

STATE OF SOUTH CAROLINA ) SOUTH CAROLINA CIRCUIT COURT 1  
COUNTY OF DORCHESTER ) DOCKET NO. 2021-CP-18-02173

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SHANNON SHAW )  
Plaintiff, )  
versus )  
AMAZON.COM, INC, MJV LOGISTICS, LLC )  
AND KEVIN BLEKICKI )  
Defendants. )

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H E A R I N G  
BEFORE THE HONORABLE MATIE MURPHY

DATE: December 4-7, 2023  
TIME: 9:46 a.m. - 8:00 p.m.  
LOCATION: South Carolina Circuit Court 1

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1 Brown?

2 MR. BROWN: (Inaudible)

3 JUROR: Can I go outside and completely turned off?

4 THE COURT: Yeah, we'll have to take your phone.

5 JUROR: Outside.

6 THE COURT: Oh, it's outside?

7 JUROR: No, like I'll give it to her outside.

8 THE COURT: Do you have it on you?

9 MR. BROWN: Yeah, he have it.

10 THE COURT: Oh, you just -- just hand it to her. All  
11 right, sorry about that.

12 All right. Counsel, you may proceed.

13 MR. YARBOROUGH: Thank you. May I please the Court?

14 THE COURT: Yes, (inaudible).

15 MR. YARBOROUGH: Good afternoon. Distracted driving kills  
16 more than eight people a day, and injures more than a thousand  
17 in the United States. Drivers are 90 percent more likely to  
18 have a crash when they drive while distracted. Number 1 rule,  
19 when a delivery driver is not paying attention, and as a result  
20 of that inattention harm someone, the delivery driver is  
21 responsible for those harms.

22 Number 2, the law in the State of South Carolina says that  
23 companies who employ or control the means and methods of those  
24 deliveries are also responsible for the harms. That's called  
25 the law of agency. Now, let me tell you the story about what

1 happened in this case.

2 September 24, 2021, just over two years ago, Kevin  
3 Blekicki is driving as an Amazon delivery associate. He was  
4 wearing an Amazon uniform. Driving an Amazon van. Delivering  
5 Amazon packages on a route designed by Amazon on that day. He  
6 showed up for work that morning at the Amazon hub facility over  
7 in Hanahan, off Magi Road.

8 After picking up his Amazon van, it was owned by Amazon  
9 Logistics and leased by his direct employer, MJV Logistics. And  
10 he went and took his van to the Amazon hub and loaded it with  
11 the Amazon packages that he was to deliver that day. And you'll  
12 hear evidence that Amazon controlled all of that operation down  
13 to how he loaded his van. He was assigned over 200 packages to  
14 deliver that day by Amazon to over 151 houses in under eight  
15 hours.

16 By about 4:45 that afternoon, he had delivered only about  
17 45 percent of his -- his stocks, but he was 65 percent through  
18 his day. Meanwhile, September 24th, same day, Shannon Shaw,  
19 this gentleman right here in the red checkered shirt. Shannon  
20 is 43 years old. He had celebrated his 43rd birthday the day  
21 before on September 23rd with his family at home.

22 And he got up that morning, it was a Friday morning, and  
23 he was excited about his day. You know why? Because he got to  
24 spend it -- he was getting ready to get to spend the weekend  
25 with his 13-year-old son, Blaze. That's Blaze there in the hat.

1 That's his other son. Ryan Blaze is here sitting next to  
2 Shannon, along with his girlfriend Christine.

3 Shannon is divorced from his ex-wife, Catherine Shaw. And  
4 they co-parent Blaze together and they have a great co-parenting  
5 relationship. And he goes back and forth, and they help each  
6 other to parent Blaze. And they always have. And Shannon was  
7 super excited because A, it was football season and he was a  
8 huge gamecock fan, so don't -- don't hold that against him. But  
9 he was excited to have Blaze come over for the weekend.

10 So he got up that morning, he took the day off work.  
11 Shannon was a maintenance technician -- a network maintenance  
12 technician at Comcast at this time. He had started working with  
13 Comcast in 2012, and worked his way all the way up to network  
14 maintenance technician. The year before this incident, he made  
15 \$88,000 working as a network maintenance technician for Comcast.  
16 He loved his job, he loved to work. Everything you'll hear  
17 about Shannon is since he -- he's a high school graduate, grew  
18 up in a blue collar household. And ever since he was in high  
19 school, he loved to work. That's what he did. He worked, he  
20 worked at Piggly Wiggly when he was in high school, he worked  
21 for Pearlstein distributors.

22 When he got out of high school, he held a number of jobs  
23 until he got his dream job at Comcast. And he started out at  
24 the bottom making like 28,000 bucks a year in 2012. He worked  
25 his way all the way up. He loved to work, he would travel with

1 his job. In any given opportunity if there was a storm in the  
2 upstate, he would go and travel for his job. He loved to work.  
3 So he loved to work. He loved Gamecock football. He loved to  
4 hunt and fish and spend time with his son, blaze and his son  
5 Ryan, and his -- and his girlfriend Christine.

6 And so on this day, he also loved riding motorcycles.  
7 He's a motorcycle guy, been riding motorcycles his whole life.  
8 He's a safe motorcycle rider. Never had a crash, never had a  
9 car accident, never had a motorcycle accident, never had any  
10 issues, been riding motorcycles all his life.

11 And he -- he had a Harley Davidson, one of the ones with  
12 the two seats on it. And Blaze loved to ride on the back of the  
13 motorcycle with Shannon. And they would do that sometimes on  
14 the back rural roads of Somerville. And so Shannon left that  
15 afternoon around three o'clock his home, and he went over to his  
16 ex-wife, Catherine's house to pick up Blaze when he got off from  
17 school.

18 Got Blaze outfitted in all of his safety gear, his boots,  
19 jeans, his helmet, got him on the back of the bike and they took  
20 off riding back for Shannon's house. They hopped over 176, they  
21 got on Jedberg Road, and they were driving along where Jedberg  
22 turned into Orangeburg Road on a straightaway driving the speed  
23 limit or under the speed limit, paying attention, out of the  
24 right of way on a primary road. When out of nowhere, Kevin  
25 Blekicki in his Amazon van pulled directly out in front of him

1 off of Winningham way.

2 This is from the police trooper's accident report. And  
3 it shows how Kevin pulled directly out in front of Shannon in  
4 his Amazon van. Shannon's motorcycle came to a complete stop.  
5 It was a violent collision at 45 miles an hour. You can see  
6 what it did to the metal frame of Shannon's motorcycle. And  
7 Shannon had no time to react. He had no time to react. You can  
8 see where he hit the van. He had pulled just out when Shannon  
9 didn't have time to break. All he could do, he'll tell you.  
10 And the last thing he remembers is standing up to try and  
11 protect Blaze.

12 He stood up, he grabbed the handlebars to try and keep  
13 Blaze from flying off of the bike, and he took the full brunt  
14 of the impact into the side of that van, going 45 miles an hour  
15 with his shoulder and with his head. And you can actually see  
16 where his head imprinted the side of the van. It was  
17 pandemonium. There was smoke, there was screams. Blaze was  
18 screaming. Shannon was disoriented. He was having trouble  
19 communicating, but then he started screaming. There was an  
20 eyewitness who -- who was traveling immediately behind Shannon  
21 at the time on his motorcycle, who saw the whole thing happen.

22 Who saw Kevin pull right out in front of him? And who saw  
23 Shannon have no opportunity to avoid this collision. Luckily,  
24 she got out of her car. You're going to hear testimony that  
25 Kevin got out of his van and came over and was asking what was



1 going on and asked Shannon, you know, was trying to ask him  
2 questions. And he -- he said Shannon was -- was really not  
3 responding, and then that he started screaming.

4 He was in pain, He was confused. There was blood on his  
5 pants, on his leg, on his head. Police respond. EMTs show up.  
6 Shannon is stabilized on the scene. He's put on a gurney, and  
7 he's taken to the hospital. Trooper Fix shows up, and -- and  
8 you're going to hear him talk about his investigation of this  
9 incident and the fact that Kevin admitted that this was his  
10 fault at the scene that he never saw Shannon, you're going to  
11 hear from Trooper Fix that there was nothing that Shannon could  
12 have done to avoid this collision.

13 And you're going to also hear from Trooper Fix that  
14 according to multiple people on the scene, Shannon appeared to  
15 have a head injury and appeared to be concussed. Shannon  
16 doesn't remember anything after standing up to try and protect  
17 Blaze, but we know that he suffered multiple injuries. He was  
18 taken to the hospital at MUSC where he was diagnosed with a head  
19 injury, with back injuries, with neck pain, and neck injuries,  
20 and shoulder injuries.

21 Shannon, as it turned out, ended up sustaining a closed  
22 head injury, a concussion, and mild traumatic brain injury,  
23 which as you'll hear was anything but mild has been anything but  
24 mild. He suffered a massive rotator cuff tear in multiple  
25 places to his shoulder. He disrupted discs in his neck and in

1 his lumbar spine. He fractured his traverse processes in his  
2 spine. There were multiple fractures from the ferocity of the  
3 impact. He also damaged nerves in his neck that now radiate  
4 pain down into his arms and his hands.

5 Shannon has had over 150 medical appointments, doctor's  
6 appointments, physical therapy appointments, X-rays diagnostic  
7 studies done since the date of this crash. He's been under the  
8 constant care of multiple orthopedic specialists, a brain injury  
9 specialist, a neurologist, physical therapists, and other  
10 medical treaters. He's had six surgeries to date on his neck,  
11 his shoulder, his lumbar spine, and his -- and his hand.

12 And he's slated to have another at the end of this month.  
13 And you'll hear from his medical providers that throughout the  
14 rest of his life, there are a lot of other surgeries he's going  
15 to end up having to have specifically as a result of the  
16 injuries he sustained in this collision.

17 Now, the good news is that Shannon is not a victim, and  
18 he's not here for your sympathy. Okay? We're not here for  
19 sympathy today. We're here -- you are here to help fix what can  
20 be fixed to help make up for what can be made up for, and to  
21 help what cannot be fixed or made up for. And we're going to  
22 talk about your job here in a minute.

23 My name is David Yarborough, and I am Shannon's lawyer  
24 along with my law partner William Applegate and Alexander  
25 Heaton. We represent Shannon Shaw. Your job as jurors is here,

1 you really have three jobs. And I want to tell you this in the  
2 beginning. So you're not wondering throughout the trial, well,  
3 why am I here? What -- what am I going to be asked to decide  
4 at the end of this case? You're here really for three main  
5 reasons.

6 One, is decide who's responsible for Shannon's injuries,  
7 okay? And some of that question has already been answered for  
8 you, okay? And we're -- we're to tell you a little bit more  
9 about that. But who's responsible? The only party who's  
10 disputing responsibility here today is Amazon. Amazon has  
11 denied responsibility and denied that they were -- that they  
12 controlled this operation, and that they controlled Kevin  
13 Blekicki.

14 So you're going to decide that. Mr. Blekicki and MJV, Mr.  
15 Buggs (phonetic) is here, who runs MJV. They've admitted this  
16 was our fault. Kevin was in the course and scope of his  
17 employment, MJV's responsible for his actions in the course and  
18 scope of his employment. And we admit it's our fault Kevin was  
19 negligent, he was careless, and we admit that Shannon was  
20 injured. They're not disputing that Shannon was injured.  
21 They're going to dispute the severity of his injuries, but  
22 they're not disputing that he was seriously injured.

23 Amazon, however, has denied everything. And, frankly,  
24 they're going to -- the evidence will be that they're going to  
25 try and dump on MJV, but you'll hear that evidence as we go

1 throughout the trial, and we will submit plenty of evidence to  
2 you that allows you to make that agency relationship easily.

3         You are also here to decide the total amount of damages  
4 that it will take to make Shannon whole, okay? Damage -- so at  
5 the end of the trial, first question you're going to have to  
6 answer is about agency. And did Amazon have the right, not just  
7 not did they exercise, but did they have the right to control  
8 the means and methods of the package deliveries and of MJ v's  
9 operation?

10         So we're going to -- we're going to give you that  
11 evidence, we're going to show you that evidence seems extremely  
12 obvious already, but we will present hundreds of pages of  
13 documents, witnesses, evidence that'll help you easily come to  
14 that conclusion.

15         So when it comes to deciding, the second question is, what  
16 are the damages? And the damages that we're going to be talking  
17 about today fall into different buckets. There's economic  
18 damages, and those are damages that are going to go to other  
19 people. Those are the past medical bills that Shannon has  
20 suffered as a result of this that are outstanding.

21         Those are the future medical bills that you're going to  
22 hear about and you're going to hear quantified and what it's  
23 going to cost over the next 33 years so that Shannon's future  
24 medical care is covered. And then another bucket of damages is  
25 the non-economic damages that we're going to talk about. And

1 those are the human damages. Those are things that can't be  
2 fixed. They're things that can't be helped, but they're things  
3 that can be made up for. Those are the -- the loss of enjoyment  
4 of life, the loss of a memory, the depression, the chronic pain,  
5 the mental anxiety, the cognitive difficulties, the change in  
6 personality, and how that affects all of his relationships as  
7 a result of his traumatic brain injury. That's the other bucket  
8 of damages you're going to be asked to decide.

9 And then finally, there'll be another type of damages  
10 called punitive damages. And if you decide that this case rises  
11 to the level of recklessness or gross misconduct on the part of  
12 Kevin, MJV or Amazon, that's something else you'll have to  
13 decide. And so that's the third job you're going to have.

14 Was -- so one is agency, two is damages, and three was  
15 Kevin's conduct not just careless, which he's admitted, but was  
16 it reckless? And should Amazon have known, did they know or  
17 should they have known if they had been paying attention? So  
18 let me tell you who we're suing and why? We're suing Kevin  
19 Blekicki for the reasons I just told you about. We're suing him  
20 because he failed to yield the right way and he was negligent,  
21 and he admits that you'll not have to decide that issue.

22 But we're also suing Kevin because we believe that he was  
23 reckless. We believe that Kevin made a conscious decision to  
24 engage in distracted driving. You're going to hear evidence,  
25 and we're going to put on evidence that he was habitually

1 engaging in conduct and behavior out on the roadways, both in  
2 his personal vehicle, and while driving the commercial vehicle  
3 that was dangerous, distracted driving that he should not have  
4 been doing.

5 We're -- we're suing MJV logistics because they are  
6 Kevin's direct employer as we told you. They are not disputing  
7 that. They are not disputing, they are also responsible for  
8 Kevin's negligence during the course and scope of his  
9 employment. So that's an issue. You're not going to have to  
10 decide.

