

1 IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
2 IN AND FOR **JURISDICTION OF COURT REDACTED**
3

4 CIRCUIT CIVIL NO. **CASE # REDACTED**
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6)
7 **PLAINTIFF REDACTED**,
8)
9)
10 Plaintiff,
11)
12)
13 vs.
14)
15)
16 **DEFENDANT REDACTED** CORPORATION,
17)
18)
19 Defendant.
20)
21)
22 -----

23
24
25 BEFORE:
26 The Honorable **Judge Name Redacted**
27 Circuit Judge

28
29 DATE:
30 **MONTH DAY AND YEAR REDACTED**
31

32 PLACE:
33 Courtroom A
34 Pinellas County Courthouse
35 315 Court Street
36 Clearwater, FL 34616
37

38 REPORTED BY:
39 Michele Luckenbill
40 Deputy Official Court Reporter
41
42

43 EXCERPT FROM JURY TRIAL
44 INITIAL CLOSING ARGUMENT OF MR. GOODMAN
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48 ORIGINAL
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3 PAGES 1 - 39
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7 ROBERT DEMPSTER & ASSOCIATES
8 OFFICIAL COURT REPORTERS
9 SIXTH JUDICIAL CIRCUIT
10 POST OFFICE BOX 35
11 CLEARWATER, FLORIDA 34617
12 (813) 443-0992
13
14
15
16
17
18

19 APPEARANCES
20
21
22

23 ATTORNEY FOR PLAINTIFF:
24

25 AVERY GOODMAN, ESQUIRE
26 Suite 176
27 25400 US 19 North
28 Clearwater, FL 34623
29
30
31

32 ATTORNEYS FOR DEFENDANT:
33

34 **Defense Atty 1 Name Redacted**, ESQUIRE
35 **Defense Atty 2 Name Redacted**, ESQUIRE
36 Post Office Box **NUMBER REDACTED**
37 Tampa, FL 33601
38
39
40
41
42

1 P R O C E E D I N G S

2 _____(The following is an excerpt from the jury
3 trial, as requested.)

4 MR. GOODMAN: Ladies and gentlemen, I
5 first of all want to apologize for having to ignore
6 you through this time; and if I have been walking
7 off elevators and turning the other way when I see
8 you, please don't hold it against me. I had to do
9 that. That's the rules.

10 Now, during the defense case, you
11 learned that **COWORKER REDACTED** removed one of
12 the tailgate hinge pins. And then, during the
13 Plaintiff's rebuttal, you learned that **COWORKER #2
14 REDACTED** had admitted to the sheriff's deputy that
15 he removed one of the hinge pins. Which accounts
16 for two hinge pins. Which means there is no hinge
17 pin left for **DECEASED REDACTED** to have removed.

18 Do you remember the testimony of
19 **NAME REDACTED**, the **DEFENDANT REDACTED** vice
20 president? Do you remember that he said that he
21 never had seen a tailgate service hook before? Do
22 you remember the former head of their design

1 department, **NAME REDACTED**, what he said? And
2 **DEFENDANT REDACTED**'s plant manager, **NAME
3 REDACTED**, what he said?

4 Do you remember that they said the
5 tailgate was so dangerous that it never should be
6 removed in the field? Do you remember that they all
7 admitted that no one was told -- no one was ever
8 told -- that you were not supposed to remove a
9 tailgate in the field?

10 Do you remember then when they
11 admitted that **DEFENDANT REDACTED** never even
12 bothered to investigate how the tailgate was being
13 used in the field?

14 Do you remember that the **DEFENDANT
15 REDACTED** manager said they don't provide any
16 user's manual? Do you remember when **NAME
17 REDACTED** said instructions are important tools to
18 avoid accidents and to ensure safety?

19 Do you remember when he admitted that
20 there were no instructions provided with this dump
21 truck describing tailgate removal?

22 Do you remember when **NAME

1 REDACTED**, the rather long video we played, when he
2 admitted that they did, in fact, know at the time
3 this tailgate was sold that they knew -- in fact,
4 they knew before this tailgate was sold -- that
5 tailgates were being removed in the field?

6 Do you remember what he said about
7 the use of a tailgate service hook on a Caterpillar
8 tractor bucket and a chain attached to a Caterpillar
9 tractor bucket? Do you remember when he said that
10 could be safely used to remove tailgates? Remember
11 that Mr. **NAME REDACTED** was a former vice
12 president of **DEFENDANT REDACTED** Corporation.

13 Do you remember **NAME REDACTED**,
14 **DECEASED REDACTED**'s boss in Florida at the time,
15 who came and testified he couldn't use the tailgate
16 properly without a tailgate hook welded on; and
17 everybody did that, if it wasn't already there?

18 Remember he testified that tailgates
19 are commonly and necessarily removed in the field?
20 Do you remember when he testified that you can't use
21 them -- you can't use them if you can't remove them?
22 You can't use them in the average kind of

1 construction work where you have to haul oversized
2 debris when you are off the road, and you have to
3 haul from one side of the site to the other?

4 Now, do you remember when **NAME
5 REDACTED**, who was the **DEFENDANT REDACTED**
6 director of design, and **NAME REDACTED**, the
7 **DEFENDANT REDACTED** plant manager, admitted there
8 were no warning labels whatsoever on the tailgate
9 telling you never to remove the tailgate or stay
10 away from the tailgate or anything like that?

