive any medications while he was  
23 in the hospital?

24 A He was on antibiotics, and I'm sure he was on  
25 pain medication.

1 Q Do you know what pain medication he was on?

2 A No, I don't have a note of it. I'm sure we  
3 probably used a small amount of Demerol and Codeine.

4 Q Why Demerol and Codeine?

5 A There is a fair amount of pain and it takes  
6 a heavy pain medicine to handle that.

7 Q Now, did Greg get up and get around on crutches?

8 A Um-hum.

9 Q Did you see him daily there in the hospital?

10 A I did daily; sometimes several times.

11 Q Were you pleased with his progress?

12 A Yes. I was very happy.

13 Q Could you tell us why you were so happy?

14 A Well, this is a potentially very serious  
15 injury. At the time when he came into the Emergency Room,  
16 you are never certain whether you can save the leg at all;  
17 whether you can get the circulation to return; whether it's  
18 going to require--

19 MR. ROSENBERGER: Excuse me, Your Honor. He  
20 didn't have that problem and what the Doctor was a-  
21 fraid of is not important.

22 THE COURT: Sustained.

23 BY MR. CRANWELL:

24 Q When Greg was discharged from the hospital,  
25 was the Hoffmann's device still on his leg?



1           A       Yes, sir.

2           Q       What directions were given with respect to  
3 Greg's activities?

4           A       We put him on a progressive angulation program  
5 where he spent more and more time up walking, putting the  
6 foot down-- at least for partial weight bearing and efforts  
7 to move the toes and foot trying to get some motion back in  
8 his tendons. Then he was on local wound care; at this time  
9 his wound was in pretty good shape.

10          Q       What is local wound care?

11          A       Well, you have the wound which is in the pro-  
12 cess of healing, but still can have drainage and fluid.

13               Then you have the pins that are going through the leg  
14 on both sides, and since they are open wounds, they have to  
15 be cleaned and usually you clean them with peroxide and put  
16 an antibiotic ointment on them. That keeps them from getting  
17 infected.

18          Q       When did you next see Greg after he was dis-  
19 charged?

20          A       He was discharged the 24th of May, and I saw  
21 him about ten days later in the office. At that time, we  
22 took the sutures out, and the wound looked fine.

23          Q       What sutures did you take out?

24          A       Sutures from the original surgery where we put  
25 the skin edges back together to cover the bone.

1 Q How did Greg tolerate that procedure?

2 A Taking the stitches out?

3 Q Um-hum.

4 A Fine.

5 Q When did you see him again?

6 A Approximately two weeks later on the 18th of  
7 June.

8 Q How was he doing then?

9 A Things looked reasonably good. He started  
10 getting a little skin irritation around the pins, and we had  
11 to put a little novocaine in, open the skin edges, so if  
12 there was any skin infection it would drain out.

13 The X-rays at that time we were happy with the way  
14 the fracture looked.

15 Q How did you-- Greg tolerate the procedure of  
16 draining the pin holes?

17 A He did fine.

18 Q When did you see him next?

19 A Another two weeks on the 2nd of July, and the  
20 wounds looked fine then. We were still concerned about the  
21 pins, but they seemed to be holding their own.

22 Q How was the foot doing then?

23 A Well, he was starting to get some return of  
24 function to the tendons that lift the foot up and lift the  
25 toes up.

1           Q       Was there any visible signs of swelling or  
2 anything at the wound?

3           A       He had a significant amount of swelling of the  
4 leg.

5           Q       What was causing that, do you know?

6           A       Well, probably a compilation of things. The  
7 wound-- the damage itself that comes from the injury always  
8 tears small veins. Veins are what take blood back from the  
9 foot back to the heart, so part of the return circulation  
10 system had been damaged so it was probably not as efficient.  
11 Plus, the other factor that returns blood or fluid from the  
12 foot is active use of muscles and activity. Since he was not  
13 back to full normal activity, he was not pumping the blood  
14 and fluid back out of the foot and all, and he was probably  
15 letting the leg and all come down at times.

16          Q       When did you see Greg again after that?

17          A       We saw him on the 18th of July.

18          Q       How was he doing then?

19          A       We needed to push him a bit in terms to use  
20 the leg and foot. The more you actually use the structures,  
21 the more stimulus there is to heal. It strengthens the heal-  
22 ing going on; speeds it up. I'm sure he was having enough  
23 pain with it that he wasn't real anxious to put his foot on  
24 the ground.

25          Q       Did you see him again after that?

1           A           We saw him on the 30th of July. At that time  
2 it looked like we had gone as far as we could with the Hoff-  
3 mann's device. He was getting local infection around the  
4 pins which happens almost all the time. These pins almost  
5 always get infected, so you then have to take them out and  
6 go to a cast.

7           Q           Would you explain to us the procedure to re-  
8 move the Hoffmann's device?

9           A           You have to then put them to sleep, cut the  
10 pins off flush to the skin on one side, cleaning the ends  
11 of the pins and skin and drill them out in reverse fashion.

12          Q           What kind of drill do you use to do that?

13          A           Hand drill.

14          Q           How did Greg tolerate that procedure?

15          A           He did fine.

16          Q           How long was Greg in the hospital when you re-  
17 moved the Hoffmann's device?

18          A           I believe he was in about two days.

19          Q           Was it necessary to stabilize the leg after  
20 you removed the Hoffmann's device?

21          A           We put a cast on it.

22          Q           What kind of cast did you put on it?

23          A           What we call a short-leg walking cast that  
24 goes from the knee down to include the foot and ankle.

25          Q           Why did you have to put a cast on the leg?

1           A       Well, the fracture was healing, but it was  
2 certainly far from mature, so you needed some type of external  
3 support to keep the fracture in alignment while healing.

4           Q       How long did that cast actually remain on  
5 Greg's leg, do you recall?

6           A       Probably another two or three months. We took  
7 that cast off the 10th of September and rex-rayed it, and  
8 put him in another cast which was taken off the 10th of Octo-  
9 ber, and it was left off.

10          Q       Have you continued to follow Greg?

11          A       I have.

12          Q       What was your directions-- recommendations  
13 when the cast was removed on October 10th?

14          A       Well, at that time, you go to work on getting  
15 your motion back. It had been in the cast for a while; the  
16 joints are stiff. You get them loosened up, you get the mus-  
17 cle strength up, and then if there is any residual wound  
18 care to be done you do that.

19          Q       Now, with respect to the injury that Greg  
20 received, currently what particular problem is he facing with  
21 respect to that injury?

22          A       Well, the potential problems that we are watch-  
23 ing along is the circulation which came back. Stabilizing  
24 the fracture has not been a problem. The next problem was  
25 the nerve, and that has all but returned to normal. The

1 functions of the tendons and muscles have come back. The  
2 other problem that you have to worry about is any infection  
3 at the fracture site which by all appearances have had no  
4 trouble with. The bone has healed well; no suggestion that  
5 there is any underlying infection. Occasionally something  
6 like that will pop up at a later date.

7 The last problem that you have to consider besides  
8 rebuilding the muscle tone and motion is sometimes a fracture  
9 like this in a youngster can stimulate-- either retard or  
10 stimulate growth, and in Greg's case it stimulated the growth  
11 so that that leg grew longer than his opposite leg.

12 Q How much longer is Greg's left leg than his  
13 right leg?

14 A Well, the first time that we measured it by  
15 X-ray, it was one and a half centimeters which is about 5/8  
16 of an inch.

17 Q How much now, do you know?

18 A The last X-ray that we took had it down to 1.1  
19 centimeters which is just under a half of an inch.

20 Q What will have to be done to correct that pro-  
21 blem?

22 MR. ROSENBERGER: If Your Honor please, that  
23 question is leading and suggests an answer, number  
24 one; and the Doctor doesn't say that he has to have  
25 any. He would have to lay a foundation for that.

1 THE COURT: Sustained. Lay your proper founda-  
2 tion, Mr. Cranwell.

3 BY MR. CRANWELL:

4 Q Dr. Hopkins, will it be necessary to correct  
5 that problem?

6 A It sometimes is necessary if the discrepancy  
7 is so--

8 MR. ROSENBERGER: If Your Honor please, I ob-  
9 ject to any further testimony. He just says some-  
10 times; he can't say what the-- with reasonable medi-  
11 cal certainty he has to do anything about it.

12 THE COURT: Rephrase your question.

13 BY MR. CRANWELL:

14 Q Dr. Hopkins, based on reasonable medical cer-  
15 tainty, can you tell us whether or not anything will have  
16 to be done to correct the length discrepancy of Greg's leg?

17 A If you have a leg length discrepancy in the  
18 vicinity of 3/8's to 1/2 of an inch or more, your various  
19 options would include the lift on the shoe.

20 MR. ROSENBERGER: If Your Honor, please. I  
21 object. He has not said--

22 THE COURT: He has just said if you have up  
23 to a half inch and he has stated that this young man  
24 has a half inch--

25 MR. ROSENBERGER: Less than 1/2 of an inch.

1 THE COURT: You said right at a half an inch,  
2 didn't you?

3 THE WITNESS: Right now at the present time  
4 it's is just under a half inch.

5 THE COURT: But he said--

6 THE WITNESS: When we first started measuring  
7 it, it was more than half an inch, and now it's less  
8 than half an inch and that's all within the range--  
9 those measurements are not so precise, so I think  
10 it is approximately a half inch.

11 THE COURT: With it being a half inch, would  
12 you say there would be a reason to take further steps?

13 THE WITNESS: Usually if somebody had a dis-  
14 crepancy of a half inch, there is enough tilt that  
15 creates a problem and we usually recommend doing some-  
16 thing about that..

17 BY MR. CRANWELL:

18 Q What are the options?

19 A Your options include using the lift on the  
20 short side.

21 MR. ROSENBERGER: Excuse me, Doctor. My ob-  
22 jection, Judge, is he must say with a reasonable medi-  
23 cal certainty what he needs to do.

24 THE COURT: That's what he's saying now.

25 MR. ROSENBERGER: No, he said options.



1 MR. CRANWELL: Judge, he has already indicated  
2 that with reasonable medical--

3 THE COURT: He has indicated that it comes  
4 within the range of something ought to be done.

5 Now, I believe you are stating, Doctor, that  
6 there are several things you can do, is that correct?

7 THE WITNESS: Right.

8 MR. ROSENBERGER: Which is necessary is my  
9 point. Can he say which is necessary?

10 THE COURT: He says something is necessary  
11 and you can do something.

12 THE WITNESS: I can tell you what I would  
13 recommend.

14 MR. ROSENBERGER: We respectfully object.

15 THE COURT: Overruled.

16 THE WITNESS: The options would include a  
17 lift to make the other side equal or in a youngster  
18 who still is growing, you have the potential of stop-  
19 ping the growth on the long side with a prescribed  
20 time period ahead of time. If they were to stop the  
21 growth of the tibia and fibula approximately a year  
22 and a half before its growth is complete, that would  
23 allow the opposite side to catch up. So that means  
24 the opposite leg would be equal and there would be  
25 no tilt, and you wouldn't have the problems associated  
with it.

1 BY MR. CRANWELL:

2 Q What procedure would you recommend for Greg?

3 A If his discrepancy drops to a quarter of an  
4 inch or less, I would not recommend doing anything except a  
5 lift in his shoe.

6 If the discrepancy stayed within a half inch, I would  
7 recommend the operation to equalize the legs at the proper  
8 time period.

9 Q Now, you are still following Greg, aren't you?

10 A Yes, sir.

11 Q Now, based on reasonable medical certainty,  
12 have you formulated an opinion as to the permanency of Greg's  
13 injury?

14 A The leg discrepancy or the injury?

15 Q The whole thing; the injury itself.

16 A Well, the injury itself has done an amazingly  
17 well recovery. We have been extremely pleased with how the  
18 leg has come out, but he does have some problems with it.  
19 Primarily in the form of loss of motion, some stiffness in  
20 the ankle joint, some loss of muscle mass in the strength in  
21 the leg, tendons going to the foot and toes.

22 Q What does that mean? The fact as far as Greg  
23 is concerned?

24 A It means that he's not going to have a com-  
25 pletely normal leg on that side as compared with the other

1 side had he not been injured.

2 Q Can you put a percentage on the disability  
3 of Greg's left leg?

4 A To put a number on it, you are left with things  
5 like strength and motion and it is a relatively imprecise  
6 system, but if you wanted a number it would be approximately  
7 five percent permanent partial disability of that leg.

8 MR. CRANWELL: Dr. Hopkins, I believe you can  
9 answer any questions Mr. Rosenberger has.

10  
11 CROSS EXAMINATION

12 BY MR. ROSENBERGER:

13 Q You have some X-rays showing the condition of  
14 this bone at the time of the fracture. Do you have any X-rays  
15 showing now that it is completely healed?

16 A I do.

17 Q Would you let the jury see those to see what  
18 a good job you have done?

19 MR. CRANWELL: Your Honor, again I object to  
20 Mr. Rosenberger's commentary.

21 MR. ROSENBERGER: What's wrong with that. He  
22 said he got good results.

23 MR. CRANWELL: I can tell you what's wrong  
24 with that. Lawyers are to ask questions and not to  
25 testify.

1 THE COURT: Gentlemen, gentlemen. We are not  
2 going to have any more of this. Just ask the ques-  
3 tion, Mr. Rosenberger; and if you have objections,  
4 Mr. Cranwell, state it succinctly.

5 MR. CRANWELL: Your Honor, I apologize. I  
6 thought I was stating my objection.

7 BY MR. ROSENBERGER:

8 Q Would you take out the X-ray to let us see  
9 how it looks?

10 (Witness proceeds with request.)

11 Q You don't have any photograph of that?

12 A No.

13 Q Is that the big bone that looked so badly?

14 A Yes.

15 Q What is this little thing coming down here?

16 A That's the little bone.

17 Q Do all of those show good solid healing?

18 A They do.

19 Q This side view shows good solid healing, too?

20 A Um-hum.

21 Q Now, let's go back. You were telling us when  
22 you got him to the hospital or the day he came in, you re-  
23 duced that fracture and took care of the lacerations of the  
24 leg?

25 A Um-hum.

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Q Is that correct?

A Correct.

Q I believe he came in on the 12th of May, and then you discharged him on the 24th? So, he was in there 12 days?

A Yes, sir.

Q Now, will you look at your notes for July 2nd, the lacerations looked fine, did they not?

A Yes, sir.

Q And did you start a partial weight bearing in July?

A We did. He was using touchdown weight bearing before that partial weight bearing at that time.

Q Then this terrible thing that looked so badly, what effect does that have on-- how does that help him?

A What it does is it enables you to hold the fracture in place, stable, without having any hardware across the fracture site or without the wounds themselves being covered up with plaster.

Q And the advantage of having the area open is so you can keep it clean and keep the infection down?

A Yes.

Q That air helps it heal?

A Right.

Q So, then on August 29, 1980, less than six

1 months, he was walking without too much trouble; August 29?

2 A Um-hum; at that time he was walking very nicely.

3 Q Then on September 10, 1980, you took the larger  
4 cast off and put on a short one?

5 A He was in a short cast from the beginning.

6 Q I see. And then on October 10, you took  
7 all casts off?

8 A Correct.

9 Q And clinically, the fracture felt solid to you?

10 A It did.

11 Q And how was the alignment?

12 A Fine.

13 Q On October 20, '81,-- I'm jumping over there;  
14 I just want to see something-- what about October 20? How  
15 was he walking then?

16 A He had a mild limp at that point. His frac-  
17 ture was clinically solid; X-rays looked good. He had occa-  
18 sional drainage from the proximal pin holes but nothing to  
19 suggest any infection at the fracture site itself.

20 Q And at that time, October 20, '81, you esti-  
21 mated the overgrowth of the limb to be about a half inch?

22 A Correct.

23 Q Now, then in April of '82, did you not say  
24 that he had full flexion and extension of his knee April 6,  
25 '82?

1           A           By April of this year, he had regained full  
2 motion of his knee and lacked about ten percent of full  
3 motion of his-- or ten degrees of full motion of his ankle.

4           Q           At that time, he had no pain and no drainage?

5           A           Right.

6           Q           Now, Doctor, you saw him on July 8, 1982,  
7 didn't you?

8           A           Correct.

9           Q           At that time, did you express an opinion as to  
10 the overgrowth of the left leg?

11          A           Well, we have been repeating-- there is an  
12 X-ray study called a scangram which takes a X-ray with a  
13 ruler beside it which is a more precise measurement, and  
14 we were repeating these at six month intervals and between  
15 the one taken back in January and the one now, that leg dis-  
16 crepancy decreased which is a good sign.

17          Q           And you have no reason to believe that it  
18 won't continue to decrease do you?

19          A           That's a somewhat unpredictable thing to pre-  
20 dict.

21          Q           Well, now look at your notes and tell me if  
22 you didn't say that on July 8, it was less than half an inch?

23          A           Correct.

24          Q           And didn't you say that it looked like you  
25 may avoid any surgical treatment?

1           A           If it continues to decrease, we will be able  
2 to avoid growth graph.

3           Q           Well, will you read me exactly how you wrote  
4 it?

5           A           That looks okay; perhaps then we can avoid the  
6 prosthesis.

7           Q           What does that involve?

8           A           What you have to do is these lines that are  
9 about a half inch below the top of the bone are growth cen-  
10 ters. You cauterize this part of the bone that has active  
11 cells and that's how the bone grows longer. There is one  
12 at both ends. We know from past experience that at this pro-  
13 ximal growth center, you get about a quarter of an inch of  
14 long bone growth per year. So if we had to make up a half  
15 of an inch or  $3/8$ 's of an inch, what we would want to do is  
16 stop this growth a year and a half to two years prior to  
17 this growth being complete. What you do is go in and cut  
18 this, take a plug out, take a curette and destroy enough  
19 cells so that the growth will stop and turn the plug around  
20 and put it back in in the wrong direction. What you do is  
21 you make a solid bone out of this without allowing for further  
22 growth.

23          Q           How many more years of growth does he have?

24          A           Usually for boys the rough age is 15 years,  
25 9 months.



1 Q That's not a major <sup>surgery</sup> syndrome is it?

2 A Well, yes.. It's pretty significant.

3 Q Basically what you see now is you have the  
4 option of a shoe lift?

5 A Um-hum.

6 Q And you can't say that you are going to need  
7 surgery?

8 A If we drop down to a quarter of an inch, I  
9 would not recommend going through the risk and the potential  
10 complications of surgery.

11 Q Well, three and a half years more of growth,  
12 don't you anticipate that there will be no--

13 THE COURT: You must ask your questions in  
14 the same manner that he asks his.

15 MR. CRANWELL: Reasonable medical certainty.

16 BY MR. ROSENBERGER:

17 Q Yes, with reasonable medical certainty.

18 A That remains a relatively unpredictable type  
19 of thing. Growth is too unpredictable to be able to say  
20 even with a reasonable medical certainty that it will go  
21 ahead and correct itself.

22 Q Otherwise stated, Doctor, you cannot state  
23 that he's going to need that surgery?

24 A We are sitting on the fence now and it would  
25 require further X-rays. It would probably take another year

1 to a year and a half to be able to determine what's going to  
2 happen.

3 Q But the trend now looks like you will not have  
4 to--

5 A It is encouraging to find the discrepancy de-  
6 creasing.

7 Q Doctor, he does not show any limp now, does  
8 he?

9 A He has a minimal limp.

10 Q Doctor, as of July 5th, I believe that's when  
11 you determined that he had five percent partial permanent  
12 disability?

13 A Right.

14 Q Then that means he was having 95 percent re-  
15 covery from this bad fracture?

16 MR. CRANWELL: Your Honor, Mr. Rosenberger  
17 knows that's an improper question.

18 THE COURT: Sustained.

19 BY MR. ROSENBERGER:

20 Q If he had a perfect recovery, what would be  
21 his recovery?

22 A If he had a perfect recovery, then there would  
23 be no discrepancies, full return of muscle use, full return  
24 of ankle motion as well.

25 Q Percentage wise?

1 A One hundred percent recovery.

2 Q And now you say he has a five percent--

3 MR. CRANWELL: Your Honor, now Mr. Rosenberger  
4 is persisting on this. He knows the difference be-  
5 tween a five percent permanent disability and a 95  
6 percent recovery rate.

7 MR. ROSENBERGER: I don't know any such thing.

8 THE COURT: The Court knows it.

9 MR. ROSENBERGER: Judge, you are way ahead of  
10 me.

11 THE COURT: I think you are entitled to do  
12 it in the proper manner. Let's ask the Doctor this.  
13 Doctor, state for the jury and for Mr. Rosenberger  
14 just what this young man's situation is today.

15 THE WITNESS: This young man's situation--

16 MR. ROSENBERGER: You mean in percentage?

17 THE COURT: Percentage?

18 MR. ROSENBERGER: That's what I'm talking about.

19 THE WITNESS: He had a very excellent recovery  
20 from a very difficult injury and has regained an over-  
21 whelming majority of the function of that leg.

22 MR. ROSENBERGER: Thank you very much.

23 THE COURT: Any further questions?

24 MR. CRANWELL: Yes, I have got some further  
25 questions, Your Honor, but again I want to state my

objection again to Mr. Rosenberger's commentary.

REDIRECT EXAMINATION

BY MR. CRANWELL:

Q Mr. Rosenberger has asked you if you made a complete recovery if you would determine that as 100 percent recovery, is that correct?

A You get into a problem of semantics. The question of recovery versus what they call disability rating. They are two separate things.

Q How about the scarring? Would that have to go away in order for you to say he had a hundred percent recovery?

A Yes. He has some very significant scarring on his leg.

Q Will that ever go away?

A No.

Q Now, Mr. Rosenberger asked you about October 20, 1981, that you said he was walking nicely, is that correct?

A Yes.

Q And then you said there was still a minimal limp, is that correct?

A Right.

Q Is that true today?

A He still has a real minor limp if you look at him very very closely. If you just watch him walking down the

1 hall and you are not paying attention to it, he appears to  
2 walk very much normal.

3 Q He can tell it though, can't he?

4 A Oh, yes.

5 Q Now, you said in April of 1982 that by that  
6 time he had full flexion of his knee. That was your response  
7 to one of Mr. Rosenberger's questions?

8 A Right.

9 Q Do I take that to mean that between May 12,  
10 1980, and April of 1982, that he hadn't regained full use of  
11 his knee?

12 A That's-- I don't think I made mention of it  
13 in previous notes, but he was making progress all the way  
14 along the line in terms of regaining his motion.

15 Q But by April of this year, he had regained full  
16 use of his knee?

17 A Full motion in the knee.

18 Q That means he can bend it?

19 A Bend it as far as he use to and straighten it  
20 out the full way.

21 Q But he was ten percent restricted on the ankle  
22 or ten degrees?

23 A Right.

24 MR. CRANWELL: Doctor, I don't believe I have  
25 any more questions

1 of the father being at the scene? How is that going to come  
2 out? He didn't see it happen.

3 THE COURT: He didn't see it happen?

4 MR. CRANWELL: No, he didn't see it happen.

5 THE COURT: I don't see any reason to bring  
6 it up.

7 MR. CRANWELL: I'm not going to bring it in.  
8 I just think in the course of the testimony that someone  
9 might say he was at the scene.

10 Judge, I would like to ask her what her marital status  
11 is.

12 THE COURT: You can ask her about her marital  
13 status and she can answer she's a widow; that's it.

14 MR. ROSENBERGER: I just think that's going to  
15 bring up--

16 MR. CRANWELL: You just said you didn't object  
17 to it and now you say you do. You can't have it both ways.

18 (The Court, counsel, and jury returned to the  
19 courtroom, after which the following proceedings were had.)

20 THE COURT: Call your next witness.

21 MR. CRANWELL: Trooper Beamon.

22 MR. ROSENBERGER: If Your Honor please, my ob-  
23 jection stands as to this type of testimony.

24 THE COURT: Okay.  
25

1                   The witness, TROOPER D. P. BEAMON, having first  
2 been duly sworn, testifies as follows:

3  
4                   DIRECT EXAMINATION

5 BY MR. CRANWELL:

6           Q       Would you state your full name please?

7           A       Trooper D. P. Beamon.

8           Q       Give us your address?

9           A       Route 2, Appomattox.

10          Q       How long have you been employed by the Depart-  
11 ment of State Police?

12          A       I have been employed since 1973, sir.

13          Q       Were you employed on May 12, 1980?

14          A       I was, sir.

15          Q       Were you stationed in Appomattox County?

16          A       Yes, sir.

17          Q       And on the morning of May 12, 1980, did you  
18 have occasion to investigate an accident on Route 460?

19          A       I did, sir.

20          Q       Okay. Tell us what time you received the call.

21          A       I received the call approximately 7:55, sir.

22          Q       Did you proceed directly to the scene?

23          A       I did, sir.

24          Q       Can you tell us approximately where this acci-  
25 dent occurred?

1           A       The accident occurred approximately 5 and 7/10's  
2 miles west of Appomattox on Route 460 in Appomattox County,  
3 sir.

4           Q       What type of locality is that?

5           A       Open country type.

6           Q       Would you describe Route 460 for us at that  
7 point?

8           A       Yes, sir. At that location is a four-lane  
9 highway; two lanes going east, two lanes going west, sir.

10          Q       What's the grade?

11          A       Grade is slight downhill grade.

12          Q       Is there a median strip out there that divides  
13 it?

14          A       Yes, sir.

15          Q       What was the weather condition on that morning?

16          A       Clear and dry.

17          Q       What is the visibility there in the westbound  
18 lane on Route 460?

19          A       Approximately 4/10's of a mile.

20          Q       Could you relate that to feet to us? How many  
21 feet?

22          A       Approximately 1200 feet.

23          Q       What was the condition of the road out there?

24          A       It was dry, sir.

25          Q       Could you describe the scene for us when you



1 arrived out there?

2 A Yes, sir. When I arrived at the location, I  
3 found two vehicles involved in the accident.

4 Q What were those vehicles?

5 A Vehicle #1 was a 1973 Ford school bus. Vehi-  
6 cle #2 was a '71 Mack tractor-trailer pulling a 1974 Dorsey  
7 trailer loaded with wood chips.

8 Q Who was driving the school bus?

9 A Mrs. Betty Jane Brown.

10 Q Who was driving the tractor-trailer?

11 A Mr. Gordon Wayne Wallen.

12 MR. CRANWELL: Your Honor, we are going to  
13 offer this as Plaintiff's Exhibit 7.

14 (Photograph marked Plaintiff's Exhibit No. 7.)

15 BY MR. CRANWELL:

16 Q Officer, I'm going to show you a photograph  
17 and ask you if that photograph reasonably depicts the scene  
18 as it was on the morning of May 12, 1980?

19 A Yes, sir. I took this photograph.

20 Q Can you tell us what it shows?

21 A Yes, sir. It shows--

22 THE COURT: Trooper, speak up so this lady  
23 can hear you.

24 A The picture shows the school bus and the trac-  
25 tor-trailer and other various cars that had stopped to assist

1 in taking care of the injured persons parked here. This also  
2 shows some dirt impression marks in the right-hand or the  
3 driving lane.

4 Q Now, officer, were you able to determine the  
5 point of impact of the school bus?

6 A Yes, sir. The point of impact was right in  
7 the center of the highway. Where the school bus had stopped,  
8 this came from the impact of the two vehicles. The fifth  
9 wheel of the trailer was sheared off, and the trailer pushed  
10 up against the cab and the cab was pushed down.

11 Q What created those marks in the road?

12 A When the impact occurred, the fifth wheel  
13 of the trailer broke off and the wheel slammed up between  
14 the cab of the truck which pressed the truck down to the  
15 highway. This came off of the truck.

16 Q You can have a seat back on the witness stand.

17 Officer, did you measure the distance between the  
18 point of impact and where the school bus came to rest?

19 A Yes, sir.

20 Q What was that distance?

21 A Approximately 194 feet.

22 Q Did you measure the distance from the point  
23 of impact where the tractor-trailer came to rest?

24 A I did.

25 Q Where did they both come to rest?

1           A           Vehicle #1, the school bus, came to rest on  
2 the right shoulder-- the east shoulder; actually in the little  
3 small ditch, drainage ditch. Vehicle #2, which is the tractor-  
4 trailer, came to rest on the right shoulder. The tractor of  
5 the rig went up an embankment and turned sideways and came  
6 to rest on the right shoulder.