11 Again, the first big question you're going to have to  
12 decide is whether Amazon is also responsible. If you decide  
13 that either Kevin or MJV were agents of Amazon, that Amazon had  
14 the right to control the means and methods of their package  
15 deliveries or exercised actual control, then Amazon is -- then  
16 they were agents of Amazon. And Amazon as the principal is  
17 responsible for their conduct.

18 The evidence will show at the time of this wreck, both  
19 Kevin and MJV were agents of Amazon, and that they not only had  
20 the right to control their package deliveries and they're  
21 business operations, but that they exercised it in almost every  
22 aspect of it.

23 Agency is a consensual relationship whereby a person or  
24 entity, the agent in this case, Kevin or MJV, acts on behalf of  
25 the principal subject to the principal's control. Again, it's

1 pretty easy concept. It's otherwise known as master servant  
2 employer-employee principle agent. It all has to do with  
3 control. The judge will tell you at the end of this trial that  
4 an agency relationship exists when the purported principle has  
5 the right to direct and control the agent and the performance  
6 of his work and in the means and manner in which the work is to  
7 be done.

8 The judge will also tell you that evidence that shows a  
9 right to control includes direct evidence of a right to exercise  
10 control or the actual exercise of control. And we will put on  
11 mountains of evidence of both of those in this case. Another  
12 way that you can show a right to control, but it's not a  
13 requirement, is a method of payment.

14 Another way that you can show a right to control is the  
15 furnishing of equipment of tools like an Amazon van, an Amazon  
16 software, an Amazon uniform, an Amazon packages, an Amazon  
17 training, and all of those things that Amazon provided as the  
18 means and methods of Kevin delivering his packages in -- in this  
19 instance.

20 And finally, the right to terminate. And you'll hear that  
21 Amazon maintained at all times the right to terminate both Kevin  
22 and MJV. They controlled and set up this entire operation. The  
23 judge will also tell you, and you're going to hear a lot about  
24 it, you're going to hear them stand up in a few minutes and say,  
25 independent contractor, Amazon subcontracted this workout to MJV

1 Logistics, and MJ -- M-J-V logistics is nothing more than an  
2 independent contract.

3 The judge will tell you that it doesn't matter what a  
4 company calls someone in their contract, it doesn't matter.  
5 Companies have been trying to avoid responsibility for  
6 subcontractors like that for hundreds of years. And the laws  
7 have developed in our state where our courts have said, no, you  
8 can't do that. The law going back hundreds of years is that if  
9 a principal has the right to control its agent, they are liable  
10 for the agent's acts. And so all this stuff about, oh, in the  
11 contract, you're going to hear about it. He was an independent  
12 contractor. The judge is going to tell you it doesn't matter  
13 what they called him.

14 An independent contractor is when you contract with  
15 someone for a specific result only, not the means and methods  
16 of how it gets done. You pay someone money to do a job and you  
17 leave them alone and they go do the job. That's the furthest  
18 thing from what we have here.

19 So just to tell you a little bit about Amazon. Amazon as  
20 everyone knows, started out as an online bookseller, right?  
21 Back in the early 2000s. They grew and grew and grew and  
22 they've grown to be everyone knows who they are, how big they  
23 are. They're one of the biggest companies in the world. And  
24 they grew so fast, so big that they outpaced their competitors,  
25 and they outpaced the capacity to deliver their packages. UPS,



1 FedEx, US Postal Service, they couldn't keep up.

2 So Amazon developed its own logistics company so that no  
3 longer did it have to sub out all of that work. It was able to  
4 develop its own logistics company, and control its entire  
5 network of deliveries. And it did this by the Amazon parent  
6 company set up Amazon Logistics. And then there's some other  
7 companies in between Amazon Logistics, LLC., and then there's  
8 MJV and I'll tell you about that in a minute.

9 But they set up this delivery system, and here it is, it's  
10 Amazon network. All the way from when the customer orders the  
11 package, which they call the first mile, where it goes to an  
12 Amazon fulfillment center, and then Amazon puts it on their  
13 airplanes and their 18 wheelers that they own, and they  
14 transport it all the way to the local hub, which is right here  
15 in Somerville. And they have one of these in most cities in the  
16 United States these days. So here over in Somerville or hand  
17 in hand, we have -- there's a local Amazon hub. It's a big  
18 building warehouse, and it's -- and there at the Amazon hub,  
19 that's where they have their delivery service partners, okay?  
20 That's where they set up this network of last mile delivery  
21 service.

22 And so they've designed this program called delivery  
23 service -- they call them Amazon delivery service partners.  
24 Amazon goes out and recruits individuals to be their delivery  
25 service partners. And that's MJV, that's Kelvin and -- Kevin

1 Buggs over there sitting at the table. And you'll hear about  
2 the fact that they controlled everything about setting up this  
3 DSP business. They recruit individuals. They -- they flew Mr.  
4 Buggs out to Las Vegas. They interviewed him. They ended up  
5 -- he wanted to be up in Spartanburg because that's where he was  
6 from. And they said, nope, you want to come work for us, put  
7 you down in the low country. We got a spot down there. You can  
8 go open up your company down there and here's how to do it.

9 They gave him operations manuals, they gave him training  
10 materials, they set him up with all of the means and methods to  
11 operate his business. All -- all of it designed by Amazon, and  
12 very tightly controlled by Amazon. And in spring of 2020,  
13 Kelvin Buggs became an MJV logistics. He became the owner of  
14 that company and it's his job and it's the DSPs job to go out  
15 and recruit and hire the drivers, okay?

16 So they are the last mile part of the delivery program.  
17 They are the ones that go out, hire the drivers, coordinate the  
18 drivers to fill the -- the package routes that are designed by  
19 Amazon. And that's what they do. So they control everything  
20 about this operation, their contracts that state that Amazon has  
21 the right to terminate it at any time. There's vehicle use  
22 agreements where Amazon owns the vehicles and leases them to --  
23 to MJV and tells them exactly how they have to be used, how they  
24 have to be maintained.

25 Amazon pays for all the fuel for the drivers. They

1 provide -- they -- they dictate the types of uniforms. You  
2 could see Mr. Buggs there is wearing an Amazon uniform. They  
3 -- they dictate what they wear, they dictate where they work.  
4 Here is the hub facility where -- that Amazon owns, where Amazon  
5 packages are delivered every day, and then picked up by the  
6 drivers. And the desk that you can see there is MJV's dispatch  
7 station within the Amazon hub.

8           So that's -- this is where every day Kevin went to pick  
9 up his packages driving his Amazon van, and this is where he  
10 went and received, I believe, his training, and -- and this is  
11 where they went to work every day at this Amazon facility.

12           Additionally -- and you're going to hear all about the  
13 training that Kevin received, and how he was on boarded through  
14 Amazon's portal and -- and the -- the massive amount of training  
15 that went on there. But you're also going to hear that not only  
16 did Amazon have all those other things that they controlled and  
17 dictated, you're going to hear that they monitored all of their  
18 -- these drivers.

19           So yes, MJV was Kevin's direct employer, right? That's  
20 who he -- he -- they -- he directly worked for him. But you're  
21 going to hear Amazon required Kevin and MJV to install this app  
22 on all of their -- on all of their driver's phones. It's called  
23 an E-mentor driving app. Your drivers will download the  
24 application on their devices, and it will measure driver actions  
25 and distractions while the vehicle is moving. That's the level

1 of control they had.

2 They managed, they monitored these drivers, they monitored  
3 their routes. They wanted to know where they were. They wanted  
4 to know when the packages were going to be delivered. And they  
5 collected all of this data in this app that they were required  
6 to install on their phone. And it all went directly to Amazon.

7 And then Amazon created driver scorecards, and then they  
8 controlled payments to MJV based on those scorecards. And they  
9 could withhold pay, they could withhold incentive bonuses. They  
10 were supposed to be monitoring the drivers in addition to what  
11 MJV was doing.

12 Another reason that we're suing these defendants is  
13 because measured by their own app, which they claim doesn't work  
14 all the time. Kevin had over 90 distracted driving events in  
15 the five short months that he worked as an Amazon delivery  
16 driver. Ninety distracted driving events.

17 We will present evidence that Kevin was a habitually  
18 distracted driver, and that he made a choice to drive while  
19 distracted on the date of the crash. We'll present evidence  
20 that Amazon and MJV either knew or should have known, yet they  
21 chose to have him drive their commercial vehicle.

22 You see, Kevin liked to make videos of himself while he  
23 was driving, and then he would post them on social media. Some  
24 of you're familiar with TikTok, Kevin, both before he was hired,  
25 during the time that he was being hired, after he was hired

1 before the crash, and even after the crash posted on his public  
2 social media page videos of him filming himself while driving  
3 a vehicle, making commentary to the camera, taking his eyes off  
4 the road, putting other innocent motorists at risk.

5         The evidence will show that Amazon had the technology,  
6 they had the technology to track this particular type of  
7 behavior, and they had already installed it in some of their  
8 other vans, but they had not yet installed it in this van as of  
9 2021. Had they done that, they would've known what Kevin was  
10 up to. And Kevin would've been prompted not to take his eyes  
11 off the road, but they did have, at that time, they had the  
12 E-mentor driving app, which had notified them that he had had  
13 90 distracted driving incidents and the evidence will show that  
14 Amazon was in possession of this information.

15         The evidence will also show that we were able to get ahold  
16 of Kevin's phone not until two years after the fact, because he  
17 objected to giving it to us when we initially asked for it. But  
18 ultimately, the Court ordered him to turn over his phone, which  
19 at the time we got his iPhone 14, he had gotten rid of his  
20 iPhone 11, which he had at the time of the crash, but which he  
21 still had at the time. We asked for it.

22         We had a digital forensic expert who was able to go in  
23 that phone and look at it to try and figure out what was going  
24 on on the day of this crash because we knew. The other thing  
25 we did is we asked for his phone records, and we got his data

1 records from the day of the crash. And you'll see his records  
2 -- his records -- his AT&T records from the month of the crash,  
3 500 pages.

4 That's how much data that Kevin was using throughout the  
5 month. And so we had our digital forensics expert analyze that  
6 data and he said, something's going on here. The day of the  
7 crash, the amount of data that Kevin has downloaded is -- it's  
8 -- it's unlike anything I've ever seen. It's consistent with  
9 streaming high quality videos throughout the entire day.

10 And so we had our forensic expert look at his phone once  
11 the Court ordered him to turn it over. And what we learned was  
12 that Kevin was in fact using his phone for entertainment  
13 purposes during his shifts. And you'll hear evidence about  
14 that. You'll hear evidence that the day before, and on the day  
15 of the crash, Kevin accessed pornography websites during his  
16 shift, while he was driving as an Amazon delivery driver.

17 On the day before the crash, he logged on to a paid -- he  
18 -- he logged on to a -- a -- what's called the world's largest  
19 pornography site online. And then he went to a paid portal, and  
20 then it took him to a payment site, and he paid some amount of  
21 money and then he went back to the -- to the porn site, and was  
22 watching porn while driving for Amazon.

23 And the evidence will be, ladies and gentlemen, this is  
24 what he was doing out there on the road while he was driving the  
25 Amazon van, and that he still had access to this on the day

1 after. The evidence also, ladies and gentlemen, is that on the  
2 next day, the day of the crash, Kevin accessed a different  
3 pornography website just a few hours before this crash happened.

4 The Judge will tell you, ladies and gentlemen, well the  
5 evidence will be that had anyone been paying attention, had they  
6 done the proper checks on Kevin, and had they looked at these  
7 90 distracted driving events that were documented before this  
8 crash happened, that he should not have been driving that  
9 vehicle. That they would've known and they could've taken him  
10 off the roadway.

11 The Judge will tell you that an employer has a duty to  
12 properly train, monitor, and supervise its employees. If they  
13 don't do all of those things and someone is hurt, they are also  
14 responsible for the harm.

15 So, again, why are we here? Seems kind of obvious, right?  
16 Amazon, again, there are excuses. MJV Logistics is an  
17 independent contractor. We had no control. We will put on  
18 plenty of evidence to the contrary, Kevin is a safe driver.  
19 They're going to say, well, you can't say that Kevin was looking  
20 at porn exactly at the time of the crash. You can't say that  
21 he was looking at it exactly at the time of the crash.

22 Well, no, no one was in the vehicle, but Kevin, but what  
23 we do know is that he was -- he was downloading an extremely  
24 large amount of data at the time of the crash that he had logged  
25 into a porn site shortly before the crash, that he had viewed

1 over three hours of YouTube videos on his phone the day of the  
2 crash. We know that.

3 So we know that he was engaging in behavior that's  
4 consistent with that type of dangerous distracted driving. And  
5 then finally, it's not that bad. It's not that bad. Shannon  
6 is not that badly hurt, and that maybe one day he can go back  
7 to work, and his brain injury is just a mild brain injury. And  
8 he's reported that he's doing better. And you know, his  
9 injuries just aren't that bad.

10 What I'll tell you is they will not call a single medical  
11 expert, a single doctor in here to refute the testimony. You're  
12 going to hear from Shannon's doctors. You're going to hear from  
13 Shannon's shoulder surgeon. We'll -- we'll talk about those in  
14 a minute.

15 First of all, I want to tell you a little bit about  
16 Shannon Shaw before the wreck. And I already did that a little  
17 bit, but Shannon was born in Charleston. He grew up in West  
18 Ashley. He graduated from Middleton High School. And like I  
19 told you, he went right to work. He always worked. He always  
20 -- he's worked hard his entire life. He's worked one job, two  
21 jobs. He's worked overtime. He loves to work. He loves to  
22 hunt. He loves to fish. He loves to ride motorcycles. He  
23 loves being outside. He loves spending time with his kids. He  
24 loves going to Gamecock football games. He loves doing all  
25 that.



1           And Shannon, like I said, Shannon is not a victim.  
2 Shannon is a victor. He has done everything his doctors have  
3 asked him to do to try and get better. Again, the night before  
4 the crash, this is a Facebook post of Kristen Carnes, his  
5 girlfriend that she posted, talking about how much she loved  
6 him, talking about how she wouldn't have got through the year  
7 without him, talking about all the fun times that they had  
8 together. And that was the next day.

9           You'll hear from Shannon's treating physicians about his  
10 injuries. And I'm not going to spend a bunch of time on that  
11 right now because you're going to hear from them. You're going  
12 to hear from Dr. Schaff via video. He had surgery scheduled.  
13 So we put him on video. It's about a 30 minute video. You're  
14 going to hear him talk about the damages to Shannon's shoulder,  
15 and his massive rotator cuff tear, and how he had to repair it,  
16 and how Shannon saw him over the course of the year, and worked  
17 really hard to get that shoulder back in good shape.

