

1 Therefore, the lawyers will be attempting to make
2 the best possible use of their time. I anticipate
3 what we will do is that plaintiffs' counsel will go
4 first and then we will take a brief recess so
5 defense can set up their technology. It's probably
6 about 10 minutes. Then the defendant will give
7 their closing argument. We'll finish with the
8 rebuttal by the plaintiff and we'll send you back.

9 We plan to order in lunch so we'll have lunch
10 delivered back to you so that you can continue with
11 your deliberations. Does anyone have any question
12 about the order of things? Plaintiffs' counsel, are
13 you ready to proceed?

14 MR. NEWSOME: Yes, Your Honor. 30 seconds.
15 Good morning. As I told you at the beginning of
16 this case, Mr. Ehrenreich told you this was a
17 important case, on behalf of my clients I want to
18 thank you for listening this whole week and being
19 attentive to all the witnesses and for giving your
20 time away from your families and your job. I know
21 it's a huge sacrifice. It's really important for
22 this family, so on their behalf thank you
23 profoundly.

24 This is an important case, but it's a simple
25 case. The answer that you're going to have to

1 decide at the end of this when you're deliberating
2 is why did Abigail Dougherty die? Why did she die?
3 So I am going to talk about this during the closing
4 about why.

5 In the beginning of the case you heard from the
6 WCA representative that safety was their number one
7 priority, safety was their number one priority, but
8 when viewed through the lens of all the evidence
9 that you heard in this case, that the WCA worker had
10 to make 90 stops before he could go home in the day,
11 that it was taking him 12 to 13 hours depending upon
12 how long it took. His incentive was to finish that
13 route as quickly and as fast as possible, to do the
14 job as fast as possible which is why because of that
15 incentive on that day he ran that yellow light and
16 he barrelled through the intersection, plowed
17 into --

18 MR. EHRENREICH: Your Honor, no facts were in
19 evidence. It's extremely inflammatory, inconsistent
20 with what you heard.

21 THE COURT: Are you asking me to do anything?

22 MR. EHRENREICH: I'm asking you to ask the
23 jurors to disregard --

24 THE COURT: I'll ask you all to rely on your
25 memory of the evidence.

1 MR. NEWSOME: Certainly. That is all I am
2 trying to do, members of the jury, is try to
3 characterize, which is that this is a man who was on
4 a mission to finish as quickly as possible, went
5 through that intersection at a speed that was too
6 fast for the conditions and ran into Abigail
7 Dougherty when she was in that crosswalk and killed
8 her. It didn't have to happen. It didn't have to
9 happen.

10 So I want to just -- again, forgive me, but I'd
11 like to let you guys know where I'm going to go with
12 closing today. I want to start with things both
13 sides agreed to. There's certain common ground, at
14 least that various witnesses have said that they
15 agree with our position. Then this is the area that
16 the other side does not agree with. They said that
17 they've done nothing wrong, that it was not their
18 fault, there were no policies violated. And we're
19 going to talk about that, why it's out position that
20 they did.

21 We're going to again go through the excuses of
22 the defenses that WCA has raised throughout the
23 trial. We're going to talk about why the evidence
24 shows that perhaps those should be considered
25 unfavorably. Then we are going to walk through the

1 actual verdict form, the actual verdict form that
2 Her Honor just read. I'm going to go through it on
3 the Elmo. Then we're going to talk about the
4 losses, what was taken from Pat Dougherty and from
5 Anita Forester and then finally I will conclude.

6 Then the defense is going to get to give their
7 statement, then I'll get about 15 minutes at the end
8 to have just one final follow up. So that's kind of
9 the roadmap for today.

10 So in talking about the context of this, this
11 lens of the evidence. I suggest that you consider
12 that day. You heard Mr. Danzy, the WCA employee, he
13 told you how he got up that morning at 4:45 a.m. and
14 got in his truck. He clocked in at 5:30 and he was
15 driving that truck that he had been in for a long
16 time. He worked there for 20 years. He might have
17 been thinking to himself, this is going to be a long
18 day, I've been working --

19 MR. EHRENREICH: Your Honor --

20 THE COURT: Sustained.

21 MR. EHRENREICH: Thank you.

22 MR. NEWSOME: You heard him say I've been
23 working 12 to 13 hour days, I've got 90 stops before
24 I get to end my day and go home. I'm going to --
25 I've got these forks, I'm pretty good at it, I've

1 been doing this 20 years --

2 MR. EHRENREICH: Your Honor, Counsel is now
3 testifying --

4 MR. NEWSOME: Your Honor, this is --

5 THE COURT: Your Honor --

6 MR. EHRENREICH: -- refer to what we heard, not
7 what Counsel --

8 MR. NEWSOME: It's a fair characterization of
9 the evidence.

10 THE COURT: Let's put it in the right person.

11 MR. NEWSOME: Okay.

12 THE COURT: First person.

13 MR. NEWSOME: He said, 12 to 13 hours a day, 90
14 stops, 90 stops before I can finish. I know I'm
15 supposed to have this windshield in front of me that
16 I can see, but he said -- you saw the photograph --
17 he lowered the forks, it makes it a little bit
18 faster. He's got to stop and pick up the dumpster
19 and if the fork is a little bit lower, it's a little
20 bit faster. As he turns and he makes that right
21 turn that day on 17th and he stops because there is
22 some trucks, he looks in the mirrors and he starts
23 to move forward. That was the last time he looked
24 in his mirrors. And he sees the light changes, it's
25 yellow. And he moves forward, he doesn't look in

1 the mirrors again, ever again.

2 He starts to accelerate through that turn and
3 as he's going over the crosswalk, he feels a bump
4 and he hears a scream. He hears a scream and he
5 pulls forward, he ultimately stops and he gets out
6 and he sees her. It didn't have to happen. It
7 didn't have to happen.