11 Remember when **NAME REDACTED**, the
12 former shop manager at Cralle-Hall sales -- do you
13 remember what he testified to -- that other
14 manufacturers put out user's manuals with dump
15 bodies, but he had never seen one from **DEFENDANT
16 REDACTED**?

17 What does this all prove? It doesn't
18 prove the people at **DEFENDANT REDACTED** are bad
19 people. What this evidence proves is negligence.
20 And that is what this case is all about. It's a
21 negligence case.

22 **DEFENDANT REDACTED** is negligent

1 because they failed to provide adequate warnings and
2 instructions with their product. They did not
3 follow the standards of heavy-equipment
4 manufacturers.

5 Do you remember the testimony of
6 **NAME REDACTED**, who was the engineer? We didn't
7 have the luxury of bringing you a live engineer, but
8 we read you his testimony at the very beginning of
9 this case.

10 Do you remember when he said to you,
11 "In my experience, there's three types, the main
12 types, of instructions which are usually referred to
13 as manuals. The first one I would mention is a
14 service manual. The next type of manual is a parts
15 manual. The third type of manual is a shop manual"?

16 So there is a service manual,
17 primarily for the operator; there is a parts manual;
18 and a shop manual that will tell you how to repair
19 it.

20 None of these came with the
21 **DEFENDANT REDACTED** truck. The evidence shows
22 that **DEFENDANT REDACTED** failed to adequately

1 warn and instruct.

2 One of the users of their dump trucks
3 was **DECEDENT REDACTED**, and two -- there were two
4 co-workers, as well: **COWORKER #2 REDACTED** and
5 **COWORKER REDACTED**, who I just mentioned before.

6 And they have some stories to tell,
7 and you have heard the evidence. The evidence shows
8 that whoever may have taken out those pins, it
9 doesn't matter, because the fundamental reason this
10 was being done wrong, the fundamental reason that
11 the evidence shows that this tailgate was being
12 removed in the field, was, One, the manufacturer had
13 never told anybody not to do it.

14 And if you remember, during the
15 testimony, there were a lot of witnesses, and most
16 of the witnesses said, "I never knew that."

17 And then, of course, there were the
18 paid witnesses who said, "Oh, well, you never should
19 remove the tailgate. I know that."

20 But the fact is, they never told
21 anybody. They never told the buyer or the user
22 through a user's manual. They never told anybody

1 through a warning. They never told anybody never to
2 remove the tailgate in the field, and they knew this
3 was being done on a regular basis. Maybe not all
4 the time, but in the regular business for which this
5 truck was being sold for.

6 Now, we proved, as I said, the
7 officers of **DEFENDANT REDACTED** Corporation said
8 they knew this tailgate needed to be removed in the
9 field; and we proved that they knew that, without
10 instructions, it was unsuitable for use in site
11 clearing.

12 Which was the purpose -- or general
13 instruction -- which was the purpose of the
14 tailgate, because you had to remove the tailgate in
15 the field.

16 And they say on this dump truck you
17 should never remove the tailgate in the field. Why
18 did they keep that a deep, dark secret in
19 **DEFENDANT REDACTED**? Why didn't they tell people
20 that?

21 They left it up to the buyer and the
22 individual user to figure things out as they went

1 along. And that is the problem. You see, when a
2 manufacturer produces a very dangerous product, such
3 as this dump truck, and then completely fails to
4 provide instructions on the proper methods to start
5 using this product safely, cannot one say that this
6 manufacturer has acted in a negligent manner?

7 Now, corporations like **DEFENDANT
8 REDACTED**, can they expect people to think things
9 up in the field as they go along; or can we expect
10 them to do investigations, to do experiments, to
11 test their product to find out how it's used? To
12 write up instructions, to hire people to analyze the
13 product and figure out how it works, and tell people
14 how it works before they sell it? Not in a
15 courtroom, but in a user's manual.

16 There is nothing that stops
17 **DEFENDANT REDACTED** Corporation from engaging
18 engineers and laboratories and experts of all types
19 and kinds to figure out the methods of safe use for
20 a piece of machinery and not force people who are
21 users of the product and buyers of the product to
22 try to figure this thing out on a haphazard basis

1 each time they try to use this product.

2 Notice, everybody seemed to have a
3 different idea of how this should be done. Some
4 people, "Well, you take it off this way, with a
5 chain." And, "Yes, I've seen that."

6 And then another, "Oh, no, never this
7 way."

8 And then one of their engineers or
9 experts came, and he admitted that, "Hey, there is a
10 serious problem with kicking it off, because you may
11 not know who's behind it." And, of course, if there
12 is somebody behind it, it falls on their head, and
13 they are the victim.

14 Now, when you end up having to figure
15 things out as you go along or when your co-workers
16 end up having to figure things out as they go along,
17 and you happen to be near them or in the vicinity,
18 because you have to do your job, a corporation,
19 ladies and gentlemen, fails to fulfill its duty to
20 adequately warn and instruct when it fails to give
21 instructions in this type of case, in the situation
22 I just mentioned; and people end up seriously

1 injured or dead as a result.