18           But you're also going to hear him say that this injury  
19 took Shannon out of the manual labor game. That's what Shannon  
20 was. He was a manual laborer. He had to carry extremely large  
21 amounts of cable. He had to climb ladders. He had to get up  
22 on heavy equipment and operate it. And he can no longer do  
23 those things that he used to do.

24           And you'll hear that Shannon lost his job as a result of  
25 this. He was -- he was let go by Comcast because they did not

1 have a job that he could do that -- that he -- that his doctor  
2 said that he was qualified for. And so after he -- and you'll  
3 hear that over the course of the two years, Shannon has had  
4 these multiple surgeries. He's had recoveries from these  
5 surgeries, and he was ultimately let go.

6 And so Schaff says, look, yeah, he can -- he can do  
7 something, but he can't do manual labor with that -- with that  
8 left arm anymore. Batista -- Dr. Batista, you're going to hear  
9 from him a little while today. He's going to talk to you about  
10 all of the spinal surgeries that Shannon had. He's going to  
11 talk to you about the neck surgery that he did on Shannon  
12 diffuse his spine. He's going to talk to you about the spinal  
13 cord stimulator that he implanted. He's going to tell you about  
14 the conservative measures they tried to control the pain. He's  
15 going to tell you about the nerve damage that was done, and the  
16 chronic pain condition that Shannon now has that he's going to  
17 have to deal with for the rest of his life.

18 You're also going to hear him say that, again, he's  
19 getting ready to do another spinal cord stimulator on Shannon's  
20 neck at the end of this month. And then it'll be after that  
21 time that they'll have a better idea. But that Shannon, due to  
22 the multitude of different injuries he has, his traumatic brain  
23 injury, his cognitive difficulties, his chronic pain condition,  
24 that there he is not presently a good candidate and likely not  
25 going to be a good candidate for full-time employment given --

1 given his skillset.

2 And, finally, you're going to hear from Dr. White, who is  
3 a board certified neurologist. He's a brain injury specialist  
4 doctor. And you're going to hear Dr. White talk about the  
5 traumatic brain injury that Shannon sustained. And you're going  
6 to hear him talk about that. And here's the thing with Shannon.  
7 And you're going to see it. You sit there and look at Shannon  
8 and he looks normal.

9 He looks normal. The traumatic brain injury is an  
10 invisible injury. And I think for those who pay attention to  
11 the news, we've heard a lot about it in the last couple of  
12 years. Some of the injuries that have been out there discussed  
13 the -- the invisible brain injury in the NFL. You hear about  
14 these NFL players suffering these invisible injuries that are  
15 not detectable on scans. They're not detectable on MRIs. They  
16 exist because of the shearing of neurons that go on during these  
17 impacts.

18 And those are impacts that are 10 or 15 miles an hour.  
19 This was a 45 mile an hour impact where Shannon's skull made an  
20 impact with the side of that van, and his brain inside his skull  
21 impacted the inside of his skull. And those axons and those  
22 neurons were sheared. And Dr. White will explain that process  
23 to you, and he'll explain, yes, this is a mild -- it's  
24 classified as a mild traumatic brain injury, but it's anything  
25 but mild.

1 All right. I don't know what your life experience is in  
2 dealing with people with traumatic brain injuries, but I've had  
3 the opportunity to represent a lot of them over the years. And  
4 I can tell you that the slightest change in the brain chemistry  
5 ever so slight change can change everything about a person. And  
6 you're going to hear from Dr. White. You're going to hear from  
7 Shannon's family members. You're going to hear from people that  
8 knew him before and after that Shannon is not the same person.

9 He's had cognitive issues. He's had memory issues. He  
10 had -- he -- he has personality changes. He has depression.  
11 He has trouble controlling his temper. He has outbursts. He  
12 has things that -- things that go on that he cannot control.  
13 And it's not just Shannon reporting this, it's the people that  
14 love him.

15 You'll hear it from his son Blaze. You'll hear it from  
16 his girlfriend Kristen most telling, you'll hear it from his  
17 ex-wife, Catherine Shaw and her husband Shaw Napoleon, who is  
18 a Dorchester County sheriff's deputy. Who was there that day?  
19 Who observed the injuries to Shannon that day? Who will tell  
20 you, listen, Shannon and I have had our differences. We butted  
21 heads Chris -- when Catherine and I first got together. But  
22 I'll tell you this, he will tell you this collision has taken  
23 Shannon's soul.

24 It has changed him forever. And this is from a guy who  
25 didn't really even like Shannon. This is a guy who's married

1 to Shannon's ex-wife. You'll judge his credibility. So at the  
2 end of this case. This is not a criminal case. This is a civil  
3 case. We have the civil burden of proof. You've heard about  
4 beyond a reasonable doubt. That's not what we're dealing with  
5 here.

6 This is a case about money damages. The plaintiff, us  
7 have the burden of proving our case just by a preponderance of  
8 the evidence. And the Judge will charge you on this at the end  
9 of the case. If we prove that it is more likely than not likely  
10 that Amazon had a right to control MJV or Kevin, we win on that  
11 agency issue. You'll check yes in the box, more likely than  
12 not, not 75 percent, not 100 percent. Is it more likely than  
13 not that Amazon controlled these folks? 51 percent we win.  
14 That's the oath you took. That's the law.

15 Same when it comes to damages. Economic damages alone.  
16 Here at the end of this case, we're going to present it --  
17 throughout the case, we'll present evidence that Shannon had  
18 \$450,000 in past medical bills, future medical expenses that his  
19 doctors are going to tell you over the course of the next 33  
20 years because this is our one day in court. This is Shannon's  
21 one day to come into court for the rest of his life.

22 And that you'll hear from an economist, who has taken the  
23 numbers and the recommendations that were given by his treating  
24 physicians, his neutral uninterested treating physicians, and  
25 tell you, this is what it's going to cost for all of this

1 medical care for the rest of Shannon's life.

2 And that the present, and then she'll reduce it to present  
3 value. The present value of that is \$9 million. And then  
4 you'll hear that the total loss of earning capacity, Shannon has  
5 not worked in the last two years. He would've earned almost  
6 \$100,000 a year at Comcast in 2021, if he had not been in this  
7 wreck.

8 And so you're going to hear the economist quantify the --  
9 the value of that over the course of his work lifetime. And the  
10 total loss of earning capacity assumes he never -- assuming he  
11 never goes back to work, which we're not saying is absolutely  
12 the case. Shannon wants to go back to work. He hopes to go  
13 back to work. He hopes to go back to work in some capacity.  
14 But like you'll hear from his doctors, the -- the likelihood  
15 with his cognitive deficits and his personality disorder that  
16 he now has, it's unlikely that he is employable in the  
17 competitive job market.

18 Can he go out and do something to earn a little bit?  
19 Hopefully maybe he needs it because he -- he suffer. He wants  
20 to be back at work. And we're going to talk about that a minute  
21 in the non-economic damages section. But assuming 100 percent  
22 loss of earning capacity, \$1.6 million. And that'll be up to  
23 you. You -- you may look at it and say, ah, we believe that  
24 Shannon could go back and figure out how to earn 25 grand a  
25 year.

1           And if that's the case, he's got a 75 percent loss of  
2   earning capacity. And we'll give you those numbers. And that's  
3   your job. You get to pick that. You get to make those  
4   decisions based on the evidence that you hear throughout this  
5   trial. And then the other damages we're going to talk about are  
6   those things that I mentioned at the beginning. The  
7   non-economic damages. We will help, we will put on evidence and  
8   testimony that Shannon has experienced extreme pain and  
9   suffering over the course of the last two years. That he has  
10  suffered loss of enjoyment of life. You know, he -- he still  
11  tries to get out and do things. He's still -- he still drives.

12           He's been able to go to a couple of Gamecock football  
13  games, even though he is had to modify the way that he does it.  
14  He goes out on date nights with Kristen. He goes on walks with  
15  her. He goes to the grocery store. He gets out and tries to  
16  -- he tries to spend as much time as he can with Blaze, but it's  
17  hard. I hate to say this in front of him, but he's told me it  
18  a number of times, he doesn't feel like a man right now because  
19  he's having to rely on Kristen.

20           He's behind on his bills. He doesn't have a job that  
21  gives him a sense of self. It's what he always had a job to  
22  give him a sense of self. He can't keep up with his tasks. He  
23  can't remember to take his medications. Kristen has had to be  
24  his nurse according to his neurologist. It's really -- he's not  
25  in a condition where he could live on his own. And so you're

1 going to hear about that and you're going to hear -- and you're  
2 -- we're going to ask you to put a value on those things both  
3 in the -- over the past two years, and for what you determine  
4 are going to be those non-economic damages throughout the rest  
5 of his life. What is the value of a memory?

6 What is the value of spending uninterrupted time with your  
7 son? What is the value of intimate relations with your  
8 girlfriend? Those things that have been interrupted, and that  
9 he has struggled with over the last two years. And that  
10 according to his doctors he's going to struggle with for the  
11 rest of his life, we're going to ask you to come back, put an  
12 amount on those non-economic damages. And those are the damages  
13 that'll go to Shannon.

14 Again, the economic damages, the medical bills, past and  
15 future. Those are set aside. Those are going to go to the  
16 doctors, and the care providers, and the treaters. The lost  
17 wages, those are used to pay for things that his -- his  
18 groceries, his mortgage, his light bill, things he would've paid  
19 for with his wages.

20 The non-economic damages are to make Shannon whole or as  
21 close to whole as possible. Again, he's not looking for your  
22 sympathy. He's not looking to win the lottery. He's looking  
23 to be made whole. If we could take a magic wand and wave it,  
24 and go back to September 23rd in that photograph you saw of him  
25 the day before. He would give anything to do that. So thank



1 you for your time. Please listen to the evidence as it comes  
2 in, and we appreciate your attention to this matter.

3 THE COURT: Counsel?

4 MR. ERVIN: Yes, Your Honor. May I please the Court?

5 THE COURT: Yes, sir.

6 MR. ERVIN: Good afternoon, ladies and gentlemen of the  
7 jury. I know it's been a long day already, but thank you for  
8 your time, for your patience. As you heard from the Judge, you  
9 are the trier fact today. As Yarborough just went through their  
10 side of the story, and what he intends to put up and show you  
11 throughout this trial. There are actually two sides to this  
12 story. There are two parties, actually three parties involved  
13 here. And so I ask you to pay attention to the evidence that's  
14 presented to you.

15 As the Judge has told you, these openings are not  
16 evidence, they're not evidence before you, that's not what  
17 you're going to base the case on. It's a perception,  
18 perspective from either side as to what we believe are the facts  
19 of the case. And so today, our judicial system works because  
20 of you. Because if you guys in this box today that are the  
21 trier of the facts, that means the evidence you must listen to  
22 and then eventually apply it to the law that Judge Murphy's  
23 going to give you at the end of this case.

24 And that's a very important responsibility, because as you  
25 see, this is a very important case, a very, very important case.

1 And so for that, thank you for your time, and I just ask that  
2 you do listen closely to the evidence that's going to be  
3 presented.

4 Now, as Mr. Yarborough stated, we fully admit that we  
5 caused the accident. MJV Logistics, Inc. LLC., Mr. Kelvin  
6 Buggs. He's the owner operator of that DSP delivery service  
7 partner. Kevin Blekicki was the driver of an MJV leased van on  
8 the date of the accident, September 21.

9 Now, Mr. Yarborough, he's certainly trying to make the  
10 case of control agency with Amazon. Well, he wants you to  
11 disregard the independent contractor status of that agreement.  
12 And you're going to see the agreements, you're going to see how  
13 the program is set up, and how the program is run.

14 And you will see that Mr. Buggs who was almost going to  
15 retire, he was in the food and beverage industry for almost 40  
16 years before he and his family moved to South Carolina, and saw  
17 an opportunity that was presented to him to join this program.  
18 And those programs are set up across the country, and here in  
19 the low country as many may or may not know that the vans you  
20 see out there delivering these packages are independent  
21 contractor. They're small business owners like MJV and Kelvin  
22 Buggs who hire their drivers. Who hire their staff, who go out  
23 and deliver packages to you guys?

24 I'm sure many of you all here may have had that delivery  
25 to you. Those are not Amazon employees. And there is a

1 contract in place that distinctly sets forth the duties and  
2 obligations of the local DSP, and their relationship with  
3 Amazon. So that is a question that's going to be presented to  
4 you throughout this trial.

5 And I ask you to pay close attention to that testimony,  
6 to the contract, to the agreements that are in place because  
7 what -- despite what Mr. Yarborough says, those contracts do  
8 matter. They do mean something. They're a legal document,  
9 they're binding documents. And so here MJV has the duty and  
10 obligation to hire its staff. There's a training program that  
11 they go through.

12 And Mr. Blekicki, who's originally from New York, came to  
13 South Carolina, went to school at Carol at USC and came back  
14 here to the low country. He was looking for a new opportunity,  
15 a -- a job to have 26 years old. And he joined, he found the  
16 ad that was set out by the MJV responded to it, and then he and  
17 Kelvin Buggs met. And after going through a process to ensure  
18 that they are a safe driver with a background check, with a  
19 motor vehicle check, once that is clear, they go through a  
20 training program, and you'll hear evidence today or throughout  
21 the trial of that program that MJV has set that Kevin went  
22 through, to become a a delivery associate, a DA.

23 You're going to hear these -- these acronyms throughout  
24 DSP delivery service partner, which is MJV and DA delivery  
25 associate, which is what Kevin was at the time of the accident.

1           Now, I know Mr. Yarborough believes you're going to see  
2           some evidence of distracted driving. I'll set forth to you that  
3           the evidence does not show at all that Kevin was distracted at  
4           the time of this accident. And that is very important. At the  
5           time of 4:40, 4:45 when this occurred, Kevin pulls up to the  
6           stop sign at Orangeburg Road and Winningham Road. He stopped,  
7           he looked left, he looked right, he thought he had it clear and  
8           he made the turn.

9           Unfortunately, the accident occurred with Mr. Shaw, and  
10          for that we have readily admitted and acknowledged we created,  
11          we caused that accident. We were negligent in doing so. But  
12          when I say we, that's MJV and Mr. Blekicki. They have admitted  
13          the negligence. But that doesn't end the story. What you have  
14          to do today is determine what damages are the result of that  
15          accident. And I know Mr. Yarborough put a bunch of numbers up  
16          on the board, and I know Mr. Shaw did sustain some injuries.

17          There's no question. We're not disputing the injuries he  
18          sustained as a result of the accident. We are disputing the  
19          extent of those injuries, and the extent of those future  
20          medicals, the future care, the big numbers they're putting up  
21          on board. We are disputed that. We do agree we are responsible  
22          for those past medicals to the extent they were related to the  
23          accident. Absolutely we agree we are responsible for that  
24          because we caused that accident.