7           Q           Were they in the ditch?

8           A           Yes, sir.

9           Q           Was there any damage to the ditch?

10          A           I believe there was some damage to the bank  
11 adjacent to it; soil, gravel, grass.

12                   MR. CRANWELL: Plaintiff's Exhibit 8, Your  
13 Honor.

14                   (P photograph marked Plaintiff's Exhibit No. 8.)

15 BY MR. CRANWELL:

16          Q           Trooper Beamon, does that photograph show the  
17 damage to the bank and ditch you are talking about?

18          A           It does.

19          Q           Did you take that photograph?

20          A           I assisted Trooper Stout. He and I took these  
21 photographs.

22          Q           And that picture is a photograph of what?

23          A           It shows the tractor-trailer that was in-  
24 volved in the accident with the school bus after the impact.

25          Q           Trooper, what portion of the tractor-trailer

1 was damaged?

2 A The portion that was damaged was the front of  
3 the tractor-trailer on the initial impact. The back of the  
4 tractor was damaged when the trailer went into it. The  
5 trailer itself was damaged. The windshield was knocked out.  
6 The damage to the tractor started mainly from the left driver's  
7 side of the vehicle. If you went over-- four feet, nine inches  
8 over from the left-hand side almost in the center of the  
9 tractor-trailer or the center of the tractor itself.

10 MR. CRANWELL: Your Honor, I'm going to show  
11 you a series of four photographs.

12 THE COURT: Plaintiff's Exhibit No. 9, No. 10,  
13 No. 11, and No. 12.

14 (Photographs marked Plaintiff's Exhibit No. 9,  
15 No. 10, No. 11, No. 12.)

16 BY MR. CRANWELL:

17 Q Trooper, I'll ask you if you will identify  
18 those photographs. Do they reasonably depict the tractor-  
19 trailer Mr. Wallen was driving on May 12, 1980?

20 A Yes, sir.

21 Q What do they show?

22 A It shows the damage to the tractor-trailer.  
23 The front bumper, windshield, the location after impact, the  
24 location of both vehicles.

25 Q Trooper, what portion of the school bus was

1 damaged?

2 A The damage started almost in the center of the  
3 exit door in the back of the school bus. The left-hand side  
4 including the bumper, top left portion of the back-- half  
5 of the back and frame of the vehicle, sir.

6 Q Was the damage confined mainly to the left-hand  
7 side of the bus?

8 A Yes, sir.

9 MR. CRANWELL: Judge, I'm going to offer again  
10 a series of photographs for Plaintiff's Exhibit 13  
11 through 17.

12 THE COURT: All right.

13 (Photographs marked Plaintiff's Exhibits 13  
14 through 17.)

15 BY MR. CRANWELL:

16 Q Again, I want to show you a series of photo-  
17 graphs, Exhibits 13 through 17, and ask you what they show?

18 A They show the damage to the school bus.

19 Q Did you take some measurements of the school  
20 bus?

21 A I did, sir.

22 Q Can you tell us the-- what happened to the  
23 left side of the bus?

24 A Yes, sir. A school bus is normally approxi-  
25 mately 27 feet long. Upon impact, the left side of the school

1 bus was recessed approximately four feet ten inches when I  
2 arrived. The back was totally destroyed; the frame was bent.

3 Q I'm going to show you Plaintiff's Exhibit 18  
4 and ask you if you will tell us what that is?

5 (Photograph marked Plaintiff's Exhibit No. 18.)

6 A Yes, sir. This shows the inside of the school  
7 bus.

8 Q Now, from your investigation, were you able to  
9 determine what seat young Greg Allen was sitting in on that  
10 school bus.

11 MR. ABBITT: If it please the Court, we object  
12 to any information that someone else might have told  
13 him.

14 THE COURT: I think you should limit it as to  
15 what he found himself.

16 BY MR. CRANWELL:

17 Q You say the photograph shows the damage to the  
18 interior of the bus?

19 A Yes, sir.

20 Q Did you have occasion to see Greg Allen at  
21 the scene of the accident?

22 A Yes, sir.

23 Q Where was he when you saw him?

24 A When I saw Greg, he was on the bank above the  
25 school bus. He was in a prone position.

1 Q Could you describe his appearance for us?

2 A Greg was as I say laying down prone. He had  
3 a piece of gauze or what appeared to be gauze in his mouth.  
4 His-- I believe it was his left leg was very badly distorted.

5 Q What do you mean it was distorted?

6 A It was not in a natural shape. It was turned  
7 almost directly angled out. He had a very bad cut on his left  
8 arm. A bone showing from the cut. He was somewhat bloody  
9 and very shakey.

10 Q Did you talk with Greg?

11 A Just for an instant. I spoke to him. He  
12 spoke back and I went on to assist some of the other children  
13 that were injured.

14 MR. ROSENBERGER: Could you speak up, please?

15 THE WITNESS: Yes, sir. I'm sorry.

16 BY MR. CRANWELL:

17 Q Was the rescue squad at the scene when you  
18 arrived?

19 A They were beginning to arrive at the scene;  
20 yes, sir.

21 Q Did the rescue squad treat Greg at the scene?

22 A I'm unaware which one took him. I was inside  
23 the bus.

24 Q Trooper, based on your investigation, would  
25 you say that the impact between the bus and the tractor-trailer

1 was a moderate impact or severe impact?

2 MR. ABBITT: Your Honor, if it please the  
3 Court, we object to that. I don't think he's in a  
4 position to say what-- he has told what he has found.

5 MR. ROSENBERGER: The photographs show the re-  
6 sults of the impact.

7 THE COURT: I think that he got the message  
8 across. I think the law is that he can testify as  
9 to what he found and not draw any conclusions.

10 MR. CRANWELL: Your Honor, I don't have any  
11 more questions for him.

12 THE COURT: All right.

13 MR. ABBITT: May it please the Court, we do not  
14 have any cross examination at this time, but we do  
15 not want to excuse him pending what may develop.

16 THE COURT: All right. You understand Trooper  
17 Beamon?

18 THE WITNESS: Yes, sir.

19 THE COURT: Now, this other witness. When do  
20 you want to put this other witness on out of order?

21 MR. ROSENBERGER: Judge, I'd like to make a  
22 motion now in the absence of the jury and--

23 THE COURT: This was a matter they were asking  
24 back there in chambers..

25 MR. CRANWELL: Your Honor, I thought we agreed



1 on that. Whenever he wants to put her on is fine with  
2 me.

3 THE COURT: Do you want to put her on now?

4 MR. ROSENBERGER: Not right now. But, Judge,  
5 I would like to make a motion.

6 THE COURT: All right, ladies and gentlemen.  
7 Please go to the jury room.

8 (The jury left the courtroom, after which the  
9 following proceedings were had.)

10 MR. ROSENBERGER: If Your Honor please, the  
11 Defendants, by counsel, move the Court for a mistrial  
12 because of the prejudicial evidence introduced on  
13 behalf of the Plaintiff going into the every detail  
14 of the damage to the vehicles involved and showing  
15 not one, but in one case four photographs of the  
16 tractor-trailer, five photographs of the school bus,  
17 when we have admitted liability for causing a colli-  
18 sion. And we have admitted that the young man suf-  
19 fered a severe comminuted compound fracture of the  
20 left leg. This is all immaterial and prejudicial  
21 and so calculated to push up the damages.

22 MR. CRANWELL: Your Honor, might I respond to  
23 that?

24 THE COURT: Yes.

25 MR. CRANWELL: May I say most humbly to the

1 Court that any evidence that I put on is not in this  
2 case or ever calculated to prejudice a jury. Now,  
3 Your Honor, I have said to the Court and I would re-  
4 spectfully state again under the Court that you heard  
5 Dr. Hopkins' testimony about the type of injury that  
6 would be caused by a severe impact, and it would take  
7 a severe impact. Now, that all goes to the nature  
8 and extent of this man's injuries. The reason I put  
9 the photographs on was to show the damages to the  
10 truck, but it was not-- I couldn't put just one photo-  
11 graph on because it was damage to a number of places,  
12 and those photographs show the extent of the damage  
13 to the truck to convey to the jury the severity of  
14 this impact. The same thing is true of the school  
15 bus. I showed a back view and side view, interior  
16 view of the school bus in order to show the severity  
17 of the impact in this case.

18 Also I asked the trooper to indicate the dis-  
19 tance that the vehicles traveled after impact so  
20 that you could get some idea of the velocity when  
21 these vehicles came together. I assume that the  
22 jury could reasonably infer that when he hit that  
23 school bus and knocked it down the road 196 feet, that  
24 it was a substantially severe impact.

25 Your Honor, I have got to prove pain and suf-

1           fering, and I have got to prove serious injury that  
2           occurred to this young man. It is not my intention  
3           to prejudice the jury, but they have got to know--  
4           they want to know how serious this young man's in-  
5           juries were, and I dare say that if it had been a  
6           slight impact out there and if it had been a small  
7           dent in the back end of that bus, I imagine that Mr.  
8           Rosenberger would certainly want to be putting that  
9           in to show the anxiety, the fear, the pain, the seri-  
10          ousness of the injury is all overplayed.

11                 Well, I'm not trying to do that. My purpose  
12           is to show, yes, this man had a serious injury. The  
13           doctor has testified that it would take a severe im-  
14           pact, shock, to create this type of injury, and that's  
15           what I'm trying to convey to the jury. I have never  
16           in a case nor in this case attempted to prejudice  
17           the jury.

18                 THE COURT: I'm going to allow it. Overruled.

19                 MR. ROSENBERGER: I respectfully object for  
20           the reasons stated, Your Honor, and I want to point  
21           out that most of the opening statements dealt with  
22           the details of the accident and not with the severe  
23           injury.

24                 THE COURT: Call the jury.

25                 The Court allows this in because I think in

1 this type case, where there has been an admission of  
2 liability, the Court-- our Court has held time and  
3 again that it is perfectly right and proper for the  
4 Court to allow evidence to show the severity of im-  
5 pact, the terrible trauma that the child was bound  
6 to have experienced in this terrible wreck.

7 (The jury returned to the courtroom after  
8 which the following proceedings were had.)

9 MR. CRANWELL: Your Honor, the Plaintiff will  
10 call Betty Rotenhizer at this point in time.

11 THE COURT: Call Mrs. Rotenhizer.

12  
13 The witness, BETTY R. ROTENHIZER, having first  
14 been duly sworn, testifies as follows:

15  
16 DIRECT EXAMINATION

17 BY MR. CRANWELL:

18 Q Would you state your name and give us your  
19 address, please?

20 A Betty R. Rotenhizer, Route 4, Appomattox.

21 Q And are you employed?

22 A Yes, sir.

23 Q By whom are you employed?

24 A Central Fidelity Bank, Lynchburg.

25 Q How long have you been employed there?

1 A Over five years.

2 Q Did you work on May 12, 1980?

3 A Yes, sir.

4 Q Where is the bank that you work located?

5 A Chestnut Hill Branch, Fort Avenue, Lynchburg,  
6 Virginia.

7 Q To get from your house to work, what route do  
8 you have to take?

9 A I take 613 where it goes into 460 into Lynch-  
10 burg.

11 Q Would you describe 460 for us?

12 A It's a four-lane highway; hard surface good  
13 highway.

14 Q Are you familiar with Route 460 at approxi-  
15 mately 7/10's of a mile east of Route 648?

16 A Yes, sir.

17 Q What time of the morning on May 12, 1980, did  
18 you leave to go to work?

19 A 7:30 a.m.

20 Q What kind of vehicle were you driving?

21 A 1972 Chevrolet Caprice.

22 Q Do you recall approaching the school bus that  
23 morning?

24 A Yes, sir.

25 Q Where was the school bus when you first ob-

1 served it?

2 A It was in front of a tractor-trailer which was  
3 in front of me.

4 Q Which lane was it in?

5 A In the right-hand lane.

6 Q Which lane was the tractor-trailer in?

7 A The right-hand lane.

8 Q Which lane were you in?

9 A Right-hand lane.

10 Q Could you tell us was there anything unusual  
11 about the tractor-trailer?

12 A When I rounded the curve, I noticed up ahead  
13 that the tractor-trailer lights, the caution lights, on either  
14 side of the cab were blinking on and off, and I could see  
15 the school bus beyond the tractor-trailer.

16 Q What did you do then?

17 A Seeing no other vehicles in the passing lane  
18 I slowed up watching for the tractor-trailer to pass the school  
19 bus. When he did not make a move to do so, then I went into  
20 the passing lane and approached both of them. I passed the  
21 tractor-trailer. My thought was to pull back into the right-  
22 hand lane and get behind the school bus. Then I saw some  
23 children on the highway up ahead, and I thought that it would  
24 probably stop because of the slow speed. So, I stayed in the  
25 passing lane and proceeded to get ready to stop.

1 Q What happened then?

2 A I saw the school bus brake lights come on and  
3 then shortly after I saw the red flashing lights on the back  
4 of the bus. By that time I had slowed till I was practically  
5 at a stop. I stopped in the passing lane right directly be-  
6 hind the bus in the passing lane. We were both at a dead stop,  
7 and I was watching for the tractor-trailer to pull up on my  
8 right to stop also. But then I heard the motor of the tractor-  
9 trailer as it approached and it made the adrenaline start pump-  
10 ing because it didn't sound like it was going to stop. Just  
11 about the time I realized that, it appeared to me out of the  
12 corner of my eye he was going to go between the front of my  
13 car and the bus, and it was hardly room for two people to  
14 stand in that distance.

15 Q What happened then?

16 A The tractor-trailer hit the bus in the rear.

17 Q Could you describe the impact for us?

18 A Yes, sir. It appeared at that point in my  
19 mind's eye that everything went in slow motion. I saw the  
20 tractor-trailer hit in the back end of the bus. The bus ap-  
21 peared to rise up off the ground as did the tractor-trailer--  
22 the tractor cab.

23 I saw all the children through the glass being thrown  
24 to the rear of the bus in a pile, so to speak, and I saw their  
25 arms and legs coming through the opening in the back where the

1 glass had been. I saw the broken glass flying.

2 Q After the bus or after the tractor-trailer  
3 struck the bus, what happened?

4 A What happened to the bus?

5 Q Um-hum.

6 A It pushed it down the highway. It caved in  
7 the back of the bus and at the same time it sort of shot it  
8 down the highway, and they separated. Both of them still  
9 traveling down the side of the highway.

10 Q What did you do then?

11 A I looked in my rear-view mirror to see if  
12 there was any traffic close behind. I saw a car way in the  
13 distance, but there was nobody in there close so I pulled on  
14 to the median strip; put on my caution lights. I believe I  
15 opened my trunk to see if there was any flares. Finding  
16 that there weren't, I went up to the scene where the bus had  
17 come to rest. I saw Greg's older brother carrying him away  
18 from the bus.

19 Q Did you see Greg?

20 A Yes.

21 Q Would you describe Greg for us?

22 A After I got to him?

23 Q Um-hum.

24 A His brother layed him in the grass, and I  
25 went up to him and he was lying on the grass and he was crying



1 out, "It hurts, it hurts. Somebody help me." And I got down  
2 beside him and held him because I could see that his left leg  
3 at some point between his knee and ankle was bent outward  
4 in practically a 90 degree angle, and I was concerned that  
5 if he moved very much that he might lose the leg completely,  
6 and I was afraid of that and I didn't want him to see it.  
7 So I sat down beside him. He was trembling. He was covered  
8 with blood. I got some blood on me.

9 He had a cut on his forehead which was bleeding.  
10 He was gritting his teeth. His face was very white. He kept  
11 crying out, "Why doesn't somebody do something." He was thrash-  
12 ing around.

13 I stayed there for about the next 20 to 25 minutes.  
14 I may have left for a moment, but for the most part I was  
15 right there.

16 Q Did you spend most of the time with Greg?

17 A Yes, I did.

18 Q Now, you said he was trembling. How could  
19 you tell?

20 A I held his hand, and I had my hand on the side  
21 of his body, and I could see that he was trembling and shaking.

22 Q How long was it before the rescue squad got  
23 there?

24 A It seemed like an eternity, but I'm sure it  
25 couldn't have been longer than a very few minutes. They were

1 on the scene before they actually came to him. I was with  
2 him 20 minutes before they began to work on him.

3 Q Did the rescue squad administer some treatment  
4 to Greg there?

5 A Yes.

6 Q What did they do?

7 A They removed that portion of his pants that  
8 covered the wound and after looking at it they straightened  
9 it--

10 Q Were you present when this happened?

11 A Yes.

12 Q Did you see the leg?

13 A Yes, I did.

14 Q Could you describe what his leg looked like  
15 to us?

16 A I had never seen anything quite like that.  
17 It appeared that it was severed except for maybe some muscle  
18 or skin on the side that was holding it on. It was not bleed-  
19 ing from that particular wound, but both edges of the wound  
20 from the top and the bottom were very dark, but there was no  
21 actual bleeding at that time, but I could see the bone had  
22 been severed.

23 Q What did the rescue squad do, do you recall?

24 A They straightened the leg and put a support  
25 on it to hold it immobile.

1 Q How did Greg react to this?

2 A To being treated?

3 Q Um-hum.

4 A I feel like that he was just relieved that  
5 someone was going to help him. He stopped crying out when  
6 they were working on him although you could still tell by the  
7 moans he was still in pain. He seemed to just more or less  
8 relax and let them take over.

9 MR. CRANWELL: You answer any questions either  
10 of these two gentlemen may have for you.

11 MR. ROSENBERGER: If Your Honor please, you  
12 understand, of course, our objection to this type of  
13 testimony remains. Since it has been admitted, I  
14 would like to ask her two or three questions about  
15 her driving and the truck.

16  
17 CROSS EXAMINATION

18 BY MR. ROSENBERGER:

19 Q Mrs. Rotenhizer, I believe you estimated be-  
20 fore that you were driving 45 to 50 miles per hour when you  
21 passed the tractor-trailer?

22 A I believe that's correct.

23 Q And the tractor-trailer then was going by  
24 your estimate around 40 miles an hour?

25 A Yes, sir. I believe that's correct.

1 on the bus?

2 A Yes, sir.

3 Q Which one was it?

4 A It was the last seat on the right-hand side.

5 Q Do you recall what seat Greg occupied?

6 A It was the next to the last seat on the right-  
7 hand side.

8 Q Where was the first stop when you got on the  
9 bus?

10 A Lee Duncan's house.

11 Q Did you pick up somebody there?

12 A Yes, Lee.

13 Q What was the next stop?

14 A The next stop was the scene of the accident.

15 Q Tell us what happened.

16 A Well, I had taken-- it was Monday morning and  
17 I had had a long weekend so I had decided to see if I could  
18 take a nap. After Lee got on the bus, I laid my head over  
19 and started to snooze. I knew the bus had stopped to pick  
20 up Wayne. I felt it stop. Then I felt this crunch and I was  
21 thrown into the floor and the bus rolled on down the road a  
22 little ways. I went out a couple of seconds or so and when I  
23 got up--

24 Q Describe what happened when you felt the  
25 crunch.

1           A           I was thrust forward into the floor. I haven't  
2 felt it before and I haven't felt it since. It was indescriba-  
3 ble. A push.

4           Q           What did you do then?

5           A           All right. I got up out of the floor and I  
6 saw Lee and I hollered at him. He was looking wide-eyed, and  
7 I heard, "Help me, brother, help me. My leg is broken."  
8 All right. I looked up to the front of the bus. Betty was  
9 trying to get the young kids off the bus. They were all look-  
10 ing back crying and I hollered and told them to get the hell  
11 off of the bus. So I started climbing over the seats and when  
12 I did I fell. My head landed in the seat. I took and I got  
13 back on my feet and saw Greg was on the floor. He was con-  
14 scious.

15          Q           What did you do with Greg?

16          A           I left him for a second and hollered for Pam.  
17 She didn't respond, and I looked to see if I could get between  
18 the seats, but I couldn't. So then, I took Greg and his leg  
19 was mangled. I could see that and it was twisted around back-  
20 wards more than it should be.

21          Q           Buddy, I'm going to ask you to look at that  
22 picture and ask you if you can tell us what that picture is  
23 of?

24          A           That's a picture of Greg's seat.

25          Q           Does that picture reasonably depict how Greg's

1 seat looked on May 12, 1980, immediately after the accident?

2 A Immediately after the accident, that's what  
3 it looked like.

4 Q How can you tell that was Greg's seat?

5 A Because the blood dripping on it. I was  
6 bleeding real bad from the head; blood was dripping from me  
7 because I was looking at his leg bent over top of him. All  
8 right. He was also bleeding and right here with the little  
9 V was where his leg was caught.

10 MR. CRANWELL: Your Honor, we are going to  
11 offer that as Plaintiff's Exhibit 19.

12 THE COURT: All right. Plaintiff's Exhibit  
13 No. 19.

14 (Photograph marked Plaintiff's Exhibit No. 19.)

15 BY MR. CRANWELL:

16 Q Would you show the jury exactly where Greg's  
17 leg was located?

18 A Right here at the bottom part of the chair  
19 right here. His leg was caught right in this little V right  
20 here. Here's where he was sitting, here's where his leg was  
21 caught.

22 Q What did you do then, Buddy, after you got  
23 Greg?

24 A Well, I took my hand and I pulled his leg  
25 out. It was like messing with jello. No bone there to hold

1 his leg. I picked him up. His foot was just dangling under-  
2 neath and I carried him off the bus. Bill Nolan was coming  
3 off the bus and I told him where Pam was, and he checked on  
4 her. I knew him because he worked on the rescue squad.

5 I took Greg about five feet off the bus and laid him  
6 on the ground. There was people there helping us and I stayed  
7 with him a couple minutes.

8 Q How was Greg getting along then?

9 A He was crying and scared. He was saying all  
10 sorts of things like he was going to die. One thing in parti-  
11 cular he said that next month he was going to be ten years  
12 old, but it didn't look like he was going to make it. I told  
13 him he didn't have to worry about that stuff because there was  
14 a nurse there and people were there to help, and I told the  
15 man that stopped to go up the road--

16 Q Did Greg have any other injuries other than  
17 his leg injury?

18 A He had cuts on his face and arms and they  
19 were bleeding, but they weren't as bad as his leg. The leg  
20 was the worse injury.

21 Q How long was it before the rescue squad arrived,  
22 do you recall?

23 A I really don't know.

24 Q Did the rescue squad take Greg to the hospital?

25 A Yes, sir.

1 She said that the school bus had been hit and involved in an  
2 accident. She didn't tell me at that point whether my chil-  
3 dren were hurt or not. She just told me the school bus had  
4 had an accident.

5 Q Did you have an occasion to see Greg?

6 A Yes, I did.

7 Q Where did you first see him?

8 A When they took him off of the ambulance in  
9 the Emergency Room at the hospital.

10 Q What hospital?

11 A Lynchburg General.

12 Q Could you describe Greg for us when you first  
13 saw him?

14 A He was covered with blood. He had cuts on  
15 his face and arms. I couldn't see his leg. I could see  
16 that it was injured, but it was bandaged up in some way and  
17 I couldn't see how bad it was hurt. He had glass all over  
18 him, and he was crying that it hurt.

19 Q What did they do with Greg?

20 A They took him directly into the Emergency Room.

21 Q What did you do?

22 A First, I went with him; just holding his hand.  
23 As soon as I got in, they ushered me out.

24 Q Did you have occasion to see Greg again that  
25 day?



1           A       Yes, I did.

2           Q       When was the next time you saw him?

3           A       This was after Dr. Hopkins had seen him and  
4 told us how bad the leg was hurt.

5           Q       Did Greg have surgery?

6           A       Yes, he did.

7           Q       Did you see him after the surgery?

8           A       Yes, I did.

9           Q       Where did you see him?

10          A       He was in post-operative or post-surgical  
11 which is the room where they put the patients who need extra  
12 watching. They take them to this unit.

13          Q       Why did they let you in there?

14          A       Well, the first time they let me in was a  
15 regular-- so see then, after that he kept crying and they  
16 couldn't keep him quiet. They usually don't let the family  
17 into this area to stay with a patient.

18          Q       Can you describe Greg's physical appearance  
19 for us?

20          A       Are you talking about after the surgery?

21          Q       Um-hum, after the surgery.

22          A       He was very pale. He had an I.V. hooked to  
23 him and kept crying telling me that it hurt and he kept beg-  
24 ging me not to leave.

25          Q       Did you stay with him?

1 A Yes, I did.

2 Q How long did you stay?

3 A I stayed the rest of the night.

4 Q How did Greg fair through the night?

5 A He didn't sleep until finally about four o'clock  
6 in the morning.

7 THE COURT: Is that the first night he was in  
8 there?

9 THE WITNESS: This is the first night. He  
10 finally dozed off to sleep and slept about an hour  
11 at four o'clock the next morning. He cried all night  
12 long.

13 BY MR. CRANWELL:

14 Q Greg had some more surgery didn't he?

15 A Yes, he did.

16 Q Who did that surgery?

17 A Dr. Hopkins.

18 Q Were you at the hospital the day that surgery was  
19 done?

20 A Yes, I was.

21 Q Do you recall how long that was after the  
22 initial admission to the hospital?

23 A About two days, I think.

24 Q Do you recall how long he was in the operating  
25 room that day?

1           A       No, I really don't. It seemed like that whole  
2 week time stood still. I have no idea how long anything took.

3           Q       Did you spend right much time at the hospital?

4           A       Yes, I did.

5           Q       Did you see Greg after the surgery?

6           A       Yes, I did.

7           Q       How did Greg seem to be taking all of this?

8 Can you describe for us his mental state to us?

9           A       He was very anxious and he was very nervous.

10          Q       About what?

11          A       About the whole condition. He didn't know  
12 whether-- I don't think the child knew whether he was going  
13 to get well at that point or not. He was hurting. He kept  
14 crying. He wanted me to rub his toes. All he wanted me to do  
15 was rub his toes and help him up in the bed.

16               Every time you walked away from him, he wanted you to  
17 come back and rub his toes. He said that makes them feel  
18 better.

19          Q       Now, was this device attached to Greg's leg  
20 on the second surgery?

21          A       Yes, it was.

22          Q       How long did he remain in the hospital after  
23 that was put in his leg, do you know?

24          A       About ten days, I believe.

25          Q       Could you describe what effect that had on

1 Greg's activities while he was in the hospital?

2 A Well, I don't know if that had it or the fact  
3 that his leg was all mangled up, but he couldn't get around  
4 very good. At first he couldn't get out of bed. We had to  
5 do everything for him. Gradually he had to be helped up.  
6 At first we had to do everything for him. We had to put him  
7 on the bedpan; he couldn't go to the bathroom. He couldn't  
8 do anything himself.

9 Q How did he react to using the bedpan?

10 A He didn't like it.

11 Q Why?

12 A It was an embarrassment to him. He had never  
13 been in a hospital before. This was something-- the only  
14 people that had ever seen him was family, and then all of a  
15 sudden this nine-year-old boy is exposed to nurses and doctors  
16 and he just-- his pride was hurt as well as his physical  
17 hurt.

18 Q Were some photographs taken of Greg while he  
19 was in Lynchburg General?

20 A Yes, they were.

21 MR. CRANWELL: Your Honor, I offer those as  
22 Plaintiff's Exhibits 20 and 21.

23 THE COURT: Twenty and twenty-one.

24 (Photographs marked as Plaintiff's Exhibits  
25 No. 20 and No. 21.)

1 BY MR. CRANWELL:

2 Q What does that show, Mrs. Allen?

3 A It's a picture of Greg that was taken right  
4 after he came out of surgery when they put the Hoffmann's  
5 device in.

6 Q I'll show you the next photograph and ask you  
7 what that shows?

8 A This picture here shows some of the cuts that  
9 were on his face and arm.

10 Q Mrs. Allen, were you present the day that Greg  
11 was released from the hospital?

12 A Yes, I was.

13 Q Could you tell us how he got out of the hospi-  
14 tal?

15 A We got him up and got him dressed. We had  
16 to get these shorts that stretched because you never could  
17 get these pants over his cast. The orderly helped get him  
18 out of the bed and in a wheelchair. He learned how to get  
19 on his crutches and do a little bit of walking.

20 Q Did he still have the Hoffmann's device on  
21 his leg?

22 A Yes, he did. He was put in a wheelchair and  
23 wheeled to the outside and with the orderly's help, we maneu-  
24 vered him around and got him in the car.

25 Q What was-- were your instructions when you got

1 him home?

2 A First off, he was supposed to try to use his  
3 crutches as much as he could. My instructions primarily  
4 were to keep the area clean that was open. He had an open  
5 wound on his leg on the side. I was to keep that clean  
6 with peroxide and a salve, I believe; coat it after I cleaned  
7 it. I was to keep the pins clean.