8 So I'd like to start by talking about some of
9 the things that we agreed to. I prepared this and I
10 hope it works. This is of course the WCA truck. A
11 couple of numbers I want to just to reinforce. 90
12 plus stops that day, 12 to 13 hours a day, Monday
13 through Friday, half a day on Saturday before he
14 could go home until he had finished those 90 stops.
15 That was his incentive, to get the job done as fast
16 as possible. Not safety first, but get the job done
17 as fast as possible. Speed was the incentive, speed
18 was priority based on what you heard in this case.

19 So in this case there is some things we've
20 agreed to. I want to just walk through some of the
21 witnesses. This is -- as you will remember, this is
22 Mr. Danzy. This is the driver. And I've
23 actually -- I just kind of want to walk through some
24 of the testimony that he said. One of the things is
25 that you must never accelerate during a turn. He

1 was asked, would you agree, sir, speeding up to
2 11 miles an hour when starting a right turn at this
3 busy intersection would be unsafe? Yes, it would be
4 unsafe. That's twice as fast as you should be
5 going; correct? Yes. And, sir, that would pose a
6 potential hazard to pedestrians and bicyclists?
7 Yes. Mr. Danzy's own words. Again, this is where
8 we agree.

9 Two, number two, we agree, both sides agree
10 based on the testimony, again, of Mr. Harding that
11 trucks must make slow turns. Question: They're
12 supposed to make slow turns; correct? Yes.

13 Three, it was WCA's policy as understood by
14 Mr. Danzy that he shouldn't be going any more than 5
15 miles during that turn. In fact, sir, have you been
16 trained by WCA to go 5 miles per hour or less making
17 a turn? Yes. So that's what you're required to do
18 under WCA's own policies and procedures? Yes. But
19 you slow down as much as you can? Yes.

20 Next, the truck must turn wide. Actually I
21 forgot one. You can't be going faster than 5 miles
22 an hour? Yes.

23 Next, four, a truck must turn wide. Again,
24 Mr. Danzy, the reason, sir, you make a slow, wide
25 turn is because it gives other pedestrians and

1 bicyclists more time to react; correct? Yes. If
2 you make a sharp turn real close to the curb, others
3 don't have no time to react, do they? No, they
4 don't.

5 You'll remember, this is Mr. Dwayne Harding who
6 is the voice of the corporation, the voice of WCA,
7 the manager who decided this route. He was the one
8 who decided the 90 stops that Mr. Danzy had to
9 finish before he could go home. And he agreed that
10 the truck must yield to cyclists in a bike lane.
11 You remember some of the witnesses were -- the
12 defense witnesses were not as willing to say this,
13 but we asked them if there is someone to his right,
14 sir, in the bike lane as he approaches that
15 intersection, if there's someone there and he sees
16 them? If he sees them, yes. Does he have an
17 obligation to yield? Yes.

18 Common sense, members of the jury. That's one
19 of the things that you bring to this, that's common
20 sense. Of course, you've heard this bike lane,
21 we're going to go through it, but it's no different
22 than two lanes of traffic as you heard from their
23 own witness, Mr. Joganich. So if this had been a
24 Toyota Camry and someone saw the bicycle, this truck
25 of course -- because it's a bicycle, there's -- you

1 know, there's just not a distinction. But of course
2 when asked, Mr. Harding, the voice of WCA agreed.

3 Next, the trucks must yield to cyclists in the
4 bike lane. If there's someone -- question, if
5 there's someone to his right in the bike lane as he
6 approaches the intersection, if there is someone
7 there and he sees them? If he sees them, yes. Does
8 he have an obligation to yield? Yes. A trucker
9 must always be aware of his surroundings. This is
10 at the very end, I think this was the last question
11 that my co-counsel asked in the redirect. He said,
12 so he has an obligation to know what's going on
13 around his truck, doesn't he? Yes, he does. What's
14 going on around me.

15 Mr. Harding also said that you must check his
16 mirrors as he approaches a turn. A lot of these
17 things are common sense, of course they are. A lot
18 of folks who are drivers know, you've got to check
19 your mirrors. You have an obligation to look around
20 you and you have to check you mirrors as you
21 approach the turn --

22 MR. EHRENREICH: Your Honor, I need to
23 approach.

24 MR. NEWSOME: Drivers?

25 (Bench conference.)

1 MR. EHRENREICH: He started off with the
2 inflammatory statements, he's now you as drivers.

3 MR. BEASON: I said folks who have --

4 MR. EHRENREICH: Clearly he's bringing it to
5 the personal level.

6 MR. NEWSOME: I'll stick to this.

7 THE COURT: You're encroaching.

8 (End of Bench conference.)

9 MR. NEWSOME: The next agreement again that
10 Mr. Harding, you have to check your mirrors, common
11 sense. He answered -- or the question was, the last
12 time Mr. Danzy checked his mirrors was right as he
13 made that right turn, he drove the entire block
14 without again changing his mirrors, that's
15 inadequate; correct? Correct. Correct. So you
16 agree.

17 Then you will remember Mr. Joganich, he went
18 back and forth on this. He in his direct said 4,
19 but he was taken back to his deposition and he
20 finally agreed that Abby was visible in the mirrors
21 for 10 seconds or 8 to 10 seconds is what he said.
22 Mr. Buchner of course said 10 seconds, but he agreed
23 finally 8 to 10 seconds. He was asked, isn't it
24 true, sir, that she was in the field of view in the
25 mirrors for 8 to 10 seconds? Again, if you assume

1 the whole distance, then it would be within the
2 field of view. Whether you see it is a different
3 question. So she would have been visible assuming
4 she had done the same route she had done every day
5 as you heard from some of the other witnesses. She
6 would have been visible for 8 to 10 seconds.

7 Finally, a truck must stop for a yellow light.
8 Question, this is from Mr. Harding, the voice of
9 WCA, do you agree that a WCA driver is required to
10 slow down and stop if a light is turning yellow?
11 Turns yellow, sir, yes. That is, in fact, a policy
12 of WCA; is it not, sir? Yes. Question, it's never
13 appropriate for a WCA driver to speed up if the
14 light turns yellow; correct, sir? Correct.