25          But as to the futures, I ask you to pay close attention

1 to the treating physicians because I think they'll show. And  
2 it's been pretty clear Mr. Shaw has made a remarkable recovery  
3 since that day. Yes, he had a massive rotator left cuff tear.  
4 Dr. Schaff is going to testify to that, that he had an extreme  
5 recovery, an excellent recovery from that. Yes, he's going to  
6 be a little bit limited with that left arm.

7 And yes, he's not going to be able to do the hard Comcast  
8 line job he did, but he's not out of the workforce. Dr.  
9 Batista, who I think is in the room and will be testifying at  
10 some point here today, he did the cervical and he will testify  
11 that when he did the cervical fusion, he had almost a 95 percent  
12 recovery and reduction in pain.

13 Mr. Shaw has done remarkably well with the surgeries, and  
14 that's part of whether or not these futures are reasonable or  
15 not. He has really made a remarkable recovery. Now, yes, he  
16 has a simulator in the -- that'll be in the cervical neck later  
17 on this month. And according to Dr. Batista, and you'll hear  
18 this testimony, if it is as successful as it was with the trial  
19 run, he's going to have another 90 or plus percentage --  
20 percentage in reduction of pain, which means he is getting him  
21 back to pre-accident baseline, which is what these treating  
22 physicians are doing, trying to get him back Mr. Shaw to the  
23 pre-accident baseline.

24 And you'll hear that he's almost there. He is almost  
25 there, and he should be able to work again. He absolutely

1 should. He will not be able to do the Comcast job and we  
2 realize that. But he's not completely out of the workforce.  
3 And I know that's part of the reason why he's depressed, that  
4 he has not been able to get out there or release to go back to  
5 work.

6 And I think his orthopedists are about to do that once  
7 they go through this last procedure and see how it -- how it  
8 takes. But all indications are that he has had a great recovery  
9 through these injuries that he did sustain. And we have readily  
10 admitted, like I said, that we caused that accident, MJV.

11 Now, you will hear from Amazon as well. Amazon did set  
12 up this program. It's a legitimate program. There are  
13 legitimate contracts in (inaudible) when they set this up with  
14 the local DSPs. And so as to the control, I'll give you -- I'll  
15 submit to you that the control Mr. Yarborough is looking for is  
16 not there. You will see the agreements, you'll see the  
17 documents, you'll see the daily operations of how MJV works and  
18 Kelvin Buggs, and he's a small business owner. He's doing his  
19 best every day. And safety is first and foremost.

20 You will hear how every single morning before his drivers  
21 go out on the road, they have a standup meeting. They have a  
22 standup meeting when safety is the first and foremost topic to  
23 go over every single morning. And then after going through the  
24 day and after getting their packages and everything ready to go  
25 out on the road, he ends up meeting with a prayer, a prayer for

1 their safety, a prayer for the safety of the public because  
2 these folks are out there driving every single day and they're  
3 not asked to rush or go fast.

4 Kelvin cares about his employees. He cares about his  
5 drivers. And you will hear that from Kelvin. He does care  
6 about the safety, and he is very sorry for what happened to Mr.  
7 Shaw. That day it was was a simple accident. It wasn't a  
8 destructive issue. And we'll show that the evidence, it's not  
9 there that he was distracted at the time. It was a simple  
10 accident.

11 Now, going through the head injury, you'll hear testimony  
12 from the trooper. You'll see evidence from the MS -- from MUSC  
13 that he did have a mild concussion. There's a Glasgow score  
14 judging your kind of cognitive abilities at the time of a -- of  
15 an injury to the head. And 15 is like the highest scale of the  
16 mild starts at three, it goes to 15. And if you're at a 15,  
17 that is the mildest of the mild.

18 At the scene he was recorded as a 14 from the MS. He was  
19 able to speak, he was able to talk, he was able to converse.  
20 By the time he got to MUSC, he was a 15. Neurosurgeon wasn't  
21 even consulted at university. So as to the head injury, we do  
22 really question that and Dr. White will have a conversation with  
23 him about that. The orthopedic injuries, we cannot dispute that  
24 he did sustain those orthopedic injuries.

25 But as I said previously, his physician are going to say

1 he has had a remarkable recovery, and he's getting closer to his  
2 baseline pre-accident, which is really the whole intent of the  
3 treatments he's been going through. Where he should not be  
4 limited in doing any other kind of work other than heavy  
5 lifting.

6 So with that, I just ask that you pay close attention to  
7 the evidence before you. It's in your hands. You are the trier  
8 of facts. You are the trier of the evidence that you're going  
9 to see. We have admitted the negligence for causing the  
10 accident of Mr. Shaw for that MJV and Mr. Blekicki we apologize,  
11 we're sorry for that. And we do agree some damages are  
12 certainly rewardable to him for that injury. But as to the  
13 larger future economic non-economic, that's where we come --  
14 that's where we part base. We don't believe he is entitled to  
15 the 11,000,000 plus.

16 We don't think that that he has made a remarkable  
17 recovery. He has. And so I ask you to listen closely to those  
18 facts, to the -- to the evidence, to the testimony, and then  
19 apply that to Judge Murphy's law when she gives that to you at  
20 the end of the case. And that when all that is considered and  
21 you apply that to the law, that you return a fair and just and  
22 reasonable verdict. We -- we understand there -- there is going  
23 to be a verdict. We just ask you to be fair and reasonable  
24 about that. So thank you for your time and we look forward to  
25 presenting our case.



1 THE COURT: Counsel?

2 MS. RAYNER: May I please the Court?

3 THE COURT: Yes ma'am.

4 MS. RAYNER: Hello. I do know it's been a long day, so  
5 I will -- I will be brief. We're here for two reasons today.  
6 One, plaintiff has asserted that we have -- we as an Amazon has  
7 enough control over their independent contractors employees that  
8 we're somehow responsible for -- for what happened to Mr. Shaw.  
9 And that's simply not what the evidence will show.

10 Mr. Blekicki, Mr. Kelvin Buggs, they've accepted their  
11 responsibility for this. It's a terrible thing that happened.  
12 It was an accident. Nobody wants Mr. Shaw to be hurt. Nobody's  
13 disputing the physical injuries that he is having. I can tell  
14 you that the evidence will not show that -- that Amazon had  
15 enough control or -- or it's just not there to -- to get their  
16 independent contractors to do what plaintiff wants you to  
17 believe that they have the ability to do.

18 I think we're all familiar with Amazon. I -- I would bet  
19 if not everyone on this -- on this jury has an account, I'm sure  
20 you know, most probably do in -- in Amazon. And Amazon collects  
21 data to measure results of its independent contractors. You're  
22 going to hear a lot about some data and -- and having the access  
23 to the data. Some different reports from drivers, and -- and  
24 their independent contractors. But the reason they have that  
25 data is just to measure the results to make sure that they're

1 getting the performance out of their independent contractors  
2 that they need for the business relationship to be successful.

3         Someone from Amazon is not there at every door making sure  
4 a package got delivered. So they have our drivers take a  
5 picture so that they can report back to their customers and say,  
6 Hey, look, here's your package. You got delivered, just like  
7 we said. And somehow plaintiff wants you to believe that just  
8 simply collecting this data and having access to it equates to  
9 control, which is -- is not how this program is meant to work.  
10 It -- the -- the inception of Amazon was alluded to earlier, so  
11 -- and I don't know that many people know this, I didn't know  
12 this till just a little bit ago, but Amazon served as a small  
13 business out of Jeff Bezos garage.

14         He cares about small businesses, and that's a good purpose  
15 of this program. They provide some guidance and support to help  
16 people own their own business and be successful at it. They  
17 give them lists of -- of some vendors that they say, Hey, these  
18 are pre-vetted vendors. You can use these vendors. They don't  
19 have to use those vendors. They give them a list to help small  
20 businesses make sure that they are surviving and successful and  
21 not having to do all of the leg work to start from the ground  
22 up.

23         They give them some training programs. The independent  
24 contractors, they don't have to use those programs. They can  
25 use those programs, they can use additional training programs.

1 It's just a -- an option that they can use. They don't have to  
2 use. It was noted that Amazon controls the manner and means of  
3 how packages are delivered. And that's simply not what the  
4 evidence will show either. Amazon will assign packages to --  
5 to the delivery service providers and say, we need these many  
6 packages delivered.

7 And then it's up to the delivery service partners to get  
8 that done. Amazon provides them some information that they're  
9 able to use, but they certainly don't have to. There's going  
10 to be some talk about whether or not Amazon assigns the routes.  
11 They don't. They give a route that the delivery service  
12 providers or their drivers may be -- may use that they want to,  
13 but they don't have to. They can go out of order, they can go  
14 from beginning to end. All they say is this number of packages  
15 need to be delivered on this -- on this route.

16 And they -- and the independent contractors are -- are  
17 supposed to have programs in place to help drivers if they're  
18 running behind, or they don't think they can get their packages  
19 delivered. And Amazon doesn't control that. The independent  
20 contractors' delivery service providers do. The -- the delivery  
21 service providers are -- are allowed and able to run their  
22 business as they see fit.

23 They hire their employees, they interview their employees,  
24 they pay their employees, they withhold their taxes from their  
25 employees. They have the right to fire their employees. Amazon

1 doesn't do that. Amazon doesn't fire their employees. Amazon  
2 doesn't -- doesn't pay their paychecks. Amazon doesn't withhold  
3 their taxes. Amazon doesn't control them. Amazon has some data  
4 of how they perform.

5 But it's not meant to control them. And they provide that  
6 information to their independent contractors. And then those  
7 contractors can do what they want when it comes to discipline,  
8 or -- or coaching, or mentoring, or anything they want to do  
9 with their drivers. That's up to the owners of the companies.

10 This program -- this delivery service program is simply  
11 an opportunity for small businesses to grow and develop in a way  
12 that they can be successful with some support. And that's what  
13 Amazon does. They just provide some support. They do not  
14 control the drivers. They don't pay the drivers, like I said.  
15 They don't tell the drivers how -- how they have to do things.  
16 They just -- they just give the information that they need done,  
17 the results that they need to see to the independent  
18 contractors.

19 And they -- they -- with the agreement, the delivery  
20 service partner agreement governs all of that. It governs the  
21 results that they need to see in order for the relationship to  
22 be successful. And the delivery service providers know that.  
23 The independent contractors know that if we want to keep this  
24 business, we have to perform this way. We have to get these  
25 results.

1           If you have a plumber come to your house, send out your  
2 employee, but if you have a broken toilet, they need to fix it,  
3 and you're going to ask them to fix your toilet. Amazon's  
4 asking them to deliver their packages. How they do it? They  
5 -- they have leeway to do -- do it how they need to do it. And  
6 it's not Amazon who's controlling that. And the evidence will  
7 show that Amazon does not have the control of Mr. Buggs of MJV,  
8 or its driver, Mr. Blekicki.

9           Again, we're very sorry that Mr. Shaw got hurt. We are,  
10 but Amazon doesn't have the requisite control in order to make  
11 them responsible for this. We're here supporting our -- our  
12 driver and our -- I'm sorry, the driver and our independent  
13 contractor.

14           So at the close of the evidence, we are going to ask that  
15 you find the evidence -- that Amazon doesn't have the control  
16 that they need, that you need to find to make sure that -- to  
17 find that MJV was an agent or that it's driver was.

18           And lastly, we also believe that the evidence will show  
19 that Mr. Shaw isn't necessarily as injured as he has claimed to  
20 be. And we do believe he's made a very good recovery. We know  
21 he is had a lot of treatment, and we believe that that was  
22 reasonable. But he's at a point where he is getting better and  
23 better and his doctors are going to testify to that.

24           And -- and that's we hope that he continues to get better,  
25 and -- and he's able to return to work. So we just ask that you

1 carefully pay attention to all the evidence that's provided to  
2 you over the course of, I hate to say a week, but it could be,  
3 and just listen, and really think about what is there, and what  
4 the parties, Amazon Mr. Buggs, MJV decided what they wanted when  
5 they entered into their relationship as a customer and an  
6 independent contractor. Thank you.

7 THE COURT: You may call your first witness.

8 MS. HEATON: Thank you, Your Honor.

9 Plaintiff calls Christopher Fix.

10 CHRISTOPHER FIX,  
11 being first duly sworn, testifies as follows:

12 THE COURT: Your witness?

13 MS. HEATON: Thank you.

14 DIRECT EXAMINATION

15 BY MS. HEATON:

16 Q. Can you please introduce yourself to the jury?

17 A. Good afternoon. My name's corporal Fix. I'm with  
18 the South Carolina Highway Patrol.

19 MS. HEATON: Sorry, Your Honor.

20 BY MS. HEATON:

21 Q. Please move (inaudible).

22 A. (Inaudible).

23 Q. Thank you. All right. Could you please go ahead and  
24 introduce yourself to the jury again?

25 A. Yes. Hello everyone. My name's Christopher Fix,

1 MS. RAYNER: Yes, Your Honor.

2 THE COURT: All right. Let's have our jury please.

3 (JURY ENTERS)

4 Welcome back ladies and gentlemen of the jury. I hope  
5 that you had a nice lunch. And thank you so much for your  
6 patience this afternoon. Please pay close attention as we're  
7 ready to proceed with the closing arguments. Counsel?

8 MR. YARBOROUGH: May please the Court?

9 THE COURT: Yes, sir.

10 MR. YARBOROUGH: Good afternoon. Good afternoon. First  
11 off, I want to remind you my name's David Yarborough and  
12 along with Alex Eaton and William Applegate, we represent  
13 Shannon Shaw. And this is my first opportunity to really  
14 speak to you today in the form of an argument. And that is  
15 what I intend to do. These are our closing arguments, which  
16 is our opportunity to advocate for our client for the first  
17 time this week.

18 First off, I want to tell you on behalf of Shannon Shaw,  
19 because he does not get the opportunity to tell you this. I  
20 want to thank you. I want to thank each and every one of you  
21 for your service this week, for your time this week, for your  
22 attention this week. I've watched you, it's been a long  
23 three days, and -- and I've paid attention to you, and you've  
24 listened. And I thank you for that on his behalf because  
25 he's not going to get a chance to say that to you today.

1 Shannon's been here throughout the week this week. He  
2 -- Tuesday was having a bad day, so he was home. He was here  
3 all day yesterday, even though he wasn't in here the whole  
4 time, he's been here at the courthouse. And he is obviously  
5 has -- has been drastically affected by this entire incident.  
6 And so he is very appreciative of all of your attention to  
7 this matter. Jury service is one of the greatest privileges  
8 and honors that we have here in our society. It's not a  
9 privilege that other countries afford to their citizens.