2 That is what happened to **DECEDENT
3 REDACTED**.

4 Now, the **DEFENDANT REDACTED**
5 lawyers may say that **DECEDENT REDACTED** was also
6 negligent. They may say -- well, the witnesses
7 here, the ones that they brought and paid to be
8 here, said that Mike was negligent. They said he
9 shouldn't have been stepping behind the tailgate.

10 But that presupposes two facts. It
11 presumes he knew that the pivot pins were removed.
12 And it presumes **DEFENDANT REDACTED** provided
13 adequate instructions for him to know how to do
14 that.

15 You must ask yourself, for someone
16 who uses this truck every day, would it not be
17 reasonable for him to know not to walk behind it?
18 Mike is dead, and he can't tell us exactly what
19 happened that day.

20 But we would be foolish not to
21 carefully examine the credibility and character of
22 every witness that came into this courtroom.

1 Bottom line is, it really doesn't
2 matter who removed those pivot pins, because the
3 essence of the case is failure to adequately warn
4 and instruct. And the evidence shows that that led
5 to **NAME REDACTED**, **DECEDENT REDACTED**'S boss,
6 not being able to provide adequate instructions for
7 his workers, and it led to the workers not being
8 able to open up the book and find out what they were
9 to do from the book in a step-by-step procedure.

10 Because, if you remember, there was
11 testimony in this case that, had the Caterpillar
12 tractor loader been here, ahead of the tailgate))
13 atop of the tailgate)) then the tailgate couldn't
14 have fell. And there was testimony that it was
15 right at his neck area at the time it did fall.

16 Now, the bottom line is, we have
17 proven our case of failure to provide adequate
18 warnings and adequate instructions, and that is what
19 we needed to prove in order to win this case.

20 The testimony is clear that
21 **DEFENDANT REDACTED** knew that these trucks had
22 tailgates that had to be removed and that, in fact,

1 these tailgates were being removed in the field.
2 And the evidence also shows that **DEFENDANT
3 REDACTED** was well aware -- well aware -- of the
4 great danger of trying to do that, if, in fact, they
5 said you should never do it because it's so
6 dangerous. But they never told anybody else that.

7 Now, the question then, becomes:
8 What did **DEFENDANT REDACTED** do to make this dump
9 truck -- knowing what they did about the way it was
10 used, what did they do to make this dump truck
11 reasonably safe?

12 And the answer is, they did basically
13 nothing. Now, not one warning label was placed on
14 the back of the tailgate. Not to warn you never to
15 remove tailgates in the field. Not to warn you
16 don't go near the back of the tailgate.

17 They had one label in the front, and
18 the only -- and there were no real references to the
19 tailgate. And if there are any, they are very
20 vague. And the thing is one page long.

21 They say they put a user's manual in
22 it, and I believe it's two pages long, and two

1 photocopied pieces of paper.

2 The evidence shows that these people,
3 the **DEFENDANT REDACTED** Corporation, failed to
4 give the instructions and the warnings that are
5 standard in the heavy-equipment industry.

6 Because, ladies and gentlemen, this
7 is a tremendous dump truck, as you have heard from
8 the evidence. A man can stand in here (indicating),
9 he may be in here (indicating), and the witnesses
10 stated, "And you may not see him in the bed of this
11 dump truck."

12 And, don't forget, there are wheels
13 on it, too. There may be a man standing in here
14 (indicating), and you may not even be able to see
15 him.

16 It's so vague, ladies and gentlemen.
17 Even a toaster oven comes with a manual.

18 The evidence shows that the
19 underlying cause of **DECEDENT REDACTED**'s death
20 was the fact that removal and replacement of these
21 tailgates had to be figured out by these small
22 companies -- these small construction companies --

1 in the field, when they purchased the trucks.

2 And they had to also be figured out
3 by the people who tried to use these trucks on a
4 haphazard basis, on the basis of figuring out as
5 they went along. And that is the problem.

6 And this process of experimentation -
7 - this process of experimentation should not be
8 carried out. The evidence has shown the process of
9 experimentation should not be carried out on an ad
10 hoc basis by people in the field.

11 The evidence has shown that this
12 process of learning how to use a tailgate, of
13 getting a step-by-step procedure, a set of
14 procedures that everybody knows about it and how to
15 do it, or everybody that doesn't know how to do it
16 knows what not to do; this has to be supervised by
17 the manufacturer.

18 The testimony of **NAME REDACTED**,
19 shop foreman at Cralle-Hall, he said other
20 manufacturers provide manuals, but **DEFENDANT
21 REDACTED** did not.

22 When you are trying to figure out a

1 dangerous product like this, you have to do it. The
2 evidence shows that you have to do it under
3 controlled conditions. Even they said, on the
4 tailgate, it should only be removed under shop
5 conditions. But they never bothered telling anybody
6 else that.

7 Now, the testimony that was read to
8 you that was originally given by **DEFENDANT
9 REDACTED** at his deposition, a licensed
10 professional engineer, indicated that **DEFENDANT
11 REDACTED** Corporation actually encouraged people to
12 try to remove these crucial pivot pins.

13 And when I'm talking about the pivot
14 pins, if you will remember, I'm talking about these
15 things here (indicating). They encourage people to
16 do that because they made them so easy to remove and
17 replace.

18 And that was the only thing that was
19 holding up the tailgate and stopping it from falling
20 as -- according to the admissions of several of the
21 **DEFENDANT REDACTED** officers.