8 Q What pins?

9 A Those were the ones from the Hoffmann's device;  
10 six holes in each side of the leg. I had to keep those clean  
11 and to try to keep it from getting infected because the longer  
12 that stayed in the better.

13 Q How did Greg fair when he got home?

14 A Well, it was tough at first.

15 Q Why?

16 A He couldn't maneuver the steps. He could go  
17 from room to room, but he couldn't go up the steps, so we  
18 had to carry him up the steps. It was awful trying to get  
19 him in a position to sleep. He had to sleep in almost one  
20 position because of the device and the brace that was put on his  
21 foot to hold it forward.

22 Q What kind of brace did he have on his foot?

23 A It was just a little metal one, and he had  
24 to sleep with that and wear it during the daytime. Between  
25 that and the pins and the ace bandage to keep it in place

1 many times it would rub his foot and he would complain about  
2 that. He would complain about the crutches and they would,  
3 you know, hit the pins and vibrate his leg that would go  
4 through to the bone.

5 Q Let me ask you, how were his normal activities  
6 affected after he got home?

7 A Well, he really couldn't participate or any-  
8 thing in what he had been doing. He couldn't do any-- you  
9 know, basically playing other than maybe play a game of cards,  
10 watch television or something like that. He couldn't get  
11 outside much and play with the other kids because he had to  
12 be cautious so he wouldn't reinjure the area.

13 Q How about his body functions? Was he able to--

14 A He was able to go to the bathroom. It was  
15 awful hard getting a bath. I don't know what word to use,  
16 but it was an experience getting a bath because we had to  
17 put him into the bathtub. I don't believe he took many baths  
18 with that in. After the cast was on, he got in the tub and  
19 hung his leg up on the side of the tub.

20 Q Well, how long did that Hoffmann's device stay  
21 on?

22 A That stayed in from the 14th of May till the  
23 31st of July, I believe.

24 Q Did Greg have to go back to the hospital to  
25 have the Hoffmann's device removed?

1 A Yes, he did.

2 Q What was done when the Hoffmann's device was  
3 removed?

4 A In the hospital?

5 Q Um-hum.

6 A He had to go back into the surgery-- the whole  
7 surgical procedure he had to go through. He was put to sleep  
8 and then went into the operating room.

9 Q After that he was discharged from the hospital,  
10 is that correct?

11 A He spent another night there after that came  
12 out, and then he was discharged the next day.

13 Q How about his leg at that point in time?

14 A Well, when he was in the surgery, they took  
15 that out and put him in a cast.

16 Q What kind of cast did they put him in?

17 A A cast that came just below the knee to right  
18 around the front of the toes.

19 Q What instructions were you given for him at  
20 home?

21 A With the cast?

22 Q Um-hum.

23 A He was to try to learn to walk as much as he  
24 could; to put weight on his cast.

25 Q Did he still have his crutches?



1           A       Well, he went back to his crutches. He had  
2 just about learned to maneuver around without the crutches,  
3 but he had to go back to the crutches again. He was on the  
4 crutches until after school started because he had to start  
5 back to school and go on the bus.

6           Q       Still have that cast on his leg?

7           A       Yes, he did.

8           Q       Did he have any problem with the cast?

9           A       Yes. He had problems with it. It was hot  
10 weather. If anybody can recall, that was one of the hottest  
11 summers we had had. It itched. He had drainage from the pin  
12 holes and drainage where the wound had not healed. The cast  
13 had developed an odor that was very offensive. It was after  
14 school had started and it was especially offensive to the  
15 kids at school.

16          Q       What happened at school?

17          A       The children would make fun of him with the  
18 odor in his cast.

19          Q       How did Greg react to that?

20          A       He came home crying.

21          Q       What did you do about that?

22          A       The first thing I could do-- the easiest thing  
23 was to contact the teacher. I sent her a letter that this  
24 was through no fault of Greg's that it had to be like this.  
25 I asked if she would talk to the kids I would appreciate it.

1 I talked to the doctor and got him to change it.

2 Q How long did Greg's leg remain in a cast?

3 A From the 31st of July, I believe, until the  
4 10th of October.

5 Q How did that affect his normal activities?

6 A He was virtually at a standstill as far as  
7 doing anything, playing games and all. He was use to play-  
8 ing and doing things that normal kids do as far as playing  
9 and activities. He could-- you know, he got around, eat,  
10 slept, and things like that, but as far as being active he  
11 was not like other kids.

12 Q What about his body functions; things like  
13 that?

14 A Well, there again with the cast on he could  
15 use the bathroom and everything, but he still had trouhle get-  
16 ting a bath. If he got a bath it was an ordeal. It was  
17 hard. We had to put his leg up on the rim of the tub because  
18 he couldn't get the cast wet, and then having to wash the  
19 toes.

20 Q When Greg got the cast off in October, what  
21 were your instructions?

22 A He was to start doing as much as he could, but  
23 he had to be very very careful. He had limited activities.

24 Q Was he able to give up the crutches then?

25 A Yes.

1           Q       What problems did Greg experience from a phy-  
2       sical standpoint?

3           A       Would you repeat that?

4           Q       What problems was Greg experiencing from a  
5       physical standpoint?

6           A       His leg was very very weak. He could not--  
7       if he got out and did anything, it was very tiring and it  
8       was still painful. It would start aching if he stood on it  
9       and still gives him some problems.

10          Q       Was he able to walk naturally at that point  
11       in time?

12          A       He had quite a pronounced limp.

13          Q       Did that limp improve?

14          A       That limp has improved.

15          Q       When did the limp subside?

16          A       It gradually subsided. He still has a slight  
17       limp and it's more noticeable when he's exerting himself.

18          Q       How's Greg getting along today?

19          A       First off I want to say that considering the  
20       circumstances, Greg made a remarkable recovery. He's done  
21       extraordinarily well, but his attitude is not as good be-  
22       cause he can't compete still as he did before and finds him-  
23       self behind other kids his own age. He can't exert himself  
24       the way they do. It is very frustrating and very aggravating  
25       when he can't seem to keep up. He also has a very pronounced

1 anxiety about tractor-trailer trucks. He does not want--  
2 when we are driving in the car, he doesn't want me near one  
3 especially if one gets behind us. It does create a problem.

4 Q Now, let's me and you talk about Greg before  
5 the accident. How old was Greg on May 11th, 1980?

6 A He was nine years old.

7 Q What grade was he in?

8 A He was in the fourth grade.

9 Q How was he doing in school?

10 A Greg was an average student.

11 Q Now, the year 1980, was Greg able to finish  
12 school?

13 A Yes, he did.

14 Q How did he finish school?

15 A They had a tutor come to the house after he  
16 got out of the hospital.

17 Q What kind of activities would Greg participate  
18 in prior to the accident?

19 A There really wasn't too much that he didn't  
20 participate in. He played football, he played softball, kick  
21 ball, wrestled; just anything that he could. He was a super  
22 active little boy.

23 Q Let's talk about Greg since the accident.  
24 How's he doing in school now?

25 A His grades?

1 Q Um-hum.

2 A They are not near as good. They have been  
3 down pronounced this year.

4 Q What's Greg's problem in school?

5 A I'm not sure. I know part of it is his atti-  
6 tude. He's slow.

7 Q What's the problem with his attitude?

8 A He seems to have more trouble getting along  
9 with the other kids. In some ways he tries to make up for his  
10 slowness in activities by being a super comedian in class  
11 which relates back to him not doing his class work like he  
12 should. He has got a-- I don't know. His attitude about his  
13 school work is just not the same.

14 Q What activities does he participate in now?

15 A At school or at home?

16 Q Both.

17 A Well, at school he takes a physical education  
18 course that they offer. I know he played some softball.

19 Q How about at home? What does he do around the  
20 house?

21 A At the house they have finally started playing  
22 softball. They're not playing football or kick ball. He's  
23 just this past year beginning to start trying to participate.

24 Q Can you tell us how Greg's attitude or what  
25 Greg's attitude is about his leg?

1           A           At first it was the thing was so terrible, he  
2           didn't want me to see it after it happened. I don't know  
3           if he was afraid that I would pass out, but I told him that  
4           I had to see it. Then, more lately it's been he wouldn't  
5           want anybody to see it. He wouldn't want to wear shorts.  
6           He doesn't want anybody asking any questions about it. He  
7           just rather not be in a situation where somebody has to see  
8           the leg.

9                   MR. CRANWELL: Judge, I believe that's 22, 23,  
10           and 24.

11                   THE COURT: All right.

12                   (Photographs marked Plaintiff's Exhibit No. 22,  
13           No. 23, and No. 24.)

14           BY MR. CRANWELL:

15                   Q           Now, I want to show you pictures marked Plain-  
16           tiff's Exhibit 24 and ask you if you will tell me what that  
17           is?

18                   A           This is the outside of Greg's left leg from  
19           this side with the holes where the-- these here.

20                   This is the left side of his leg where the pin holes  
21           came out on the outside.

22                   This is part of the scar of the open wound from the--  
23           where the bone came through the leg.

24                   Q           Plaintiff's Exhibit 23; will you tell us what  
25           that shows?

1           A           This is the front view of his leg now. This  
2 is where the pin holes are on each side. This is the outside.

3           This is the actual scar left where the open wound  
4 was at where the bone broke through the skin.

5           Q           Plaintiff's Exhibit 22?

6           A           This is the inside of the same leg. This  
7 here is the pin hole at the top. This part here is where  
8 the open wound was when he got home from the hospital.  
9 This is where the bone came through.

10           MR. CRANWELL: This will be No. 25.

11           (Photograph marked Plaintiff's Exhibit No. 25.)

12 BY MR. CRANWELL:

13           Q           What does this show?

14           A           This is a picture of Greg taken, and you can  
15 see the scars in this picture.

16           Q           Mrs. Allen, did you incur medical expenses  
17 with respect to the treatment of Greg?

18           A           Yes, sir.

19           Q           I'm going to show you a list and ask you if  
20 that's a list— compilation of Greg's expenses?

21           A           This is just about complete. There are a few  
22 little extra bills.

23           Q           What is the total amount?

24           A           \$9,309.01.

25           MR. CRANWELL: Plaintiff's Exhibit No. 26.

1 THE COURT: Plaintiff's Exhibit No. 26. This  
2 has been stipulated by both sides that this is the  
3 proper amount.

4 (Document marked Plaintiff's Exhibit No. 26.)

5 BY MR. CRANWELL:

6 Q Mrs. Allen, did you file a suit as Greg's  
7 mother and next best friend?

8 A Yes, I did.

9 Q Are you asking these citizens of Appomattox  
10 County now to award monetary damages for Greg's injuries?

11 A Yes, I am.

12 Q What amount are you asking them to award for  
13 Greg's injuries?

14 A I'm asking them to award an amount that is  
15 fair, which I think is fair, of \$250,000.

16 MR. CRANWELL: You answer any questions that  
17 Mr. Rosenberger might have.

18 MR. ROSENBERGER: Your Honor, we move to  
19 strike that. That is not evidence to the jury to  
20 award the damages based on what the injuries are and  
21 not what this lady thinks.

22 THE COURT: She's only testifying as to the  
23 fact that she has filed suit and asking for damages.  
24 Of course, you will award such damages as you will  
25 find the evidence merits.



## CROSS EXAMINATION

BY MR. ROSENBERGER:

Q Mrs. Allen, I note that Greg seems to be very calm and sits quietly all day and writes with all this conversation going on about him. Is he normally a calm-like child like this?

A Yes.

Q And like all young men, he wears long pants?

A Yes, he does.

Q And that covers up the scars, of course, on the leg?

A Yes.

MR. ROSENBERGER: Thank you, ma'am.

## REDIRECT EXAMINATION

BY MR. CRANWELL:

Q Let me just ask you one question that Mr. Rosenberger brought up. Now, he says he wears long pants?

A Yes.

Q Does he wear long pants when he goes swimming?

A No.

MR. CRANWELL: Okay.

THE COURT: You may step down.

MR. CRANWELL: Your Honor, I'll call Gordon Wayne Wallen, the adverse party, and respectfully ask the right

1 to proceed with him on Cross Examination.

2 THE COURT: All right.

3  
4 The witness, GORDON WAYNE WALLEN, having first  
5 been duly sworn, testifies as follows:

6  
7 DIRECT EXAMINATION

8 BY MR. CRANWELL:

9 Q You have been sworn, haven't you?

10 A Yes, sir.

11 Q Would you state your name for us, please?

12 A Gordon Wayne Wallen.

13 Q How old are you?

14 A Twenty-eight now.

15 Q What's your address?

16 A Route 1, Box 66, Red Oak, Virginia.

17 MR. ROSENBERGER: Judge, it's understood my  
18 objection to go ahead into details of the accident  
19 still stands.

20 THE COURT: Yes.

21 BY MR. CRANWELL:

22 Q Now, I want to take you back to the year 1980.  
23 Were you employed?

24 A Yes, sir.

25 Q By whom were you employed?

1           A       Kenneth Jones and Elder.

2                   MR. ROSENBERGER: Would you speak up? I can't  
3           hear you.

4                   THE WITNESS: Kenneth Jones and M. J. Elder.

5       BY MR. CRANWELL:

6           Q       This is who?

7           A       That's Elder, Mr. Elder; and that's Kenneth  
8       Jones.

9           Q       When did you go to work for them? Was it  
10       April 1st, 1980?

11          A       I don't know exactly the date, but I know--

12          Q       When you first went to work for them, what  
13       were you doing?

14          A       Driving a truck; before or after I went there?

15          Q       When you went to work for them what were you  
16       doing?

17          A       Driving a transfer.

18          Q       A what?

19          A       A transfer.

20          Q       What's a transfer?

21          A       A tractor-trailer.

22          Q       What had you been doing prior to that?

23          A       Well, I drove another one before that; another  
24       tractor-trailer.

25          Q       Where were you driving it?

1 A Wileysburg.

2 Q Wileysburg, Virginia?

3 A Yes.

4 Q Is it true that when you went to work for Mr  
5 Elder and Jones you had been driving a tractor-trailer for  
6 three months?

7 A I had been driving longer than that, but  
8 just for him three months.

9 Q Do you know Mr. Robert Mick?

10 A No, sir, I don't believe so.

11 Q Do you remember a gentleman from the Depart-  
12 ment of Transportation talking to you about this accident?

13 A Yes, sir.

14 Q Do you recall telling him that you had about  
15 three months experience driving a tractor-trailer when you  
16 went to work for Elder and Jones?

17 A I told him I had three months-- I had been  
18 working for him for three months.

19 Q Now, how many miles had you driven tractors  
20 and trailers?

21 A I couldn't say because no telling how many  
22 miles I drove.

23 Q Well, did you ride with some of the riders--  
24 drivers before you actually started driving for them?

25 A Yes, sir. I rode with a guy two or three days.

1 Q Was that kind of breaking you in?

2 A We're supposed to ride-- they were trying me  
3 out to see if I could drive.

4 Q To see if you could drive?

5 A Yes.

6 Q Well now, did you take any written test when  
7 you went to work for him?

8 A No, sir.

9 Q At that point in time, did you have a Virginia  
10 Chauffeur's license?

11 A I had a Class A Chauffeur's license-- Class A  
12 Operator's.

13 Q Class A Operator's to operate a car?

14 A No, it's for to operate anything under--

15 Q Anything under 40 feet and less than 40,000  
16 pounds?

17 A I think that's right.

18 Q Now, this tractor-trailer that you were driv-  
19 ing for Elder and Jones, what was the gross weight on it?

20 A 40,000 pounds I think.

21 Q You needed a Chauffeur's license to drive it,  
22 didn't you?

23 A Yes, sir.

24 Q Now, when you went to work for them, did they  
25 ever ask you if you had a Chauffeur's license?

1 A Yes, sir.

2 Q What did you tell them?

3 A I showed it to Kenneth; Kenneth looked at it.

4 Q You showed him what license you had?

5 A Yes, sir.

6 Q Did they tell you it was all right to drive  
7 a tractor-trailer after you showed him that?

8 A He said it was Class A on it, and that was what  
9 it was supposed to be.

10 Q How many axles did they have on it?

11 A It was five altogether counting the trailer.

12 Q Yet they told you you could drive the tractor-  
13 trailer?

14 A They didn't say nothing about it. I had a  
15 Class A.

16 Q Did you have any kind of road test?

17 A Well, that was a road test when I rode with--

18 Q Two days riding was a road test?

19 A Yes, sir.

20 Q Well, if you were riding how did you get any  
21 test?

22 A Well, I drove some, too. I drove some back.

23 Q Who were you riding with?

24 A Alan Meyers.

25 Q Alan Meyers?

1 A Yes.

2 Q Did he work for these two gentlemen?

3 A Yes, sir.

4 Q Is that A-l-a-n, Alan? M-e-y-e-r-s, Meyers?

5 A Yes.

6 Q And he was the guy that gave you the road test?

7 A Yes, sir.

8 Q Now, did you examine this truck before you took  
9 it out?

10 A Yes, sir. I always examined it to make sure  
11 the lights and tires were right.

12 Q Did either of these two gentlemen or anybody  
13 at work ever tell you what you were supposed to check on that  
14 truck before you took it out?

15 A We-- they told me to make sure everything was--  
16 tires and lights--

17 Q Tires and lights were working?

18 A And brakes.

19 Q And brakes?

20 A Yes, sir.

21 Q Now, let's me and you go to May 11, 1980.

22 Did you go to work on that day?

23 A That was on a Sunday.

24 Q You went in about nine o'clock p.m. Sunday  
25 night, didn't you?

1 A Yes, sir.

2 Q What did you go in for?

3 A I had to come up and pick up a tractor-trailer  
4 and go to--

5 Q Carry a load of what to where?

6 A To Roanoke Rapids, North Carolina.

7 THE COURT: Speak up now. I'm having diffi-  
8 culty hearing you and I'm sure she is.

9 Answer that question again.

10 THE WITNESS: I picked up a tractor-trailer  
11 at Charlotte Court House to carry to Clarksville,  
12 and I carried a load to Roanoke Rapids.

13 BY MR. CRANWELL:

14 Q What time had you gotten up that day?

15 A I reckon about one o'clock.

16 Q One o'clock in the afternoon?

17 A Yes.

18 Q And did you drive down to Roanoke Rapids?

19 A Yes, sir.

20 Q What did you do after you got to Roanoke  
21 Rapids?

22 A I backed up the thing and loaded it.

23 Q And then what did you do?

24 A I started back.

25 Q Started back where?



1 A Back to Clarksville.

2 Q What were you coming back to Clarksville for?

3 A I had to load another load to go to Big Island.

4 Q Had to load a load of what?

5 A Bark and saw dust.

6 Q To go to Big Island?

7 A Yes, sir.

8 Q Did you-- what time did you leave Roanoke  
9 Rapids coming back to Clarksville?

10 A I couldn't say. It was dark. It was late at  
11 night.

12 Q Now, on the way back from Roanoke Rapids, you  
13 had some trouble with this tractor-trailer, didn't you?

14 A I had trouble with the lights.

15 Q What happened with the lights?

16 A The wire come loose in the pigtail that hooks  
17 to the truck.

18 Q Did the lights go out?

19 A They went out and I pulled over to the side.

20 Q What did you do?

21 A I had a screwdriver and fixed-- took the plug  
22 out and fixed them.

23 Q You didn't call a mechanic from the home office  
24 to help you fix it?

25 A No, sir.

1 Q Do you recall again your conversation with Mr.  
2 Mick telling him that a mechanic came out and fixed the truck  
3 and that you slept in the cab?

4 A I told him I slept in the cab, but I didn't  
5 tell him about getting a mechanic.

6 Q Did you go to sleep in the cab?

7 A I went to sleep when I fixed it.

8 Q You went to sleep about when? 5 a.m.?

9 A About three hours.

10 Q About three hours. When you got up, what did  
11 you do?

12 A I got up and walked around and checked the  
13 truck over and went on to Clarksville.

14 Q You went over to where?

15 A Went on back to Clarksville, Virginia.

16 Q What did you do when you got to Clarksville?

17 A I backed that trailer where it was supposed  
18 to go and hooked to another one and drove to Charlotte Court  
19 House and loaded it with a frontend loader.

20 Q What time did you get through doing that?

21 A I don't know. I reckon something after five.

22 THE COURT: Is that in the morning?

23 THE WITNESS: Yes, sir.

24 BY MR. CRANWELL:

25 Q Five a.m. in the morning?

1                   A        I couldn't say that was what time it was.

2                   Q        What did you do then? Set out for Big Island?

3                   A        Yes.

4                   Q        What was the weight of that truck once you got

5 it loaded?

6                   A        Sometimes it was 72-- 73--

7                   Q        Thousand pounds?

8                   A        I reckon.

9                   Q        What do you do now?

10                  A        Well, I'm helping a man farm right now.

11                  Q        When was the last time you drove a tractor-

12 trailer?

13                  A        Been about four months.

14                  Q        About four months ago?

15                  A        Yes.

16                  Q        Did you ever get a Chauffeur's license yet?

17                  A        Yes, sir.

18                  Q        When did you get it?

19                  A        I got it about two weeks after the accident.

20                  Q        About two weeks after the accident?

21                  A        Um-hum. See when I went over there, I asked

22 for a Class A Operator's license and it's supposed to be

23 a Class A Chauffeur's license.

24                  Q        Did you ever see the bus before you hit it?

25                  A        I saw it when I first come up through Appomat-

tox.

1 Q Huh?

2 A I saw it when I first left Appomattox; I reckon  
3 it was the same bus.

4 Q But that's the last time you saw it?

5 A Yes.

6 Q Just ran right straight into it?

7 A I didn't run straight into it.

8 Q You never saw the brake lights, flashing lights  
9 or anything?

10 A No, sir.

11 Q Never applied the brakes on your truck or any-  
12 thing, did you?

13 A I hit them-- I applied them, but she stopped  
14 too quick in front of me.

15 Q Stopped too quick?

16 A See I was watching in the mirrors.

17 Q Do you recall telling Mr. Mick that you applied  
18 the brakes and they didn't brake?

19 A They didn't hold.

20 Q Huh?

21 A They didn't hold.

22 Q Would that mean you didn't have any brakes?

23 A I don't know what that means.

24 Q That's what you told Mr. Mick, isn't it? That  
25 you pulled the lever?

1           A       I think I told him that; I don't know.

2           Q       Why did you have your flashing lights on?

3           A       I turned the left signal light on. It might  
4 have brought both flashers on.

5           Q       You mean if you turn the left signal light on  
6 both flashers come on?

7           A       Well, it could have come on. I just turned  
8 the left signal light on.

9           MR. CRANWELL: Judge, that's all the questions  
10 I have for him at this point in time.

11          THE COURT: Do you all have any questions at  
12 this time?

13          MR. ROSENBERGER: Yes, Your Honor.

14

15                   CROSS EXAMINATION

16 BY MR. ROSENBERGER:

17          Q       What's your first name?

18          A       Gordon. They call me Whitey.

19          Q       Gordon, do you ever raise your voice, get mad,  
20 talk so people can hear you?

21          A       Sometimes.

22          Q       Try yelling at me. Maybe it's me, but you  
23 sound mighty soft.

24                When did you first get that Chauffeur's license?  
25 Class A license?

1 A I reckon it was over a year.

2 Q Before the accident happened?

3 A Yes, sir.

4 Q How did you happen to get a Class A? Is that  
5 the same as-- I mean I'm just an ordinary driver. Mine doesn't  
6 seem to have a Class A.

7 What's the difference between that and what I have?

8 A It's got an A on it.

9 Q You got the thing that you had at the time?

10 A I got it in my pocket. There's the one I had  
11 at the time. It's got an A.

12 Q Come down here and just pass it down and let  
13 them see it.

14 A You see it's got a Class A on it.

15 THE COURT: Get back up and have your seat.

16 BY MR. ROSENBERGER:

17 Q If he doesn't use this any more, can we file  
18 this as an exhibit?

19 THE COURT: Yes.

20 MR. ROSENBERGER: Judge, we would like to file  
21 this as Defendant's Exhibit No. 1.

22 THE COURT: All right; Defendant's Exhibit No.  
23 1.

24 (License marked Defendant's Exhibit No. 1.)

25 THE COURT: This is just an Operator's license.

1 MR. ROSENBERGER: With a Class A on the front  
2 of it.

3 BY MR. ROSENBERGER:

4 Q Now, when you read on the back where it says  
5 Class A, read what that line says. Can you see it?

6 A It says Class A. I can't make out what it  
7 says.

8 Q You can't read it?

9 MR. ROSENBERGER: Judge, can you read it?

10 THE COURT: I'll certainly try if you will  
11 hand it to me.

12 What do you want me to read?

13 MR. ROSENBERGER: What Class A does.

14 THE COURT: Class A vehicle is a combination  
15 of three or more axles. Gross weight in excess of  
16 40,000 pounds.

17 BY MR. ROSENBERGER:

18 Q Now, does a tractor-trailer have as many as  
19 three axles or more?

20 A It was five axles with the tractor-trailer.  
21 Three with the tractor and two with the trailer.

22 Q So this license says three or more. Is that  
23 what you said, Judge?

24 THE COURT: Vehicle or combination three or  
25 more axles; gross weight in excess of 40,000 pounds.

1 BY MR. ROSENBERGER:

2 Q Now, did you operate tractor-trailers with  
3 this Operator's license?

4 A Yes, sir.

5 Q Class A?

6 A Yes, sir.

7 Q Was it ever inspected by anybody; that is before  
8 you came to work for Elder and Jones?

9 A What do you mean by inspected?

10 Q Did anybody ever stop you and look at it?

11 A Yes. I run through road checks a whole lot  
12 of times.

13 MR. CRANWELL: Objection, Your Honor, that  
14 would be hearsay.

15 MR. ROSENBERGER: That's not hearsay; he's  
16 saying whether anybody has ever checked it or not.

17 THE COURT: He said people had checked it.

18 BY MR. ROSENBERGER:

19 Q All right. What kind of checks were they?

20 A Where they checked for driver's permit; to  
21 see if you got your driver's permit.

22 Q Who checked it?

23 A State troopers.

24 Q You ever had any problems about it?

25 A No, sir.



1           Q       Now, before you started driving a tractor-  
2 trailer for Mr. Jones and Elder, did you drive a tractor-  
3 trailer for anybody else?

4           A       Yes, sir.

5           Q       Can you name some of the people you drove for?

6           A       I drove for James Guill out of Wileysburg.

7           Q       Who else did you drive for?

8           A       John Tucker out of Phenix. I reckon that's  
9 his address.

10          Q       Is that a tractor-trailer?

11          A       Well, he had a tractor-trailer and ten wheeler,  
12 too. I drove both of them.

13          Q       You drove them both?

14          A       Yes.

15          Q       Do you need any special license to drive a ten  
16 wheeler?

17          A       No, sir; same license, Class A.

18          Q       How was it that you just got a Class A that  
19 didn't say Chauffeur's?

20          A       When I went over there to ask for it, I asked  
21 for Class A Operator's, and I supposed to ask for Class A  
22 Chauffeur's.

23          Q       You were asked about being examined and all,  
24 did you have any trouble with your eyes or physical problems  
25 at the time you were driving for Jones and Elder?

1 A No, sir.

2 Q And were you able to operate the tractor-trailer  
3 all right?

4 A Yes, sir.

5 Q Did you have any wrecks with it?

6 A No, sir.

7 Q Now, on this particular Sunday when you took  
8 this very same tractor from where to where?

9 A I took it from Charlotte Court House to Clarks-  
10 ville, Virginia, and unhooked from that trailer to another  
11 trailer to go to Roanoke Rapids.

12 Q Did you take a loaded or unloaded trailer  
13 down there?

14 A I unhooked the empty one that wasn't loaded  
15 and hooked to a loaded one.

16 Q How far is Roanoke Rapids over the Virginia  
17 line?

18 A I'd say it's about nine or ten miles across  
19 the line.

20 Q Then when you came back, you were what they  
21 call deadheading-- you just had the tractor?

22 A No, I had the trailer, too.

23 Q Was it loaded or unloaded?

24 A It was unloaded.

25 Q It had been unloaded down in Roanoke Rapids?

1 A Yes.

2 Q Did you get that one loaded or did you pick  
3 up another?

4 A I had to unhook that one and put it back to  
5 where I got it from. Then hook it to the one I brought from  
6 Charlotte Court House and I had to load that myself.