10 Here in the United States and here in Dorchester County  
11 and South Carolina, you as the jury, get the opportunity to  
12 make a real difference in the decisions of things that happen  
13 in your community as a jury. You get to be the conscious of  
14 the community to determine what is and what is not acceptable  
15 conduct in this country. So today I have the opportunity, as  
16 I mentioned to you at the beginning of the case, I -- I have  
17 been representing Shannon for almost two years. And as part  
18 of that process, we had to go out and investigate, and we had  
19 to gather up all of the evidence to come in and present  
20 before you. And the reason that we had to do this is because  
21 Amazon, since the beginning of this case, has denied  
22 responsibility. They've denied their responsibility, they've  
23 tried to avoid their responsibility. And as a result of  
24 that, we are here today.

25 Now, Kevin and MJV have admitted fault in this case. So



1 that is not an issue you are going to have to decide. You  
2 don't have to decide that. Your job is going to be to decide  
3 whether Amazon shares in that responsibility with them. And  
4 that's the question of agency we're going to talk about in a  
5 little bit.

6 First of all, I want to talk to you about the burden of  
7 proof. As I mentioned at the beginning of the case, the  
8 burden of proof in a civil case is more likely than not.  
9 It's have we the Plaintiff presented evidence to you in this  
10 case that proves by at least 51 percent that what the  
11 evidence we have put on is true, that we have met our burden  
12 of proving agency and of proving damages. Is it more likely  
13 true than not true? And again, as I talked to you about in  
14 the beginning of the case, your job is to fill out this  
15 verdict form. I told you at the beginning of the case you  
16 were going to get a verdict form. And that what I was going  
17 to try and do this week is give you the evidence that you  
18 need in order to fill out this verdict form.

19 Now again, this all of this evidence and all of this  
20 testimony, that -- that didn't have -- I didn't make any of  
21 that up. I didn't create any of that. My job is to go out  
22 and gather that information. That's the burden that I've  
23 carried over the last two years. That was my job -- our job  
24 as Shannon's lawyers; was to go out and gather that evidence,  
25 go out, interview his doctors, go out and interview the

1 trooper, go out and gather the photographs, go out and get  
2 the medical records, talk -- have someone go talk to the  
3 doctors. You know how hard it is to get in to talk to  
4 doctors? And it -- it is extremely difficult.

5         So we had to hire people to go out and talk to the  
6 doctors and say, doctor, what -- what effect did this have on  
7 Shannon? Doctor what are his needs going to be in the  
8 future? Because we knew that we would be coming into Court  
9 because of Amazon's denials, and that we had the burden. We  
10 had the burden of proving what those issues were. We had the  
11 burden of proving his injuries. We had the burden of showing  
12 you what his medical expenses are. We had the burden of  
13 showing you what medical care he's going to need in the  
14 future. So we did that. And it's -- and it's been a lot of  
15 work over the last two years. And as you've seen over the  
16 last two days, a lot of people took time. A lot of important  
17 people, doctors that have busy medical practices that took  
18 time off from seeing their patients to come in here and tell  
19 you and honestly respond to questions about what the effects  
20 of this have been on Shannon Shaw and -- and why they  
21 happened.

22         So again, your verdict form, the Judge is going to  
23 instruct you on the law, and she's going to send you back to  
24 the jury room with this verdict form. She's going to choose  
25 a foreman, a foreperson, I should say. She's going to

1     appoint a foreperson who's the person who will take the  
2     verdict form or who will be given the verdict form once back  
3     in the room. And that -- that foreman is going to be the one  
4     that fills out the answers to these questions based on all of  
5     your decisions. And -- and you have to be unanimous --  
6     unanimous in your decisions. You have to come to a group  
7     decision on each of the questions.

8             And again, each of the questions in order to check, yes,  
9     and to fill out the information preponderance of that  
10    evidence. The first question you're going to have to answer,  
11    did the Defendant Amazon have the right to control MJV  
12    Logistics or Kevin Blekicki, yes or no? Did they have the  
13    right? Not did they control them. Not did they control  
14    everything about them. Not did they sign their paycheck.  
15    That's not the test. It's not the -- not did they call them  
16    an independent contractor. It's not the test; it's not the  
17    law in South Carolina. Did they have a right to control MJV  
18    Logistics and Kevin Blekicki?

19            The Judge is going to tell you that an agency  
20    relationship exists when the purported principle has the  
21    right to direct the control of the agent and performance of  
22    his work. And in this case, the purported principle is  
23    Amazon, and the agent is MJV Logistics or Kevin Blekicki,  
24    either one of them, both of them. But it -- it only has to  
25    be one of them. Did they have the power or the right to

1 direct and control them in some performance of their work?  
2 Again, as I told you in the beginning, here in South  
3 Carolina, and I don't know how they do it in New York, and I  
4 don't know how they do it in Seattle, Washington, where  
5 Amazon is headquartered. But here in South Carolina, the law  
6 that is developed over hundreds of years and the law that you  
7 as a jury took up an oath to uphold, the Judge will charge  
8 you that language in a contract declaring that a particular  
9 relationship is an independent contractor relationship is not  
10 determinative. It doesn't matter what they called it.

11 You know what matters, who has the power. And who do  
12 you think has the power in this situation? Who has the right  
13 to make decisions about this overall operation and empire?  
14 And the Judge is going to charge you that some of the things  
15 that you can consider. Again, this is not a four-part test.  
16 This is not a four-part checklist. If you get back in your  
17 jury room and you're going through here and one of your  
18 fellow jurors goes, well, I'm not sure about the method of  
19 payment. So that's okay. These are types of evidence that  
20 show a right to control.

21 One of those is direct evidence of a right to control or  
22 exercise control, not even the actual exercise of control,  
23 the right to control. So we'll talk about, again, I'm not  
24 going to go through all these things. This has been a  
25 three-day trial, not a -- not a three-month trial, where you

1 may have forgotten about certain things. You'll have all of  
2 this evidence with you back in the jury room. You have the  
3 contracts, you have the onboarding delivery associate slides,  
4 you have the training slides, the execution slides. All of  
5 these things have different elements of the right to control.  
6 The -- the DSP, the Amazon, again, Amazon Delivery -- Amazon  
7 delivery service partner, Amazon Delivery Associate. They  
8 don't call them MJV Delivery Associates. They call them  
9 Amazon Delivery Associates. What does Amazon control?

10 We talked about in -- Mr. Bugs, the owner of MJV, back  
11 when we took his deposition. We showed him all of these  
12 documents. We showed him the contracts that govern his  
13 business. And we said, all right, now we're not going to go  
14 through these hundreds and hundreds of pages. What we've  
15 done is we've pulled out a summary of what's in there, and we  
16 want to go through that summary with you and we want to show  
17 this to you and see what you agree with. And he checked off  
18 all of the different ways that Amazon controlled and had the  
19 right to control his business and the delivery of Amazon's  
20 packages.

21 So again, if you're back in the jury room and thinking,  
22 all right, well, what direct evidence did we see of a right  
23 to control? All of these documents. They're all there.  
24 Outside, in addition, all of the testimony that was there, by  
25 Kevin Bugs, by Kevin Blekicki.

1           The method of payment, it's all in the contracts as  
2 well. The money flows down from Amazon. Amazon pays the  
3 DSPs based on metrics, based on per package delivery, based  
4 on the performance of the drivers. So there's 19 pages of  
5 rules for payments from Amazon to the DSP that then flows to  
6 the drivers. And Amazon controls how much of that money  
7 comes down by metrics that it that it measures watching the  
8 drivers every week.

9           Every week it gathers up this information and it makes  
10 determinations about how much they're going to pay the DSP  
11 based on how many packages delivered. Were they late? Were  
12 the drivers safe or unsafe? All of these metrics they  
13 measure and they control the money to Amazon, which  
14 ultimately controls the money to the drivers. You heard  
15 this. You heard the Amazon -- you heard the -- the Amazon  
16 drivers talking about it on their chat. Hey, the supervisor  
17 at MJV, I just got a message from Amazon. They're not happy.  
18 Click it or miss it with Amazon. Click that seatbelt or miss  
19 that bonus. That's the level of control. That's the level  
20 of supervision that they had over these drivers. Every day  
21 they're watching them, they're monitoring them, they're  
22 collecting this data, and they're using it to control the  
23 money.

24           The furnishing of tools and equipment, again, by itself.  
25 Take away everything else. Take away everything else. And

1 just think about this as evidence of a right to control. I  
2 mean, think about it. I want to -- I want to bring up an  
3 example that counsel for Amazon brought up during her  
4 opening. She said, huh, if you hire a plumber to come to  
5 your house, that plumber's not your agent or employee. Well,  
6 he wasn't when he got there.

7 But if that plumber gets there and then you tell that  
8 plumber, hey, you got to put on a Yarborough-Applegate  
9 uniform, and I need to run a background check on you. So you  
10 need to log onto this Yarborough-Applegate portal, and you  
11 need to go through all this process, put in there so  
12 Yarborough-Applegate can do your background checks and run  
13 you through this portal. And then I'm going to run you  
14 through training. You're going to spend two days of  
15 training, okay? And you're going to be trained. Then you're  
16 going to take a written test made up by Yarborough-Applegate  
17 on, you know, how to do your job. And then  
18 Yarborough-Applegate is going to give you a -- a vehicle with  
19 Yarborough-Applegate written on the side of it.

20 And then Yarborough-Applegate is going to give you a gas  
21 card. And then Yarborough-Applegate is going to give you a  
22 phone. And then Yarborough-Applegate is going to install a  
23 monitoring app on your personal phone to track your  
24 movements. And then we're going to send -- we're going to --  
25 then we're going to give you a -- a route of -- of toilets to

1 go out and fix. Okay? And then we're going to send you out  
2 on that route with software on the phone that directs you  
3 where to go, how -- how to -- what to do when you get there,  
4 how to fix the toilets, how to -- the tools to fix the  
5 toilets to take a picture of your work. And by the way, if  
6 you don't do it exactly the way that we prescribed you do,  
7 we're going to -- we're going to dock your pay. Okay?

8 Well, that person might've been an independent  
9 contractor when they got to the house, but when I sent them  
10 out with all those instructions, with all those tools, under  
11 all that control, they became my agent. They became an  
12 agent. And that's exactly what happened here. The means and  
13 the methods, the tools, the delivery app, the workstation,  
14 the hub facility, the title to the vehicle, all of those  
15 things are the furnishing of equipment and tools.

16 And finally, the right terminate. I mean, I quite  
17 frankly couldn't believe what we heard today after all of the  
18 other testimony and evidence that you have heard this week  
19 about Amazon's control over these delivery drivers. I mean,  
20 you heard -- I played Amazon's corporate rep -- rep --  
21 representative deposition for you. And during that  
22 deposition, he admitted that -- that under certain  
23 circumstances, they had the right to terminate drivers from  
24 delivering Amazon packages.

25 Well, that's the work that they've contracted them to



1 do. That's what -- that's what they do. That's what the  
2 delivery drivers do. Here you got Mr. Bugs admitting Amazon  
3 retains the right and ability to discipline, terminate  
4 delivery associates. He even gave you an example of them  
5 doing that. He said, Amazon came in and fired my driver who  
6 hit a dog. That's -- and again, the Judge is going to charge  
7 you, you have to judge the credibility of the witnesses, the  
8 credibility of the people that came in here this week and  
9 talked to you. What is their motivation for coming in the  
10 mirror and saying the things that they said?

11 And PJ got on the stand this morning and told you that  
12 Amazon did not have a right to fire Amazon drivers. Didn't  
13 have a right to do it, even though in his deposition, he  
14 said, based off egregious conduct, someone can prevent them  
15 from delivering packages. What does that mean? Prevent them  
16 from delivering packages. It means that they fire. Today,  
17 he said Amazon can off board a driver. Again, off boarding,  
18 maybe that -- that -- that's a term they use in New York or  
19 in Seattle where Amazon is. You know what off boarding is  
20 here in South Carolina. You're -- you're in the wind, you're  
21 canned, you're no longer on the job, you're out, you're off  
22 boarding, you're not allowed to deliver Amazon packages  
23 anymore.

24 He also admitted numerous other elements of Amazon's  
25 degree of control and their right to control. Their own

1 corporate representative had to admit that they're required  
2 to use the Flex app. That that tells them how to deliver the  
3 packages. It -- it monitors every aspect of their job.

4       Yeah, the scorecards, the weekly scorecards that Amazon  
5 compiles. Again, all of this information monitoring that  
6 data and keeps it, and they control the pay for it, and they  
7 rate the drivers on it. They have all of this information.  
8 So again, Kevin Blekicki admitted, you heard him on the  
9 stand, Amazon controls everything about the means and methods  
10 of his job. Amazon's route directed him to take a left. And  
11 that's the other thing. PJ got up there today and said he  
12 was asked a question by -- by opposing counsel. Did Amazon's  
13 app require Mr. Blekicki to take a left turn on that day in  
14 front of Mr. Shaw's motorcycle? You heard -- and he -- he  
15 said he -- he never met Mr. Blekicki before. Never been to  
16 South Carolina before. Doesn't know anything about the  
17 specifics of this case. You heard it from -- from Mr.  
18 Blekicki. My Amazon route program directed me to take a left  
19 turn. I was following my route.

20       They controlled his route. They controlled everything  
21 about his hiring, his training, taking a test, getting on  
22 boarded, requiring the use of the Amazon apps on his work and  
23 personal phone. And that's something else I wanted to bring  
24 up too right now. Okay? Because the -- the -- it's a good  
25 thing that argument by counsel when questioning isn't

1 evidence because it's not. But the evidence this week has  
2 been from Kevin Blekicki that the eMentor, the monitoring app  
3 was on his personal phone.

4 The whole point of putting it and making the drivers put  
5 it on their personal phone is to measure their distracted  
6 driving and supposedly to prevent them from manipulating  
7 their phone while they're driving. That's how it controls  
8 that data. And he said, under oath, that he had eMentor  
9 installed on both his personal phone and the phone that was  
10 given to him by Amazon.

11 So again, when you get back in your jury room, the first  
12 question that you get to, we believe that -- and I -- I -- it  
13 probably -- it may feel like I'm beating a dead horse, but  
14 that's what we've been up against. We've been up against one  
15 of the largest corporations in the world trying to avoid  
16 responsibility. And so it's been our burden to put on and to  
17 put on all of this evidence and to go out and show you -- so  
18 we can come in here and we could show you that, I mean, I  
19 think you could probably come to this conclusion by your own  
20 common sense, but we were -- we're not allowed to rely on  
21 that. We have the burden. We have to put on the evidence.