22 Now, because people were doing this -

1 - in fact, they admitted that all you needed to take
2 these pins out was a pair of hands, pair of pliers,
3 and that was it.

4 Now, you heard, if you remember the
5 testimony, as mentioned before -- the testimony of
6 **NAME REDACTED** -- who said that they use a chain
7 and a piece of power machinery themselves to remove
8 the tailgate, which was the very same method that
9 **DECEDENT REDACTED** was trying to use.

10 And you learned from the testimony of
11 **NAME REDACTED** that the method of using that
12 power machinery, the chain or the hoist and the
13 bucket, was safer than this kicking-out method,
14 because you never knew when somebody was behind that
15 tailgate while you were kicking it out.

16 There was no guidebook. There were
17 no instructions. There was nothing to turn to for
18 an answer as to how to do this thing.

19 Now, when you deliberate in this
20 case, after the lawyers, like me, we finish our
21 speeches here and when the Judge gives you the
22 instructions on the law, you can look at the verdict

1 form, which you will be given, and you will be able
2 to see a question there: "Was there negligence on
3 the part of Defendant **DEFENDANT REDACTED**
4 Corporation which was a legal cause of the
5 decedent's death?"

6 And I would suggest to you that,
7 based upon their failure to adequately warn and
8 adequately instruct, that you can mark "Yes" on that
9 question.

10 And then the next question is: "Was
11 there a substantial change made to the dump-truck
12 tailgate after it was manufactured which was a legal
13 cause of the decedent's death?" Which is right
14 there (indicating).

15 Now, I would suggest to you that
16 there was no -- the evidence shows that there was no
17 substantial change that was not foreseeable for this
18 manufacturer made in that dump truck.

19 They knew that people had to open
20 these tailgates in the field. They knew they had to
21 get them back on. You heard the testimony that they
22 couldn't get them back on unless they welded on a

1 little hook there of some sort or another. Either
2 that, or something else -- something to hook it
3 onto.

4 And you also learned that it was
5 extremely dangerous to kick it out because you
6 didn't know who was behind you. Anybody could be
7 there. If it was a person, and it lands on his
8 head, he would have died. Just as **DECEDENT
9 REDACTED** did.

10 And, furthermore, you learned from
11 the deposition of -- that was played to you -- of
12 **NAME REDACTED** that there were chains on this
13 dump truck, chains that can be hooked to a hoist --
14 chains that can be hooked to a hoist -- which is
15 what he said they do at **DEFENDANT REDACTED**, if
16 you recall.

17 He said they hooked the chains to the
18 hoist, and they lift the tailgate off, and that's
19 how they do it. Except this is irrelevant.

20 I would suggest to you that, in the
21 question, was there a substantial change made to the
22 dump-truck tailgate after it was manufactured which

1 was a legal cause of the decedent's death, then you
2 can mark "No," based upon the evidence.

3 Now, the next question is: "Were the
4 actions of **DECEDENT REDACTED** in his removal of
5 the tailgate an intervening act which was a legal
6 cause of his death?"

7 Well, you have the evidence that
8 **COWORKER REDACTED** removed one of the pins. You
9 heard the rebuttal where **CO-WORKER #1 REDACTED**
10 admitted to removing one of the pins. There is no
11 more pins left for **DECEDENT REDACTED** to remove.

12 And if there were, in -- if this pin
13 here (indicating) -- if this pin here were in, this
14 tailgate, you heard, couldn't have fallen. The
15 managers of **DEFENDANT REDACTED** admitted to that.

16
17 So, where it says when were the
18 actions of **DECEDENT REDACTED** and the -- and,
19 again, another point is, the evidence showed that
20 these tailgates were being removed generally by
21 construction companies in the field -- so why was
22 **DECEDENT REDACTED** doing something that wasn't

1 done?

2 And another point. If they didn't
3 want people to remove tailgates in the field, why
4 didn't they tell people that?

5 So, on B, where it says, "Were the
6 actions of **DECEDENT REDACTED** in his removal of
7 the tailgate an intervening act which was a legal
8 cause of his death?" The evidence shows you can
9 mark "No."

10 C is, "Was a misuse of the dump-truck
11 body and/or tailgate a legal cause of the decedent's
12 death?"

13 The question you have to ask yourself
14 is: Was this dump truck being misused? The
15 testimony was that these tailgates are being removed
16 in the field all the time. How can one say that
17 something which is a common practice -- doesn't
18 happen every day, but it's a common practice -- how
19 can that be a misuse of a product?

20 So I would suggest that you can mark
21 C "No."

22 And then, finally, on that particular

1 question, you have Subsection D on there. The
2 question is: "Was the condition of the dump-truck
3 body open and obvious to a reasonable person under
4 the circumstances at the time of the incident
5 complained of?"

6 Well, if you remember, **COWORKER
7 REDACTED** said he removed a pin. Then you heard on
8 rebuttal that **COWORKER #2 REDACTED** told the
9 sheriff on the day of the incident that he removed
10 the pins. There were no more pins for Mike to
11 remove.

12 So, was the condition of the tailgate
13 with the two removed pins; was it open and obvious
14 to Mike? If they were there, the thing couldn't
15 have fallen. That's what the testimony shows.