7 THE COURT: How far is it from Clarksville to  
8 Roanoke Rapids?

9 THE WITNESS: I'd say about 75 miles; maybe  
10 a little bit farther.

11 BY MR. ROSENBERGER:

12 Q Now, you came back to Clarksville?

13 A Yes, sir, back to Clarksville.

14 Q And then you dropped an empty one there?

15 A I dropped an empty one and picked another  
16 empty one up.

17 Q Where did you go with that?

18 A I went back behind the sawmill and loaded it  
19 with a frontend loader.

20 Q Where did you go behind the sawmill?

21 A Great big sawdust pile.

22 Q What town or county or city, Gordon? I'm try-  
23 ing to find out where you picked up or loaded this other one.

24 THE COURT: Where is the sawmill?

25 THE WITNESS: In Clarksville, Virginia.

1 BY MR. ROSENBERGER:

2 Q So then you loaded in Clarksville?

3 A See, I picked up the empty tractor-trailer  
4 in Charlotte Court House and went to Clarksville, and I un-  
5 hooked that empty one. They already had one loaded where  
6 it was supposed to go to Roanoke Rapids. So I carried that  
7 to Roanoke Rapids. Then I dropped the empty one when I came  
8 back-- it was loaded-- I dropped that at Clarksville and  
9 picked up the other empty one and loaded that and started  
10 to Big Island.

11 Q Where did you load that tractor to start with  
12 to Big Island is what I'm getting at?

13 A At Clarksville.

14 Q So you started from Virginia on this trip,  
15 and you were going to Big Island on this trip in Virginia?  
16 Is that right?

17 A Yes, sir.

18 Q Where did you have any trouble with lights?

19 A I had them when I come out of Roanoke Rapids.

20 Q And was that on the tractor or the trailer?

21 A On the trailer.

22 Q On the trailer, but not on the tractor?

23 A Not on the tractor.

24 Q And you were still driving the same tractor  
25 and this other trailer that you were in in this accident?

1           A       I was driving-- I was in a different trailer  
2 when I was in Roanoke Rapids.

3           Q       All right. I see. Did you report any problems  
4 with the lights on your trailer down in Roanoke Rapids?

5           A       I didn't have nobody to report it to.  
6                   I knew what was wrong, and I went over and  
7 fixed it.

8           Q       That was it?

9           A       Yes, sir.

10          Q       All right. The collision-- had you had any  
11 problem driving to Roanoke Rapids or all the way back through  
12 Appomattox with the tractor-trailer loaded?

13          A       No, sir.

14          Q       No problems with it at all?

15          A       No, sir.

16          Q       And then as you were-- when do you remember  
17 following the school bus?

18          A       When I first-- when I first got on 460.

19          Q       When you first got on 460.

20          A       I first saw it then.

21          Q       Then did you keep up with it?

22          A       No. I slowed down, and then it went on out  
23 of sight.

24          Q       Then when did you pick up with it again?

25          A       When I looked in the mirror. I saw it way on

1 up ahead of me. Then I looked in the mirror and watched  
2 vehicles coming up beside me, and then when I looked back it  
3 done stopped and it was too late. I hit my brakes and cut  
4 to miss it.

5 Q You cut to miss it?

6 A Yes, and I was too close on it.

7 Q Did your brakes have time to operate?

8 MR. CRANWELL: Objection, Your Honor.

9 THE COURT: Ask your question.

10 BY MR. ROSENBERGER:

11 Q My question is when you hit your brakes, how  
12 close were you on it?

13 A I thought I was close enough for them to work. I  
14 don't know exactly how far I was, but they didn't catch.  
15 Then after I saw I wasn't going to be able to stop, I whipped  
16 it to the left.

17 Q Had you had any problems with these brakes  
18 catching up to that point?

19 A No, sir.

20 Q Are you a mechanic?

21 A Well, I did mechanic work for 13 months in  
22 Richmond.

23 Q In Richmond?

24 A Yes.

25 Q What kind?

1 A I never worked on a tractor-trailer.

2 Q Just cars?

3 A Cars, trucks.

4 MR. ROSENBERGER: Excuse me a minute, Judge.

5 Let me-- thank you, Gordon.

6 MR. CRANWELL: Just stay right there.

7

8 REDIRECT EXAMINATION

9 BY MR. CRANWELL:

10 Q You indicated that-- when Mr. Rosenberger  
11 asked you when you got this Class A Operator's license, and  
12 you said about one year before?

13 A Yes, sir.

14 Q And you indicated that you had experience  
15 driving tractor-trailers about three months before you went  
16 to work for Elder and Jones, is that right?

17 A Well, I had operated tractor-trailers.

18 Q Well, that would mean for seven months prior  
19 to actually operating a tractor-trailer you had a Class A  
20 Operator's license, is that correct?

21 A Yes, sir.

22 Q You never operated a tractor and trailer up  
23 until that three month period, have you?

24 A Yes, I operated some for the other man I worked  
25 for two weeks.

1 Q Two weeks.

2 A Then John Tucker. I drove a ten-wheeler  
3 tractor-trailer for him about six months.

4 Q Did you have a Class A Chauffeur's license  
5 then?

6 A I had the same license I had then.

7 Q You had that one?

8 A Yes.

9 Q Who was that you said you worked for for six  
10 months.

11 A John Tucker.

12 Q John Tucker. Did you get this Class A Chauff-  
13 feur's license when you went to work for him?

14 A Yes.

15 Q You just walked into the DMV and told them you  
16 wanted a Class A Chauffeur's license, right?

17 A No, sir.

18 Q What did you do?

19 A You have to drive 500 miles before you can  
20 get your Chauffeur's license.

21 Q Did you tell them you had driven 500 miles?

22 A I told them I drove 500 miles.

23 Q You hadn't driven 500 miles, had you?

24 A Yes, sir.

25 Q Who had you been driving for?



1 A John Tucker.

2 Q How long had you been driving for him?

3 A About six months.

4 Q So you drove for him for six months, and then  
5 you went down and got your Class A Operator's license?

6 A Well, see before I went to work for him I drove  
7 about a week, and then I went and got the Chauffeur's license--  
8 the Operator's license.

9 Q Okay. So let me get this straight. You drove  
10 a tractor-trailer for about a week, is that right?

11 A Well, whatever it takes for--

12 Q And then you went down and got a Class A  
13 Chauffeur's license?

14 A Yes.

15 Q And did you tell the lady down there you had  
16 been driving 500 miles a week?

17 A Yes, sir.

18 Q What kind of truck were you driving?

19 A A Mack.

20 Q Huh?

21 A A Mack.

22 Q How many axles?

23 A Five.

24 Q Five axles?

25 A Yes.

1 Q What were you hauling?

2 A Chips.

3 Q Where were you hauling them?

4 A To a man next to Norfolk-- Waverly.

5 Q When you went to work for that man, did you  
6 take any written test or anything for him? Any physicals?  
7 Any driver's test or anything at all?

8 A No, sir, I didn't.

9 Q Did you check your vehicle or anything then?

10 A I always checked it every time I went out.

11 Q You always checked your brakes and your lights?

12 A Which one are you talking about?

13 Q I'm talking about when you started driving a  
14 tractor-trailer. I want to find out how you learned.

15 A Well, see it was another driver driving that,  
16 too. I was helping him drive.

17 Q You started out helping somebody else drive?

18 A See, he had a ten-wheeler hauling and that's  
19 just three axles. They had to have that Operator's license--  
20 Chauffeur's license for Class A for to drive that, too; and  
21 when I wasn't driving that, at night or when I got off in  
22 the evening late I'd go with the guy driving the tractor-  
23 trailer. He had been driving about three years.

24 Q Now--

25 THE COURT: Have you gentlemen looked at when

1                   this was issued? When it expired?

2                   MR. CRANWELL: No, sir.

3                   THE COURT: It was issued in '76; it expired  
4                   in '80.

5 BY MR. CRANWELL:

6                   Q       Did you keep any records at all when you were  
7                   working for Elder and Jones?

8                   A       No. I just kept up with what loads I got.

9                   Q       You didn't keep any logs?

10                  A       No, sir.

11                  Q       Did you file any kind of application for em-  
12                  ployment or anything like that?

13                  A       No, sir. They saw that I had a driver's li-  
14                  cense, and I drove with that guy.

15                  Q       How much did they pay you to haul these wood  
16                  chips?

17                  A       \$30 a load depending on where they were from.

18                  Q       Now, let me go through this one more time.  
19                  Now, are you telling us that prior to going to work for Elder  
20                  and Jones that you had had six months experience driving for  
21                  someone?

22                  A       Part-time; I won't driving regular.

23                  Q       And two weeks for someone else?

24                  A       I drove regular for him.

25                  Q       You do— again I want to remind you. You do

1 recall talking to Mr. Mick of the Department of Transporta-  
2 tion, do you not?

3 A Yes, sir.

4 Q Do you recall telling him that your previous  
5 driving experience with semitrailers consisted of less than  
6 three months; that you rode with other drivers for the com-  
7 pany for about two weeks before you were assigned a vehicle,  
8 and that prior to that time you had worked for two different  
9 truck operators hauling logs mostly riding the seat with  
10 the owner for a total of about six weeks? Do you recall  
11 saying that?

12 A No, sir.

13 Q You do recall talking to him though?

14 A I recall telling him I rode with the guy for  
15 about two days.

16 Q When you call riding in the seat that means  
17 you're sitting on the shotgun side watching somebody else  
18 drive, doesn't it?

19 A That was when I went to work for him.

20 Q Went to work for Elder and Jones?

21 A Two weeks-- two days I mean, not two weeks.

22 MR. CRANWELL: I don't have any more questions  
23 for him, Your Honor.  
24  
25

## RE CROSS EXAMINATION

BY MR. ROSENBERGER:

Q Are you the same Gordon Wayne Wallen that this Class A Operator's license was issued to?

A Yes, sir.

Q What's your Social Security number?

A 226-86-5831.

Q That's what's shown on this license, right?

A Yes.

Q Now, the Judge thought it was issued June of '76. I can't tell whether it was June 3 or June 6.

THE COURT: June 3, '76; it expires 05-31-80.

BY MR. ROSENBERGER:

Q Well, we sent for a magnifying glass so that I can read this thing.

MR. CRANWELL: I can read it. I don't have any trouble reading it.

MR. ROSENBERGER: I can read the month, but I can't read the day.

MR. CRANWELL: It's 03-76.

MR. ROSENBERGER: Is that what it is?

MR. CRANWELL: Um-hum.

BY MR. ROSENBERGER:

Q Wayne, why did you need an Operator's license, Class A, back in '76?

1 A I don't know why I needed it back then.

2 Q Did you get this one renewed?

3 A Well, see they last every two years now, but  
4 they did last longer.

5 Q Yes. This is from '76 to 1980; May 31, 1980.  
6 Did you have this one renewed?

7 A Yes. I got a new one.

8 Q You got a new one in place of this one?

9 A Yes.

10 MR. ROSENBERGER: Judge, after that glass  
11 comes, I'd like to review it.

12 THE COURT: Okay.

13 MR. ROSENBERGER: That's all Your Honor.

14 MR. CRANWELL: Your Honor, that's not all.  
15 You sit right down there. Judge, I thought we were  
16 going to let this thing speak for itself. If Mr.  
17 Rosenberger wants to get it out and look at it, I  
18 want to go back into it.

19 FURTHER EXAMINATION BY MR. CRANWELL:

20 Q Now, my question is you have told us here  
21 that about six months before you went to work for these gen-  
22 tlemen that you got a Class A Operator's license, is that  
23 right?

24 A Six months or longer.

25 Q Could it have been 1976?

1           A           It could have been, but I couldn't figure  
2 what I got it for.

3           Q           Well, I'm having trouble understanding you  
4 because you were very explicit. You said you went back down  
5 to DMV and you told them you wanted a Class A Chauffeur's  
6 license and told them that you had been driving 500 miles,  
7 and that's exactly what it says in the law that you have to  
8 tell them, and that they issued you one. Now those dogs  
9 don't hunt in the same pack.

10                   Did you get this Chauffeur's license in 1976, or did  
11 you get it six months prior to April of 1980?

12           A           '76, but I don't know why.

13           Q           Well, then would it be fair to say that you  
14 are either confused or misleading us? Which one is it?

15           A           I'm not misleading you--

16                   MR. ROSENBERGER: If Your Honor please, I move  
17 to strike that comment. He couldn't be misleading  
18 when he filed this Operator's license.

19                   THE COURT: Ladies and gentlemen, disregard  
20 that last statement. Just ask him the question.

21                   MR. CRANWELL: I apologize, Your Honor.

22 BY MR. CRANWELL:

23           Q           Where were you living in 1976?

24           A           Where I'm living now; in Red Oak, Virginia.

25           Q           Would it be fair to say that in 1976 is when

1       you got this license?

2               A       I know why I got it in 1976. I use to drive  
3 a dump truck.

4               Q       Where did you drive that?

5               A       Wileysburg.

6               Q       Wileysburg. That's where this other fellow  
7 was, right?

8               A       Um-hum.

9               Q       Who did you drive the dump truck for?

10              A       Al Puryear. I drove for him before I drove  
11 for Tucker.

12              Q       So, would it be fair to say then that when  
13 I had you on Cross Examination and you said that you had  
14 driven about a week before you went to work for-- who was  
15 the guy you drove six months for?

16              A       John Tucker.

17              Q       You said you had been driving about a week  
18 before you went to John Tucker, and that you had driven 500  
19 miles and that's when you got your Chauffeur's license or  
20 your Class A Operator's license for him, right?

21              A       Well, I had that way before then.

22              Q       You had that way before then?

23              A       Yes.

24              Q       Correct me if I'm wrong. I thought you said  
25 on Cross Examination that you went to work for this fellow



1 for six months, and you got your Class A Operator's license  
2 when you went to work for him and that you had been driving  
3 for somebody about a week then and that's where you got your  
4 500 miles experience because I asked you is that where you  
5 got your 500 miles a week, and you said yes.

6 A Well, see I rode with the guy I use to work  
7 for. He got me the job there driving the truck for John  
8 Tucker. See I rode with him and drove for him coming back.  
9 That's how I got the experience.

10 Q I thought you already had the Class A Opera-  
11 tor's license then. If you got it in 1976, you already had  
12 it then, didn't you?

13 A See, that's when I rode with him. He's the  
14 one that learned me. He gave me a job because I didn't have  
15 a job.

16 Q Is this 1976 when you told DMV about having  
17 500 miles experience?

18 A Well, I had it.

19 Q Yes or no?

20 A I had it in '76.

21 Q When did you tell the DMV that you had this  
22 500 miles experience so that you could get your Operator's  
23 license.

24 A That's when he was learning me how to drive.  
25 That Tucker fellow. See, he lived a mile up from me.

1 Q So what you are telling us is that you had  
2 about four years experience driving a tractor-trailer before  
3 you went to work for these fellows?

4 A Well, I got it, but I didn't drive any. I  
5 kept it. I didn't get a regular license back. I kept it.

6 MR. CRANWELL: Judge, I don't believe I have  
7 any further questions.

8 MR. ROSENBERGER: I do.

9 FURTHER EXAMINATION BY MR. ROSENBERGER:

10 Q I want to know how you happened to wake up  
11 about this dump truck? Why did you have to have a Class A  
12 license to drive a dump truck?

13 A Because you are driving for somebody else.

14 Q You are acting as a chauffeur?

15 A Yes.

16 Q Instead of asking for the Chauffeur's license  
17 you asked for an Operator's license?

18 A Well, I guess so--

19 MR. CRANWELL: Your Honor, could I see the  
20 Court in chambers?

21 THE COURT: Yes.

22 (The following proceedings were had in chambers.)

23 MR. CRANWELL: Your Honor, I have great respect  
24 for this man and that's the reason I want to bring this up  
25 in chambers with you. Would you ask him not to communicate

1 with the witness any more? Because he sat right beside me and  
2 said, when Mr. Rosenberger asked the witness why he had to  
3 have a Class A Operator's license, he said because he was  
4 driving for someone else. Mr. Gordon Wayne Wallen said the  
5 exact same thing.

6 MR. ROSENBERGER: Wat was telling me.

7 THE COURT: I understand, but the man heard  
8 you. The man heard you.

9 MR. ROSENBERGER: Actually, Judge, he was  
10 driving for someone else.

11 THE COURT: That man would repeat anything  
12 in the world you say or I say or he says.

13 MR. ROSENBERGER: I admit he's no Ph.D., but  
14 it's obvious that he tried to tell what he knows. You can  
15 see he hasn't been deliberate.

16 THE COURT: The man-- out and out, there is  
17 no question in the record. He said that he had gotten  
18 this thing just a few months before this accident happened,  
19 and then when I read that the thing--

20 MR. ROSENBERGER: You read the date it was  
21 issued. Nobody else picked it up.

22 THE COURT: Then he said that he got it before  
23 then, and that's when he took the training.

24 But what he's getting at, as I understand it, what  
25 you are trying to show is that these people put this man on

1 the road when he wasn't properly licensed and they knew it.

2 MR. ROSENBERGER: This hasn't got a thing in  
3 the world to do with the accident. What's the materialality  
4 of it?

5 THE COURT: The materialality of it is as to  
6 whether or not these people were wanton in their disregard  
7 for life in allowing this man to drive when he was not pro-  
8 perly registered, and they knew it.

9 MR. ROSENBERGER: Well, Judge, that doesn't  
10 have anything to do with his driving record. That's our  
11 point. This guy has been driving every kind of thing.

12 THE COURT: The more you go into it, the more  
13 he's been driving. There's no doubt about that.

14 MR. CRANWELL: Judge, the only thing is that  
15 I wish is that you would-- I know it's just a natural reflex  
16 thing--

17 THE COURT: He was telling him, and the thing  
18 that I understand--

19 MR. CRANWELL: You heard him then?

20 THE COURT: Yes, I heard him. You heard it,  
21 and then I heard the man tell him what you said. No question  
22 about that. He repeated what you said. You didn't mean to  
23 do it, I know that. He can't hear, and he talks louder than  
24 he has to for you and me. Because I heard it the same time  
25

1       you did. I heard the man repeat it.

2                   (The Court and counsel return to the courtroom.)

3       THE COURT: Here is the glass.

4       MR. ROSENBERGER: May I let the jury look at  
5       it now that we have the magnifying glass?

6       THE COURT: All right, go ahead.

7       MR. ROSENBERGER: Here is what we think the  
8       date of birth is, and the date of issue, and the date of ex-  
9       piration.

10      BY MR. ROSENBERGER:

11           Q       How long did you drive that dump truck?

12           A       Six months.

13           Q       What did you haul?

14           A       Gravel.

15           Q       What?

16           A       Gravel.

17           Q       In other words, you were hauling gravel from  
18       place to place?

19           A       In Richmond.

20           Q       From where?

21           A       In Richmond; all over Richmond.

22           Q       You were driving it all around Richmond?

23           A       Yes.

24       MR. ROSENBERGER: That's all.

25       THE COURT: You may step down.

1 MR. CRANWELL: Judge, just one question.

2 THE COURT: All right.

3 FURTHER EXAMINATION BY MR. CRANWELL:

4 Q Mr. Wallen, you said that you got this Class  
5 A Operator's license because you were driving for someone  
6 else?

7 A That's what the guy told me.

8 Q You have got to get a Chauffeur's license to  
9 drive for somebody else, don't you?

10 A Well, a Class A.

11 Q You got to get a Class A Chauffeur's license  
12 to drive for someone else, don't you?

13 A Yes.

14 Q And you never had a Class A Chauffeur's li-  
15 cense in your whole life have you?

16 A I got a Class A Chauffeur's license now.  
17 I thought I had the right thing.

18 MR. CRANWELL: No more questions, Your Honor.

19 THE COURT: You may step down.

20 I believe you were going to call a witness out of  
21 order here?

22 MR. ROSENBERGER: The sheriff has gone to get  
23 her.

24 THE COURT: Come around here and have a seat.  
25 Ladies and gentlemen, this lady is being called out of order

1 o'clock and we are going to be here tomorrow, and I feel we  
2 are going to end up tomorrow certainly before this time.  
3 For that reason, we are going to take a break now until to-  
4 morrow morning.

5 Do you want to start about 9:30?

6 MR. CRANWELL: That would be fine, sir.

7 MR. ROSENBERGER: Whatever suits you, Judge.

8 THE COURT: We will start tomorrow morning  
9 at 9:30. Again, please do not talk to anybody about this  
10 matter ever or allow anybody to talk to you about it. We  
11 will go into it in the morning starting at 9:30.

12 All right, you may be excused.

13 (Thereupon the proceedings were adjourned to  
14 the following day, July 23, 1982, at 9:30 a.m.)

15 \* \* \* \* \*

16 (The following proceedings were had in cham-  
17 bers with the Court and counsel, July 23, 1982, 9:30 a.m.)

18 THE COURT: All right, gentlemen.

19 MR. ROSENBERGER: If Your Honor please, in  
20 view of the Cross Examination of Gordon Wayne Wallen by  
21 Plaintiff's counsel relative to his Operator's license, and  
22 the fact that Mr. Mick of the Department of Transportation  
23 of the United States government is here, Mr. Cranwell said  
24 to the Court yesterday that he had copies of guilty pleas  
25 of Mr. Elder and Mr. Jones. We want to show the Court that  
those pleas of guilty had to do with failure to keep records

1 and that sort of thing which were not related to this acci-  
2 dent at all and as a matter of law could not have been any  
3 proximate cause of the collision.

4 Now, we are put in a position-- I didn't do it yes-  
5 terday of saying Mr. Cranwell or Your Honor we object to this  
6 type of Cross Examination on the grounds that it is a collat-  
7 eral issue and has nothing to do with this case. Mr. Cran-  
8 well would not be in a position to use Mr. Mick to impeach  
9 Mr. Wallen on a collateral matter, and it merely prolongs the  
10 case and it's additional prejudice to the defendants who have  
11 admitted liability in the case.

12 We have this judgment order. It's interstate viola-  
13 tions as motor carriers, Judge, for not keeping records. I  
14 think they are from count 1 through 26 for various times  
15 that their trucks went out of state for whatever purpose and  
16 they did not have records. They did not have logs, they did  
17 not have various unsundry things that the Federal act regu-  
18 lations required. The counts dealing with this particular  
19 accident #28, 29, 30 and 31 were dismissed. So, we get into  
20 collateral matters that has nothing to do with this accident.

21 MR. CRANWELL: Judge, I have been in this business  
22 a long time, not nearly as long as Mr. Rosenberger, but I  
23 can tell an end run when I see one.

24 What they pled guilty to was to not having the driver's  
25 road test done, the physical examination done, or the written



1 examination done of their drivers. That's what they pled  
2 guilty to. Count #1, Mr. Rosenberger has got a copy of it  
3 and that's what I intend to show that they pled guilty to  
4 knowingly and willfully.

5 THE COURT: I'm going to give you a chance to  
6 question him out of the hearing of the jury to see what his  
7 testimony is. I'm going to give you an opportunity to do  
8 that.

9 Now, I have been reading these cases and so forth.  
10 It's very questionable-- I don't know what exactly-- what  
11 this evidence is, but it's very questionable as to whether  
12 or not there is any willful-- that you are going to be able  
13 to show willful negligence on the part of these owners in my  
14 mind. I want to hear the evidence out of the hearing of the  
15 jury.

16 MR. CRANWELL: Judge, it doesn't have to be  
17 questionable in your mind. The standard of proof is you have  
18 to be convinced in your mind that reasonable men could not  
19 differ as to whether or not--

20 THE COURT: That's right. I understand, and  
21 I'm going to hear some of this out of the hearing of the jury  
22 to see what the situation is. Now, I want to see-- Mr.  
23 Rosenberger, if they entered pleas of guilty to this man be-  
24 ing an improper driver and not taking an exam--

25 MR. ROSENBERGER: No, sir.

1 THE COURT: Well, Mr. Cranwell--

2 MR. ROSENBERGER: Not to him being an improper  
3 driver.

4 THE COURT: Well, I mean for allowing him to  
5 drive without first examining him, without him having proper  
6 license--

7 MR. CRANWELL: Just read Count 1 to the Judge.

8 MR. ROSENBERGER: That on or about the dates  
9 herein after set forth of the State and the Western Dis-  
10 trict of Virginia, Milton J. Elder and Kenneth W. Jones, a  
11 partnership doing business as Elder and Jones, Defendants,  
12 a common carrier, who are by motor vehicle engaged in trans-  
13 portation of property in interstate commerce did knowingly  
14 and willfully permit the herein after named drivers for the  
15 use of employees, said defendant, to drive a motor vehicle  
16 on the dates and between the places herein after set forth  
17 without first maintaining driver qualification files for  
18 said drivers including a current valid medical examiner's  
19 certificate, a driver's road test, a driver's written exami-  
20 nation, a driver's employment examination, a driver's employ-  
21 ment application, and the annual review of driver's driving  
22 records in violation of 49-CFR-391.51:49 US 11914.

23 THE COURT: Well, see what that says is this,  
24 as I understand it. It says that they pled guilty to not--  
25 and the testimony has been by this young man himself, that he

1 didn't take any of these examinations.

2 MR. ROSENBERGER: That's right. What does that  
3 have to do with this?

4 THE COURT: Well, if they allowed this man to  
5 drive, put him on out there to drive without having taken  
6 any examinations of him, without knowing whether he was qua-  
7 lified with all those sort of things that are required--  
8 there is a reason for requiring all of those things as you  
9 well know. And if they put him out there, and he has already  
10 admitted being negligent, and it certainly could go to their  
11 negligence in allowing him. Now, whether or not it's suffi-  
12 cient negligence or not, I'll have to wait and see.

13 MR. ROSENBERGER: Your Honor, you will recall  
14 that this transportation of wood chips or sudders was from  
15 Clarksville, Virginia, to Big Island, Virginia. All intra-  
16 state.

17 THE COURT: I understand, but it's the same  
18 driver.

19 MR. ROSENBERGER: These pleas were to inter-  
20 state operations, not this particular operation and--

21 MR. CRANWELL: Judge, they pleaded guilty to  
22 having Gordon Wayne Wallen on their payroll as interstate  
23 carrier and putting him on the road-- the highways of the  
24 Commonwealth of Virginia and North Carolina and anywhere else  
25 without adequately testing him to see if he was qualified to

1 drive. All this is is proof of their failure to do that.

2 MR. ROSENBERGER: That doesn't prove that he's  
3 unqualified.

4 MR. CRANWELL: That doesn't prove that he was  
5 unqualified, it proves that they took no steps to say-- to  
6 determine if he was qualified. Then the jury is going to  
7 have to look at all the facts and circumstances in this case  
8 and a reasonable inference to be drawn from and see if this  
9 guy was a competent driver. They may well assume that the  
10 reason this accident happened was that he was not capable  
11 of driving that tractor-trailer, because the evidence is  
12 really weird in this case. Your man says first that he never  
13 saw the bus's lights or saw the bus and ran right into it.  
14 Then he comes along--

15 MR. ROSENBERGER: He said it stopped too quick.

16 THE COURT: His first testimony and the testi-  
17 mony that I recall before when we had his testimony that he  
18 never saw that bus after he left Appomattox until he hit it.

19 MR. CRANWELL: That's what he testified to.

20 MR. ABBITT: He said he stopped several times.

21 MR. CRANWELL: No, sir.

22 THE COURT: He said that above Appomattox,  
23 he never saw it again until he hit it.

24 MR. ROSENBERGER: Then he said yesterday--

25 THE COURT: Afterwards he tried to cure it.

1 MR. CRANWELL: The reason I remember it is  
2 I turned around and I said you ran smack into the bus and  
3 hit my fist and he said yes.

4 MR. ROSENBERGER: Judge, our evidence will also  
5 be that your people knew that he had been driving tractor-  
6 trailers, and that he had been hauling wood chips--

7 THE COURT: I'm going to give you an oppor-  
8 tunity to put on that.

9 MR. ROSENBERGER: When you have got all of  
10 that in there, there is no contradiction on that. You haven't  
11 got-- this man has never had an accident. That's unquestioned  
12 testimony.

13 MR. CRANWELL: What do you mean he has never  
14 had an accident. He ran into this school bus, killed a girl  
15 and maimed another kid.

16 MR. ROSENBERGER: This was the only time he  
17 had an accident. That didn't prove an incompetent driver  
18 prior to the accident. It was merely a failure to be able  
19 to turn his--

20 MR. CRANWELL: Well, are you saying to the  
21 Judge that in order to be an incompetent driver a person  
22 would have had to have had a wreck prior to this accident?