22 So we'll ask you to check yes to this question. If you  
23 check no to this question, then Amazon's off the hook. If  
24 you check no to this agency question, Amazon they walk. And  
25 this whole idea that they've come up with about avoiding

1 responsibility and about putting all of this burden. So  
2 Amazon makes the money from this logistics practice, and they  
3 end up taking all of the burden of that and leaving it with  
4 Mr. Bugs and Mr. Blekicky, if you check no to that question.  
5 And again, we're going to talk about more -- we're going to  
6 -- we're going to talk later in the -- in -- in the day about  
7 the issues related to that. But just -- just remember that.

8       The other thing we're going to talk about in this case  
9 is damages. Because we also, as counsel for the Plaintiff,  
10 have the burden of proof on damages. Again, by preponderance  
11 of the evidence, okay? So what did we do? We had to go out,  
12 like I said, and gather all of the information to bring it to  
13 you in order for you to answer these questions. And as I  
14 told you in the beginning of the case, there are certain  
15 elements of damages under -- under the law if you hurt  
16 somebody because you broke the law or consciously disregarded  
17 the safe -- their safety, they -- they are entitled to be  
18 made whole from any damages that they suffered as a result.

19       So here the Judge is going to tell you, you go to this  
20 question no matter what, regardless of how you ask answer  
21 question one, you go to this. How you answer question,  
22 number one, decides who pays for this and who's responsible  
23 for this. Okay? So after you answer yes to number one, if  
24 that's what you do, or no, you go to question two, and you  
25 answer these questions. And the amount of past medical

1 expenses, which were stipulated to which counsel, I heard  
2 them stand up in the opening statement and say, we're not  
3 disputing his past medical bills and expenses.

4 So the only evidence, ladies and gentlemen that you  
5 heard during this trial was that all of his past medical  
6 bills were reasonable and necessary. And we put on the  
7 evidence of those. And that number is going to be on an  
8 exhibit with you back in the jury room. It's \$453,728.36  
9 future medical expenses and that -- that'll be Exhibit 32.  
10 You'll have that back there. So you just fill in that  
11 amount. The bottom number. And one of the other things I  
12 wanted to talk to you about here is that is not money that is  
13 going to go to Shannon Shaw. So that is money -- remember I  
14 talked to you about that there are things that you can fix in  
15 the beginning, fix, help, and make up for, in an effort to  
16 make whole, which is the purpose of your job, to try and make  
17 him whole. This is one of the things that can be fixed.

18 And she's -- the Judge is going to give you a charge on  
19 the law, on medical expenses, tell you that the Plaintiff, if  
20 we've met our burden of preponderance of the evidence, more  
21 likely than not showing that these were related to this motor  
22 vehicle collision, motorcycle vehicle collision, then  
23 Plaintiff is entitled to these. And not only the past  
24 medical expenses, but the Plaintiff is entitled to future  
25 medical care costs that have been proven by the preponderance

1 of the evidence. And so we went out and had these doctors  
2 interviewed, and these doctors came to trial and they talked  
3 about, based on their experience, based on their training,  
4 based on their review of the scientific literature, based on  
5 their two-year long treatment history with Shannon, based on  
6 their understanding of these disease processes in his body.

7 And -- and I'll remind you that as it relates to  
8 Shannon, this is not a single body part that has been  
9 injured. These are -- this -- this is a -- a multi-systemic  
10 injury that have occurred in different parts of his body, as  
11 you've heard about. There are the issues related to the  
12 shoulder, there are the issues related to the spine, they are  
13 the issues related to the lumbar. There are the issues  
14 related to the traumatic brain injury. All of these  
15 different damages are what have to be considered by you and  
16 the evidence that you've heard this week.

17 So the doctors have predicted that to a reasonable  
18 degree of medical certainty most probably, that this is the  
19 amount of future damages that will be needed to take care of  
20 Shannon over the course of the next 33 years. So 33 years is  
21 a long time. Those numbers may seem big, but that is what  
22 it's going to take over the course of 33 years. And as -- as  
23 the economist told you, that's not even the amount of money  
24 that is needed over the -- to -- to cover all those expenses.  
25 That's the amount of money today that then has to be taken

1 and put into an investment account that has no risk, that can  
2 earn at least 5 percent interest, that can then grow over the  
3 course of the lifetime of the next 30 -- 33 years in order to  
4 get to the number that will be needed to pay for all of those  
5 medical expenses.

6 So Tricia Yount calculated the cost of all of that  
7 future medical care. And this is the number she came up  
8 with. The midpoint. The midpoint was \$9.3 million,  
9 9.339251. But what we wanted to do and what we felt was  
10 fair, you are the jury, you're the ones that get to decide.  
11 You heard Nurse Lustig talk about the three different  
12 options. There's the budget plan, there's the mid plan, and  
13 then there's a Cadillac plan. So that, we offer that to you.  
14 What -- what do you think Shannon should have? Do you think  
15 he should have the budget plan? Do you think he should have  
16 the middle of the road plan or do you think he should have  
17 the Cadillac plan? That's -- that's up to you as the jury to  
18 decide.

19 But what I'll submit to you is that all of the evidence  
20 of this case, all of the evidence -- if -- if you believed  
21 Dr. White, and if you believed Dr. Battista, and if you  
22 believed Dr. Shaaf, all of whom have no dog in this fight,  
23 all of whom are Shannon's treating physicians, if you believe  
24 them on what their experience is with treating these types of  
25 patients and what is reasonably certain and most likely to

1 occur in the future, and they've said, we don't have a  
2 crystal ball. We're not -- can't say a hundred percent  
3 what's going to happen in the future, but more likely than  
4 not, to a reasonable degree of medical certainty, they all  
5 gave their opinions, that these items will be needed in the  
6 future.

7         And so it's you that's going to decide who does this  
8 burden fall on? Who does this burden of future medical care?  
9 What's going to give Shannon the best opportunity to -- to  
10 make him whole, to go back out and to be a productive member  
11 of -- of society? Who is going to bear the burden of these  
12 future medical expenses? Should it be the parties who were  
13 responsible for his injuries, who put him at risk that day by  
14 a conscious disregard for the safety, for his safety by being  
15 a distracted driver. They've admitted that, they've admitted  
16 negligence, they've admitted it was their fault. So who  
17 should be responsible for his future medical care? The  
18 taxpayers of Dorchester County, Shannon's family or the  
19 people who are responsible for this, the people that caused  
20 this harm to him. That's for you, the jury to decide.

21         And if you allow an award these damages for future  
22 medical care to Shannon, then the burden will go where it's  
23 supposed to be. And it will no longer be on Shannon or his  
24 family or the community. You heard Dr. White talk about the  
25 staggering -- the -- the medical literature about the



1     staggering cost on our economy of the effects and the future  
2     effects of traumatic brain injuries, mild traumatic brain  
3     injuries. The literature supports that all of the evidence  
4     is there and you will have it.

5             Lost wages to date, I don't believe those are being  
6     disputed either. I think counsel does not dispute, he has  
7     not been able to go back to work at this time. He's not been  
8     medically cleared, that he has another surgery yet coming up  
9     and that due to his current situation, he can't work. That's  
10    all of the evidence that you heard from every single one of  
11    his doctors is that as of today, he cannot work. So you'll  
12    see on the earning loss report that you'll have with you in  
13    the jury room, the past medical expense -- or I'm sorry --  
14    past lost wages, which is from the date of the incident up to  
15    today, plus his 401k match, which he would've earned is  
16    \$210,761.

17            The loss of a -- loss of earning capacity. There's been  
18    a lot of talk about this and what Shannon is going to be able  
19    to do or not do in the future. So we know that Shannon was a  
20    manual laborer. We know that he was earning almost a hundred  
21    thousand dollars a year. We know that he had worked his way  
22    up for eight years to get to that job. And we know that he  
23    is not going to be able to go, I mean, I -- the evidence has  
24    been that he's -- there's no chance of him going back to any  
25    sort of job like that in the future. So the question that

1 you were going to have to answer is, is he going to have to  
2 go back to work at all? Or is -- is he going to be able to  
3 go back to work at all? And if so, what is his loss of  
4 earning capacity? You know? And so if -- and we -- so we're  
5 giving you a range there and you have the documents back in  
6 your jury room to make that decision.

7 If you believe that what doctor -- Shannon's doctor said  
8 were true, if you believe Dr. White and Dr. Battista and Dr.  
9 Shaaf, when you combine all of their testimony, because they  
10 were all talking about sort of different body systems. You  
11 heard Shaaf talking about the shoulder; you heard Battista  
12 talking about the neck and the -- the chronic pain condition.  
13 And I'll remind you, Battista said, I've never seen somebody  
14 with two spinal cord stimulators, two different implants in  
15 their body and a chronic pain condition like Shannon's ever  
16 really be able to go back out into the competitive job  
17 market. I just, I haven't seen it in my practice.

18 I'm not saying it can't happen, but I hadn't seen it.  
19 That's not even taken into account the traumatic brain injury  
20 and the issues addressed by Dr. White who said, I don't know.  
21 You know, I don't think he's -- he's really going to be fit  
22 to go back out into the competitive job market. Shannon  
23 wants to go back to work. He wants to go out and do  
24 something. I'm not going to stand up here in front of you  
25 and tell you he can never go back to work or do anything,

1 because I know he is going to try, if the doctor's let him.  
2 So the question is, you're going to have to answer, is his  
3 loss of earning capacity a hundred percent?

4 If you say, I'm going to give him the benefit of the  
5 doubt, we're not sure that he's ever going to go back to  
6 work. I don't think he can work today. We're going to give  
7 him a hundred percent loss of earning capacity. That number  
8 would be \$1.4 million.

9 If you say, hey, I think he's going to be able to go  
10 back and I think it'd be good for him to go back to work in  
11 some capacity, earning some amount of money. I think he  
12 could earn \$25,000 a year, which is 25 percent of what he was  
13 making at the time he was injured. That'd be a 75 percent  
14 loss of earning capacity and his future loss of earning  
15 capacity would still be \$1.1 million over the course of his  
16 lifetime.

17 If you say, hey, I think he's going to be able to find a  
18 pretty good job. I think Shannon's going to be fit to go  
19 back and make 50 grand a year somehow working, you know,  
20 full-time, part-time. I don't know what it is. But if you  
21 find that he had a 50 percent loss of earning capacity, his  
22 after trial loss for future loss of earning capacity would be  
23 \$738,000.

24 And again, at 25 percent, if you think Shannon's going  
25 to be able to go back near full-time, some sort of job making

1     \$75,000 a year, which the evidence in this case does not  
2     support at all. But if you believe that, then still there  
3     would be a \$369,000 loss of earning capacity. So again, that  
4     -- those are your jobs. Those are the jobs that you're going  
5     to have when you get back there and you start talking about  
6     this case and what the evidence was, the evidence that you  
7     heard.

8             And if one of your fellow jurors says, I'm just not  
9     sure. They'll say, well, let's talk about what the evidence  
10    is. Who'd we hear from? Heard from White. Heard from  
11    Battista. We heard from Shaaf. We heard from his coworker  
12    Shelton about what a daggum hard worker he was and how he  
13    can't -- there's no way he can do that job anymore. We heard  
14    from his ex-wife Kristen about how much he'd love to go back  
15    to work, but how his personality's different, and how this  
16    traumatic brain injury has affected him. We -- so you'll  
17    have all of that to consider and to talk about as you go back  
18    into the jury room.

19            Again, all of these things, the economic damages, those  
20    -- that is all money that are going to go to other people,  
21    those are the things that the medical expenses past and  
22    future are the things that you, the jury can fix by awarding  
23    a full measure of damages for past and future medicals.

24            The lost wages are things that can't be fixed, but that  
25    they can be -- they can be helped, okay? Because those are

1 wages that he would've earned that he can -- that he hasn't,  
2 and that he might not be able to in the future, that he will  
3 be using to -- to go out and spend on things that he would've  
4 spent his wages on. So that's money that'll go to pay the  
5 light bill, to pay his child support, to buy clothes for his  
6 kids, things that he would've spent his wages on. That's not  
7 money for Shannon. That's not money that Shannon's going to  
8 get to keep. That's money that, you know, Shannon, despite  
9 making good money, he had a lot on his plate. He had kids,  
10 he had ex-wife; he had a household; he had a lot of things  
11 that are expensive. So those are all pills that go out the  
12 door.

13 The other part of this case that you're going to have to  
14 decide and that the Judge is going to charge you on is the  
15 non-economic damages. That is -- those are the things that  
16 cannot be fixed and they cannot be helped, but they can be  
17 made up for, which is the third part of your damages job.  
18 These are the things that you can't see that are under the  
19 surface. These are the things that the Judge will tell you  
20 we value in our society. We as a civil society and under our  
21 laws, have to place a value on these things in order to make  
22 someone whole when they are injured. And so this is a number  
23 that is going to be entirely in your discretion, entirely in  
24 the jury's discretion. You the jury, are going to have to  
25 come up with a method of determining this number and what

1 you, the jury think is fair based on the evidence that you've  
2 heard this week and based on your life experiences in your  
3 common sense.

4       These different items that the Judge will talk to you  
5 about, loss of enjoyment of life, (inaudible) pain and  
6 suffering, and the other evidence that there's been -- broken  
7 back, sleep disorder, the risk of future illness and re-tear,  
8 and early onset dementia, the chronic pain condition. And  
9 you're going to have to go through the analysis. All right,  
10 here we are two years out. We know that over the past 2.2  
11 years, that's 804 days, that he's had to live with these  
12 conditions.

13       And then you have to look at the future, 33.69 years  
14 that the law says he's entitled to be compensated, to be made  
15 whole for having to live with these unwanted conditions and  
16 these unwanted injuries throughout the rest of his life. And  
17 you, the jury will have to decide what are these things  
18 worth? What are these items? What are these -- these  
19 non-economic damages? What is the value of that?

20       And -- and I think Nurse Lustig described it well. She  
21 said -- if -- if you remember, she said, it's the things that  
22 we take for granted. It's getting up in the morning and  
23 being able to remember to take your medicines. It's the  
24 interest that you have throughout the day. It's the ability  
25 to organize tasks. It is the ability to sleep well at night.

1 It is the ability to be -- to be free -- to be free of fear  
2 about what your future holds. It's about being able to enjoy  
3 unfettered that relationship with your son. It's about being  
4 able to be a -- a proud dad. You -- you heard Sean Napoli  
5 talk about how Shannon used to be. He would bound into the  
6 house; he would witness proud -- a proud dad who loved  
7 nothing more than to spend time with his kids. And then you  
8 heard -- you heard those objective witnesses talk about the  
9 difference and what it's like now.