15 So those are the things that we agreed to. And
16 I've actually done these on the board over here.
17 There is -- I will come back to these. But I'm just
18 going to call this the agreed board. Based on the
19 testimony that you heard, those are the things that
20 of course our side has testified through
21 Mr. Buchner, but that based on what we went through
22 with the other side, various witnesses have agreed
23 as well. Never accelerate, slow turns, WCA policy 5
24 miles an hour, and trucks have to turn wide, yield
25 to cyclists in the bike lane, be aware of their

1 surroundings, check your mirrors as you approach the
2 turn, Abby would have been visible for 8 to 10
3 seconds, and the truck must stop for a yellow light.

4 Those -- that's all right there. I wrote those
5 out this morning. The only issue of disagreement is
6 that Abby died because WCA broke the rules. You
7 heard from their two witnesses, Mr. Danzy and
8 Mr. Harding, he said no, he did nothing wrong. He
9 didn't violate any of our policies. He's still on
10 the road today. Nothing wrong.

11 So this brings us to our next stop. I want to
12 take this next phase of my closing statements and I
13 want to talk about Mr. Buchner. I want to talk
14 about why you heard testimony that WCA was negligent
15 here. You've heard the instructions on negligence.
16 And this is of course a photograph that Mr. Buchner,
17 who was the only engineer who testified in this
18 case, the only Florida licensed engineer, I think
19 the other fellow has a certified something, but
20 Mr. Buchner was a P.E. he testified, you remember
21 he went through extensively about the work he did.

22 Now, I was going to go through it, but he did
23 an exhaustive job talking about the police
24 photographs that he took, how he went to the scene
25 within 4 days after the crash, how he didn't just,

1 you know, mark something off with a -- with a pencil
2 in the back of a napkin. He took copious surveys
3 with the fixed station, with, you know, thousands of
4 laser points to document to precision exactly what
5 happened. He then rendered that as part of a CAD
6 drawing using math and into a very detailed
7 reconstruction that was based on a lot of forensic
8 data, forensic data that, as he said, are not
9 available in a lot of cases.

10 We had three different -- four different
11 videos. We had the Rowdy Reptile video that was
12 taken from the -- from the corner. We had the
13 Relish video, the shorter video that was taken at
14 the beginning, the bus video that you can see so you
15 can see where the garbage truck was in progression,
16 and of course he had his own videos that he took.
17 So he took all of that and he was able to put it all
18 together and map out with very precise precision
19 exactly what occurred. And his conclusions after
20 all of that were basically threefold, three reasons
21 why this crash occurred and why the WCA driver was
22 negligent.

23 First, it was because of acceleration. He
24 accelerated into and during the turn. Two, that the
25 driver didn't check his mirrors. Had he checked his

1 mirrors, he would have seen Abby and he would have
2 slowed and stopped. And, three, that he made too
3 tight of a turn. And if he had made a wide turn as
4 he was supposed to Mr. Buchner was -- he talked
5 about how you have to, based on the CDL license that
6 he has and what the standard of care is for
7 truckers, that this wouldn't have happened. Had any
8 of these three things not happened, had he not
9 accelerated, if he had looked and not turned tight,
10 Abby would not have died.

11 So let's talk through each of these briefly.
12 This is sort of the heart of the disagreement. The
13 first is the acceleration. And if you will
14 remember, he took all of the reconstruction work
15 that he did, the surveys, the fixed station, the
16 diagrams and he rendered a very detailed, a
17 second -- actually millisecond -- not millisecond, I
18 can't remember what the numbers were -- the little
19 tiny points where he could see with precision
20 exactly what the speed was in any particular point
21 in time based on putting all those videos together
22 because they had timers on them, frame by frame and
23 he put this together that you saw.

24 He said this was the simple version of the best
25 way to understand why there was an acceleration. I

1 want to walk through this just briefly for the
2 members of the jury. If you will recall, during his
3 testimony he talked about how initially based on --
4 this is of course what they call the Reptile video.
5 There was the earlier video that he also used, the
6 Relish video. So the truck was stopped, initially
7 it was going he said 7 miles an hour. And this is
8 the phase during this first portion of time because,
9 again, these are -- these are the same segments of
10 time. We got two other segments, but each distance
11 represents the same amount of time on -- based upon
12 his reconstruction. And you'll see that, you know,
13 the first distance -- we'll just mark this. I got a
14 marker.

15 So if we use this yardstick, this is what he
16 showed you. Put a dot here. So this is -- this is
17 the first segment of time, first segment of time.
18 Then if you go to the next second, as you can see
19 the truck would have only been here. So I'm going
20 to -- I wish -- does anybody have a Post-It note? I
21 want to mark on the television set.

22 MR. EHRENREICH: Here you go, Counsel.

23 MR. NEWSOME: Thank you. So if we were to mark
24 this give or take, it's about right here. I'll just
25 use that as roughly. Then of course as he proceeds

1 again the same period of time, again, if he had been
2 going that same amount of speed constantly, he would
3 have been roughly here. So, in other words, if he
4 hadn't accelerated into that turn, Abigail Dougherty
5 would have been past it and she would not have been
6 killed. Which brings us back to the first --

7 MR. EHRENREICH: Your Honor, may I approach,
8 please?

9 THE COURT: Sure.

10 (Bench conference.)

11 MR. EHRENREICH: At this point I move for a
12 mistrial. The reason is this -- we went through
13 this in trial already and you ruled on it. It's the
14 utter speculation to say, well, I could come back
15 and say, well, if she just stopped or if she had
16 just reduced her speed from 15 to 10 we could --
17 this is all the speculation which is why that never
18 comes in. You ruled on it during the trial.

19 THE COURT: I did.

20 MR. EHRENREICH: Now Counsel has disregarded
21 the way you ruled on it and now used it as a purpose
22 for his closing.

23 MR. NEWSOME: Your Honor, he testified to this
24 entire -- to this entire board, that everything I
25 have said based on his opinion is exactly what he

1 said. He said that had he not accelerated, these
2 are demonstrative exhibits that I'm showing you were
3 all shown to the jury. All I'm doing is arguing
4 reasonable inferences, not reasonable, this is
5 exactly what Mr. Buchner said. He explained this to
6 the jury.