23 MR. ROSENBERGER: You have got to have some  
24 notice that I have got an improper driver--

25 MR. CRANWELL: Okay. Let me tell you one of

1 the arguments I'm going to make to the jury. I'm-- well, if  
2 you want me to explain to you how I think I can go about prov-  
3 ing he was an incompetent driver, I'm going to say to the  
4 jury, number one, that he has given no reasonable explanation  
5 as to why he hit the bus. He drove right into it. Let me  
6 tell you. I'm going to say to the jury, do you think a com-  
7 petent experienced driver with three hours sleep is going to  
8 get into a vehicle that weighs 72,000 pounds and drive down  
9 the road?

10 THE COURT: Gentlemen, I'm going to hear what  
11 this gentleman has to say out of the hearing of the jury.  
12 Then I will decide whether it's admissible.

13 MR. ABBITT: I think the record ought to be  
14 clear that all of these violations are purely and simply  
15 Federal violations; not a one is a state violation. This  
16 thing is purely intrastate.

17 THE COURT: The reason I will allow this is  
18 to show that these people should have given these tests,  
19 should have checked this man, should have known whether or  
20 not he was a proper driver before they turned him loose to  
21 operate a vehicle of the size of this upon the highways of  
22 the Commonwealth of Virginia.

23 MR. ROSENBERGER: Judge, he had an Operator's  
24 license.

25 THE COURT: He had an improper Operator's

1 license. He didn't have the proper license that he should  
2 have had.

3 MR. ROSENBERGER: To drive for somebody else,  
4 but if he owned this van, he could have driven it.

5 MR. CRANWELL: I'm going to show that-- I  
6 understand what you are saying about him being able to drive  
7 a truck, but I'm also going to show that Elder and Jones,  
8 they said-- he said that they looked at his driver's license.  
9 Have you ever looked at a Chauffeur's license?

10 MR. ROSENBERGER: No.

11 MR. CRANWELL: Well, when you pull your Opera-  
12 tor's license out, it says right across the top of it; on a  
13 Chauffeur's license, it says Chauffeur's right across the  
14 top of it. Now you tell me, I bet they both have a Chauff-  
15 feur's license, don't they?

16 MR. ROSENBERGER: I don't know.

17 MR. CRANWELL: Well, we're going to pull them  
18 out, and I bet it says Chauffeur's. And I'm going to say  
19 you mean you looked at your driver's license and it said  
20 Chauffeur's, and you looked at this man's--

21 MR. ROSENBERGER: The state trooper looked at  
22 it.

23 MR. CRANWELL: The state trooper gave him a  
24 citation for it out here.

25 MR. ROSENBERGER: I know, but they passed him

1 on the road a number of times.

2 MR. CRANWELL: Well, let me tell you my opi-  
3 nion on this.

4 THE COURT: I'm not interested in your opinions  
5 on this thing. I have got to rule on this now, and you all  
6 have taken enough time on this.

7 Another thing out there today, I don't want any bick-  
8 ering. We want to go ahead and move through this. No com-  
9 ments by anybody about what the witnesses say or anything.  
10 We are going to move ahead and get this thing out of the way.  
11 Because I saw this jury the other day, and they got taken  
12 back a little bit, and they didn't take any time at all and  
13 came back in with a verdict like that. I want these people  
14 to give this mature and proper consideration, and if we al-  
15 low bickering and so forth, they are not going to do it.

16 MR. ROSENBERGER: Judge, we respectfully ob-  
17 ject to your inclusion of this, but if you want to hear the  
18 evidence it's all right.

19 THE COURT: I'm going to hear it outside of the  
20 hearing of the jury to see what the man's going to say.

21 (The Court and counsel return to the courtroom  
22 after which the following proceedings were had.)

23 (The Clerk calls the jury.)

24 THE COURT: All right. All the witnesses  
25 will please go out. Who is the next witness?



1 MR. CRANWELL: I'm going to call M. J. Elder,  
2 adverse party.

3  
4 The witness, M. J. ELDER, having first been  
5 duly sworn, testifies as follows:

6  
7 DIRECT EXAMINATION

8 BY MR. CRANWELL:

9 Q Would you state your name and give us your  
10 age, please?

11 A Melvin Elder; 49.

12 Q And what's your address?

13 A Post Office 85, Cullen, Virginia.

14 Q What's your employment?

15 A Working tobacco for my stepfather and mother  
16 now, and getting rid of my trucks.

17 Q You are getting out of the trucking business?

18 A I parked three of them last week and I'm  
19 trying to get the others parked as soon as I can get rid of  
20 them.

21 Q Now, in 1980, were you in business with Mr.  
22 Jones?

23 A Yes, sir.

24 Q Were you all operating a trucking business  
25 known as Elder and Jones?

1           A       Yes, sir.

2           Q       What were the primary-- what was your primary  
3 business?

4           A       Hauling chips and sawdust. I was working on  
5 the railroad, with C&O Railroad at the time, but I was a part-  
6 ner with him hauling sawdust and chips.

7           Q       Do you drive a tractor-trailer yourself?

8           A       I can't even crank one.

9           Q       You were just in business with--

10          A       Yes, sir.

11          Q       You had been in the business for a substantial  
12 period of time, hadn't you?

13          A       No, sir. I never been in the business before.

14          Q       Never before going in the business with Mr.  
15 Jones?

16          A       I had a little hickory sawmill with my cousin.  
17 We sawed these little things where you make axe handles and  
18 and sledge handles. We had two men working and a ton and a  
19 half truck to haul those things on, and that was in 1968.  
20 We hauled them to Kenbridge. During Christmas Kenbridge  
21 wouldn't take any and they said the first of the year they  
22 would take them. We sawed a bunch of them and this plant  
23 burned down in Kenbridge, so the man in Kenbridge said we  
24 could sell them to Charles Roberts in Greensboro. So Ken  
25 and another boy--

1 Q Ken who?

2 A Ken Scruggs. He was my partner at the time.  
3 We put those things on a ton and a half truck, two axle; just  
4 a plain old regular farm truck that we used and went to Greens-  
5 boro with those. When he crossed North Carolina line, the  
6 DOT people checked him and said we were improper and said  
7 we weren't supposed to be in there without something. It was  
8 something we didn't have right. That was the only trip we  
9 made in there, and we went out of business after that.

10 Other than that I farm some, and I had worked in a  
11 restaurant in Charlotte Court House. My brother-in-law and  
12 myself own a business and kept it for about five years and  
13 sold it.

14 Q Who actually ran the business then?

15 A This business?

16 Q Um-hum.

17 A Kenneth Jones.

18 Q Did he drive a tractor-trailer?

19 A He could, but he didn't.

20 Q Had he been driving tractors and trailers  
21 prior to you all getting into business?

22 A Yes, sir.

23 Q How many years, do you know?

24 A I think 10 or 15 years. He owned his own  
25 tractor-trailer part of the time, and I can't remember him

1 driving others, but I recall him driving his own tractor-  
2 trailer. I had known him for a long time and him driving  
3 off and on, but the time we went into business he owned  
4 a garage in Charlotte Court House.

5 Q How many trucks did you all own?

6 A At one time I think we owned-- I can't remem-  
7 ber. I think it's 13, but I'm not sure. When this wreck  
8 happened, I believe we had probably seven; I'm not sure.

9 Q How many trailers did you have?

10 A I don't remember. We bought 25 or 30 trailers.  
11 I don't remember if we had them at this particular time. We  
12 weren't pulling them. Most of the them were just for resell.  
13 Actually we had for every tractor, we probably had a trailer  
14 we could pull.

15 Q And you all would haul these wood chips down  
16 to Roanoke Rapids?

17 A No, sir. We were supposed to haul them to  
18 South Boston. The plant in South Boston is owned by the same  
19 people that owns the plant in Roanoke Rapids. They got  
20 blocked up with chips. We were hauling sawdust plus these  
21 chips. So they got blocked up and wouldn't take them so  
22 we took some down to Roanoke Rapids for about a week. Then  
23 we started taking them again to South Boston. We run them  
24 down there two or three trips to Roanoke Rapids on account  
25 of they wouldn't take them in South Boston, but the same

1 people owned both plants.

2 Q Now, I assume, based on your 1968 experience,  
3 that you knew when you started going over into North Carolina  
4 that you had entered into interstate commerce?

5 A No, sir.

6 Q Never dawned on you did it?

7 A No, sir.

8 Q You didn't think about it?

9 A No, sir.

10 Q Now, these drivers that you all would hire,  
11 did you personally interview any of these drivers?

12 A No, sir.

13 Q Did you personally inspect any of the vehicles  
14 that were purchased?

15 A No, sir.

16 Q Any trailers?

17 A I seen some trucks. I'd go along and see the  
18 truck, but as far as knowing anything--

19 Q You left all that up to Mr. Jones, didn't you?

20 A Yes, sir, but I would give my opinion if it  
21 was a good looking truck, but that's as far as I knew. I  
22 wasn't a mechanic or anything.

23 Q How about the business procedures? Was all  
24 that handled by Mr. Jones also?

25 A Yes, sir.

1 Q You were just kind of a silent partner in all  
2 of this. Did you put up money?

3 A I put up what little money I had and what  
4 little property I had.

5 Q And you left the business operations mainly  
6 up to Mr. Jones, is that correct?

7 A Yes, correct.

8 Q He was the one that knew about trucks and the  
9 one that had been driving, right?

10 A Right. I didn't know anything about them.  
11 I know a little more now, but still not much.

12 Q Are you still in business with Mr. Jones?

13 A No, sir.

14 MR. CRANWELL: Judge, based on our discussion  
15 in chambers, I want to go into--

16 THE COURT: Ladies and gentlemen, if you all  
17 would go into the jury room for just a moment.

18 (Whereupon the jury retired to the jury room.)

19 MR. ROSENBERGER: If Your Honor please, I  
20 move to strike his entire testimony on the grounds  
21 it's irrelevant and immaterial and has nothing to do  
22 with the collision that occurred on May 12, 1980.

23 THE COURT: Let's see what he says now.

24 MR. ROSENBERGER: I just want to be in a posi  
25 tion-- I stated that in chambers, and I don't want

1 to waive that.

2 THE COURT: I understand that. You are not  
3 waiving anything.

4 BY MR. CRANWELL:

5 Q You were a partner in business with Mr. Jones,  
6 were you not?

7 A Yes, sir.

8 Q And you relied upon his skill and knowledge  
9 to run the business, did you not?

10 A Yes, sir.

11 Q Now, do you recall being charged in the United  
12 States District Court, Western District, with certain criminal  
13 violations?

14 A Yes, sir.

15 Q I'm going to show you a waiver statement where  
16 you consented to be tried by the United States Magistrate  
17 and ask you if that's your signature on there?

18 A Yes, sir.

19 Q Also, I want to ask you if you voluntarily  
20 pleaded guilty to Count 1, 2, 3, 4; all the way from Count 1  
21 through to Count 26?

22 A Yes, sir.

23 Q Did you pay a fine of \$2,500?

24 A Yes, sir.

25 Q Did you plead guilty to Count No. 1?

1 A I don't know what that is.

2 Q I'm going to read it to you. On or about  
3 the date the hearing is set forth in the State of the Western  
4 District of the State of Virginia--

5 MR. ROSENBERGER: Excuse me a minute, Your  
6 Honor. I think the best way to get this in is to  
7 file this information.

8 THE COURT: Well, I think he's going to file  
9 it, but he's asking this gentleman now. This man  
10 didn't remember what he pled guilty to and he's  
11 reading the counts to him and asking him if he's  
12 guilty of that.

13 MR. ROSENBERGER: Well, we will state for the  
14 record that he pled guilty to Counts 1 through 26 in-  
15 clusive.

16 THE COURT: I understand.

17 MR. ROSENBERGER: Some of them are duplicate.

18 THE COURT: What he-- I assume, Mr. Rosenberger,  
19 that what he is doing is getting this man to state  
20 that he did plead guilty to allowing an improper  
21 man to drive. A man who has not been licensed and  
22 so forth. Let him ask the question. We haven't put  
23 this before the jury yet, Mr. Rosenberger. That's  
24 what I'm doing here.

25 MR. ROSENBERGER: Very well, Your Honor.



1 THE WITNESS: That's what I pled guilty to.  
2 They had us charged with 60 or 70. Most of them  
3 were duplicates and some of them are placed in there  
4 again.

5 THE COURT: Let him read this to you and see  
6 if you pled guilty to this. Mr. Rosenberger said  
7 you did, and what he is asking is if you understood  
8 what you pled guilty to.

9 THE WITNESS: I pled guilty to it; I under-  
10 stood it at that time.

11 BY MR. CRANWELL:

12 Q That on or about the dates herein set forth  
13 in the State of Virginia, Western District, that M. J. Elder  
14 and Kenneth Jones, a partnership doing business as Elder  
15 and Jones, a common carrier by motor vehicle engaged in  
16 transportation of property in interstate commerce did know-  
17 ingly and willfully commit the herein after named drivers  
18 to use and employ said defendant to drive motor vehicles  
19 on the dates between the places herein set forth without  
20 maintaining a driver's qualification file for said drivers  
21 which included a valid medical examination certificate, a  
22 driver's road test, a driver's written examination, a driver's  
23 employment examination, a driver's employment application,  
24 and an annual review of the driver's record in violation of  
25 49 CFR 391.51; 49 USC 11914 Section B.

1 THE COURT: I think the proper way to get this  
2 before the Court would be this way, Mr. Cranwell.  
3 This man says that he pled guilty to those. He says  
4 he left the operations of the business to the other  
5 man. He admits he pled guilty. Of course, by being  
6 a partner, he is charged so. I think the way to get  
7 at this would be with the other man.

8 MR. CRANWELL: Okay. Your Honor, I would  
9 agree with that, but I just want to be sure that this  
10 man acknowledges his--

11 THE COURT: This man has acknowledged that  
12 he did enter a plea of--

13 MR. CRANWELL: Knowingly and willfully.

14 THE COURT: Well, that's what it says.

15 MR. ROSENBERGER: Judge, the reason I suggested  
16 filing the thing is that the record--

17 THE COURT: He's going to file that.

18 MR. CRANWELL: I'm going to offer it right now,  
19 Your Honor.

20 THE COURT: All right. I feel that that's  
21 far enough to go with this man, and I will allow  
22 them to hear just that part of it that he did, but he  
23 allowed the other man to operate the business, but  
24 that he, himself, knowingly entered pleas to these  
25 charges. I think that's as far as we can go with

1                   this witness.

2                   MR. CRANWELL: Your Honor, I offer his signa-  
3                   ture consent. I offer a certified copy of his plea  
4                   of guilty and a certified copy of the counts which  
5                   he pled guilty to.

6                   THE COURT: All right. Let's do that after  
7                   the jury comes in.

8                   MR. ROSENBERGER: Judge, you are going to ad-  
9                   mit this before the jury now?

10                  THE COURT: Let's wait until I hear Mr. Mick.  
11                  Let's go ahead and give Mr. Mick-- are you going to  
12                  call him next?

13                  MR. CRANWELL: I'm going to call Mr. Jones.

14                  MR. ROSENBERGER: Judge, included in the in-  
15                  formation are Counts 28, 29--

16                  MR. CRANWELL: Just pull the pages off.

17                  MR. ROSENBERGER: 30 and 31. I'd like the  
18                  whole thing to be in and his pleas show that he did  
19                  not plead guilty to those four counts.

20                  THE COURT: I certainly don't want the man  
21                  to say he pleaded guilty to anything he didn't.

22                  MR. ROSENBERGER: All right, but you mark  
23                  them as Exhibits what?

24                  MR. CRANWELL: I think it's--

25                  THE COURT: 27; Exhibit 27.

(Document marked Plaintiff's Exhibit No. 27.)

MR. ROSENBERGER: Of course, Judge, under no circumstances would we want those counts to go before a jury even if you do admit any pleas of guilty that would not be as to those counts to be dismissed. You understand that?

THE COURT: Yes. That's why I didn't see any reason for putting them in.

MR. CRANWELL: Your Honor, I don't think there is any reason to put them in. If there is any error-- I'm going to suggest to the Court now that Mr. Rosenberger is inviting error by letting someone testify that they did not plead guilty to some charge.

MR. ROSENBERGER: Well, you offered that as a tested copy, and the tested copy is the last page below the last count, so I want to make a point that those four counts--

THE COURT: I don't think it's going to amount to anything for the jury to see this part of it. He can certainly state to the jury what he has pleaded guilty to. I think that's sufficient. I think to allow them to see any of this other would be error.

MR. ROSENBERGER: And, Judge, you are not right now admitting any of it--

THE COURT: Until I have heard it.

1 MR. ROSENBERGER: So you haven't made up your  
2 mind on it?

3 THE COURT: No.

4 MR. ROSENBERGER: Okay.

5 MR. ABBITT: You may want to cross examine  
6 him on what he has testified to.

7 MR. ROSENBERGER: No, I don't want to cross  
8 examine him.

9 THE COURT: All right. He doesn't want to.  
10 Come around Mr. Jones.

11  
12 The witness, KENNETH W. JONES, having first  
13 been duly sworn, testifies as follows:  
14

15 DIRECT EXAMINATION

16 BY MR. CRANWELL:

17 Q Would you state your full name, please?

18 A Kenneth Woodrow Jones.

19 Q How old are you, Mr. Jones?

20 A Forty-four.

21 Q Where do you live?

22 A P.O. Box 3, Charlotte Court House, Virginia.

23 Q In 1980, were you in the trucking business  
24 with Mr. Elder?

25 A Yes, sir.

1 Q Had you been in the trucking business a sub-  
2 stantial period of time?

3 A Yes, sir.

4 Q And you have heard him testify that you were  
5 primarily in charge of running the business?

6 A Yes, sir.

7 Q Tell us your previous trucking experience.

8 A Well, I'd owned trucks from 1970 to '76. I  
9 sold out to buy a garage. I drove off and on for other people  
10 from 1960 to 1970.

11 Q Who did you drive for?

12 A I drove for Ware and Lumber Service in Wileys-  
13 burg for six years, Roadway Express in Winston-Salem, North  
14 Carolina for one year.

15 Q Roadway Express in Winston-Salem, North Caro-  
16 lina for one year?

17 A Yes, sir.

18 Q They are interstate motor carriers, are they  
19 not?

20 A Yes, sir.

21 Q Did you take a physical exam when you went  
22 to work for them?

23 A Yes, sir.

24 Q A road test?

25 A Yes, sir.

1           Q       A written examination when you went to work  
2 for them?

3           A       Yes, sir.

4           Q       So you knew that when you drive in interstate  
5 commerce you had to do all that, didn't you?

6           A       Yes, sir.

7           Q       Do you know why they gave you those tests?

8           A       Yes, sir.

9           Q       To see if you were qualified to drive a truck?

10          A       Yes, sir.

11          Q       Now, in 1980, you knew you were making inter-  
12 state runs, didn't you?

13          A       It all happened in just two weeks prior to the  
14 date we are talking about. We weren't running interstate.  
15 We were primarily open carriers.

16          Q       Two weeks before May 12?

17          A       We started hauling that stuff to Roanoke  
18 Rapids. We had picked up some of our own tractors from out  
19 of state and brought them in.

20          Q       Were you making interstate runs in March?

21          A       Pulling our trailers in; yes, sir.

22          Q       Huh?

23          A       Picking up empty trailers, yes; we weren't  
24 hauling any loads.

25          Q       Are you telling this court that on March 31,

1 1980, John Child didn't make a run for you to Bridgewater,  
2 New Jersey?

3 A He went up there and picked up a empty trailer.  
4 He didn't haul freight. We lost the trailer in New Jersey,  
5 and he brought it back in to us.

6 Q Did Steven Blackstock on March 19, 1980, make  
7 a run to Lancaster, Pennsylvania?

8 A Probably that was an empty trailer.

9 Q And on 3-26-80, did Steve Blackstock make a  
10 run to Philadelphia, Pennsylvania?

11 A That was an empty trailer.

12 Q And on 4-5-80, did Steve Blackstock make a run  
13 to Providence, Rhode Island?

14 A Yes, that was an empty trailer.

15 Q And on 4-12-80, did he make a run to West  
16 Haven, Connecticut?

17 A I don't remember the dates.

18 Q All these are empty trailers?

19 A Yes, sir.

20 Q How about when he went to Roanoke Rapids,  
21 North Carolina? Was that empty?

22 A No, sir.

23 Q How about York, Pennsylvania?

24 A That was empty. Roanoke Rapids was the only  
25 place we ever hauled out of state.



1 Q What would you do with those empty trailers?

2 A We bought those trailers from Roadway Express.  
3 We had to pick them up from where they were sitting and brought  
4 them to Charlotte Court House.

5 Q Are you telling the court that between March  
6 19, 1980, and May 12, 1980, that you all bought ten trailers?

7 A Bought more than that.

8 Q You bought more than that?

9 A Yes, sir. I don't remember the exact dates,  
10 but--

11 Q But you knew that you were going out of state  
12 to get these, didn't you?

13 A Yes, sir.

14 Q And you were familiar with the Federal motor  
15 vehicle regulations, weren't you?

16 A Well, I knew-- I knew of the authority, but  
17 we weren't running under ICC.

18 Q Well, you did plead guilty, did you not, in  
19 the United States District Court, Western District of Vir-  
20 ginia, to running ICC on all these dates that I have just  
21 eluded to you on?

22 A Yes, sir.

23 Q Knowingly and willfully?

24 A Yes, sir.

25 Q Now, do you have a Chauffeur's license?

1 A Yes, sir.

2 Q Let me see it.

3 (Witness complies with request.)

4 Did you have a Chauffeur's license in 1980?

5 A Yes, sir.

6 Q You knew what a Chauffeur's license was, didn't  
7 you?

8 A Yes.

9 Q Who hired Mr. Wallen? You or Mr. Elder?

10 A I did.

11 Q Who was Al Meyers?

12 A He was one of our drivers.

13 Q Is he the man that tested Mr. Wallen?

14 A Yes, sir. He's the man he rode with.

15 Q Did he tell you that Mr. Wallen was doing all  
16 right on the road?

17 A I can't remember how he told me. I always  
18 asked him if the man was a good driver or whatever.

19 Q But you, yourself, didn't check Gordon Wayne  
20 Wallen, did you?

21 A No, sir.

22 Q You left that up to somebody else?

23 A Yes, sir.

24 Q Do you remember answering some interrogatories  
25 from me in the case of Edward N. Fuller, administrator of

1 Pamela Dawn Fuller versus Gordon Wayne Wallen and M. J. Elder?

2 A Yes, sir.

3 Q Let me read interrogatory #9 to you. State  
4 whether or not you or the company required the defendant,  
5 Gordon Wayne Wallen, to take any written or other tests to  
6 employ in your business? If yes, explain the depth of the  
7 tests in detail.

8 Your answer was-- first of all, let me ask you is  
9 that your signature?

10 A Yes, sir.

11 Q Gordon Wayne Wallen was given a road test.  
12 Based on his performance of that test, our observation of that  
13 test was that with his operating ability and prior experience  
14 we employed him.

15 Now, wouldn't that lead you to believe that you ob-  
16 served him and evaluated his driving?

17 A No, sir.

18 Q You didn't do it?

19 A I didn't.

20 Q Well, is that answer on that interrogatory  
21 incorrect then?

22 A Well, I didn't understand it. Did it say the  
23 company or me personally?

24 Q Why don't you read the answer to that.

25 A I believe it's in error.

1 Q Well, was it yours or not?

2 A Well, the company I would think.

3 Q You didn't say anything to Mr. Al Meyers  
4 or anything in your answers to interrogatories, did you?

5 A No, sir.

6 Q Now, you heard Mr. Wallen testify that he  
7 showed you his Chauffeur's license or his Operator's license,  
8 is that correct?

9 A Yes, sir.

10 Q And you looked at it?

11 A Yes, sir.

12 Q And you said it was all right for him to drive,  
13 is that right?

14 A Yes, sir.

15 Q You want to tell us about that?

16 A Well, I always-- when I hire a man, I always  
17 take his Chauffeur's license and I thought-- to get his ad-  
18 dress and Social Security number, date of birth, and all the  
19 information I need and put it on the paper. I looked at his  
20 Class A and failed to see Operator's. I never seen a Class  
21 A Operator's license before. All the Class A I had ever  
22 seen was a Chauffeur's license.

23 Q Let me ask you, what does it say at the top of  
24 your driver's license?

25 A You mean where it says Chauffeur's?

1 Q Yes, sir.

2 A Yes, sir.

3 Q What does it say at the top of Mr. Wallen's?

4 A It says Operator's.

5 Q Didn't that tickle your curiosity just a little  
6 bit?

7 A Sir, I looked at the Class A; I never heard  
8 of a Class A Operator's license. I always looked to see if  
9 it was a Class A license, and I just failed to see the word  
10 Operator. I never heard tell of a Class A Operator's li-  
11 cense. I know a Class A permits you to drive in excess of  
12 40,000 pounds.

13 Q That's right. That's what intrigues me. You  
14 have never heard of a Class A Operator's license, have you?

15 A No, sir.

16 Q Now, if you had taken your time and looked  
17 over it and seen that this was a Class A Operator's license,  
18 you would have been concerned about this man's ability,  
19 wouldn't you?

20 A Probably so, yes.

21 Q Probably so? Probably or yes?

22 A Yes, I guess so.

23 Q And you would have probably tested him your-  
24 self, wouldn't you?

25 A No, sir. Class A is the same thing as Opera-

1 tor's permit. You have got to be able to drive tractor-  
2 trailers.

3 Q I thought you said you had never heard of a  
4 Class A Operator's license. How do you know it's the same  
5 thing?

6 A It says that you can drive a combination of  
7 vehicles three axles or more, 40,000 pounds and over is  
8 Class A.

9 Q But at that point in time, you just testified  
10 that you didn't know that there was even such a thing that  
11 existed as a Class A Operator's license.

12 A No, sir, I didn't.

13 Q So, if you had just taken some time to see  
14 you would have found out whether this man was qualified to  
15 drive because you would have seen the Operator's on his li-  
16 cense.

17 A Class A was qualified, sir. With a Class A,  
18 he has the same qualifications that I have with a Chauffeur's  
19 license.

20 Q Now, did he have any medical examination?

21 A No, sir.

22 Q Did you ever ask him if he had any serious  
23 illnesses or anything like that?

24 A No, sir.

25 Q Did you ask him if he was a diabetic?

1           A       No, sir.

2           Q       You don't know to this day whether he's a  
3 diabetic or not, do you?

4           A       No, sir.

5           Q       Did you know that you can't drive tractor-  
6 trailers if you are a diabetic?

7           A       No, sir.

8           Q       You don't know that?

9           A       No, sir.

10           MR. ROSENBERGER: Speak up, please, so we can  
11 hear you.

12           THE WITNESS: I know if you got any restric-  
13 tions-- I don't know about the health part.

14 BY MR. CRANWELL:

15           Q       I just told you I was blind in one eye. Do  
16 you think I could get a Chauffeur's license?

17           A       I don't think so.

18           Q       Let me ask you what do you know about driving  
19 a tractor-trailer? How do you go about deciding who to em-  
20 ploy if you don't know any of this stuff?

21           MR. ROSENBERGER: Your Honor, that's purely ar-  
22 gumentative.

23           THE COURT: Sustained.

24 BY MR. CRANWELL:

25           Q       Do you know if there is any restrictions on

1 a license? That you can't get a Chauffeur's license on what  
2 you're telling us?

3 A Well, if he had a Class A license, he couldn't  
4 have any restrictions if he was driving. The State issued  
5 the license. I figured he was qualified.

6 Q If you figured he was qualified, why did you  
7 give him a road test?

8 A A lot of people have permits to drive. I  
9 wanted to see if he could handle it.

10 Q That's exactly right. Every Tom, Dick, and  
11 Harry who walks in off the street with a Chauffeur's license,  
12 Class A, you don't hire them, do you?

13 A No, sir.

14 Q Now, you are telling me and the Court that  
15 driving this big rig is a pretty complicated thing?

16 A Don't seem too hard for me.

17 Q Don't seem too hard for you?

18 A No, sir.

19 Q How long have you been doing it?

20 A Twenty years.

21 Q It takes a while where you can get to handle  
22 those things, don't it?

23 A Well, I don't know how you are supposed to  
24 learn, sir. If the man can do it, he can do it in a short  
25 time. If he can't, he never will learn.