10 And you heard about Dr. White talk about why the -- the  
11 traumatic brain injury. It is an invisible injury. It is  
12 there. You can't see it. It happens from the shearing of  
13 these neurons in the brain that ever so subtly changes the  
14 personality of people. And Dr. White talked about all of his  
15 experience in treating these types of patients. And then he  
16 talked about how it's affected Shannon and to have his  
17 personality changed in those not positive ways. Shannon was  
18 a happy, go lucky, proud, hardworking guy, and now he flies  
19 off the temper. And I know I have four kids, you know, I  
20 have four kids and I -- I know how hard it is sometimes as a  
21 parent to deal with my children. And I -- I have -- I like  
22 to think that I have a pretty good sense of self-control and  
23 I think of myself as a -- a calm and prudent person, and a  
24 measured person who thinks before I respond to them, even  
25 though sometimes my brain tells me to say things that are

1 inappropriate. All right? I want to say those things, but I  
2 don't say those things because my brain tells me that those  
3 things are not appropriate to say to children or not  
4 appropriate to say to my wife. I have those facilities in my  
5 brain. I take those things for granted sometimes, but that's  
6 my filter. That's what keeps me from doing that.

7         And all the evidence you've heard this week is that  
8 Shannon has lost that filter. His brain circuitry has been  
9 rewired. So think about how that makes you feel. Think  
10 about how that makes him feel when he loses it on his  
11 children, on Blaze, on his -- on his girlfriend, on his  
12 ex-wife. How does that make him feel? Again, those are the  
13 types of non-economic damages, over the course of a lifetime,  
14 over the course of 35 years, the last two years in the next  
15 33 years. What is that -- what is the value of that to you,  
16 the jury in Dorchester County?

17         We'll ask you to make that decision, but you know what?  
18 I'm glad that you get to make that decision. We selected you  
19 this week. We picked you to be the fair deciders of that  
20 question. Amazon does not get to answer that question and  
21 put a value on those damages. That is for you to do. You  
22 have all the power.

23         Finally, we're going to talk about punitive damages.  
24 And I'm going to talk to you -- I'm going to get a chance to  
25 come back up and speak to you a little bit in reclose.



1 They'll get a chance to respond and then I'll get up here  
2 really briefly. Since I have the burden, I get the last  
3 opportunity to speak with you. And I'm going to talk to you  
4 a little bit about punitive damages.

5 Remember in the beginning of the trial, I told -- told  
6 you you had three jobs; agency, damages, and then sort of the  
7 conduct involved here, and why it happened, who knew it was  
8 happening, who should -- who had the power to prevent this?  
9 And is this acceptable conduct on the roadways of Dorchester  
10 County? You are the conscious of the community like I said.  
11 You are the Judge of this today. The Judge is going to read  
12 you the law and then you're going to go back in the jury room  
13 and you're going to decide whether or not you want Amazon  
14 delivery drivers driving around in your neighborhoods, on  
15 their cell phones, engaging in distracted driving while  
16 delivering your packages. You get to make that decision.

17 And let's see what the evidence has shown. You're going  
18 to answer these -- these three questions, do you find by  
19 clear and convincing evidence that Kevin Blekicki acted in a  
20 reckless, willful, wanton manner and that this conduct  
21 approximately caused damages to Shannon Shaw? If you check  
22 yes, then you'll be asked to award a measure of punitive  
23 damages, an amount that you think will deter Mr. Blekicki  
24 from engaging in this type of behavior in the future. Okay?  
25 Punitive damages serve two purposes, the Judge is going to

1 tell you. One is to punish, two is to -- to deter. You're  
2 going to have to decide what that number is. What -- what  
3 number is it that's going to deter Mr. Blekicki from driving  
4 around, making videos being distracted on the roadways of  
5 Dorchester County? You have to decide that.

6 Next, you have to decide whether or not MJV acted in a  
7 reckless, willful or wanton manner. Did they know, should  
8 they have known that he was unfit and that he was likely to  
9 engage in dangerous activity? Not just did they know, but  
10 should they have known, had they acted like a reasonable and  
11 ordinary employer should they have known? So you'll answer  
12 that question and then you'll decide an amount of punitive  
13 damages against MJV, if -- if any. What will cause them to  
14 act differently to prevent their employees from being out on  
15 the roadways, engaging in the type of behavior that was going  
16 on in this case.

17 Finally, if you checked yes to number one, if you  
18 checked yes to number one, then we're -- you will answer this  
19 question -- because if you check no to number one, then  
20 Amazon is -- that -- that they didn't have the right to  
21 control Kevin or MJV, then there's no punitive damages  
22 against them either. Again, they go scot-free, they go  
23 clear. They don't share in the responsibility.

24 But if you decide that Amazon acted in a reckless,  
25 willful or wanton manner, if you decide that they knew or

1 should have known, that they should have taken other measures  
2 to -- to better vet Kevin as the largest technology company  
3 in the world, to make sure that before they hired him as a  
4 delivery van driver in your community, that he wasn't a  
5 distracted driver. That he -- that he was fit to drive a  
6 vehicle. That he wasn't going to be out on the roadways  
7 engaging in distracted driving behavior. Or did they know  
8 this during the time that he was employed by them any of --  
9 if you find that they knew or should have known any of those  
10 things, then you would check yes to this.

11 If you want to -- to tell Amazon this is not acceptable,  
12 it is not acceptable for your vans to be out in our  
13 neighborhoods with drivers with 90 distracted driving events  
14 recorded by your own software. It's not okay for your  
15 drivers to be out in our neighborhoods delivering packages  
16 while they're looking at videos and pornography on their  
17 phone. It's not okay. We don't want it here in Dorchester  
18 County. If you want to send them that message, then you'll  
19 check yes to this question, and then you'll assign an amount  
20 of money that you think will send that message or that --  
21 that will make them change, that will affect change, that  
22 will make this community safer. That's the power that you  
23 are going to have back in this jury room today.

24 And the Judge will tell you that the law and negligent  
25 hiring, training, and supervision as it relates to that

1 punitive damages conduct is that we must show that the  
2 principal knew or should have known by the exercise of  
3 ordinary or reasonable care that the agent was incompetent or  
4 unfit to be driving as a delivery driver, not just when he  
5 was hired, but throughout the course of his employment.  
6 Should he have been taken off the road? Should he have been  
7 taken off the road? Both MJV and Amazon had this information  
8 about Kevin before this happened. What do you expect to  
9 happen when you've got a guy out there engaging in this type  
10 of conduct and the manipulation of data?

11 PJ sat up there before you, ladies and gentlemen today,  
12 and said that Kevin is a fantastic driver by their metrics, a  
13 fantastic driver. This guy is a fantastic driver. They  
14 outfitted him with their own monitoring data that measured  
15 his actions. They made him put it on his phone and it  
16 recorded these 90 distracted driving events. And if you  
17 remember the testimony of Kevin, you remember he said it  
18 would --- it would register when I manipulated my personal  
19 cell phone. When I picked up my phone, that's when it would  
20 record these distractions.

21 And I said -- now remember, I asked you about it in your  
22 deposition and don't you agree sometimes you would log out of  
23 the eMentor app. Yeah, I agree with that. Sometimes it  
24 wouldn't pick up things. We know he admitted on the day of  
25 and the day before, the only days we got a look at his phone,

1 we know that both of those days he told you he was engaged in  
2 distracted driving. He was looking at pornographic pictures.  
3 He logged into a website while he was in his car on his, on  
4 his route, and he -- yeah, oh, did he -- was he holding it or  
5 did he put it in the -- in the cup holder to watch the  
6 YouTube videos during the three hours that they were playing  
7 during his route?

8 We know he's admitted, he was engaging in distracted  
9 driving that day and we know they came in during their case  
10 and put up something showing there were no distracted driving  
11 events the day before or the day of the collision. We know  
12 by his own testimony he was engaging in distracted driving.  
13 He told you that. So again, think about the credibility of  
14 the witnesses and think about the information that both  
15 Amazon and MJV had available to them throughout the course of  
16 his job. Should they have taken him off the road before this  
17 happened to Shannon Shaw? Should they have taken him off the  
18 road? Is that -- would that have been reasonable to do that?  
19 And have we proven that by clear and convincing evidence?

20 Spoliation. Again, I don't want to go into all that.  
21 The Judge is going to tell you, if you think Kevin had been  
22 instructed to hold onto his phone by our instruction to him  
23 back in March of 2022 and then he got rid of it, the Judge  
24 will tell you -- you're able to draw an inference from that,  
25 that there's probably a reason he got rid of it, that there's

1 a reason that he had an obligation to preserve it and he  
2 didn't.

3 So we know what we found on there just last month when  
4 we finally got to look at his new phone from data that had  
5 transferred over. But I think it's safe to assume that  
6 there's a lot more stuff on there that you can assume was  
7 there for the entire time he was driving. Three hours during  
8 his shift, he watched these YouTube videos, taking his eyes  
9 off the road. He's admitted. This is a choice. This is  
10 dangerous conduct. This is recklessness.

11 I'm going to get back up and talk to you in a little  
12 while, ladies and gentlemen. But the evidence in this case  
13 has been overwhelming. It has not just been ever so  
14 slightly. That is all of the evidence. Those are all the  
15 witnesses that you heard from -- from the Plaintiff. All of  
16 the documentary evidence is here. The only witness that was  
17 even called by the Defense is PJ, who frankly we put up also,  
18 we believe that many of the things he said this morning,  
19 actually I -- and I -- I think I saw some of you nodding that  
20 some of the things that support a case of agency, he said  
21 this morning about the rules and the regulations that are all  
22 dictated to MJV by Amazon and that they had to abide by.

23 So again, thank you very much for listening. I'm going  
24 to get out and talk to you in just a little bit, close this  
25 thing up, but I appreciate your time, I appreciate your

1 attention and thank you again on behalf of Shannon Shaw.

2 THE COURT: Counsel?

3 MR. ERVIN: Please the Court, Your Honor?

4 THE COURT: Yes, sir.

5 MR. ERVIN: Good afternoon, ladies and gentlemen. As I  
6 said in the beginning when we opened up, your job is the  
7 trier of the facts. And I do thank you being here this  
8 entire week. It's been a long week, received a lot of  
9 information about testimony. And so now once the Judge  
10 charges you with the law, which you need to apply to this  
11 case, it'll be in your hands to make that determination  
12 whether or not the Plaintiff has met their burden in this  
13 case.

14 I want to say that it has been an honor and a pleasure  
15 to represent Kelvin Bugs and Kevin Blekicki in this case. I  
16 told you that you've seen throughout Mr. Bugs is a caring  
17 single, entrepreneur, business owner who has cared about his  
18 drivers and his employees. He is a man who has been in the  
19 food and (inaudible) for many years. He learn about team  
20 building and he saw an opportunity through the DSP program.  
21 He thought, this is what I want to do. I want to teach Yount  
22 kids, drivers out there and build a team to conduct a  
23 business. A small business owner who has spent his time here  
24 in Charleston, even though he and his family are in  
25 Spartanburg. He's come down here for many times, many days

1 of the week, and he is engaged in his business and with his  
2 team.

3 And Kevin Blekicki, he has -- he's an incredible kid.  
4 He was a kid at this time and he was vetted. He went through  
5 a process, background check, motor vehicle check, and he was  
6 hired by MJV. He is an employee of MJV. And MJV is an  
7 independent contractor for the DSP program. He is an  
8 independent contractor that signed a document that you'll  
9 see. And despite what Mr. Yarborough says, the contracts do  
10 matter. The four corners of that document matter as to what  
11 MJV as an independent contractor for Amazon does here in this  
12 contract.

13 So you'll have this information back there. You'll be  
14 able to go through it, but you've heard the testimony from my  
15 clients. Now, as we said in the opening, we fully admit  
16 negligence for this accident. There's no question that  
17 Kevin, on that afternoon, without being distracted, made the  
18 turn in front of Mr. Shaw and he did cause this accident. As  
19 I said in the opening as well, that to the extent you find  
20 that any of those damages, certainly the past medicals are  
21 the direct result of that accident, then yes, MJV is  
22 responsible. We are responsible for that. But that's for  
23 you to decide about the futures and I'll certainly get there  
24 in a second. But part of your burden has already been lifted  
25 on the negligence question. There's no question that MJV and



1 Kevin caused the accident.

2 As to the punitive issue, Mr. Yarborough just indicated  
3 there's absolutely no evidence by clear and convincing  
4 evidence. And the Judge will read -- read you the law on  
5 clear and convincing. It is a higher burden than just a  
6 preponderance, more likely than not. It's not the ultimate  
7 burden you see in a criminal case, by preponderance, by a --  
8 well ---

9 THE COURT: Beyond reasonable doubt.

10 MR. ERVIN: --- beyond reasonable doubt. It is just  
11 below that, clear and convincing. And I'll submit to you the  
12 evidence is not supporting any clear and convincing evidence  
13 that Kevin or MJV had any issues or any idea of any  
14 distracted driving concerns.

15 First and foremost, the very first witness that was on  
16 the stand was Trooper Fix. He was the investigating officer  
17 who showed (inaudible) the accident. And after being  
18 questioned about whether or not he has investigated accidents  
19 that were caused by distracted driving, he said yes, yes he  
20 did. He has investigated many of those accidents, but in  
21 this case, he could not find that Kevin was distracted  
22 causing the accident. He said it was a failure to yield the  
23 right way. He had no evidence that Kevin was distracted at  
24 the time he pulled out in from Mr. Shaw. There is no clear  
25 and convincing evidence that Kevin was distracted.

1           And then Mr. Green, Scott Green came up here and he --  
2       Judge Murphy will give you the law on the experts, expert  
3       testimony. You can agree to listen to it, discard it, and  
4       wave it, just as any other witnesses that were here before  
5       you. Mr. Green after looking at it, I think you -- if you  
6       recall, he said him numerous times, it was more likely than  
7       not Kevin May have had access to certain data on his phone,  
8       but he could not state whether or not Kevin was looking at  
9       anything at the phone in his hand at the time of the  
10      accident. He could not state that. There's no clear and  
11      convincing evidence that he was.

12           Kevin testified as well that he would not have done  
13      that. He has never done that in his car while he was driving  
14      for an Amazon for MJV on his delivery route. There's no  
15      clear and convincing evidence that he was distracted at the  
16      time.

17           Now, Mr. Green went through the three-day window, which  
18      was a court order. And -- and as to this spoliation charge,  
19      and I think there was testimony to it. There was a request  
20      by counsel to preserve or at least have that phone inspected  
21      early on. And throughout the process, discovery process, I  
22      was not able to speak to Mr. Kevin until January 10, 2023.  
23      And at that time, that was at a deposition that Mr.  
24      Yarborough took of Kevin. He didn't ask for that phone. He  
25      didn't ask to inspect that phone. And Mr. Kevin had the

1 phone on him at that time, but he had no intention of  
2 deleting or destroying any kind of evidence. There was no  
3 intent to do that.