7 THE COURT: Certain questions though that were
8 asked of him, such as if the speed had remained she
9 wouldn't have been killed; if the speed remained,
10 she wouldn't have been in this accident, and I did
11 sustain those as speculative. So I think you're
12 getting close.

13 MR. NEWSOME: I'll move past t.

14 THE COURT: Change your wording.

15 MR. NEWSOME: Yes, Your Honor. I think he
16 said -- I'm positive he said that had she
17 accelerated --

18 THE COURT: I also sustained some of those
19 objections.

20 MR. NEWSOME: I'll move on.

21 THE COURT: Great.

22 MR. EHRENREICH: Thank you, Your Honor.

23 (End of Bench conference.)

24 MR. NEWSOME: Again, members of the jury, it
25 was agreed that the driver must never accelerate

1 into a turn. Next, the reconstruction animation.
2 You remember that Mr. Buchner at the end took all of
3 that and he rendered it, it's a very expensive
4 process, it took hundreds of hours, but with
5 precision he was able to come up with a
6 reconstruction.

7 There was a top view of the animation that was
8 scientifically based upon -- let's see if I can make
9 this work. This is just a clip from the animation.
10 This is the truck moving as he testified during
11 trial. You can see Abigail -- I want you to watch
12 right here when he speeds up. Speed up, speed up,
13 speed up, impact. You can see it with your own
14 eyes. You must never accelerate entering a turn. I
15 would like to show it one more time. I suggest you
16 watch for the speed up. Watch it for yourself.
17 Watch the speed up as he approaches the
18 intersection. You must never accelerate while
19 entering a turn.

20 So I want to also bring you back to
21 Mr. Joganich, the defense's expert. And the
22 question was, sir, if the garbage truck maintained
23 its speed at 5 to 7 miles an hour instead of
24 accelerating to 12 or 13, which is what he said, he
25 said it was even faster than Mr. Buchner, he said

1 11, she would have passed the garbage truck before
2 the intersection? Yes. That's Mr. Joganich.

3 MR. EHRENREICH: Your Honor, I think that was
4 taken from a deposition that -- is that from --

5 MR. NEWSOME: He was impeached with this and he
6 agreed, that is what he said at trial. It was my
7 recollection.

8 THE COURT: I'm going to remind the jury that
9 you can rely on your own recollection of the
10 evidence.

11 MR. NEWSOME: Certainly.

12 MR. EHRENREICH: That's taken out of his
13 deposition, that was not used.

14 MR. NEWSOME: It was used and I've got a
15 transcript reference.

16 THE COURT: Let's keep going move on.

17 MR. NEWSOME: Next is that he never looked.
18 That's something that Mr. Buchner testified, that
19 other than that one time he looked, 200 feet before
20 the intersection, he never looked again, not one
21 time. And that's another basis for the negligence
22 of WCA in this case. You'll remember that he showed
23 you the inside of the cab. It showed the rearview
24 camera, the four rearview mirrors on the back. And
25 then he did this very exhaustive and extensive what

1 he called a mirror study where they again took their
2 survey data, they actually took and mapped out the
3 tape on the ground what could be seen where based
4 upon the various mirrors. And you can see this is a
5 photograph of it. It shows the entire field of
6 vision extending back again based on that very, very
7 detailed CSI type recreation that he does.

8 This was a very specific study to see what he
9 was seeing based on that rearview camera, based on
10 the 4 rearview mirrors. He talked about this
11 mirror. This is, again, taken -- this is one of the
12 police photographs that was introduced into evidence
13 that you can see. These were two officers who were
14 standing next to the side of the truck and this
15 photograph was taken from the position of the
16 driver. So if the driver would have looked over and
17 seen, that's exactly what he would have seen that
18 day where those two officers were and this is his
19 diagram of it.

20 I think you also heard this is the same study,
21 field of vision and these are the two officers.
22 And, again, the testimony was from Mr. Joganich he
23 would have been -- she would have been visible, Abby
24 would have been visible for 8 to 10 seconds before
25 the turn. Had he seen her, he would have stopped.

1 Next they turn too tight. This is -- again,
2 this is a still photograph taken from the CAD
3 drawing of Mr. Buchner's recreation. And as you can
4 see, this is the turn. This is the actual turn of
5 the bus position by position. We have the magnet
6 board that we used before where you could see that
7 when he turned. He started to actually enter the
8 bike lane, which of course I think the clear
9 testimony was that you're not supposed to do, and he
10 comes right over almost to the edge of the curb.
11 Too tight of a turn. Had he taken it slower, and
12 certainly had he taken it wider, Abigail Dougherty
13 would not have been killed.

14 This is another close-up version of it. Look
15 where the truck is in this location. Look where
16 this biker was. And there's a reason why a wide
17 turn is important and why a wide turn is safe and
18 why a truck must make wide, slow turns. Of course
19 this is just a -- this is not in evidence, this is
20 just a demonstration. But when there is a race car
21 and it turns as quick --

22 MR. EHRENREICH: Your Honor, there is no facts
23 in evidence about how race cars take a curve.

24 MR. NEWSOME: I'll move on. The point is,
25 members of the jury, a tighter turn is a faster

1 turn. You heard it's a more dangerous turn. You
2 heard from Mr. Buchner who talked about as a CDL
3 licensed driver it's necessary to do something
4 called a button hook. I think you heard from some
5 of the other witnesses, you take it nice and wide so
6 that you can see, so that you have your time, take a
7 wide and slow so that you use caution to make sure
8 you're aware of your surroundings. You give
9 yourself time to make sure no one is there so when
10 you make that turn you're not running someone over.

11 The yellow light, if you'll recall Mr. Buchner
12 was there 4 days after the crash occurred and he
13 took this video and he showed it to you. I don't
14 want to play the video but this is a still
15 photograph that was taken that day. As you'll
16 recall, he was in the bicycle lane looking forward.
17 You can see the traffic, you can see the students,
18 you can see where the student on the bicycle is
19 stopped. I suggest that you think about all the
20 evidence and the reconstruction that you just saw
21 and where that truck went that day with that too
22 tight of a turn. Think about the evidence in this
23 case.