1           Q       Well, you would agree with me that the man's  
2 physical capabilities and his physical condition would have  
3 a lot to do with his ability to drive one, wouldn't it?

4           A       Yes, sir.

5           Q       Then why didn't you check this man's physical  
6 wellbeing out? Why didn't you give him a medical examination  
7 like the FCC regulations require?

8           A       Like I say, we--

9           Q       You just didn't care, did you?

10          A       Yes, sir, I cared.

11          Q       Well, let me ask you another thing. In order  
12 to drive these big rigs, don't you have to know the rules  
13 of the road? How they handle? What to expect and look for?

14          A       Yes, sir.

15          Q       Well, why didn't you give him a written test  
16 to find out if he could do that?

17          A       I had seen him drive a tractor-trailer.

18          Q       I thought you said a minute ago that you hadn't  
19 seen him drive; that you had Alan Meyers do it.

20          A       I saw him drive before he applied for the job.  
21 I saw him driving down in Charlotte Court House.

22          Q       Okay. And you were satisfied that he was capa-  
23 ble of driving from what you had seen him drive?

24          A       Yes, sir.

25          Q       Then why did you give him a test? Why did

1 have Alan Meyers drive with him?

2 A He didn't know where to go. He had to find  
3 out where to go and unload and load and the process.

4 Q So, what you are telling the Court then, is  
5 that he didn't have a road test? Alan Meyers didn't give  
6 him a road test, and all Alan Meyers did was to show him  
7 where to pick up stuff, is that right?

8 A No, sir.

9 Q Well, did you give him a road test or not?

10 A He rode with the driver.

11 Q To see where to go to pick up stuff?

12 A To see how it handled, where to go, and all  
13 that stuff. It was a combination of things.

14 Q What?

15 A I said it was a combination of things; show-  
16 ing him where to load and unload, seeing how he could drive.

17 Q So, are you saying that the way you had pre-  
18 viously seen him drive didn't come into your decision on  
19 whether to hire him or not?

20 A Yes, everything come into it.

21 Q Everything. What had you seen him drive be-  
22 fore?

23 A Tractor-trailer. I seen him haul chips. I  
24 knowed where he was going to load and I knowed where he was  
25 going to pick them up and unload.

1 Q Who was he hauling for?

2 A James Guill, Wileysburg, Virginia.

3 Q How about your other drivers? Did you give  
4 all of them a road test?

5 A All the long distance drivers. We had four  
6 long distance drivers at the time, and we did all the pro-  
7 cessing under the DOT.

8 Q Who were they?

9 A Wayne Conner, Timothy Pride, Collin Jones.  
10 I'm not sure about the other one. I think it was Lee Sawyer.

11 Q Lee Sawyer?

12 A Yes, sir.

13 Q Collin Jones, and who else?

14 A Timothy Pride.

15 Q Timothy Pride?

16 MR. ROSENBERGER: McBride?

17 BY MR. CRANWELL:

18 Q McBride?

19 A Timothy Pride-- I don't know if that's his  
20 last name or not. Wayne Conner is one I know.

21 Q When were those people employed by you?

22 A I can't remember the dates, sir.

23 Q McBride?

24 A Pride; P-r-i-d-e.

25 Q Pride.

1           A           That may not be the right name. I'd have to  
2 look-- I know it was four drivers.

3           Q           Are Collin Jones and Kermit Jones one and the  
4 same person?

5           A           No, sir.

6           Q           Who is Kermit Jones?

7           A           He's my brother.

8           Q           Who is Collin Jones?

9           A           He's my brother.

10          Q           Who is Stuart Sawyer?

11          A           He was a driver from Newport News.

12          Q           Did they have some kind of ICC permit or cer-  
13 tification?

14          A           They had everything. They are long distance  
15 drivers.

16                   THE COURT: In other words, you knew that they  
17 were supposed to have these things, did you not?

18                   THE WITNESS: These long distance drivers,  
19 yes, sir. But when I hired Mr. Wallen, we were just  
20 hauling local; 75 mile radius.

21                   THE COURT: But you did allow him to haul  
22 over the state line?

23                   THE WITNESS: Yes, sir.

24                   THE COURT: And that was wrong, wasn't it?

25                   THE WITNESS: Yes, sir.

1 THE COURT: And you pled guilty?

2 THE WITNESS: Yes, sir.

3 BY MR. CRANWELL:

4 Q You say you have been driving for how long?

5 A Well, roughly 22 or 23 years off and on. I  
6 been off some and been back on. I haven't drove any now for  
7 about seven years.

8 Q You heard him testify that that truck was  
9 loaded with wood chips and made about 72,000 pounds?

10 A Yes, sir.

11 Q Do you think a good experienced driver would  
12 have gotten in that truck loaded with 72,000 pounds with  
13 three hours sleep and try to drive up the road?

14 MR. ROSENBERGER: If Your Honor please, I  
15 object to him asking for an opinion under the cir-  
16 cumstances.

17 THE COURT: Well, his opinion is very impor-  
18 tant in this. This is the man that decided whether  
19 or not he should do it, and this is the whole gist  
20 of this whole thing. Whether or not he was so negli-  
21 gent-- I mean that he should have known better than  
22 to allow that man to drive. That's why I'm hearing  
23 it now to see if it was enough for it to be willful  
24 and unlawful.

25 MR. ROSENBERGER: Okay, Judge, I'm sorry.

1 BY MR. CRANWELL:

2 Q Do you think an experienced capable driver  
3 would have gotten in that truck loaded with 72,000 pounds  
4 of wood chips and tried to drive it from Clarksville all the  
5 way to Big Island with only three hours sleep?

6 MR. ROSENBERGER: That doesn't include, Your  
7 Honor--

8 A He was working nighttime instead of daytime.  
9 His run was set up where he could run it in the legal amount  
10 of time. He could have made his run in the legal amount of  
11 time. If he slept before he went to work, he shouldn't have  
12 been tired.

13 Q Well, that's what I'm saying. When you are  
14 that tired, do you think an experienced driver would have  
15 done something like that?

16 A Well, I mean I don't see any reason for him  
17 to be tired.

18 Q Let's me and you assume he was tired.

19 A Yes, sir.

20 Q Do you think a good experienced driver ought  
21 to get in a truck loaded with 72,000 pounds of wood chips  
22 and go hauling off down the road?

23 A I don't know, sir.

24 Q You don't know?

25 A No, sir.

1 Q Do you care?

2 A Yes, sir.

3 Q Let me ask you another question. Did you re-  
4 quire your drivers to inspect their vehicles?

5 A They are supposed to. They are told to.

6 Q Did you show them how to do the inspection?

7 A Yes, sir.

8 Q Did you show Mr. Wallen?

9 A How to adjust the brakes and what to check on  
10 it.

11 Q What did they have to check?

12 A To check the brakes, lights, tires. Of course  
13 the water, stuff like that before they went out on a trip.  
14 The night Wayne left I had to go down there; he was checking  
15 the stuff when I was down there.

16 Q You saw him checking?

17 A I was there when he left; yes, sir. He was  
18 checking his lights and all when I went down on the lot.  
19 I was helping him go along; it was eight or nine o'clock or  
20 somewhere like that Sunday night.

21 Q Any of these other drivers that you had other  
22 than the ones you named, did you give a written test to or  
23 require a physical examination of any of them?

24 A Not the ones that's supposed to be running  
25 local.

1 Q Do you know if they had a Chauffeur's license?

2 A Yes, sir.

3 Q Did you look at their license like you did  
4 Mr. Wallen's?

5 A I probably could have missed another one.

6 Q You just didn't pay much attention before,  
7 did you?

8 A I just paid attention to Class A. That was  
9 the thing that was required to run.

10 Q That you knew about. Well, did you ever take  
11 the time to inform yourself as to what you ought to do to  
12 get good drivers on the road?

13 A I know what you need to do; yes, sir.

14 Q Well, what do you need to do?

15 A Pay union scale.

16 Q Is that all?

17 A Well, it's a lot of difference.

18 Q Are you saying that to get qualified drivers  
19 you have to pay a good wage?

20 A It's a difference in operations of a large  
21 trucking company and a small one. I tried to do what was  
22 right. That's what I'm saying. I tried to check everything.

23 Q How much were you paying him?

24 A He's being paid by the trip.

25 Q How much a trip?



1           A       \$30 I think. He made about \$60 a day.

2           Q       What would a good experienced driver with  
3 union scale have gotten paid for those trips?

4           A       I don't know.

5           THE COURT: Considerably more than that.

6           THE WITNESS: I'm not saying a union driver--

7 BY MR. CRANWELL:

8           Q       What would he have gotten paid?

9           A       I don't know, sir.

10          Q       You don't know what the union scale is?

11          A       No.

12               THE COURT: Gentlemen, I'm going to allow  
13 this in. This is certainly a jury question as to  
14 whether or not this man-- it's certainly a jury ques-  
15 tion. I'm going to properly instruct them as to  
16 willful and wanton and so forth, but there is cer-  
17 tainly a question as to whether or not this man was  
18 so careless and so negligent in hiring this man as  
19 to whether or not he would be guilty of punitive  
20 damages.

21               MR. ROSENBERGER: Your Honor, the evidence to  
22 this time does not show any such willful and wanton  
23 negligence. As a matter of fact, he has said that  
24 this man was qualified. The evidence that we have is  
25 he has seen the man operate the truck. I would like

1 to ask him to what extent before you rule.

2 THE COURT: All right.

3  
4 CROSS EXAMINATION

5 BY MR. ROSENBERGER:

6 Q Mr. Jones, Mr. Cranwell read to you an answer  
7 to the interrogatory, and you also told him that you had seen  
8 him drive. Over what period of time and where had you seen  
9 him drive tractor-trailers?

10 A Well, he use to come by my shop going to Covington  
11 up in the mountains, Lunenburg County, and he would come  
12 by my shop and get a load and come back. Prior to that he  
13 was driving for John Tucker. He was driving a ten-wheeler  
14 truck then hauling lumber.

15 Q What kind of lumber?

16 A Just rough lumber from the sawmill.

17 Q Now, when you speak of going over the moun-  
18 tains to Covington, what route did he follow when he came by  
19 your shop? Where was your shop?

20 A I didn't ask him. I assume he went up 460 to  
21 Roanoke.

22 THE COURT: If you don't know, say you don't  
23 know.

24 THE WITNESS: All right.  
25

1 BY MR. ROSENBERGER:

2 Q What routes would he follow-- where was your  
3 shop?

4 A On Route 40.

5 Q What county?

6 A Charlotte County.

7 Q What town?

8 A Charlotte Court House.

9 Q To get from Charlotte Court House how many  
10 different routes do you have to get to Covington?

11 A I wouldn't want to say which way he went. I  
12 didn't question him.

13 Q All right. Between Charlotte Court House and  
14 Covington, is it level driving like down in eastern Virginia  
15 or what?

16 A No, sir.

17 Q What kind of routes are they?

18 A Rough terrain I guess you would say.

19 Q Now, over what period of time had you seen  
20 him drive tractor-trailers?

21 A I don't remember. I knew he was a driver.  
22 I don't remember how long or how many times I saw him.

23 Q Did he live in the same general area that you  
24 lived in?

25 A The same county; about 20 miles from where I  
lived.

1 Q Had you had any comments about his qualifica-  
2 tions as a driver or law-abiding citizen? Did you know any-  
3 thing about him?

4 A No, sir.

5 Q Had you heard anything detrimental about him  
6 prior to this time?

7 A No, sir.

8 Q How long did he drive for you before this col-  
9 lision occurred?

10 A I would say a week, I think.

11 Q Did he have any accidents or any problems with  
12 the tractor-trailer?

13 A No, sir.

14 Q Were there any mechanical difficulties with  
15 the tractor-trailer that he had taken care of properly?

16 A Not to my knowing.

17 Q Had there been, you would have known?

18 A Yes, sir.

19 Q MR. ROSENBERGER: That's all I care to ask him.

20 THE COURT: I think this is a matter certainly  
21 where reasonable men could differ as to what this  
22 man did, what was proper and right, and whether he was  
23 really wantonly negligent in the manner in which he  
24 hired this man and put him in charge of a truck with  
25 the power and hauling the loads and so forth. It

1. certainly-- you and I differ on it a little bit, Mr.,  
2. and I think we are fairly reasonable, and I think it  
3. is something reasonable men can differ on. I think  
4. with proper instruction it ought to go to the jury.

5. MR. ROSENBERGER: Your Honor, we respectfully  
6. object for the reasons stated.

7. THE COURT: All right.

8. MR. ROSENBERGER: And further, the evidence  
9. does not show as a matter of law as being a jury  
10. issue as to whether he was guilty of willful wanton  
11. negligence. In addition, as a matter of law there is  
12. no evidence to show that the fact that he had a Class  
13. A Operator's license and not a Chauffeur's license,  
14. or that he had not had a road test, or physical ex-  
15. amination, or written examination, or oral examina-  
16. tion had nothing to do with this collision.

17. THE COURT: Here's a man that testified before  
18. me, Mr. Rosenberger, yesterday that he saw this ve-  
19. hicle in Appomattox and the next time that he recalls  
20. seeing it, he had hit it.

21. MR. ROSENBERGER: I understood him to say  
22. it stopped suddenly.

23. THE COURT: After that he did come back and  
24. say that. Prior to that time he said that, on several  
25. occasions, that he didn't see this vehicle after he

1 left Appomattox, and he doesn't recall seeing it or  
2 anything else.

3 MR. ROSENBERGER: My recollection is he said  
4 also that he attempted to cut to the left, but did  
5 not have time. All of that goes into it.

6 THE COURT: I understand that. All of that  
7 is going in and the jury will have an opportunity  
8 as to which one they believe.

9 Frankly, I believe that he didn't see it until  
10 after he hit it.

11 MR. ROSENBERGER: Judge, we would ask that ir-  
12 respective of your conclusions as to the evidence  
13 that you not express or give the jury that impression.

14 THE COURT: I'm certainly not going to do  
15 that.

16 MR. ROSENBERGER: Judge, could we have a  
17 short recess for a minute. I just have to go out  
18 for a minute if you don't mind.

19 THE COURT: All right. We will take a five  
20 minute recess.

21 (A five minute recess was taken at 10:35 a.m.)

22 MR. ROSENBERGER: If Your Honor please, Mr.  
23 Abbitt has just brought to my attention that I haven't  
24 probably emphasized enough to the Court that the  
25 pleas of guilty had to do with a number of other

1 drivers on other occasions with interstate commerce  
2 and that here we would be dealing with one intrastate  
3 trip by Gordon Wallen, so that would certainly be  
4 highly prejudicial to show to the jury the pleas of  
5 guilty.

6 THE COURT: The only thing that I'm going to  
7 allow to go to the jury as to pleas of guilty are  
8 the answers to his questions as to whether or not  
9 he entered pleas of guilty to the specific acts of  
10 this man we are trying here today.

11 MR. ROSENBERGER: You don't have any in there.

12 MR. CRANWELL: Oh yes you do.

13 MR. ROSENBERGER: Not on this particular occa-  
14 sion.

15 THE COURT: What I'm saying is this, Mr. Rosen-  
16 berger, as to this man's ability to drive. To get  
17 before the-- I think they are entitled to get that  
18 this man was not tested and so forth. That's all.  
19 I'm not interested in what they allowed the others  
20 to do.

21 MR. ROSENBERGER: The evidence was that he had  
22 been tested, and this man observed him.

23 THE COURT: What I'm saying is what he read  
24 and asked this gentleman if that's what he answered  
25 a guilty plea to to this man not keeping the proper--

1 He admitted that he did not give him an examination  
2 as required. He didn't give him a physical or the  
3 written examination as required and so forth, and  
4 that's what I'm going to allow.

5 MR. ROSENBERGER: For the Federal interstate?

6 THE COURT: That's right. And this man has  
7 testified that he operated interstate.

8 MR. ROSENBERGER: Twice, yes.

9 THE COURT: Yes.

10 MR. CRANWELL: Judge, could I, for the record,  
11 state that once again? I'd like to point out to  
12 the Court that the plea of guilty is just one of the  
13 many factors that I think is admission on the part  
14 of this party that he was-- had a total disregard  
15 for the public's safety when he hired this man and  
16 entrusted him with a heavy piece of equipment that  
17 takes unique skills to operate and put him out on the  
18 road.

19 THE COURT: That's why I'm allowing you to  
20 get that in and no other reason; just as to this man,  
21 not these other charges against Mr.-- nothing else  
22 of his other operations. I'm allowing you to get  
23 that in that this man pled guilty to not giving this  
24 man a proper test and so forth.

25 MR. ROSENBERGER: But, Judge, that plea of



1 guilty was interstate, not intrastate.

2 THE COURT: I understand. The only reason.  
3 I'm allowing that is they did not test this man and  
4 he was operating in interstate.

5 MR. ROSENBERGER: But not when this accident--

6 THE COURT: Not when this accident happened.

7 MR. ROSENBERGER: Very well.

8 THE COURT: Now, do you want to put Mr. Jones--  
9 I mean Mr. Elder on? It didn't seem to me from the  
10 evidence that I see that he runs the business.

11 MR. CRANWELL: We can go ahead and start with  
12 Mr. Jones when the jury comes back.

13 THE COURT: All right. Don't go beyond the  
14 admission of this.

15 MR. CRANWELL: All right; I'm not.

16 (The jury returned to the courtroom after  
17 which the following proceedings were had.

18  
19 EXAMINATION BY MR. CRANWELL:

20 Q Would you state your name, please?

21 A Kenneth W. Jones.

22 Q How old are you, Mr. Jones?

23 A Forty-four.

24 Q What's your address?

25 A P.O. Box 3, Charlotte Court House, Virginia.

1 Q What is your current employment?

2 A Truck salesman.

3 Q For who?

4 A Hines Truck Sales, Roanoke, Virginia.

5 Q Now, in 1980, were you in the trucking busi-  
6 ness with Mr. Elder here?

7 A Yes, sir.

8 Q And you have heard him say that you were the  
9 kind of managing partner then?

10 A Yes, sir.

11 Q Now, tell us a little bit about your work ex-  
12 perience prior to going into business with Mr. Elder.

13 A I drove a truck from 1960 to '70 for other  
14 people. At that time I started driving my own truck until  
15 1976.

16 Q Who were some of the people you drove for?

17 A Ware Lumber Service in Wileysburg, Virginia,  
18 Roadway Express in Winston-Salem, North Carolina.

19 Q How long did you drive for Roadway?

20 A One year.

21 Q When you went to work for Roadway, did you  
22 have to take a road test?

23 A Yes, sir.

24 Q Did you have to take a written test?

25 A Yes, sir.

1 Q Did you have to take a medical examination?

2 A Yes, sir.

3 Q Did you have to show proof that you could  
4 operate the vehicle and have the proper license to operate  
5 the vehicle?

6 A Yes, sir.

7 Q Now, you and Mr. Elder went into this business  
8 of hauling wood chips, I believe, wasn't it?

9 A Yes, sir.

10 Q And you all hauled down to Roanoke Rapids in  
11 North Carolina?

12 A Yes, sir.

13 Q And you made some trips to New Jersey and  
14 Pennsylvania?

15 A Not with loads; no, sir.

16 Q With empty trailers?

17 A We went up there and picked up empty trailers.

18 Q How many vehicles did you all have?

19 A Seven or nine; I don't remember.

20 Q Now, this particular tractor that Mr. Wallen  
21 was driving for you on May 12, 1980, what kind of vehicle  
22 was it?

23 A A 1971 Mack sleeper cab.

24 Q How long had you owned it?

25 A About eight months, I think.

1 Q How about the trailer?

2 A I think it was a '65 Dorsey; I don't know. It  
3 was an oak-top trailer 40 feet long.

4 Q How long have you had a Chauffeur's license?

5 A About 22 or 23 years.

6 Q You have had a lot of experience with big  
7 trucks, haven't you?

8 A Yes, sir.

9 Q It takes good physical skills to operate  
10 them, doesn't it?

11 A Well, I guess so.

12 Q You got to be in good physical health to oper-  
13 ate one, don't you?

14 A It's not that much more than an automobile.

15 Q Do you have to be in good physical health to  
16 operate one?

17 A Yes, sir.

18 Q You have to have a good working knowledge of  
19 the rules of the road, too, don't you?

20 A Yes, sir.

21 Q Now, you say when you were working at Roadway  
22 you took a road test, written test, and physical test?

23 A Yes, sir.

24 Q Why did you have to take all those tests?

25 A ICC regulations.

1           Q       Roadway wanted to find out if you were quali-  
2       fied to drive a truck, didn't they?

3           A       Yes, sir.

4           Q       And that's the reason you take those tests,  
5       isn't it?

6           A       Yes, sir.

7           Q       Did you hire this man back here?

8           A       Yes, sir.

9           Q       Did you require him to take a physical examina-  
10      tion?

11          A       No, sir.

12          Q       You knew that was required, didn't you?

13          A       At the time I hired him it wasn't required.

14          Q       Well, you knew if he was going to drive inte  
15      state commerce it was required, didn't you?

16          A       Yes, sir.

17          Q       Did you give him any kind of written test?

18          A       No, sir.

19          Q       Did you give him a road test?

20          A       One of our men did.

21          Q       Who was that?

22          A       Alan Meyers.

23          Q       Had Alan Meyers had a road test when he went  
24      to work for you?

25          A       As best I can remember.

1 Q Had he had a physical when he went to work  
2 for you?

3 A I think he had a physical, but we didn't re-  
4 quire him to have it.

5 Q You didn't give him a written test either, did  
6 you?

7 A No, sir.

8 Q Now, when you hired this gentleman over here,  
9 you put him in a truck with Alan Meyers?

10 A Yes, sir.

11 Q And you testified a little earlier that you  
12 put him in that truck so he would know where to pick up his  
13 loads and things, didn't you?

14 A Several reasons. So he would know where to  
15 go to drive, and this other driver rode with him.

16 Q Did you put him in the truck with Alan Meyers  
17 to evaluate what his skills were or show him where to pick  
18 up loads?

19 A Both, sir.

20 Q You would say both?

21 A Yes, sir.

22 MR. ROSENBERGER: If Your Honor please, I  
23 suggest to Mr. Cranwell to step back so we can all  
24 get in on it.

25 THE COURT: Very well.

1 MR. CRANWELL: I apologize to Mr. Rosenberger  
2 and to the Court, Your Honor.

3 BY MR. CRANWELL:

4 Q You testified earlier that the reason you  
5 hired Mr. Wallen is that you had seen him drive prior to go-  
6 ing to work for you?

7 A Yes, sir.

8 Q So you saw him drive prior to his going to  
9 work for you and you were pretty much satisfied that he could  
10 drive a truck?

11 A Yes, sir.

12 Q So, the truth of the matter is then when you  
13 put him in the truck with Alan Meyers, it wasn't to evaluate  
14 or test his skills, it was to show him where to pick up his  
15 loads, wasn't it?

16 A I never rode with him.

17 Q I thought you just said you had seen him drive?

18 A I never rode with him. I seen him drive.

19 Q And you are saying to us that you would have  
20 to ride with him to see if he was qualified or not?

21 A Not necessarily.

22 Q Did you look at this man's license when you  
23 hired him?

24 A Yes, sir.

25 Q This is his license he said he handed you?

1 A Yes, sir.

2 Q Does it say Operator on it?

3 A Yes, sir.

4 Q This is your driver's license, isn't it?

5 A Yes, sir.

6 Q What does it say on that?

7 A It says Chauffeur.

8 Q That's the kind of license you need in order  
9 to drive for you, isn't it?

10 A Yes, sir.

11 Q Did you look at his license at all when he  
12 gave it to you?

13 A Well, I wrote down his name, Social Security  
14 number, his address, and Class A license, so I looked at  
15 that much of it. I failed to see this part over here.

16 Q How could you fail to see Operator on that or  
17 fail to see Chauffeur on there? You have seen that Chauffeur's  
18 license of yours a hundred times, haven't you?

19 A I don't know.

20 Q Do you think a good experienced qualified  
21 driver would get in a 1971 tractor that you've got and load  
22 up with 70,000 pounds of wood chips and set off driving from  
23 Clarksville with three hours sleep to go to Big Island?

24 MR. ROSENBERGER: Your Honor, this question  
25 assumes the driver was tired when he got in this



1 tractor-trailer. He said himself he slept until one  
2 o'clock the day before, so I think the question is  
3 misleading. There is no evidence that this man was  
4 tired.

5 THE COURT: Rephrase your question.

6 BY MR. CRANWELL:

7 Q You feel like you are an experienced driver,  
8 don't you?

9 A Yes, sir.

10 Q Would you load that tractor-trailer up with  
11 70,000 pounds of wood chips and get in it and attempt to drive  
12 it from Clarksville to Big Island with three hours sleep?

13 A That depends on when the three hours sleep  
14 was.

15 Q Suppose you had slept till one o'clock the day  
16 before and then gone to work at nine and had gone down to  
17 Roanoke Rapids and had vehicle trouble on the way back--  
18 stopped and fixed your vehicle at two o'clock in the morning  
19 and finally got in the cab, took a nap till five a.m. in the  
20 morning, then got back in the truck and drove it up to Clarks-  
21 ville and filled it up with wood chips.

22 A Yes, sir.

23 Q You think you would?

24 A Yes, sir.

25 Q Now, would it be fair to say that all you knew

1 about Gordon Wayne Wallen when you hired him was you had  
2 seen him drive a truck before?

3 A Well, I'm-- I talked to him lots of times. I  
4 been knowing him for about a year.

5 Q Did you inquire as to his health?

6 A No, sir.

7 Q Did you inquire as to his knowledge of opera-  
8 ting a big truck? How to handle one? What the rules of the  
9 road were and that sort of thing?

10 A I think we discussed that.

11 Q You think you did?

12 A Yes, sir.

13 Q When?

14 A Sometime when he asked me for the job. I  
15 didn't hire a man and put him in the truck and tell him to  
16 just go off.

17 Q Well, you hired a man without looking at his  
18 driver's license, didn't you?

19 A No, sir. I looked at his driver's license.

20 Q You didn't look at it very close though, did  
21 you?

22 A No, sir.

23 Q How much did you pay this man?

24 A He got paid by the load.

25 Q How much per load?

1           A       It varied, but averaged around \$30 a load.

2           Q       Tell us what you have to do to get good ex-  
3       perienced drivers.

4           You want me to tell you what your answer to that was  
5       a minute ago?

6           A       Your question got me a little off, too.

7           Q       Tell us what you said then and tell us how  
8       my question had you off?

9           A       Well--

10          Q       Tell us, tell us, tell us right now.

11          MR. ROSENBERGER: Excuse me, Your Honor.

12          THE WITNESS: Don't yell at me, sir. I'll  
13       talk to you if you will talk to me.

14          THE COURT: Go ahead and answer the question.

15          THE WITNESS: We was talking about the money  
16       part. The type of drivers we have adjusts his own  
17       brakes, checks his own lights, runs the frontend  
18       loader to load his truck. He's an all around worker.  
19       As far as I'm concerned, he's more experienced than  
20       a man that can just drive, but you don't make the  
21       money. He don't go through the same examinations that  
22       a union driver does because all they have to do is  
23       drive. As far as experience and knowhow, I think he's  
24       just as good.

25          When it comes down to the money part, he don't

1           make that unless he does more work.

2 BY MR. CRANWELL:

3           Q       Tell us what you did then to satisfy yourself  
4 that this man had the experience and knowhow that you said  
5 he had?

6           A       I know he had been driving a truck, and he  
7 went with one of our drivers and drove with him.

8           Q       Didn't you also say a minute ago that to satis-  
9 fy yourself, you would have to drive with him yourself-- ride  
10 with him?

11          A       No, sir.

12          Q       You didn't say that?

13          A       I didn't think I did, but I wouldn't have to  
14 ride with him to know he was a qualified driver.

15          Q       Let me ask you if you recognize that?

16          A       Yes, sir.

17          Q       Is that your signature?

18          A       Yes, sir.

19          Q       I'll ask you if that is a cover sheet from the  
20 United States District Court, Western District of Virginia?

21          A       Yes, sir.

22          Q       Does that indicate that you pled guilty to  
23 certain criminal offenses?

24          A       Yes, sir.

25          Q       And would one of those be Count #1?

1 A Yes, sir.

2 Q And did that include Gordon Wayne Wallen?

3 A I don't know.

4 Q If I let you look at that, would that refresh  
5 your recollection that Gordon Wayne Wallen was one of the  
6 people?