16 So, the question was the condition of
17 the dump body open and obvious to a reasonable
18 person under the circumstances at the time it was
19 complained of, you can also mark "No" on that
20 question.

21 Then, Number Three -- and if you mark
22 "Yes" on any of these questions, the Defendant wins

1 this case. Number Three is, "Was there negligence
2 on the part of the decedent which was a legal cause
3 of his death?" Yes or no.

4 That's called a comparative
5 negligence defense. What it means is, was this some
6 negligence on the part of **DECEDENT REDACTED** and
7 some negligence on the part of **DEFENDANT
8 REDACTED** that together caused **DECEDENT
9 REDACTED** to die?

10 And if you mark "Yes" on that, you
11 would end up having to divide the responsibility
12 between **DECEDENT REDACTED** and **DEFENDANT
13 REDACTED**; as opposed to the other ones where you
14 mark "Yes," they automatically win.

15 On this one, if you mark "Yes," you
16 then divide responsibility between the two parties.

17 Now, I would suggest to you -- and
18 think about this; think about it carefully -- was
19 there negligence on the part of the decedent?

20 Well, if you believe that **DECEDENT
21 REDACTED** removed those pins, then I would suggest
22 to you there was negligence on the part of

1 **DECEDENT REDACTED**.

2 But how can you believe that when
3 you've heard the testimony that **COWORKER
4 REDACTED** removed one pin, and you heard rebuttal
5 testimony from the sheriff's deputy that on the day
6 of the accident, **COWORKER #2 REDACTED** said he
7 removed one of the pins?

8 So I would suggest that, if you
9 believe that **DECEDENT REDACTED** removed both of
10 those pins or one of those pins and stepped behind
11 that tailgate knowing both pins were out, I would
12 suggest that you have to mark "Yes," that he was
13 partially responsible for his own death.

14 But if you believe that it didn't
15 happen that way, then I would suggest you have to
16 mark "No." I would suggest that the evidence shows
17 that you need to mark "No" on that particular
18 question.

19 Now, if you did mark "Yes" to Number
20 Three, where you end up splitting the negligence on
21 a comparative negligence basis, you then have to
22 answer Question Four, which is -- it says, "State

1 the percentage of negligence which was a legal cause
2 of the decedent's death, that you charge to the
3 decedent, **DECEDENT REDACTED**," and to **DEFENDANT
4 REDACTED**; and your total needs to be a hundred
5 percent of the damages.

6 I would suggest -- and you have to
7 understand, I don't know what you are thinking. I
8 don't know. I don't know. I can't read your minds.
9 I don't know. So please don't think that I'm
10 suggesting to you that you should even get to this
11 point, because that's not what I'm suggesting.

12 But if, for some reason, you are
13 thinking you are going to end up on Question Number
14 Four, I would suggest that **DECEDENT REDACTED**
15 could not have been more than twenty-five percent
16 liable for his own death.

17 If you believe he took out those
18 pins, then there is some liability on his part. But
19 that is still -- that still does not erase the
20 testimony that there were no warnings and no
21 instructions and no way for him to learn how to use
22 this tailgate on a day-by-day basis.

1 Obviously, people did know how to use
2 this tailgate because you heard witness after
3 witness after witness tell you different stories.
4 People did not know how to use this tailgate.

5 Now, assuming you haven't marked
6 "Yes" to any of the questions in Paragraph Two, you
7 marked "No" to all of these, and you have marked
8 either "Yes" or "No" to Number Three, and either
9 have had to go on to Number Four by splitting the
10 negligence -- if you have gotten past Number Two and
11 marked "No" in all of Number Two, then you would
12 have to go to Number Five, which is total amount of
13 damages.

14 And you will have to then determine
15 the amount of damages that were sustained by the
16 McCoy family. Now, there's three categories here,
17 and it says, "Total damages of **DECEDENT
18 REDACTED**'s estate, total damages of **DECEDENT'S
19 WIFE REDACTED**, and total damages of **DECEDENT SON
20 REDACTED**."

21 You heard the testimony from the
22 economist concerning these matters. You heard Dr.

1 **NAME REDACTED**, come in here, and he testified as
2 to what the proper amounts of losses were.

3 And I would suggest that, before you
4 get to this point and start marking anything here,
5 that you ought to start thinking about the **NAME
6 REDACTED** family and what this case -- you have to
7 start thinking about their background: What he was
8 working at, what he was doing for a living, what his
9 future prospects for earnings were, his life
10 expectancy -- things like that.

11 This is a tough job to determine the
12 damages, and you have to most importantly remember
13 and think about what Dr. **NAME REDACTED** had
14 calculated -- his economic calculations.

15 Now -- and also you have to remember
16 the relationships between **FAMILY NAMES REDACTED**
17 in terms of the intangible damages that you will
18 hear about from the Judge. It will be one of the
19 awards that is provided by the law, being pain and
20 suffering, loss of consortium, loss of
21 companionship, protection -- these sorts of things.

22 You heard the testimony that

1 **DECEDENT REDACTED** was a good man. You heard
2 that he had been wounded in the service of his
3 country -- wounded in his knee. You heard that he
4 was a man who entered the Army as a private and came
5 out a sergeant.

6 You heard that he was a man who
7 started working in the coal mines as a shuttle-car
8 operator, and four years later, at the age of
9 twenty-eight or twenty-nine, he was a mine foreman.