24 We'll come back to it. We're talking about the
25 yellow light. So what you will recall is that the

1 initial purpose for this was to see how long the
2 green light was. And he measured it. He measured
3 the green -- I'm going backwards here. He said,
4 okay, how long is the green light? He's going to
5 measure it until it turns yellow. And he told you
6 that it was a 28 second green light. He also was
7 able to re-create by reference to this black pickup
8 truck, when the black pickup truck's brake lights
9 went off and he started to move forward and when the
10 truck -- this is when the truck started to make that
11 turn or when it left the Relish video, this is the
12 first video. So he was actually able to calculate
13 the time between the light turning green when the
14 truck started to move, the black -- and when the
15 truck was entering the intersection. It was
16 29 seconds.

17 That's consistent of course with what Mr. Danzy
18 testified that on the day of the accident he gave a
19 written statement to the police that the traffic
20 light had just turned to yellow making the turn.
21 Which goes back to this board, which is that the
22 truck must stop for a yellow light, not accelerate
23 through the turn when the light is yellow.

24 So for all of those reasons, the acceleration,
25 the yellow light, the wide turn, not looking in the

1 mirrors, not being aware of your surroundings, for
2 all of those reasons as Mr. Buchner testified, the
3 WCA driver was negligent that day.

4 At this time I want to talk about WCA's
5 defenses, why they say that they are not responsible
6 for the death of Abigail Dougherty. The first is
7 they're saying, well, I think you will remember
8 Mr. Danzy, maybe even the corporate representative
9 said, well, you know what, he only has to stop, he
10 only has to yield if he sees her. I'm paraphrasing.
11 That's my memory. But that seemed to have been said
12 several times during this trial, he only has to
13 yield if he sees her. He only has to give the right
14 of way if he sees her.

15 First of all, as Mr. Buchner testified, that's
16 not so. You have to yield the right of way to
17 whoever is in the right lane of traffic, especially
18 if they're proceeding at a constant speed, you have
19 to wait until they go by. But the reason that this
20 defense is just not so, because if it were, you do
21 this while you're going through a turn at an
22 intersection, at a busy intersection near campus
23 with pedestrians and traffic, just cover your eyes,
24 then it would be an excuse no matter what happened.
25 It would be an excuse no matter what happened.

1 Negligence is not looking, making sure that you
2 see, because as you've heard from Mr. Buchner, you
3 have an obligation, not just as a CDL driver of a
4 30,000 foot -- a 30,000 pound truck, but also an
5 obligation for all motorists on the road. You have
6 to look where you're going, be aware of your
7 surroundings, and make sure that when you're turning
8 you're yielding the right of way to the lane of
9 traffic to your right.

10 Next, this was a big one, we've heard a lot of
11 discussion, I even asked you about this at voir
12 dire, the impairment issue. The impairment issue
13 that this is Abby's fault because the night before
14 she had been partying with friends, she had alcohol,
15 she had taken cocaine and it impaired her such that
16 her impairment caused this crash. It caused this
17 crash. And I'd like to first take a step back and
18 talk about this is the defense of WCA. In other
19 words, we have the burden of proof to prove that WCA
20 was negligent; WCA has the burden of proof that Abby
21 was impaired and that the impairment contributed to
22 her death. That's their burden.

23 They have to prove by the greater weight of the
24 evidence that she was impaired and that it
25 contributed or caused her death. And I'd like to

1 walk through that briefly. You heard our expert and
2 he's a hired expert, he's a Ph.D., Dr. Sawyer.
3 Dr. Sawyer said that he looked at all the evidence
4 in this case and the entire file. Based on his
5 research she was not impaired at the time, she just
6 wasn't.

7 You heard from Goldberger. Goldberger said you
8 know what, he obviously had not reviewed the entire
9 file and he said I just, I can't -- she may have
10 been, it's possible she was impaired, and there's
11 evidence that she was -- may have been impaired, but
12 I can't give an opinion other than to say it's a
13 possibility because I hadn't reviewed the whole
14 file. That's not burden of proof.

15 And finally, I would suggest that there's an
16 umpire on this, to the extent that there is even a
17 tie to break, Dr. Bruce Goldberger. He's the
18 medical examiner who hired -- I'm sorry,
19 Dr. Hamilton, the medical examiner who hired
20 Dr. Goldberger. At the end of his testimony he
21 said, you know what, yes, there was some cocaine in
22 her system, there was 0 blood alcohol, and he said I
23 don't think she was impaired enough to interfere
24 with her driving or her riding her bike to school.
25 The defense does not meet their burden of proof

1 based on the evidence that's in this case.

2 Finally, I suggest you use your common sense.
3 Look at the video, look at the reconstruction.
4 Abigail Dougherty was riding in a straight line at a
5 speed going to class, common sense. That's a
6 living, breathing sobriety test. Use your common
7 sense. The defense has not met their burden of
8 proof on this issue.

9 Next, oh, but he had his turn signal on, he had
10 his signal on, so she should have seen that. Okay.
11 As Mr. Buchner said though, so what? This comes
12 back to the basic premise that these are two
13 independent lanes of traffic and her rights and
14 privileges in her lane of traffic, going at a
15 constant rate of speed across an intersection even
16 with a right turn -- a light turning yellow, she has
17 the right of way. And if it was a Toyota Camry
18 instead of a bike, that truck, even if it has his
19 blinkers on --

20 MR. EHRENREICH: Your Honor, this is bicycle
21 versus truck, not a Toyota Camry.

22 MR. NEWSOME: We talked about cars in the
23 intersection, how it's the same.

24 THE COURT: Keep going.

25 MR. NEWSOME: The truck's blinkers are not an

1 issue. I would also suggest though Mr. Danzy said
2 he thought he had them on. Joganich had three
3 different versions of whether he could see it that
4 you heard about that he's given other various times.
5 First he saw 7 blinks, now he sees 6 or 4 or 5. I
6 don't exactly remember, it was very confusing. I do
7 know it sounded like he changed his testimony a
8 bunch. At the end of the day, use your common
9 sense.