7 A Yes, sir.

8 Q Would you like to read Count #1 for us, please?

9 A You read it.

10 Q On or about the dates herein after set forth  
11 in the State of the Western District of Virginia, Melvin J.  
12 Elder and Kenneth W. Jones, a partnership doing business as  
13 Elder and Jones, a common carrier by motor vehicle engaged  
14 in the transportation of property in interstate commerce did  
15 knowingly and willfully permit the herein after named drivers  
16 for the use of employment of said drivers to drive motor  
17 vehicles on the dates and places herein set forth without first  
18 maintaining driver qualifications including a current medical  
19 examination, a driver's road test, a driver's written examina-  
20 tion, a driver's employment examination, a driver's employ-  
21 ment application, and an annual review of the driving record  
22 in violation of 49 CFR 391.51 and 49 USC 11914 B.

23 Did you plead guilty to that?

24 A I pleaded guilty, but all that is not correct.  
25 We weren't a common carrier.

1 MR. CRANWELL: I have no more questions for  
2 him, Your Honor.  
3

4 EXAMINATION BY MR. ROSENBERGER:

5 Q Mr. Jones, could you tell us approximately how  
6 long you had known Gordon Wayne Wallen before you employed  
7 him?

8 A Well, I had known him for about a year. Most  
9 of the time when I saw him, he was working. As far as any-  
10 thing more than that--

11 Q When you and Mr. Cranwell were talking about  
12 his driving a truck, do you mean just a regular truck or  
13 tractor-trailer?

14 A When I first saw him, he was driving a tandem  
15 axle-- a three-axle truck.

16 Q All right. Can you operate a three-axle truck  
17 with a plain Operator's license like Rosenberger would have?

18 A No, sir.

19 Q What kind of license do you have to have?

20 A A Class A.

21 Q All right. Then what other kind of truck have  
22 you seen him or that you referred to?

23 A I saw him driving a tractor-trailer for James  
24 Guill.

25 Q Who is James Guill?

1           A           A man in the trucking business in Wileysburg,  
2 Virginia.

3           Q           What kind of tractor-trailer and what kind of  
4 load did he haul?

5           A           He was hauling wood chips when I saw him.

6           Q           Where did you see him haul them?

7           A           He was going to Covington.

8           Q           From where?

9           A           Lunenburg County; I don't exactly know where.

10          Q           Going to Covington, Virginia?

11          A           Yes, sir.

12          Q           Between Lunenburg and Covington, is that level  
13 flat land or mountain land?

14          A           Well, it's really worse the farther west you  
15 go than it is from here to the east.

16          Q           Is that obtained before you get to Covington  
17 or after?

18          A           Before you get to Covington.

19          Q           All right. On the times that you had seen  
20 him, did anything appear to be wrong with his health?

21          A           No, sir.

22          Q           Have you heard of him being in any accidents?

23          A           No, sir.

24          Q           Now, when you were asked by Mr. Cranwell about  
25 these road tests, written tests, physical examinations, you

1 said they were required by what or by who?

2 A The Department of Transportation, the Inter-  
3 state Commerce Commission.

4 Q When you say interstate, does that mean within  
5 Virginia or outside-- from Virginia to other states?

6 A From Virginia to other states.

7 Q At the time you employed this gentleman, what  
8 did you employ him to do-- drive where?

9 A He was to haul chips from South Boston to--  
10 from Clarksville to South Boston and sawdust from Clarksville  
11 to Big Island.

12 Q Was that route entirely within Virginia?

13 A Yes, sir.

14 Q Your knowledge of the ICC regulations, did  
15 that require these tests?

16 A At that time it didn't; no, sir.

17 Q As to the pleas of guilty that you spoke of,  
18 you said it included a common carrier by motor vehicle. Were  
19 you, as far as you knew, a common carrier?

20 A We were not a common carrier.

21 Q You did though, when you referred to one of  
22 these violations as involving Wallen, was that having to do  
23 with the haul from Clarksville, Virginia, to Big Island, or  
24 did that have to do with going out of the state?

25 A He went out of state when he went to Roanoke



1       Rapids, North Carolina.

2               Q       What was the purpose-- when did you start to  
3 go to Roanoke Rapids, North Carolina? Why?

4               A       I don't remember the date, but I recall-- the  
5 chips were cut off from South Boston, so I told him to take  
6 a few loads to Roanoke Rapids.

7               Q       Before this time, you were hauling to where?

8               A       South Boston and Big Island.

9               Q       Then what happened?

10              A       So we started hauling down to Roanoke Rapids.

11              Q       And these things involving Wallen was for  
12 hauling where?

13              A       He went to Roanoke Rapids.

14              Q       North Carolina?

15              A       Yes, sir.

16              Q       That was interstate?

17              A       Yes, sir.

18              Q       Did you have any accidents down there?

19              A       No, sir.

20              Q       Now, did you look at this man's license?

21              A       When I hired him?

22              Q       Yes.

23              A       Yes, sir.

24              Q       You are sure about that?

25              A       I didn't look at it close enough, but I seen it.

1 Q Did you see what kind of license he had?

2 A I saw he had a Class A.

3 Q And in your mind, what did the Class A autho-  
4 rize him to operate?

5 A A vehicle of three or more axles, combination  
6 weight of 40,000 pounds or more.

7 Q All right. Would that have authorized him to  
8 operate the tractor-trailer that he was operating on this day  
9 provided he owned it?

10 A Yes, sir.

11 Q What was the difference then between an Opera-  
12 tor's license and a Chauffeur's license?

13 A I'm not certain.

14 Q Well, who is a chauffeur? What does he do?

15 A That's when you are hauling-- he was driving;  
16 that was his job as a chauffeur. He was required to have a  
17 Chauffeur's license; he was being paid.

18 Q And hauling somebody else's tractor-trailer?

19 A Yes, sir.

20 Q But if he owned that tractor-trailer, Class A  
21 would have been all right?

22 A That's the way I understood it; yes, sir.

23 Q Well, you just told me it would authorize three  
24 or more axles in excess of 40,000 pounds.

25 A Yes, sir.

1 MR. ROSENBERGER: I'm through, Your Honor.

2  
3 REDIRECT EXAMINATION

4 BY MR. CRANWELL:

5 Q Mr. Jones, you testified earlier-- just a min-  
6 ute ago-- that you just looked at the Class on Mr. Wallen's  
7 driver's permit?

8 A Yes, sir.

9 Q You had never seen Class A Operator's license,  
10 had you?

11 A No, sir.

12 Q The only kind of Class A you had ever seen  
13 was a Chauffeur's license, wasn't it?

14 A Yes, sir.

15 Q Well, don't you think that if you had taken  
16 just a second of your time to look to see that it said Opera-  
17 tor's on it that it would have tickled your curiosity just a  
18 little bit?

19 A It might have.

20 Q Don't you think that that would have made you  
21 do a little investigating on this man?

22 A The reason I got all the information off of  
23 his license is we would get-- we would send and get the driving  
24 record from the Division of Motor Vehicles, and probably when  
25 we got it back it would have been caught. I always got that

1 information from every driver we had and sent it to the Divi-  
2 sion of Motor Vehicles to get the driving record.

3 Q Now, Mr. Rosenberger asked you if you were  
4 hiring Mr. Wallen to be an intrastate driver; asked you if  
5 you were a motor carrier, and you said no, is that correct?

6 A I said we were not a regulated common carrier.

7 Q Do you recall a few minutes ago testifying  
8 that you had four long distance drivers; Collin S. Jones,  
9 Stuart Lee Sawyers, and someone else who were qualified for  
10 these long haul drivers?

11 A Yes, sir.

12 Q And do you recall that they had been working  
13 for you a substantial amount of time before Mr. Wallen came  
14 to work for you?

15 A Yes, sir.

16 Q Then you were a common carrier, weren't you?

17 A No, sir. These drivers were running under  
18 other carrier cards.

19 Q Hauling for you?

20 A Hauling for everybody.

21 Q Employed by you?

22 A All we did was pay them.

23 Q You paid them?

24 A Yes, sir.

25 Q And they were employed by you?

1 A Yes, sir.

2 Q Wouldn't that make you a common carrier?

3 A No, sir.

4 Q In your mind it doesn't?

5 A It don't. I know that for a fact.

6 Q You know about that, but you don't know any-  
7 thing about Class A Operator's license and Chauffeur's li-  
8 cense, do you?

9 A Sir, that was just a simple mistake.

10 Q Was it a simple mistake or did you not pay  
11 any attention to what you were doing?

12 A Maybe I wasn't paying attention. The other  
13 part I know it was the law on that.

14 Q Would you tell me one more time what's the  
15 purpose of all these tests that you have to give these ICC  
16 drivers?

17 MR. ROSENBERGER: Your Honor, we have been over  
18 that about three times. We object to the repetition  
19 of that.

20 THE COURT: Sustained. You may step down.

21 MR. ROSENBERGER: Just a minute, Your Honor.

22

23 RECROSS EXAMINATION

24 BY MR. ROSENBERGER:

25 Q These over-the-road drivers— these four other

1 drivers, did you lease them and the equipment to somebody  
2 else?

3 A Yes, sir.

4 Q So, they weren't actually, other than you  
5 renting them out with the equipment, they were operating un-  
6 der somebody else's rights?

7 A Yes, sir.

8 Q Now, when you saw Class A on that Operator's  
9 license, did that indicate to you that that was a Chauffeur's  
10 license; a sufficient license?

11 A Yes, sir, it did.

12 MR. ROSENBERGER: Thank you.

13 MR. CRANWELL: Your Honor, I apologize, but  
14 I don't recall because of the questioning of this  
15 witness out of the hearing of the jury and with the  
16 jury in here, I don't recall if I asked him about  
17 the inspection of drivers with the jury in here.

18 THE COURT: Ask your question.

19  
20 FURTHER EXAMINATION BY MR. CRANWELL:

21 Q Did you teach your drivers how to inspect their  
22 vehicles?

23 A Not personally; no, sir.

24 Q Did anybody?

25 A We had a mechanic that handled that end of it.

1 We had a full-time mechanic to look at them.

2 Q So, nobody taught these people how to do the  
3 inspections?

4 A I told them what to do when they went on a  
5 trip. I didn't stay there personally.

6 Q What did you tell them to do?

7 A They had to check the brakes, lights, tires,  
8 and the engine parts, oil and water; stuff like that.

9 MR. CRANWELL: That's all the questions I have.

10 MR. ROSENBERGER: So you saw that they did  
11 that?

12 THE WITNESS: They were supposed to do it,  
13 and so was the mechanic. I didn't myself.

14 MR. ROSENBERGER: That's all.

15 THE COURT: Next witness.

16 MR. CRANWELL: Robert Mick.

17 MR. ROSENBERGER: If Your Honor please, I  
18 think you would want to hear this out of the hearing of the  
19 jury.

20 THE COURT: All right, ladies and gentlemen,  
21 we will have to see what evidence is admissible.

22 (The jury left the courtroom, after which the  
23 following proceedings were had.)

24  
25 The witness, ROBERT MICK, having first been  
duly sworn, testifies as follows:

1 MR. ROSENBERGER: May it please, Your Honor,  
2 the Defendants by counsel move the Court to strike the evi-  
3 dence dealing with the issue of punitive damages. Counsel  
4 for the Plaintiff has admitted that the operator of the truck  
5 was not liable for punitive damages. There is no evidence  
6 that Melvin J. Elder did anything with regard to the opera-  
7 tions of the trucking business or that he approved or disap-  
8 proved any operations that had to do with this particular  
9 transaction.

10 Then as regards to the Defendant, Kenneth W. Jones,  
11 we say as a matter of law there is no evidence to show what  
12 Mr. Jones did was willful and wanton negligence that was a  
13 proximate cause of this collision, and that there is nothing  
14 on which to submit this to the jury as to either one of these  
15 Defendants.

16 Mr. Abbitt wants me to emphasize the fact that this  
17 tractor-trailer was on an intrastate run at the time, but ir-  
18 respective of that none of the evidence shows that any of  
19 the Defendants were negligent of willful and wanton negligence  
20 which would-- or actions which would justify an award of  
21 punitive damages.

22 MR. CRANWELL: Your Honor, with respect to  
23 Gordon Wayne Wallen, the Plaintiff indicated that they thought  
24 that his only fault was being an inexperienced driver who  
25 undertook the task that he wasn't up to, and that he's pro-



1       bably guilty of simple negligence. Well, he admitted he's  
2       guilty of simple negligence on his part.

3               The real question as I see it is was Mr. Jones, an  
4       experienced motor vehicle carrier driver himself, who was  
5       familiar with all the ICC regulations as well as his own  
6       standards that he set out, was he guilty of wanton negligence  
7       in hiring a person of the capability that has been indicated  
8       by the Defendant, Gordon Wayne Wallen? Let me just tick off  
9       what those things were.

10              Here's a man who had a Class A Chauffeur's license  
11       for a number of years. He says he looked at Mr. Wallen's  
12       Class A Operator's license and never paid any attention to  
13       Operator in bold print. By his own admission, that would  
14       have tickled his own curiosity, and he may have taken further  
15       steps to find out about this man's qualifications.

16              THE COURT: Well, by his own testimony the  
17       man wouldn't have been qualified to work for him.

18              MR. CRANWELL: He wouldn't have hired him.  
19       The next thing is, by his own admission, he did not inquire  
20       as to this man's health, yet he acknowledges one has to be  
21       in good health in order to drive a vehicle. He acknowledges  
22       that one would have to know the rules of the road and know  
23       the operation of a big truck yet he didn't give him a writ-  
24       ten examination-- he acknowledges that-- or anything to find  
25       out what his qualifications were in that area.

1 As to the road test, his testimony is in complete  
2 conflict and contradiction. Out of the hearing of the jury  
3 he said one time that he was relying on his having seen him  
4 drive before. Then he said that a road test was given. Then  
5 he said well he was only riding with the man in order to find  
6 out-- going from location to location. Now, granted with the  
7 jury hearing him, he said that the driving with Al Meyers  
8 was probably a combination of evaluation. But there is abso-  
9 lutely no evidence in this record that he received any eva-  
10 luation at all from Mr. Meyers as to what this man's driving  
11 capability was before he put him on the road. He never said  
12 he received any written report or discussed that with him.

13 Now, I think there is ample evidence, at least this  
14 individual, that he had willful disregard for the safety of  
15 people on the highway. He acknowledges that these vehicles  
16 are large; they take special skills to drive them. Proximate  
17 cause is a difficult area, Your Honor, and I understand the  
18 problems I have with proximate cause. I do know that the  
19 Court has said that you do not have to prove the direct link  
20 of proximate cause by every single solitary writ of affirma-  
21 tive evidence.

22 Now, I think that reasonable inferences can be drawn  
23 from the evidence in this case that Mr. Wallen's inexperience  
24 is what caused this accident. I also think that the jury can  
25 draw the inference that willful wanton disregard for trying

1 to evaluate whether he was a competent driver or not was an  
2 inference to be drawn from those facts, and I would suggest  
3 most humbly to the Court that they be permitted to draw that  
4 inference from the facts in this case.

5 THE COURT: This is a very close matter cer-  
6 tainly on this punitive damages situation. The rest of it,  
7 as you know, there's no question. You have already admitted  
8 liability and so forth. This is a close matter.

9 I don't know that I could-- if they gave punitive  
10 damages, I don't know whether I could let it stand or not,  
11 but I'm going to let it go to the jury. It's a close matter  
12 as to Mr. Jones. He's the only one I could see where there  
13 is a question of punitive damages.

14 MR. ROSENBERGER: With all due respect, Your  
15 Honor, I respectfully object and accept to Your Honor's rul-  
16 ing on this subject.

17 THE COURT: I thought you would.

18 MR. ROSENBERGER: I say, Judge, that these--  
19 you might say simple acts of negligence, but not any willful  
20 and wanton acts as--

21 THE COURT: Well, that's a jury issue.

22 MR. CRANWELL: Judge, there is evidence. By  
23 his own admission in Federal court of a willful and knowing  
24 violation of the law.

25 MR. ROSENBERGER: Failure to examine this

1 fellow, give him a road test, and that sort of thing when  
2 here's a man that had been driving, and he knew he had been  
3 driving, and he knew he hadn't had any accidents.

4 THE COURT: See, that's the part that's a ques-  
5 tion, I think, for the jury as to whether or not it was e-  
6 nough. Whether or not it is enough. Now, I say it's a real  
7 close case, and I want to look at some law on it, but no-  
8 body has pointed any law to me except two cases of entrust-  
9 ment, and those are not applicable.

10 MR. ROSENBERGER: Judge, have you ever known  
11 of anybody ever convicted of negligence that had an automo-  
12 bile accident because they didn't have an Operator's license  
13 in Virginia when they had been driving on the road? This man  
14 had been driving, had been stopped by state troopers.

15 Well, I'm not going to prolong it, but I believe you  
16 understand.

17 THE COURT: I understand your position.

18 MR. ROSENBERGER: These people have been sued  
19 jointly you know. I don't see how you could have a separate  
20 verdict in this case.

21 MR. ABBITT: The minute you let it go to the  
22 jury as to punitive damages, that's going to be highly pre-  
23 judicial to the other two Defendants regardless of whether  
24 they find-- even if they don't find-- even if the jury doesn't  
25 find for punitive damages, it's going to raise the amount.

1 MR. CRANWELL: They can poll the jury and  
2 ask the jury that question.

3 MR. ROSENBERGER: Yes, but Judge that is  
4 very important, and I made the point when we started out yes-  
5 terday that we are admitting liability as to compensatory  
6 damages, but if you add all of this in you can't say that  
7 they, because of this evidence, that they haven't put it  
8 in under compensatory damages and not punitive. Particularly  
9 when you are going to rule as a matter of law that two of  
10 them are not guilty of punitive damages. That's where you are  
11 going to have a big problem. I think Mr. Abbitt's point is  
12 very well taken. They are going to be in a spot.

13 MR. CRANWELL: Are you saying to me or are you  
14 saying to the Court that in a case where one of the joint  
15 tort-feasors may well be guilty of punitive damages and ano-  
16 ther one is not, that there is no way that you could ever  
17 try those cases together?

18 MR. ROSENBERGER: Well, when you have three of  
19 them admitting compensatory damages. Three of them admitting  
20 that. Then you add in all this other business and you have  
21 filed about 15 photographs of this accident. You have added  
22 insult to injury as to how this accident happened when we ad-  
23 mitted it was all our fault.

24 MR. CRANWELL: You don't have to build your  
25 record when you are talking to me. I have been there before,

1 too.

2 MR. ROSENBERGER: I just want to stop right  
3 here and tell this Judge who is ruling on this thing that it's  
4 his responsibility to see that we get a fair and impartial  
5 trial.

6 MR. CRANWELL: Well, it sounds like to me that  
7 you are saying to the Judge that in any case that you have  
8 more than one defendant, and one of them may be charged with  
9 punitive damages, that you don't think the defendant who is not  
10 guilty of punitive damages could not get a fair and impartial  
11 verdict from a jury; and I don't believe that.

12 MR. ROSENBERGER: Judge, I'm saying you can't  
13 get a jury of laymen to distinguish between these things.

14 MR. CRANWELL: The law provides for that. I  
15 have got a special verdict-- the law says they can be duly  
16 instructed that they have to award compensatory and punitive  
17 damages separate. That's what the law is.

18 MR. ROSENBERGER: But when you tell this jury  
19 that the operator of that tractor-trailer that caused this  
20 accident was not liable for punitive damages, whereas another  
21 guy's at home and knew nothing about it, they are going to  
22 certainly add on to the compensatory damages to take care of  
23 the guy that was operating the truck. That's the reason we  
24 objected from the beginning.

25 MR. CRANWELL: That is pure speculation on Mr.

1 Rosenberg's part.

2 THE COURT: What you are saying is that the  
3 jury hasn't got sense enough to give the verdict. I don't  
4 believe that. With the proper instructions, I think that  
5 they will. I think we can instruct them properly, and I just  
6 said to you that it's a close case and close matter as to  
7 whether or not there was willful and wanton negligence on  
8 the part of anybody. But I think that there has been enough  
9 evidence on the part of Mr. Jones as to whether or not he  
10 was-- he pled guilty to willfully not doing these things he  
11 should have done. He's done that. He has admitted that to  
12 the jury-- to the Court.

13 MR. ROSENBERGER: For interstate.

14 THE COURT: He further admits that he has been  
15 a driver for twenty-some years. He knows all about driving,  
16 and he didn't do these things that ought to be done by any-  
17 body hiring a driver. All he knows about this man, from the  
18 evidence, is that he has seen him drive up and down the road  
19 for other people, and he stopped by his place. He had never  
20 ridden with him, never saw anything about him at all, and he  
21 put him in the truck with this other man to ride.

22 MR. ROSENBERGER: We respectfully object.

23 THE COURT: All right.

24 MR. ROSENBERGER: Judge, this is what I'd like.  
25 I'd like to confer with our clients and also with Mr. Abbitt.

1 THE COURT: Oh, no. My comment is this. This  
2 man said that he didn't do it, the other man did.  
3 The other man was here. That's all I meant.

4 MR. ROSENBERGER: Yes, Your Honor.

5 THE COURT: Call your next witness.

6 MR. ROSENBERGER: Mr. Litchford.

7  
8 The witness, FRANKLIN LITCHFORD, JR., having  
9 first been duly sworn, testifies as follows.

10  
11 DIRECT EXAMINATION

12 BY MR. ROSENBERGER:

13 Q Would you state your full name, please?

14 A Franklin Boyce Litchford, Jr.

15 Q Where do you live, Mr. Litchford?

16 A Concord, Virginia.

17 Q What's your business?

18 A I'm a mechanic.

19 Q Do you just work in your garage or what do you  
20 do?

21 A I work in a garage and do road service work  
22 and wrecker work.

23 Q Whose garage is this?

24 A My father's.

25 Q And you work there for him?



1           A       I been there all my life.

2           Q       Did you have occasion to go to the scene of  
3 the school bus accident on Route 460 about a mile or so from  
4 Spout Spring on May 12, 1980?

5           A       Yes, sir.

6           Q       What was your purpose in being there?

7           A       Remove a tractor and trailer from the scene  
8 of the accident.

9           Q       What did you take with you to remove it?

10          A       We had a-- we took a wrecker. We might have  
11 took two wreckers and equipment to move it.

12          Q       When you hooked to the tractor-trailer, were  
13 you able to move it?

14          A       Yes. We moved it a few feet and noticed the  
15 wheels on the tractor were sliding, so we stopped and ad-  
16 justed the brakes off on the tractor so we could pull it.

17          Q       What do you mean you had to adjust the wheels  
18 off?

19          A       When the air goes down on it or anything hap-  
20 pens, it goes into emergency lock, and the brakes were locked  
21 up on it. We had to get under the bottom of it and adjust  
22 the brakes so we could get the wheels to release because the  
23 brakes was on.

24          Q       Then if you had to release the brakes on all  
25 of them, what would that indicate to you as a mechanic as to

1 whether the brakes were operating?

2 A Well, the brakes was properly adjusted and was  
3 good brakes on it because I had to release them. If it hadn't  
4 been out of adjustment or no brakes on it, then these brakes  
5 wouldn't have been locked because the air chambers wouldn't  
6 have hold the brakes on because when it's not adjusted up  
7 properly the wheels would roll. By the wheels sliding, that's  
8 why I had to get under it and adjust them off.

9 MR. ROSENBERGER: You may examine him.

10  
11 CROSS EXAMINATION

12 BY MR. CRANWELL:

13 Q Mr. Litchford, I hope I'm going to be brief.  
14 Have you worked on tractor-trailers right often?

15 A Yes, sir.

16 Q Now, I don't know much about brakes, but let  
17 me see if you and I can exchange some information here that  
18 might be helpful to all of us.

19 There are air brakes on this tractor-trailer, right?

20 A Yes, sir.

21 Q The principal of an air brake is just the op-  
22 posite from a foot brake in an automobile. In other words,  
23 in an automobile you put pressure on and that pushes the drum  
24 up against the wheel and stops the car, right?

25 A Right.

1           Q       And air brakes what you do is you force air  
2 in and hold the drums away from the wheel and when you let  
3 the air out, the drum flies back and stops it, right?

4           A       Well, both parts-- well, I know you're speak-  
5 ing the best you can, but I think what you're saying is right,  
6 it's just not said correctly.

7           Q       Okay. How about you saying it correctly for  
8 me.

9           A       When you apply your brake with air pressure,  
10 your brake shoes expand and go against the drum, and that's  
11 what it does apply. What I said a while ago, if one's out  
12 of adjustment, then anytime your brake is applied on emergency  
13 or with the foot brake-- if it's out of adjustment, it wouldn't  
14 lock the wheel.

15                 What I'm saying is they was adjusted.

16           Q       Isn't it true that if you severed that hose  
17 from the air tank to the brake, it will lock the brakes up?

18           A       Tell me that again.

19           Q       Isn't it true that if you severed the air hose  
20 that goes in and feeds the air to the air compressed brake,  
21 once you sever that hose it will lock the brakes up?

22           A       That's right.

23           Q       And the hose was severed on this air brake,  
24 wasn't it?

25           A       I don't understand the word you use-- hose.

1 Q Well, was the hose severed?

2 A What do you mean, sir?

3 Q The air hose in the brake?

4 A Well, not to my knowing. I don't know if it  
5 was or not because I never put no air on it, and in the wreck  
6 the hoses was damaged and torn.

7 Q And the reason the brakes locked up was be-  
8 cause there was no air pressure there, right?

9 A Right. But if the brake wasn't adjusted pro-  
10 perly, it wouldn't have held when I slid it. In lock or out  
11 of lock, it would still have the same amount of brake. That's  
12 what I'm saying.

13 Q What I'm asking you is because the brakes were  
14 locked up was because of the damage to the air hoses, is that  
15 right?

16 A Well, any time a truck loses air pressure and  
17 goes into emergency, it will lock up, yes.

18 Q So, you would agree then that in the accident if  
19 the air hoses were ruptured, it would have locked the brakes  
20 up on that truck, wouldn't it?

21 A Yes. If it's improper adjustment it would.  
22 If it wasn't improper adjustment, it won't.

23 Q And the brakes were locked up on this?

24 A Yes, sir.

25 Q So, that would lead you to believe that it was

1 an improper adjustment?

2 A No. They were adjusted up tight; that's how  
3 I adjusted them off.

4 Q Is it fair to say that the reason the brakes  
5 were locked up and the wheel was sliding is because you had  
6 lost air pressure to the brakes?

7 A Yes, sir; at that time it would be.

8 Q Would it be fair to say that within the course  
9 of the accident-- of the impact-- that the air hose was se-  
10 vered that that would automatically lock the brakes up at  
11 that point?

12 A Yes, it would, but again I say if they were  
13 out of adjustment, they will still come on but they wouldn't  
14 hold. But if they wasn't adjusted up properly-- so really  
15 the brakes has to be adjusted up properly to hold with the  
16 foot valve or if the air hose is cut or torn.

17 Q It would have been possible under the scenario  
18 that you have given to-- maybe to have attempted to apply  
19 the brake and because of some malfunction you couldn't vent  
20 the air and the brakes wouldn't work. Is that possible?

21 A That would be possible.

22 Q So, you didn't check the brakes for that type  
23 of malfunction, did you?

24 A There's no way because the linings, like I say,  
25 was torn. It was good brake linings on them, and the brakes

1 were set up properly and tight. By all reason, it should have  
2 had good brakes on it because it had brakes on it when I went  
3 to get it, but I wasn't in the truck with him so I can't  
4 honestly say.

5 MR. CRANWELL: I don't have any more questions.

6  
7 REDIRECT EXAMINATION

8 BY MR. ROSENBERGER:

9 Q Mr. Litchford, do I understand you to say that  
10 the brakes would not have locked up like you found them if  
11 they had not been working properly before the accident?

12 MR. CRANWELL: Your Honor, I object. That is  
13 an extremely leading question.

14 MR. ROSENBERGER: That's what he said, Your  
15 Honor.

16 THE COURT: Gentlemen, ask him a question; a  
17 straight-out question.

18 BY MR. ROSENBERGER:

19 Q Would the brakes have locked up like you found  
20 them if they were not properly adjusted before the accident?

21 A Well, the brake would have come on at any  
22 time, but if they hadn't have been adjusted up right, they  
23 wouldn't have slid the wheels when I tried to move it. They  
24 was adjusted properly. That's what I'm saying. Either way  
25 the brakes was properly adjusted up tight. That's why the

1 wheels slid. And that's the reason I got under and adjusted  
2 them off. Now, any other malfunction is beyond my knowing.