10 You heard he was an excellent worker,
11 as **NAME REDACTED** testified to. **NAME
12 REDACTED** testified that after he quit H and W, he
13 tried to go back to West Virginia to try to get his
14 old job back, but he couldn't.

15 So he came back to H and W, and that
16 **NAME REDACTED** was happy to hire him back because
17 he was an excellent worker.

18 Now, you heard that **DECEDENT
19 REDACTED** was a hard-working man who worked
20 overtime -- as much overtime as he could. He worked
21 seventy hours a week, an average of sixty-one hours
22 a week. It was the testimony of Dr. **NAME

1 REDACTED**, when he told you about his past earning
2 potential and average, and **NAME REDACTED** said he
3 had been working about seventy hours a week.

4 And immediately before he died, you
5 have to think about why he did that. He did that
6 for simple reasons. He loved his family and wanted
7 to care for them in the best way that he could. And
8 that's what you heard from the evidence.

9 Now, you heard that **DECEDENT
10 REDACTED** didn't drink, didn't smoke, didn't take
11 drugs. He was a family man and loved his home life
12 and family, and he gave up his job of long-distance
13 truck driving to be with his family. You heard he
14 was a man from a tiny town in West Virginia, that he
15 was a good, decent, hard worker. You heard all
16 those things.

17 And in making your decision when you
18 go back in the jury room and start your
19 deliberations, you have a right to review all of the
20 materials that we have placed into evidence. You
21 have a right to look at everything when you go in
22 there, and I would encourage you to do that.

1 And I encourage you to take as much
2 time)) I know this has been a long time, a very
3 long trial, and I'm exhausted, and so are you -- but
4 this is the McCoy family, and this is their day in
5 court. And I would encourage you to take as much
6 time as you need to make the proper award in this
7 case and to determine the issues in this case.

8 It is incredible, ladies and
9 gentlemen, that even with **DECEDENT REDACTED**
10 dead, that so-called expert up there states no
11 instructions are needed, even in light of the fact
12 that all of these guys testifying to different ways
13 of removing the tailgate.

14 And one says this, and one says that,
15 and no one really knows exactly how to do it. And
16 one says this is dangerous, and one says that's not
17 dangerous, and this one says you kick it out, and
18 one says it's safer to lift it out.

19 And it's clear nobody knows. You can
20 infer from the evidence that nobody knows exactly
21 how this is supposed to be done.

22 And, ladies and gentlemen, that's why

1 it's the manufacturer's responsibility to do the
2 experiments, the investigation, and the testing, and
3 to determine how these things are done, so that
4 people can -- when they are using that truck in
5 business on the jobs, and they are doing something,
6 they have to go and look at that manual and find out
7 what to do.

8 And if they had done that, if that
9 was in the manual, they would infer that they would
10 start talking about it and saying, "Hey, look, this
11 is the way it's done; it's in the manual." And,
12 over time, everybody would be doing it the right
13 way.

14 But, instead of everybody doing it --
15 instead, the evidence showed everybody is doing it a
16 different way, because nobody knows how it's
17 supposed to be done.

18 But yet they bring this person in
19 here to tell you, you don't need instructions, and
20 you don't need to know how it's done. And does that
21 make any sense to you that a company should put out
22 a product, and it doesn't need to put out a user's

1 manual?

2 Does that make sense? Does that make
3 common sense to you? Is that common sense to you?
4 And that's really what this case is all about. You
5 have to use your common sense, ladies and gentlemen.

6 Is that reasonable for a manufacturer
7 to go out and put up very dangerous -- a product
8 they admitted that was very dangerous, that could
9 kill -- is it reasonable for them to put that out
10 without any kind of user's manual whatsoever?
11 Without any warnings about removing the tailgate?

12 Even though they, themselves, say the
13 tailgate should never be removed in the field, and
14 even though they, themselves, admit they know it's
15 being done in the construction industry, and they
16 tell you that a seven-hundred-and-forty-pound solid
17 steel tailgate does not need instructions to know
18 how to use it?

19 And they tell you it's a solid
20 tailgate, a solid dump body. And we are not
21 disputing that. It's made like iron. In fact, it
22 is iron, and it's seven hundred forty pounds of

1 steel. Steel, ladies and gentlemen, that came down
2 on **DECEDENT REDACTED**'s head and killed him.

3 No family should have to suffer like
4 this. People shouldn't have to die because of
5 things like this. People shouldn't have to leave
6 widows and sons whose lives have been molded by a
7 tragedy.

8 Now, the evidence shows that
9 **DEFENDANT REDACTED** Corporation paid a lot of
10 money to bring so-called experts that you have heard
11 here in to court to tell you how to use this truck
12 and to analyze how it's made and how it should be
13 operated.

14 Why didn't they do that? Why didn't
15 they have this truck analyzed and determined and
16 figure that out before they sold the truck? Now,
17 why didn't they put that analysis and determination
18 in the final conclusions as to the safe way? Why
19 didn't they put that in the user's manual and put it
20 in the truck so people could refer to it?

21 You've heard the evidence that since
22 his father died, **NAME REDACTED** has had a pretty

1 rough time. You heard at the age of about twelve or
2 thirteen, he had no father figure, no one to guide
3 him, no one to look up to, no one to discipline him
4 when he got out of line.