10 Members of the jury, if you look at those
11 videos, you decide if the is blinker on. Okay. If
12 you look at them, you decide they weren't on, okay.
13 It is not determinative of whether that truck
14 violated her right of way no more than any other
15 contact with two lanes of traffic.

16 Finally, that it was Abby's fault. I want to
17 talk about this because the only ring of truth
18 suggests the defense expert Joganich had was when he
19 talked about the necessity and the duty of a cyclist
20 to pay attention, to look where they're going. And,
21 members of the jury, this might be a case of shared
22 responsibility. If you decide that Abby had some --
23 should have done something differently that could
24 have saved her life, then this is a case of what's
25 called comparative fault. Then you can put some

1 percentage of fault against her and the family will
2 accept your decision in that.

3 This is -- this is not an easy case and a
4 bicyclist does have a duty to look where they're
5 going and to make sure that they are, you know, not
6 going to run into things or do things that are
7 unsafe. Of course that's common sense as well. But
8 let's put this in context, as my co-counsel said,
9 context of what was going on at the time.

10 So what were her options? She sees the truck,
11 there's no question. Even if he has his blinkers on
12 or not, there's a strobe light, it was there. It's
13 a big loud truck, it looks like she's in her lane of
14 traffic going straight. So what were her options?
15 None of them were good because she didn't know that
16 this truck was going to speed up. And the evidence
17 is from Mr. Buchner she just -- if he had maintained
18 a constant speed, she would have been fine. But to
19 the extent that she should have slowed down,
20 Joganich says, well, gosh, she should have stopped
21 in back of the truck. Is that reasonable? Does
22 that make common sense? Is that what bicyclists do,
23 stop in case there is a truck going forward? Or
24 would she have stopped at the crosswalk to let him
25 go by. You saw the reconstruction. Had she done

1 that here, I think you know what would have
2 happened. It would not have made any difference
3 because that truck ran right over her, the edge of
4 that area. She had been dead just as much as --

5 MR. EHRENREICH: Your Honor, that's argument.
6 No facts in evidence.

7 MR. NEWSOME: It's argument based on inference.

8 THE COURT: Keep going.

9 MR. NEWSOME: What are her next options? Now
10 she's through the intersection. She didn't stop
11 there, she's through it and all of a sudden she
12 feels this or sees of course this truck coming over
13 her. What are her options then? Should she stop?
14 Should she slow down? If she had, I'd suggest you
15 can infer from the evidence that she still would
16 have been run over. Not a good option.

17 The only option, the only second option I think
18 we heard at some point was maybe she could have
19 veered wildly to the right. I think we referred to
20 it at some point called a bail-out maneuver. A
21 bail-out maneuver. How long did she have to do
22 that, to make these decisions? How long did she
23 have? So this is the reconstruction. Of course if
24 she hadn't stopped, if she kept going through, she
25 stopped, she slows down. This is from

1 Mr. Joganich.

2 What he says is that from when she entered that
3 intersection it was first at 2.2 seconds from coming
4 into the screen and then 3.3 seconds when she got
5 hit. So, members of the jury, that's 1.1 seconds.
6 So either she stops or if she keeps going, she's got
7 1.1 seconds according to their expert, 1.1 seconds
8 to make a decision. First of all, the guy is going
9 to run her over. Second of all, she has to react.
10 Third, that she's got to get out of the way and do
11 this bail-out maneuver in 1.1 second. Members of
12 the jury, use your common sense. Use your common
13 sense. That's not reasonable.

14 She didn't have a lot of good options that day
15 and none of those options other than stopping way
16 behind the truck back at the box would have saved
17 her life. Is that reasonable? So for all of this,
18 again, members of the jury, if you guys decide --
19 obviously if you decide -- and there may be proof
20 here that she should have done something differently
21 and not just could have been done something
22 differently, would have made a difference, you also
23 have to prove causation on this. You have to prove
24 that it caused her death, that it would have made a
25 difference. If you do, then this is a case of

1 what's called comparative fault.

2 There can be concurring cause. In other words,
3 it doesn't have to be all or nothing and that's okay
4 if you decide that. You can decided that there is
5 percentage of fault that caused this on the truck
6 and you can decide that there is a percentage of
7 fault on Abby. That's okay. If you do that, the
8 family accepts it. That's what this is about. It's
9 called -- you've heard the instructions, a
10 concurring cause. At the end you're going to have
11 to weigh it.

12 And we talked about this briefly in voir dire,
13 we talked about weighing the evidence. It's a
14 function of both time and weight of the evidence.
15 And here WCA's driver made a decision based upon his
16 incentive to finish that route. He saw the yellow
17 light, you saw that he sped up through it, that was
18 his decision. Abby's was a reaction. She maybe had
19 a second or two at the most to decide what to do and
20 decided to do something that would have actually
21 made a difference, would have saved her life. I
22 would suggest the evidence in this case, certainly
23 if there was, it's certainly much, much less than
24 WCA's. What, 5 percent maybe?

25 It's for you to decide. But it may be a case

1 of shared responsibility based upon all the facts
2 because the ring of truth, the one thing Joganich
3 says, she did have an obligation to be careful and
4 to have made a different decision. That's for you
5 to decide. It would also have to have mattered.
6 Whatever she did would have necessarily had to avoid
7 her death here.

8 So I want to talk about the verdict form. Her
9 Honor read this to you already. I'm just going to
10 go over it briefly, see if I can get this to work.
11 I wonder if we can focus it, it's not very clear.
12 If we could, I want to move this over so they can
13 see it. Sort of turn this out of the way.

14 Negligence on the part of WCA which is a legal
15 cause? Yes. Negligence on the part of Abigail
16 Dougherty? Maybe, if you find that it could be a
17 case of shared responsibility. And then you're
18 going to have to put in the percentages of both. I
19 would suggest, again, no more than 5 percent on
20 Abigail Dougherty under the circumstances in all of
21 the evidence in this case, and 95 percent against
22 WCA.