3 MR. ROSENBERGER: May he be excused, Your  
4 Honor?

5 THE COURT: I don't know.

6  
7 RECROSS EXAMINATION

8 BY MR. CRANWELL:

9 Q From my own mind when you say they were ad-  
10 justed right, you mean that the drums that actually exert  
11 pressure against the wheel hubs to stop it were adjusted  
12 right so they all fit into place in the right spot, right?

13 A Right. You say the drums and all and really  
14 it's the brake shoes against the drums.

15 Q Right. And all that was adjusted properly.  
16 What you are saying is any other malfunction or any  
17 other problems with the brakes, you didn't check?

18 A Right. They couldn't be checked because the  
19 air hose was torn.

20 I have been to get some like this and the brake come  
21 on like this and the brake will not hold.

22 MR. CRANWELL: Your Honor, that's all.

23 THE COURT: You may step down.

24 MR. ROSENBERGER: We rest, Your Honor.

25 THE COURT: All right, gentlemen. Do you have

1 any rebuttal?

2 MR. CRANWELL: No rebuttal, Your Honor.

3 THE COURT: We are going to go back now, ladies  
4 and gentlemen, and talk about the instructions.

5 MR. CRANWELL: Your Honor, before we talk about  
6 instructions, could I make one inquiry of Mr. Rosenberger and  
7 Mr. Abbitt and you in chambers?

8 THE COURT: We are going to be in chambers  
9 anyway.

10 MR. CRANWELL: That's fine.

11 (The following proceedings were had in chambers  
12 with the Court and counsel.)

13 MR. CRANWELL: Your Honor, I have young Greg  
14 Allen here and he's been here for two days. Your Honor, I  
15 would be of the feeling that the jury may want to see his leg,  
16 and I will be more than happy for them to take a look at his  
17 leg in his current condition. The photos reasonably depict  
18 it.

19 MR. ABBITT: It would be improper at this time.

20 THE COURT: That's up to you gentlemen.

21 MR. ABBITT: He's rested his case.

22 THE COURT: He's rested his case, and it isn't  
23 rebuttal.

24 MR. ROSENBERGER: If Your Honor please, the  
25 Defendants, all of them by counsel, move the Court to strike



1 the evidence relative to punitive damages and to submit this  
2 to the jury solely on the question of compensatory damages.

3 And, of course, it goes without saying that I renew  
4 my motions for mistrial because of prejudicial evidence that  
5 has come in that must affect the jury's verdict as to com-  
6 pensatory damages.

7 I think maybe one time, Judge, you described this  
8 as a horrible or terrible accident, and I agree that it was  
9 a bad accident.

10 MR. CRANWELL: That was not done to prejudice  
11 the jury.

12 THE COURT: I didn't say that in front of the  
13 jury. All of you all agree that it was a bad accident.

14 MR. ROSENBERGER: We know that, and we admit  
15 liability for the reason that we didn't want to prejudice  
16 the jury against these people on compensatory damages. We  
17 know we owe compensatory damages.

18 THE COURT: All right, Mr. Cranwell.

19 MR. CRANWELL: Your Honor, I understand that  
20 on a motion to strike the evidence is viewed most favorably  
21 to the plaintiff. The motion now, of course, is I guess  
22 on the weight of the evidence, but again I would state to  
23 the Court that I do think there is a jury question on punitive  
24 damages of Mr. K. W. Jones. The evidence in this case is  
25 that he was an experienced driver, he knew what he was doing,

1 he, himself, had had to be qualified to drive these large  
2 rigs. In addition to the ICC regulations that he was familiar  
3 with, he indicated that it was necessary to have a physical  
4 well-being in addition to being familiar with the operations  
5 of the trucks, to be familiar with the rules of the road, yet  
6 he took no steps to inform himself of that. He also acknow-  
7 ledges that these rigs are large things that takes some skill  
8 over and above the ordinary to operate, yet by the same token  
9 he took absolutely no steps whatsoever to inform himself as  
10 to the skill of this Gordon Wayne Wallen. In fact, there is  
11 no evidence that he even took the time to check with Mr. Alan  
12 Meyers who was to do the road test. I have a question as to  
13 whether or not there was even a road test if you consider all  
14 the evidence of his made outside of the hearing of the jury  
15 as well as in.

16 I think the jury ought to have the opportunity to  
17 say we don't think the people should allow unqualified people  
18 to be out on the highway with total disregard for safety. I  
19 don't think there is any question. If you look at this man's  
20 experience and the circumstances of what they were hauling,  
21 the size of these rigs, he knew that he had to have a quali-  
22 fied person out there. I think it's an absolutely total dis-  
23 regard for the safety of the people using the highways of the  
24 Commonwealth of Virginia to put a person out there who is  
25 driving a vehicle like Mr. Wallen.

1           The evidence in this case is that this man came down  
2 the road, he had seen the school bus once, he came down the  
3 road and he never saw it again and ran right smack in the  
4 back of it. There is absolutely no excuse for that kind of  
5 conduct, and I think the jury would be reasonable in inferring  
6 that this guy shouldn't have been put out on the road. If  
7 you look at what Mr. Jones did or didn't do, I think he indi-  
8 cates a willful disregard for the safety of people driving on  
9 the highways and I think the jury--

10           THE COURT: Well, further than that, he allowed  
11 a man to operate who didn't have the proper operating creden-  
12 tials.

13           MR. CRANWELL: Well, Judge, that goes without  
14 saying that this man knew that he had to have a Chauffeur's  
15 license, yet he looked at a driver's license that obviously  
16 had the word Operator printed across the top of it, yet he  
17 did not spend the time or even take--

18           THE COURT: Of course that is coupled with the  
19 other evidence. I feel that this is a close question, how-  
20 ever, I feel that it is a jury question as to whether or not  
21 Mr. Jones is guilty of willful and wanton negligence in hir-  
22 ing this man and turning him loose with this vehicle. For  
23 that reason, I'm going to allow that to go to the jury. I  
24 don't know what the situation will be after that.

25           MR. ROSENBERGER: If Your Honor please, we

1 respectfully object for the reasons stated. By not responding  
2 in detail to Mr. Cranwell, we think his version of the evi-  
3 dence is not complete.

4 THE COURT: All right. It is certainly in  
5 my mind a jury question as to whether or not that man was  
6 guilty of willful wanton negligence having pled guilty to will-  
7 ful-- knowing he hadn't done the proper things for this man  
8 to be driving.

9 MR. ROSENBERGER: Of course, Judge, you realize  
10 that we think this prejudices us as to compensatory damages.

11 THE COURT: I understand that. That's in the  
12 record. I think under the proper instructions, I'm certainly  
13 going to instruct them that any punitive damages against him  
14 have nothing to do with compensatory damages.

15 Now, let me get the Plaintiff's instructions  
16 first.

17 MR. CRANWELL: Your Honor, this is taken out  
18 of the blue book. The first one states the issues in accor-  
19 dance with the instructions as outlined in the Supreme Court  
20 or at least the approval of the Supreme Court in the blue  
21 book. This, we think, states the issues.

22 If the Judge approves, this will be number one. Is  
23 there any objection to that?

24 MR. ROSENBERGER: Oh, yes. Number one, the  
25 evidence is insufficient as a matter of law to support a verdict

1 of punitive damages against K. W. Jones, and the evidence is  
2 insufficient as a matter of law to show that any such negli-  
3 gence was a proximate cause of the collision.

4 THE COURT: Of course, that's certainly a  
5 matter to argue before the jury. I'm going to give this.  
6 This is number one.

7 Now, that was the one I wanted to be sure that you had.  
8 Any objection to that?

9 MR. ROSENBERGER: The Defendants, by counsel,  
10 object to instruction number two on the ground that there is  
11 no evidence on which to base this and the reading of this  
12 instruction shows that it's no evidence to support it.

13 MR. ABBITT: Of course, the submission of this  
14 is prejudicial to all the Defendants from the standpoint of  
15 compensatory damages.

16 THE COURT: You have no objection to proximate  
17 cause, do you?

18 MR. ROSENBERGER: The definition is correct.  
19 It's not correct in this case, Your Honor, because as a matter  
20 of law there was no proximate cause, and nothing that this  
21 man did was a proximate cause of punitive damages.

22 Now, the one thing that this instruction may be mis-  
23 leading is as to we have admitted that we are liable for com-  
24 pensatory damages which is an admission of proximate cause as  
25 to compensatory damages, but this doesn't limit that. This

1 deals with punitive damages also.

2 We respectfully object to the giving of instruction  
3 one, two, and three for the reasons stated.

4 THE COURT: And four?

5 MR. CRANWELL: Judge, I think this will pro-  
6 bably take just a minute to redraft this.

7 THE COURT: Well-- If you find for the Plaintiff  
8 to be entitled to be compensated for his damages-- that's  
9 already been admitted, and there is no reason to have that in  
10 there.

11 MR. CRANWELL: Judge, I think we need to strike  
12 that out and should say: If you believe by the greater weight  
13 of the evidence that the Defendant, K. W. Jones, acted with  
14 malice toward the Plaintiff or acted in a certain manner that  
15 was a willful wanton disregard of the Plaintiff's rights  
16 then you may also find for punitive damages for the Plaintiff.

17 THE COURT: I would think that you would want  
18 that, Mr.--

19 MR. ROSENBERGER: No, we don't want it.

20 MR. ABBITT: I think his name, K. W. Jones,  
21 ought to be put in there on the second line from the bottom  
22 of the second paragraph.

23 MR. ROSENBERGER: I might call your attention,  
24 Your Honor, to number two. You don't limit willful and wan-  
25 ton negligence to any particular Defendant.

1 THE COURT: Which one if that?

2 MR. CRANWELL: That's just a definition, Bill.

3 THE COURT: That's a definition; that's not--

4 MR. ROSENBERGER: It leaves it wide open as to  
5 the Defendant.

6 MR. ABBITT: You are talking about the last  
7 paragraph?

8 MR. ROSENBERGER: I'm talking about number two.

9 THE COURT: When the Defendant is aware of his--  
10 aware of his conduct-- when the Defendant, K. W. Jones.

11 This is a definition, but I believe we had better put  
12 K. W. Jones in there.

13 MR. CRANWELL: Judge, that's the reason I like  
14 the other instructions, the old instructions, better than I  
15 do in these blue books. This definition is right out of the  
16 new blue book instructions.

17 THE COURT: I know, but all of these instruc-  
18 tions you have to bend them according to the circumstances.

19 MR. CRANWELL: I understand that, but these  
20 are the definitional instructions, and they are pretty much  
21 set out under--

22 THE COURT: Well, I think that this would cer-  
23 tainly-- you are only asking for punitive damages as to one  
24 Defendant.

25 THE CRANWELL: That's correct.

1 THE COURT: And I think they might get the  
2 idea from this one that it was a general situation for them.  
3 I don't see that it would hurt you at all, and it might clear  
4 it up some.

5 Now, the fourth. Plaintiff is said to find K. W.  
6 Jones for his actions to serve as an example to prevent others  
7 from acting in similar ways. If you award punitive damages  
8 you must state separately in your verdict the amount you allow  
9 as compensatory, and the amount you allow for punitive damages  
10 and such damages can only be awarded as to K. W. Jones-- as  
11 to Defendant, K. W. Jones. Since you are not asking for puni-  
12 tive damages from anybody else. --if the evidence warrants.

13 MR. CRANWELL: What are you going to say at  
14 the end of that?

15 THE COURT: If you award punitive damages, you  
16 must state separately in your verdict the amount you allow  
17 as compensatory damages and the amount you allow as to puni-  
18 tive damages, and such punitive damages can only be awarded  
19 against the Defendant, K. W. Jones, if the evidence warrants.

20 MR. ROSENBERGER: If Your Honor please, the  
21 Defendants, by counsel, object to the actions of the Court  
22 on granting instruction number four on the grounds that there  
23 is no evidence that K. W. Jones was guilty of willful and  
24 wanton acts which would justify a verdict on punitive damages.  
25 The instruction does not contain all of the necessary elements



1           If you find by the greater weight of the evidence  
2   that K. W. Jones was: 1, acting intentionally in disregard  
3   of another person's right, or; 2, acting with a reckless in-  
4   difference to the consequences to another person when the  
5   Defendant, K. W. Jones, was aware of his conduct and was also  
6   aware from his knowledge of existing circumstances of condi-  
7   tions that his conduct would probably result in injury to ano-  
8   ther, and further believes by a greater weight of the evi-  
9   dence that such acts were the proximate cause of the acci-  
10   dent, then you shall find your verdict for the Plaintiff  
11   against K. W. Jones only on the issue of punitive damages.

12           You shall find your verdict for the Defendant, K. W.  
13   Jones, if the Plaintiff fails to prove either of the elements  
14   above or fails to prove that they were the proximate cause  
15   of the accident.

16           But you wouldn't say not the proximate cause because  
17   you are giving them a double negative there, Bill.

18           If the Plaintiff fails to prove either of the ele-  
19   ments above or that they were the proximate cause.

20           If he fails to prove that they were the proximate  
21   cause. Do you see what I'm saying?

22           MR. ROSENBERGER: I see.

23           THE COURT: All right, I'm going to give it  
24   that way.

25           MR. ROSENBERGER: If Your Honor please, the

1 Defendants, by counsel, object to the Court giving instruction  
2 number five on the ground there is no evidence on which to  
3 base that instruction that K. W. Jones was guilty of such  
4 acts-- of willful and wanton acts as to justify a verdict  
5 for punitive damages. There is no evidence to show that if  
6 he were, such acts were a proximate cause of the collision.  
7 And in addition, this instruction is prejudicial to the other  
8 Defendants on the issue of compensatory damages.

9 THE COURT: The Court feels that this is a jury  
10 question as to whether or not there was evidence of suffi-  
11 cient negligence to make it willful and wanton, and further  
12 as to whether or not there was proximate cause; whether that  
13 negligence was the proximate cause of the accident is also  
14 a jury question, and from the evidence reasonable men might  
15 certainly infer that there was sufficient evidence.

16 All right, each of you have 15 minutes, and Mr. Cran-  
17 well has 30 minutes.

18 (The Court and counsel return to the courtroom  
19 after which the following proceedings were had.)

20 THE COURT: All right, ladies and gentlemen  
21 of the jury. You have heard all of the evidence now; the  
22 evidence that you will consider from what you have heard on  
23 the witness stand and from the floor presented to you.

24 This is the law that you will apply to the evidence  
25 that you have heard in working on your verdict. Your verdict

1 must be based on the facts as you find them and on the law  
2 contained in all of the instructions.

3 The issues in this case are; the Defendants have ad-  
4 mitted liability, and the Plaintiff is entitled to recover  
5 for compensatory damages from them. This issue has been ad-  
6 mitted by the Defendants. The Plaintiff is entitled to re-  
7 cover compensatory damages, but the jury must determine the  
8 amount. On this issue the Plaintiff has the burden of proof.

9 Was the Defendant, K. W. Jones, willfully and wantonly  
10 negligent?

11 If K. W. Jones was willfully and wantonly negligent,  
12 was such willful and wanton negligence a proximate cause of  
13 the accident?

14 If the Plaintiff is entitled to recover punitive  
15 damages from K. W. Jones, what is the amount of such damages?

16 On these issues the Plaintiff has the burden of proof.  
17 Your decision on these issues must be governed by the in-  
18 structions that follow.

19 "Willful and wanton negligence" is acting intention-  
20 ally in disregard of another person's rights or acting with  
21 a reckless indifference to the consequences to another per-  
22 son when the Defendant, K. W. Jones, is aware of his conduct  
23 and is also aware, from his knowledge of existing circumstances  
24 and conditions, that his conduct would probably result in in-  
25 jury to another.

1 A proximate cause of an accident, injury, or damage  
2 is the cause which in natural and continuous sequence pro-  
3 duces the accident, injury, or damage. It is a cause without  
4 which the accident, injury, or damage would not have occurred.

5 In determining the compensatory damages to which Plain-  
6 tiff is entitled, you may consider any of the following which  
7 you believe by the greater weight of the evidence was caused  
8 by the negligence of the Defendant:

9 (1) any bodily injuries he sustained and their effect  
10 on his health according to their degree and probable duration;

11 (2) any physical pain and mental anguish he suffered  
12 in the past and any that he may be reasonably expected to suf-  
13 fer in the future;

14 (3) any disfigurement or deformity and any associated  
15 humiliation or embarrassment;

16 (4) any inconvenience caused in the past and any that  
17 probably will be caused in the future;

18 (5) any medical expenses incurred in the past.

19 If you find by the greater weight of the evidence  
20 that K. W. Jones was acting intentionally in disregard of  
21 another person's right, or acting with reckless indifference  
22 to the consequences to another person when the Defendant, K.  
23 W. Jones, was aware of his conduct and was also aware from  
24 his knowledge of existing circumstances of conditions that his  
25 conduct would probably result in injury to another, and further

1 believes by a greater weight of the evidence that such acts  
2 were the proximate cause of the accident, then you shall  
3 find your verdict for the Plaintiff against K. W. Jones  
4 only on the issue of punitive damages.

5 You shall find your verdict for the Defendant, K. W.  
6 Jones, if the Plaintiff fails to prove either of the elements  
7 above or fails to prove that they were the proximate cause of  
8 the accident.

9 The Court instructs the jury that you should not in-  
10 fer that the disabilities alleged by the Plaintiff were caused  
11 in the collision, but the burden of proof is on the Plaintiff  
12 to show by a preponderance of the evidence the injuries sus-  
13 tained in the accident and the duration and extent thereof,  
14 and if you believe that the Plaintiff has failed to carry  
15 this burden of proof as to the duration and extent of any  
16 such injuries, then you should not award damages for those  
17 items for which he has failed to carry the burden of proof.

18 The Court instructs the jury that it is not suffi-  
19 cient for the Plaintiff to prove that he has suffered or may,  
20 at some future date, suffer, from causes which as a mere  
21 possibility resulted from the collision.

22 The Court instructs the jury that your verdict must  
23 not be based in any way upon sympathy, bias, guesswork or  
24 speculation. Your verdict must be based solely upon the evi-  
25 dence and the instructions of the Court.

1 there are any punitive damages.

2 All right.

3 (Thereupon the jury retired to the jury room  
4 to consider their verdict July 23, 1982, 3:35 p.m.)

5  
6 (The jury returned to the courtroom after deli-  
7 berations at 5:30 p.m.)

8 THE COURT: Is that your verdict?

9 THE FOREMAN: Yes, sir.

10 THE CLERK: //We, the jury, on the issues joined  
11 find for the Plaintiff and fix his compensatory damages at  
12 \$50,000. Lacy Webb, Jr., Foreman.

13 We, the jury, on the issues joined find for the  
14 Plaintiff against the Defendant, K. W. Jones, and fix his  
15 punitive damages at \$50,000. Lacy Webb, Jr., Foreman.

16 THE COURT: Is that your verdict, ladies and  
17 gentlemen?

18 THE JURY: Yes, sir.

19 THE COURT: All right, you may be excused.

20 MR. ROSENBERGER: If Your Honor please, the  
21 Defendants, by counsel, move the Court to set aside the ver-  
22 dict of the jury for punitive damages non obstante veredicto.  
23 The Defendants also move the Court to set aside the verdict  
24 of the jury as to compensatory damages. And as to both ver-  
25 dicts on the ground that they are contrary to the law and the

1 evidence-- without evidence to support them, for the actions  
2 of the Court in striking the juror, Ferguson, for cause; for  
3 the actions of the Court in admitting the details of the col-  
4 lision in opening statements, and admitting the evidence of  
5 the state trooper relative to the impact, to the conditions  
6 of the vehicles, and the various unsundry circumstances which  
7 he found at the scene; for the admission of the evidence of  
8 the witness, Betty Rotenhizer and Buddy Allen, relative to  
9 the various details of the collision; for admitting the  
10 photographs, Exhibit 7 and 8 showing the condition of the  
11 vehicles at the scene after the Defendant had admitted lia-  
12 bility, and having admitted that the Plaintiff had sustained  
13 a severe fracture, that the force of the blow was not neces-  
14 sary to prove the extent of the injuries; and the action of  
15 the Court in admitting Plaintiff's Exhibits 9, 10, 11, and  
16 12, which showed the damage to the tractor-trailer involved  
17 in this case; for the admission of Plaintiff's Exhibits 14,  
18 15, 16, 17, showing the damage to the school bus, the damage  
19 all in the school bus; for the admission of Exhibits 22, 23,  
20 24, 25, showing the photographs of the leg of this young  
21 man, and his picture in the hospital; for the evidence rela-  
22 tive to the recess of the school bus four to six feet-- four  
23 feet, six inches; the evidence relating to the distance the  
24 school bus was "knocked down the road 196 feet"; for the  
25 admission of the photograph 18 showing the seats all in the

1 bus which did not relate to the Plaintiff alone, and the  
2 comments about the school children on the bus. The refusal  
3 of the Court to strike the evidence of the Plaintiff rela-  
4 tive to punitive damages at the conclusion of the Plaintiff's  
5 evidence, and at the conclusion of all of the evidence. The  
6 comments of the Court during the course of the trial; for the  
7 actions of the Court in granting Plaintiff's instructions  
8 1, 2, 3, 4; and the action of the Court in denying Defendant's  
9 instruction relative to the fact that neither Federal-- that  
10 the verdicts would not be subject to Federal or State income  
11 taxes.

12 We move, Your Honor, to render judgment for the De-  
13 fendant, K. W. Jones, as to punitive damages.

14 We also assign the fact that the damages are exces-  
15 sive due to the detailed evidence submitted relative to the  
16 circumstances at the scene, and the very much evidence intro-  
17 duced which purported, as far as the Plaintiff is concerned,  
18 to willful and wanton acts amounting to punitive damages or  
19 basis for punitive damages, and on the ground that all of  
20 that evidence prejudiced the Defendants as to compensatory  
21 damages and occasioned with the result of excessive verdict  
22 of \$50,000 for compensatory damages.

23 And, Judge, it's just been called to my attention  
24 that I did not include instruction 5, I thought I did, as  
25 one of our grounds for the action in granting instruction 5.



1 MR. CRANWELL: Your Honor, I respectfully sub-  
2 mit under the Court that this case was well, true, and vigor-  
3 ously tried by all parties.

4 I would say to the Court that the jury was properly  
5 instructed.

6 I will note further to the Court that I do not recall  
7 during the course of opening statements Mr. Rosenberger voic-  
8 ing any objections to any statement made, and I would say  
9 at that point in time that he has waived any right to object  
10 to that particular point.

11 Judge, I would respectfully submit to the Court that  
12 the decision of the jury of Appomattox County should be af-  
13 firmed.

14 THE COURT: Unless you gentlemen want to sub-  
15 mit something further to me, then the Court will affirm the  
16 verdict.

17 MR. ROSENBERGER: If Your Honor please, the  
18 Defendants, by counsel, respectfully object and accept for  
19 the reasons stated.

20 THE COURT: So noted.

21 The Court is adjourned.

22 (Thereupon the Court adjourned at 5:40 p.m.)  
23  
24  
25

SHOULD YOUR ADDRESS CHANGE, FILL OUT THIS CARD AND MAIL TO:

THE DIVISION OF MOTOR VEHICLES  
P.O. BOX 27412  
RICHMOND, VIRGINIA 23269

RETURN ONLY THIS STUB - DO NOT SEND LICENSE  
NOTE NEW ADDRESS ON BACK OF LICENSE

MY NEW ADDRESS IS

STREET OR RFD NUMBER AND BOX NUMBER

POST OFFICE STATE ZIP CODE

CITY OR COUNTY OF RESIDENCE

FOLD ALONG THIS LINE

Limitations or special wishes, if any:

Signed by the donor and the following two witnesses  
in the presence of each other:

SIGNATURE OF DONOR

DATE SIGNED

DATE OF BIRTH OF DONOR

CITY AND STATE

WITNESS

WITNESS

This is a legal document under the Uniform Anatomical  
Gift Act or similar laws.

FOLD ALONG THIS LINE

CLASS A - VEHICLE OR COMBINATION, THREE OR MORE AXLES, GROSS WEIGHT IN EXCESS OF 40,000 LBS.  
CLASS B - PASSENGER CARRYING BUS WITH MORE THAN 12 PASSENGER SEATS  
CLASS C - MOTORCYCLE (THREE WHEELS OR LESS IN CONTACT WITH THE GROUND)  
CLASS D - SCHOOL BUS

MAY NOT OPERATE ABOVE VEHICLES IF THE WORD "NONE" APPEARS ON LINE

RESTRICTION CODES WITH DESCRIPTIONS

- |                            |   |
|----------------------------|---|
| 0 - NONE                   | 6 - MOTORCYCLE (THREE WHEELS OR LESS IN CONTACT WITH THE GROUND)        |
| 1 - CORRECTIVE LENSES      | 7 - VALID ONLY IN VIRGINIA  |
| 2 - AUTOMATIC TRANSMISSION | 8 - VALID BEGINNING 1 HOUR AFTER SUNRISE<br>ENDING 1 HOUR BEFORE SUNSET |
| 3 - MICH SIGNAL DEVICE     | 9 - SEE BELOW FOR WORDS OF RESTRICTIONS                                 |
| 4 - SIDE VIEW MIRROR       |   |
| 5 - ARTIFICIAL LIMBS       |   |
| 6 - ALL HAND CONTROLS      |   |

NOTE NEW ADDRESS HERE

COMMONWEALTH OF VIRGINIA  
OPERATING LICENSE  
226-86-5831  
HALLEN, GORDON WAYNE  
RT 1 BOX 66  
REDOAK, VA 23964  
05/08/55  
CHARLOTTE CO  
06/03/76 05/11/80  
THIS IS PART A OF A TWO-PART LICENSE. IT IS NOT VALID UNLESS PRESENTED WITH PART B BEARING THE SAME SOCIAL SECURITY OR CONTROL NUMBER.

UNIFORM ANATOMICAL GIFT ACT  
NOT A REPLY TO MAIL  
Part of Name of Donor  
In the hope that I may help others, I hereby make this anatomical gift without cost to my estate, to take effect upon my death. The words and marks below indicate my desires.  
I give:  
(a) eyes and any other needed organs or parts  
(b) only the following organs or parts:  
Specify the organ(s) or part(s)  
for the purposes of transplantation, therapy, medical research or education.  
CONTINUED ON REVERSE SIDE

ADDRESS CHANGE ONLY  
SEE INSTRUCTIONS ON REVERSE SIDE  
226-86-5831  
05/08/55  
HALLEN, GORDON WAYNE  
RT 1 BOX 66  
REDOAK, VA 23964  
FOLD ALONG THIS LINE

United States of America vs.

United States District Court

DEFENDANT

MILTON J. ELDER AND KENNETH W. JONES Western District of Virginia  
a partnership doing business as Roanoke  
Elder & Jones

Magistrate's Docket No. 81-0121C-01 and 02

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date

1981-TR-94  
COB 25, P 20

MONTH DAY YEAR  
09 29 81

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

William Rosenberger, Jr, Esq.

(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that

☐ NOLO CONTENDERE,

☐ NOT GUILTY

there is a factual basis for the plea,

to Cts. 1,2,3,4,5,6,7,8,10,11,12,13,14,15,16,17,18,19,20,21,22,23,25,26

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY to Cts. 1,2,3,4,5,6,7,8,10,11,12,13,14,16,17,18,19,20,21,22,23,24,25,&26

FINDING & JUDGMENT

Defendant has been convicted as charged of the offense(s) of failure to maintain driver qualification files and driver's daily logs (18:13 49CFR391.51;39518)

SENTENCE OR PROBATION ORDER

SPECIAL CONDITIONS OF PROBATION

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that the counts are consolidated for sentencing and defendants are fined the sum of \$2,500.00 jointly.

A TRUE COPY, TESTE

Joyce F. Witt, Clerk

By: [Signature]

Deputy Clerk

(continued)

ADDITIONAL  
CONDITIONS  
OF  
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

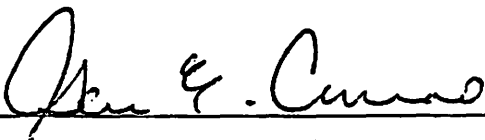
It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

COMMITMENT  
RECOMMEN-  
DATION

SIGNED BY

☐ U.S. District Judge

☒ U.S. Magistrate



Date 9-29-81