5 You heard that **NAME REDACTED**
6 couldn't handle him alone at that age. I don't have
7 to point out how she felt about it. You heard the
8 testimony about how she was upset. You heard that
9 it was a great blow.

10 Now -- and I don't have to paint a
11 picture of how the death of his father affected
12 **SON REDACTED**, because you heard that already.
13 You heard that from Dr. **NAME REDACTED** and Ms.
14 McCoy and from her parents, and you heard that it
15 affected him very badly.

16 Now, I know a lot of you are young
17 and not everybody has experienced this type of loss,
18 and it's hard to understand how that can have this
19 type of effect, because people kind of often don't
20 understand that.

21 But you've got to make an effort in
22 this case to think about the evidence. Evidence

1 from Dr. **NAME REDACTED**, the school psychologist,
2 and from the family about the fact that he lost
3 confidence in himself, withdrew from himself,
4 stopped attending classes -- all this other stuff.

5 This is something that, even as a
6 young person, you have to really think about it,
7 because, you know, some of you have never had kids,
8 and it's hard to understand. So you have to really
9 weigh this and think about this and think about the
10 evidence. Think about the fact that, with the death
11 of his father, he lost a role model, a companion
12 through life.

13 Remember the testimony of how he used
14 to play ball with his dad, and his dad was involved
15 in the school activities. And before his dad died,
16 he was captain of the basketball team, I believe the
17 evidence will show.

18 And afterwards, he didn't properly
19 attend his classes. He talked a lot about his
20 father's death. Hard to imagine how a twenty-year-
21 old man now that was a twelve- or thirteen-year-old
22 boy then, but you have to think about that. You

1 have to think about what a twelve-year-old felt when
2 his father, who was so involved with him, died.

3 And you -- we also put in some
4 records from Dr. **NAME REDACTED**'s office, that
5 being a doctor that **WIFE REDACTED** saw after
6 **DECEDENT REDACTED**'s death. The documents
7 indicate -- and that is in evidence -- if you
8 remember, I read a list of things I was putting into
9 evidence at the end of my case -- you can look at
10 that and see she was sick to her stomach and
11 nauseous for over a year whenever she thought about
12 that.

13 You will learn that Dr. **NAME
14 REDACTED** treated her, and you will learn that the
15 medical records refer to her grief over this. Her
16 mother testified as to how she tried over and over
17 again, agonizing over the death of this man, her
18 husband, the man she married at the age of eighteen
19 in West Virginia.

20 And you heard how she kept his
21 clothes neatly in the drawer, even though he was
22 dead for many, many years. And you can look at the

1 medical records that you will have and see that she
2 lost twenty pounds from throwing up constantly in
3 that first year after he died.

4 Ladies and gentlemen, he is dead, and
5 he is never going to come back. The family will
6 suffer -- has suffered and will suffer. You can
7 think about the evidence, but you have to try and
8 understand the grief that -- the effect of that --
9 this death had on this family.

10 You cannot bring **DECEDENT
11 REDACTED** back. The only thing you can do is award
12 money. That's what these cases are about; and
13 probably throughout this case, some of you may have
14 been asking yourselves, what or how much should I
15 award?

16 Some of you may have even prayed,
17 trying to get some guidance on that. The decision
18 is yours. But I hope that I can help you a little
19 bit with that decision by reminding you what the
20 economist testified.

21 Dr. **NAME REDACTED**, who used to
22 teach at USF, if you will remember, as an economics

1 professor, stated past economic loss of support
2 between his death on June 16, 1986, and now would be
3 about a hundred and eighty-six thousand dollars.

4 He estimated a loss of past services
5 to be about sixteen thousand to thirty-three
6 thousand. He estimated the loss of -- he estimated
7 the total loss of past economic loss would be from
8 one hundred eighty-eight to two hundred and twenty
9 thousand, approximately.

10 And as to future losses -- and this
11 is all past losses -- as to future losses, he
12 estimated from about five hundred thousand to about
13 a million, depending on whether or not he got his
14 old job back in the mines.

15 Now -- and he also indicated that,
16 based upon the employment as a tractor-trailer
17 driver or some other employment, he might have been
18 able to get it -- might have been somewhere in the
19 middle, which would be about seven hundred fifty
20 thousand. That's the future.

21 And so he estimated -- oh, he also
22 estimated the loss of services and things like that

1 at about a hundred thousand to about two hundred and
2 twenty-one thousand. And then he estimated that the
3 loss of what are called net accumulations, which is
4 basically the loss to the estate of **DECEDENT
5 REDACTED**, came to one hundred ninety-one thousand
6 to about two hundred sixty-eight thousand, if Mike
7 had lived a normal life to the end of his normal
8 life span.

9 So total economic damages estimated
10 by Dr. **NAME REDACTED**, if my memory serves me
11 right, was seven hundred seventy-nine thousand to
12 one million five hundred and forty-five thousand --
13 or, let's say one million five hundred thousand, to
14 make it rounded off.

15 This is only the economic losses that
16 can be calculated by an economist, ladies and
17 gentlemen. There are other losses in this case,
18 things that the Judge will tell you about.