23 On the alcohol issue, was she impaired at .08
24 or higher? No. There is no proof of that. And the
25 rest of these questions are relating to the alcohol

1 and so if you answer that no, you just going onto
2 the damages.

3 The damages for both Pat Dougherty and for
4 Anita Forester, that's what I'd like to talk about
5 now. After I talk about this case, I'm going to sit
6 down. So when I talk about the damages and the
7 evidence of the damages, it's because we have an
8 obligation to do so so that you can do your job.
9 It's certainly not for sympathy and it's hard to do.
10 It's obviously hard for my clients to testify. It's
11 not an easy thing for the clients to deal with and
12 it's not an easy thing for the jury to decide
13 damages, but we have to present enough evidence for
14 you to be able to do your job under the law.

15 You know, in America it's not an eye for an
16 eye; a tooth for a tooth. That's barbaric. We also
17 don't believe in this country you turn a blind eye.
18 We believe in justice. We believe in accountability
19 and responsibility and we believe in consequences.
20 Here there have been none, no consequences for the
21 cause of Abby's death in this case. And so your job
22 in this case is to act as appraisers, appraisers of
23 the loss of what was taken from Pat Dougherty and
24 what was taken from Anita Forester and to measure
25 those losses, measure what was taken.

1 The law in Florida is not the value of a life.
2 It's not the value of the loss of -- or the value of
3 Abigail Dougherty who she was as a person. The law
4 is that you have to measure what was taken from Pat
5 and measure what was taken from Anita individually.
6 Measure what was lost as appraisers, as appraisers
7 of those losses and of what was taken, what was
8 actually thrust into their lives.

9 So that's your job. That's why we have to
10 present the evidence in this case, that's why we
11 have to talk at this point about the losses and who
12 she was as a person, who she was in relation to her
13 mom and her relationship to her dad because if we
14 don't, then you can't do your job. So it's not for
15 sympathy, but it's what we have to do to enable you
16 to fully and completely understand who she was as a
17 person, as human being, especially the relationship
18 with her mom, the relationship with her dad, what
19 they go through and what they've been through in the
20 past and in the future.

21 Those are all part of the things you have to
22 measure and have to act as the appraisers to do your
23 job. So it's not just, you know, the pain -- the
24 pain and the loss of what was taken the last two
25 years. It's -- this is -- this is a decision that

1 will last for all time. And you heard Your Honor
2 say, you heard the life tables, that Anita is going
3 to live for another 30 something years and Pat a
4 little bit less than 30, but basically 30 years each
5 of this for the rest of their life. And that's what
6 this has to measure. That's a lot of time. That's
7 lot of time.

8 If you think about 30 years what has happened
9 in the last 30 years, it's -- I could go on, but
10 there's -- you think of that number 30, but you have
11 to think about it on a day-to-day basis. Every
12 single day certainly since this happened, but for
13 the foreseeable future, this is where they're at.
14 So the verdict has to measure -- measure that loss
15 for all time. We can't come back in 10 years. This
16 is it. This is a verdict and a measure for all
17 time. That's why the fullness of it has to all be
18 considered. This is why we have to talk about the
19 damages.

20 So the loss of a child is maybe -- maybe the
21 greatest loss of all. And it's not just that this
22 is any child, this was the right child. This was
23 the rock star. All children are different, all
24 families are different, all parents are different in
25 relationships. Sometimes there are -- all parents

1 love their children, but there are other very
2 challenging children, but this was a special child,
3 special to their parents. She was the shining rock
4 star of this family and that's something that you
5 have to consider.

6 She was also the only daughter, the only
7 daughter which is in and of itself something that
8 you can consider. Not that their son, they don't
9 love their son, but Abby was special from the day
10 she was born. Through high school, through all the
11 achievements and the things that she did, she's the
12 A student, the good girl, the life, the vibrancy of
13 what you heard and not just in school, but the
14 things that she did, the volunteer work she did, and
15 just truly just one of those special children. And
16 that's something that you have to consider. And
17 that's what was taken. And if maybe it was a
18 different child or a different relationship, then
19 maybe the measure of the damages would be different.

20 I've got some photos. You know, also with
21 respect to the timing of this thing, you know, when
22 a child was -- when she was raised by these parents,
23 you go through all these different stages, right?
24 There's diapers and the years with diapers and then
25 there's preschool, then you got to get a babysitter

1 and all the stresses and daily work that goes into
2 raising that child and then you get them -- then
3 she's going through grade school and the sports and
4 the soccer practices and birthdays, the unimaginable
5 commitment of time and effort and expense and
6 sacrifice that is maybe in terms of life-style the
7 most single life changing event when you -- when a
8 parent has a child.

9 And here Abby had gone through all those
10 various stages, all the sacrifices from those folks,
11 all of the time, all of the commitment, all of the
12 money. And finally she goes to the University of
13 Florida and they're worried to death about her.
14 It's not going too well and then all of a sudden,
15 she launches. She launches. And the joy and the
16 satisfaction that you heard from Pat and Anita when
17 they talked about this is just something special.
18 Not all parents get that, but they did. They did.
19 And that's something you have to measure fully and
20 not diminish by the verdict in this case.

21 You have to look at -- you know, there is a
22 tendency to in these kinds of cases to lump the
23 damages together, Pat and Anita, you just lump them
24 together. That's not the law in Florida. It's not
25 on the verdict form and nor would that be even

1 remotely fair. Your job on the jury is that you
2 have to look at, you have to measure the loss, what
3 was taken and what was thrust into their lives. Not
4 what was just taken, but what was thrust, the daily
5 hearing about somebody else's child who graduated
6 University of Florida and going right back down into
7 that place that was thrust into your life
8 unnaturally --

9 MR. EHRENREICH: Your Honor --

10 MR. NEWSOME: -- into her life unnaturally,
11 unnaturally, suddenly, violently, and in an ugly way
12 with no expectation from either one of them. And
13 you have to measure that. Not just what was taken,
14 this rock star of a child, but what was thrust into
15 their lives.