19 I would suggest that the likelihood
20 was shown by the evidence as far as his going back
21 to working at the mines. I would suggest that you
22 think about that, and you consider awarding the top

1 figure here, which would be one million five hundred
2 thousand in economic damages.

3 Now, on the verdict form, it doesn't
4 have it so easy for you, unfortunately. The verdict
5 form says -- on Number Five, it says, "Total damages
6 of **DECEDENT REDACTED**'s estate."

7 That's net accumulations again. And
8 Dr. **NAME REDACTED** said that was between one
9 hundred ninety-one to two hundred sixty-eight
10 thousand.

11 Total damages to **PLAINTIFF
12 REDACTED**, I would suggest, would be approximately
13 the one point two million in economic damages, which
14 is the loss of support, plus -- either one point two
15 million in economic loss, plus -- of loss of
16 support, plus intangible damages, things like pain
17 and suffering, loss of the relationship between
18 husband and wife, loss of consortium, and other
19 intangible damages that the Judge will tell you
20 about.

21 This type of damage cannot be
22 quantified by an economist. I can't bring an

1 economist here to tell you exactly what those
2 damages will be, because that is something which,
3 within our system of justice, has to be decided by
4 the jury.

5 You have heard -- I mean, there is no
6 easy answer what to say about that, because you have
7 to consider all the evidence. You have the pain and
8 suffering of a woman over the loss of her husband,
9 the misery of a boy -- very difficult to calculate.

10 But you need to think about that, and
11 you need to calculate it. I don't know what to tell
12 you to award for that.

13 I would suggest to you that love and
14 companionship and the absence thereof, the pain and
15 suffering in the loss of someone you dearly care
16 about is worth, by any common-sense standard, ten
17 times what a man's economic loss is.

18 Love is worth more than a man's
19 stream of income. Anyone with common sense knows
20 that. So consider that in your award.

21 I would suggest that -- on this
22 figure with PLAINTIFF REDACTED's award, I would

1 suggest that you could award three million dollars
2 in intangible damages, which would be a total of
3 four point two.

4 And I would suggest -- based upon the
5 evidence you have heard about **REDACTED**, I would
6 suggest that in his case -- well, I don't know what
7 to suggest, because only you really know -- well,
8 you don't know, either.

9 It's very difficult to award damages
10 -- intangible damages. You have to think about what
11 it is that **SON REDACTED** lost. He lost his
12 father. He lost a guide. He lost a man he looked
13 up to. He lost his friend. He lost -- he lost
14 basically everything.

15 He lost his teacher in basketball.
16 He lost his companion and his guidance, his friend
17 to support.

18 I would suggest that you award **SON
19 REDACTED**, for that, the amount of one million
20 dollars. But the decision is up to you, not me.

21 Now, remember, when you do determine
22 whatever amount of damages you do determine, it

1 doesn't have to be mine; it has to be yours. It's
2 not what I tell you to do; it's what you see from
3 the evidence. All right?

4 So I would suggest that, if you do
5 find -- and, again, don't assume when I say this
6 that I have any opinion as to whether you should or
7 shouldn't find anything regarding negligence on the
8 part of **DECEDENT REDACTED** -- if you do find that
9 there was any negligence on the part of **DECEDENT
10 REDACTED**, remember, it's not your job to reduce
11 these figures by the amount of negligence.

12 Remember, if you were to decide that,
13 if you were to make a split verdict -- twenty-five
14 percent Mike and seventy-five percent **DEFENDANT
15 REDACTED** or something along those lines -- then
16 the Judge would be the one to take the total amount
17 of damages that you mark down on this sheet, and he
18 then reduces it by the amount that you put or your
19 percentages that you put here.

20 In other words, if you were to figure
21 these both in, you would end up having it done
22 twice, which is less than what you intended to

1 award.

2 So remember, the total amount of
3 damages would go here, whatever you determine that
4 they would be. And if for some reason you think
5 **DECEDENT REDACTED** took out those pins, and you
6 have to find him partly responsible because of that,
7 then your percentages would go here. But let the
8 Judge reduce these figures by these percentages.

9 Ladies and gentlemen, you heard the
10 evidence. The evidence has shown that the Defendant
11 failed to adequately warn and instruct users --
12 foreseeable users -- of its product.

13 In the beginning of this case, I
14 asked you, would you be willing to award -- make an
15 award -- if we proved our case?

16 I would suggest to you that we have
17 proved our case, and I ask that you keep your
18 promise in the beginning of this case.

19 Thank you.

20 -----

21 (THEREUPON, THE REQUESTED EXCERPT FROM THE
22 PROCEEDINGS WAS CONCLUDED.)

1

2

1 STATE OF FLORIDA)

2 COUNTY OF PINELLAS)

3 I, Michele Luckenbill, Deputy Official Court Reporter,
4 Sixth Judicial Circuit,

5 DO HEREBY CERTIFY that the foregoing proceedings were
6 had at the time and place set forth in the caption
7 thereof; that I was authorized to and did
8 stenographically report the said proceedings; and that
9 the foregoing pages, numbered 1 through 38, inclusive,
10 constitute a true and correct transcription of my said
11 shorthand report.

12 IN WITNESS WHEREOF, I have hereunto affixed my official
13 signature this 11th day of **IDENTIFYING INFORMATION
14 REDACTED**.

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Michele Luckenbill
Deputy Official Court Reporter