16 Pat and Anita have handled it in different
17 ways. You know, Anita has obviously had this
18 amazing relationship with her; they text, they talk.
19 And the relationship between a mother and a daughter
20 is such a special thing and it really -- you know,
21 it grows over time when that child grows into a
22 woman and you can relate to -- or she can relate to
23 that child as a woman, as an adult and those
24 conversations become more meaningful and then folds
25 over time, over the course of her life. And then

1 all of a sudden eventually maybe the child becomes a
2 little bit of the parent and there's a change in
3 that relationship that grows and matures and that's
4 all been taken from her. Her only daughter.
5 She's -- she's dealing with it, you know.

6 She's working through this. You heard how she
7 goes to the grief counseling group. And she is --
8 she's moving forward. She's keeping her head held
9 high. She's trying to make something out of this by
10 helping other parents as well. But the day-to-day
11 every single day for the next 30 years, that
12 connection to that only daughter is gone and it's
13 been taken. And so you have to measure this when
14 you act as the appraisers from her perspective for
15 her daughter.

16 Obviously she would love to have her daughter
17 back, but that can't happen. So you have to measure
18 her damages as a fair and appropriate number based
19 upon those damages, based upon the totality of that
20 loss and the totality for all time.

21 And the same thing with Pat. He has to have --
22 you as members of the jury have to appraise and
23 measure his damages differently. Pat, he's kind of
24 a quiet guy, he's humble. This is very different
25 than Anita. Pat is a welder, he's a small business

1 guy, he's a small business, doesn't travel a lot.
2 And for this man as you heard, this was his sun and
3 moon and stars. This was his -- it sounds cheeky,
4 but this was his pride and joy. This was his
5 biggest accomplishment, Abby Dougherty, who
6 graduates from high school after being a cheerleader
7 and just the joy and the love and the proudness of
8 that, to be able to grab that and just think about
9 her and light up your day and when she texts you and
10 to be able to put her into the dorm and you're sad,
11 but you're so proud --

12 MR. EHRENREICH: Your Honor, I need a sidebar,
13 please.

14 MR. NEWSOME: He's so proud. I am talking
15 about Pat of course.

16 (Bench conference.)

17 MR. EHRENREICH: I counted eight times now
18 where Counsel has used the word you and your, the
19 cumulative effect of that, that's a mistrial. He's
20 done it on purpose.

21 MR. NEWSOME: No, I'm not.

22 THE COURT: You're making me nervous, very
23 nervous.

24 MR. NEWSOME: I'll move on.

25 (End of Bench conference.)

1 MR. NEWSOME: That was taken from Pat. That
2 was taken suddenly and it was taken violently with
3 no -- with no warning and he has to deal with that
4 every day there. He's dealing with it in his own
5 way. He's moving forward. He is going back to his
6 business and he's moving forward, but it still comes
7 back to him. Every time he hears an ambulance,
8 every time Friday comes along and he goes to the
9 beach, he texts Anita, and he thinks about her in
10 his own way and he's dealing with it, he's moving
11 on. But there's a hollowness about him. There's a
12 loss, there's an emptiness that he is going to have
13 for the next 30 years.

14 You know, it would be a disservice just to
15 think about the obvious things, the weddings, the
16 children, the birthdays, the holidays, the
17 celebrations. But the real -- the real day-to-day
18 loss is that hollowness, that emptiness that comes
19 from hearing about someone else's child, from maybe
20 seeing something about the University of Florida
21 that can trigger that and bring it all back and not
22 having his rock star for the next 30 years.

23 So that's why, members of the jury, I asked you
24 that at the beginning if the damage -- or the
25 evidence showed that the loss, what was taken was

1 substantial and would justify a verdict for Pat not
2 to exceed \$15 million and a verdict for Anita not to
3 exceed \$15 million. You know, I asked, maybe this
4 isn't the right case for some people, but if the
5 evidence did show and all of you said yes.

6 So in this case, the evidence does show that.
7 And that's a lot of money. But it's a lot of loss
8 and it's a lot of loss over a lot of time. And if
9 it was less time or less loss, then perhaps a less
10 amount of money would be appropriate. But in this
11 case for both of these two people and this child,
12 when viewed from their eyes, of who she was and the
13 relationship that they had, you know, a verdict for
14 this amount of dollars is, I would suggest based on
15 the evidence in this case, is appropriate.

16 You may hear someone might, you know -- or
17 someone might say, oh, gosh, that's more than so and
18 so would make in their whole lifetime. But it's not
19 about a paycheck. It's not about a paycheck. This
20 is about the loss of a child measured from both of
21 their very unique perspectives.

22 So, finally, as Your Honor instructed, it's not
23 your job to reduce the damages. You have to -- you
24 have to come up with a number on the verdict form
25 that represents the full measure of the damages for

1 all of time. And that's your sworn duty to do. So
2 members of the jury, I think that's all I have at
3 this time.

4 I'm going to sit down now. The defense is
5 going to get to stand up and they're going to give
6 their closing statement and I'm going to have a
7 brief rebuttal. Again, on behalf of Pat and on
8 behalf of Anita, we very sincerely thank you for
9 your time and sacrifice and giving up your week for
10 this and being a part of this jury. Thank you.

11 THE COURT: Thank you. We're going to go ahead
12 and take about a 10 minute recess so they can set up
13 their technology. As soon as they're ready, we'll
14 bring you back in. Okay.

15 (Jury exits the Courtroom.)

16 THE COURT: Anything we need to address before
17 we have the defense give their closing? We'll be in
18 recess for 10 minutes.

19 (Off the record.)

20 (Jury enters the Courtroom.)

21 THE COURT: Whenever you're ready.

22 MR. EHRENREICH: Thank you, Your Honor. Good
23 morning for another 10 or 12 minutes. We spent the
24 week with you. My name is Todd Ehrenreich. I think
25 I told you that on Monday. I'm going to spend a