4 And actually when it finally came time when Mr.  
5 Yarborough finally decided, yes, let me -- let's see this  
6 phone, he had already had a switch over to iPhone 11 to the  
7 14. That was a couple months after the deposition. But then  
8 once that occurred, once we had the request readily turned it  
9 over after the Court order and he got the information he  
10 needed. But that data that was extracted, Mr. Green could  
11 not state that Kevin was accessing it, was looking at it at  
12 the time of the accident. He could not prove that. And --  
13 and Kevin testified that he was not distracted at the time.  
14 Trooper Fix did not find that he was distracted at the time.

15 Also, you -- there is no clear and convincing evidence  
16 that Mr. Blekicki was distracted at the time of this  
17 accident.

18 As to the eDriving record, you saw the various  
19 distractions that were up there, 90 recorded. You also heard  
20 the testimony from Mr. Bugs, from Kevin, from PJ who's up  
21 here earlier, that eDriving metric is not completely  
22 accurate. It can pick up anything with the -- if the phone  
23 moves without even touching it. And at the time, certainly  
24 of the week of and the month of MJV and Kevin had the highest  
25 FICO scores within the system, that they were not distracted

1 driving, that this rabbit, this -- this phone that actually  
2 has the eMentor app on it was stationary in the vans and  
3 would record any kind of movements.

4 But here at the time of this accident, at the month of  
5 the accident, they had one of the highest scores within the  
6 DSP systems. Once again, there's no evidence of distraction.  
7 There was no evidence leading up to September that Kevin was  
8 a distracted driver. And Mr. Bugs testified that anytime a  
9 driver would come in, they would certainly have these scores.  
10 There were data that was provided to them, to the DSPs. That  
11 they would coach their drivers; they would have conversations  
12 with their driver; they would train their drivers on safety.  
13 And you heard Mr. Bugs state that every single morning with  
14 the standup meeting they had, safety was the number one  
15 topic, in addition to everything that was going to go on for  
16 that day. Safety has always been first and foremost with Mr.  
17 Bugs and his company MJV.

18 Regarding the hire. You heard testimony from Mr. Bugs  
19 and from Kevin that the process, the way it occurs is once  
20 Mr. Bugs was given this opportunity after he was almost about  
21 to retire, to join a team, to join a company, to create a  
22 company to contract with Amazon, to build this team of  
23 delivery drivers. And he took that opportunity. He went  
24 through the process, he went through the background and  
25 established his business.

1           And then he, Mr. Bugs went out and advertised for his  
2 drivers, which is how he met Kevin. Kevin had shown up for  
3 another DSP potential opportunity. And when Mr. Bugs met  
4 Kevin, they struck up a conversation and they hit it off.  
5 You heard how -- how Kevin looked up to Mr. Bugs as a mentor,  
6 as someone he trusted, as someone that he relied on, and how  
7 Mr. Bugs enjoyed Kevin's company. Yes, Kevin is a -- a  
8 quirky kind of funny guy. You could see that, certainly from  
9 the social media post, which is on his own personal phone.  
10 MJV does not have access to his personal phone. And Mr.  
11 Kevin had testified earlier that he would not be accessing  
12 social media on his driving. While he's driving on a shift  
13 with -- with MJV, he was not being distracted and there's  
14 absolutely no evidence that he was at the time of this  
15 collision or while he was on his shifts for MJV.

16           And the training process that they go through, once Mr.  
17 Bugs interviews and finds the drivers, yes, they have to go  
18 through an onboarding process with Amazon. You heard how  
19 they have the background checks and the motor vehicle checks,  
20 and then they come through and do a three-day training, but  
21 that training doesn't end there. It continues on with MJV.  
22 MJV throughout the life of that DA was with him as a -- as a  
23 member of MJV, just continuously being trained, continuously  
24 being coached on their performance, on their safety as they  
25 go through their daily shifts.

1           So I would submit to you, there has been no evidence of  
2 any negligent hiring. They went through the proper channels,  
3 the proper procedures, they were vetted, and MJV, with Kevin  
4 specifically as an employee, had an obligation and duty to  
5 train him and continuously coach him, which he did. And you  
6 saw this from the documentation. That is exactly what he has  
7 done for Kevin and his other das that are part of the MJV  
8 team. I'll submit to you, ladies and gentlemen, there is no  
9 -- there is no evidence of negligent hiring.

10           And once again, MJV is an independent contractor.  
11 Amazon does not hire these drivers. The local DSPs do. It's  
12 their responsibility, is their duties. You'll see under the  
13 agreement section 10, they're in charge of the person, in  
14 charge of hiring them, in charge of paying them, giving them  
15 the benefits. It's an MJV responsibility and duty. And  
16 that's exactly what Mr. Bugs does for his staff. What he did  
17 for Kevin when he was on staff with MJV.

18           Now, you do have the biggest question to answer on the  
19 damages. As I've already submitted to you, the damages, or  
20 at least certainly the medicals that have been the direct  
21 result of the accident, Mr. Shaw has incurred. That if you  
22 find are the result of this accident is MJV's responsibility,  
23 and that is the 400 -- if you find that the total 400,000  
24 plus part of that, that is our responsibility and -- and  
25 we've admitted that.

1           As to the other damages, certainly the future damages, I  
2 would ask that you would go back and listen to and recall  
3 certainly what the orthopedic treating physicians, that Dr.  
4 Shaaf left rotator cuff surgery went very well. He has not  
5 seen Dr. Shaaf in over a year, that he had a remarkable  
6 recovery. Yes, he's going to have some limitations. Yes,  
7 he's not going to be able to be a Comcast lineman. Again, we  
8 understand that. But Dr. Shaaf did not say he could never  
9 work here. That he would like to have that conversation with  
10 Mr. Shaw when that time comes. And as Dr. Battista stated,  
11 that time will come after this next procedure. He's going to  
12 have in December the cervical (inaudible).

13           But as to all the surgeries that he's had, he's had  
14 remarkable recovery. He's had remarkable relief. It's been  
15 in the medical records they testified to. 95 percent relief  
16 in the neck, over 90 percent in the back. Fully released  
17 from his care for the left shoulder, though he has to make  
18 sure he does maintain that. But it's been two years and he  
19 has. He certainly has maintained that. But he will, and I  
20 think Dr. -- Mr. Shaw stated you would like to work again and  
21 I think he certainly can work again.

22           But right now, as to the future wages, that is  
23 speculation. Dr. Battista agree with that, that until he  
24 actually gets through this recovery, he cannot state, he  
25 doesn't rule it out. And Mr. Shaw certainly would like to

1 work again. So as to those futures, it's a question mark and  
2 I would say it's a speculative issue that I think as Ms.  
3 Yount actually factored into her earnings calculations, I  
4 would certainly defer to her and the lower level percentage  
5 of a potential future issue, because right now we don't know  
6 100 percent, there's an indication that he can work again and  
7 that there's no reason why Dr. Shaaf and Dr. Battista  
8 wouldn't eventually sign off on that. As Dr. Battista said,  
9 he cannot do that until after this next surgery.

10 Now, one of the biggest issues, I think is the head --  
11 the head. Now, as I indicated yesterday and when we finally  
12 got into the medical records, let's see, Exhibit 48, it's  
13 actually here on the very first page. Remember I asked Dr.  
14 White whether or not he had been diagnosed with concussion.  
15 He had not been. At MUSC, he was not diagnosed with  
16 concussion. And these guys stood up and they said, wait a  
17 minute, wait a minute, let's look in here. They did find the  
18 word concussion in the records and you'll see that, he was  
19 not diagnosed with a concussion.

20 He actually -- because he presented with a history of  
21 potentially hitting his head, he was worked up for a  
22 concussion. He was worked up as he should have been. But as  
23 he goes through the process, and it's all right here in the  
24 records, he had the CT scan of his head, which was absolutely  
25 normal. No indication of any change in matter whatsoever.



1 No -- no issue or no indication of a brain damage, a brain  
2 issue. He was diagnosed with amnesia. And I'll submit to  
3 you it was a temporary amnesia because Mr. Shaw sat in the  
4 stand yesterday and testified that he did actually remember  
5 what happened that day leading up to the actual accident. He  
6 recalls washing his motorcycle that day. He recalls getting  
7 ready to go pick up the sunglasses. He recalls getting  
8 Blaze. He recalls driving down the road. He recall seeing  
9 Kevin stop at the stop sign before he pulls out. It was a  
10 temporary amnesia diagnosis that he had on September 24th.  
11 It was two years later. He remembers what happened.

12 Now, Dr. White at the time he saw Mr. Shaw in December,  
13 roughly two and a half months after the accident, Dr. White  
14 didn't have the MUSC records. It says that in his report.  
15 He didn't have the opportunity to review those records, where  
16 had he had them at the time of his first appointment, he  
17 would've realized he was not diagnosed with a concussion and  
18 that the CT scan was negative. But yet Dr. White, two and a  
19 half months later says he's got a concussion when there was  
20 no evidence of a concussion. And Dr. White stated, I didn't  
21 do any other tests, didn't do any other scans; didn't do any  
22 other cognitive tests because he said he didn't have to. He  
23 didn't need to.

24 Well, he didn't know that he wasn't diagnosed with a  
25 concussion. He was diagnosed with amnesia, temporary

1 amnesia. But then Dr. White and Ms. Lustig said, well, you  
2 know, we didn't do the testing. We didn't do -- what's  
3 exactly what he said here. They did do the testing because  
4 it was too expensive. Said that Shannon was too busy or said  
5 that Shannon couldn't sit for two days to go through any kind  
6 of cognitive -- cognitive testing. Which doesn't make any  
7 sense, but yet they're asking -- and that one number they put  
8 up there for future medicals was -- and I think Ms. Lustig  
9 testified it was \$12.5 million, to have almost 24/7  
10 monitoring Mr. Shaw. Because apparently Mr. Shaw can't do  
11 anything for himself anymore. But that's not the case. You  
12 saw him testify.

13 He is absolutely capable of doing things. His  
14 orthopedist encouraged him to do things and get out in the  
15 community, not sit around. Given that Ms. Lustig has said  
16 he's sitting in his chair for eight hours a day, it doesn't  
17 make any sense. And they've done no diagnostic testing to  
18 prove this mild, medium traumatic brain injury. There's no  
19 evidence of it. It doesn't make any sense. And here he was  
20 not diagnosed with one the day of the accident. And the day  
21 of the accident, when the EMS arrived within 10 minutes, he  
22 had a Glasgow Coma -- Coma Score, which does tell you your  
23 cognitive abilities at the time of a traumatic event, it was  
24 a 14th. And by the time he gets to MUSC, it's the 15th.  
25 He's verbally responsive. He is talking. There was

1 testimony he actually called his ex-wife. He spoke to  
2 Trooper Fix in the -- in the EMS. He is awake, he's  
3 cognitive, he's speaking, yes, he doesn't have the memory of  
4 the exact impact because he did have amnesia. But that  
5 amnesia was temporary. He was able to recall as the time  
6 passed, as he sat there yesterday, what happened, what  
7 happened that day.

8 Now, I know he has been depressed. I know he's had some  
9 anxiety, certainly without having a job right now, without  
10 being released to go back and forth yet. Of course he is.  
11 That doesn't mean he has a TBI, doesn't mean he has a brain  
12 injury -- injury. Ms. Lustig said that, you know, it -- she  
13 would encourage him to do some kind of therapy, to talk to  
14 his people. But yet she's saying he needs to be monitored  
15 24/7. And that's just not -- it doesn't make sense. He --  
16 he's not a vegetable. He's not incapable of taking care of  
17 himself.

18 And once he works with this orthopedic injury, I think  
19 he will be able to work again. I think he will be able to  
20 get back out and get more action. I mean he certainly was  
21 able to go to football games. He went to football games last  
22 year. He went to the Carolina Bowl game earlier this year.  
23 He's able to drive. He admitted he -- he's driven his  
24 motorcycle since this happened.

25 I would just ask you to weigh the evidence you see, the

1 testimony you've heard and be fair and feasible. We know  
2 there's going to be a verdict within (inaudible). We know we  
3 caused the accident. We know that some of these medical  
4 bills are certainly related to that accident and we take  
5 responsibility for that.

6 But as to the future issues. Orthopedist said, look,  
7 with the shoulder he may have a 10 percent -- 60 percent  
8 chance of re-tear or he may or may not. He may not have  
9 that. As for the cervical, Battista said, look, once he has  
10 his stimulator implant, I think he's going to have 90 percent  
11 greater recovery from it, relief and pain, which will allow  
12 him to do things. Yes, I know he -- Mr. Shaw is covering  
13 from his orthopedic injuries.

14 Brain issue, I think is a very big question here in this  
15 case. Dr. White kept saying common sense, common sense, but  
16 he didn't do any testing. He didn't do any other scans. The  
17 only scans we had in the case is from MUSC. He said he was  
18 fine. The CT scan of the head was normal. There's no  
19 indication of any changing matter. And that he was  
20 responsive. He wasn't agitated, he wasn't confused following  
21 the accident. And you'll have that record back there with  
22 you. So the head injury, we certainly dispute. Orthopedic  
23 injuries, of course we don't dispute those. He -- he's  
24 certainly sustained those injuries and he's done very well  
25 with the surgeries, treatments, getting near the end for that

1 last implant. And after he gets that, the doctor say, hey,  
2 we'd like to talk to him about what kind of jobs he can do.

3 He testified he used to be a dispatcher. There's  
4 certain things he can't certainly do that are not heavy  
5 lifting, heavy manual labor. There's sedentary jobs. Jobs  
6 that he can make some money. And I know he hasn't -- he  
7 hasn't looked yet because he hasn't been released. But that  
8 day is coming. Once he's released from his orthopedic care,  
9 he can go out and find a job, which he says he wants.

10 So ladies and gentlemen, thank you again for your time.  
11 I know it's been a long week. We just ask that at the end of  
12 the day, you be fair, you be reasonable, in your verdict.

13 THE COURT: Counsel?

14 MR. STEPHENSON: Your Honor, may I please the Court?

15 THE COURT: Yes, sir.

16 MR. STEPHENSON: Thank you, Your Honor.

17 Ladies and gentlemen of the jury, my name is Jeremy  
18 Stephenson. I'm represent Amazon Company. (Inaudible) aware  
19 of. Again, thank you for being here this week and paying  
20 attention, I thank you for that service to the community.

21 Amazon is not at fault for the left turn that Kevin made  
22 on September 24, '21. They're not. Kevin and Kelvin have  
23 admitted they are the ones at fault for making that left  
24 turn. Amazon did not cause Kevin's car to turn left that  
25 day. Amazon did not hire Kevin. It did not employ Kevin.

1 It did not pay Kevin. It did not have the power to fire  
2 Kevin. There is nothing Amazon could have done to foresee  
3 Kevin making a left turn from that stop sign or to have  
4 prevented him from making a left turn at that stop sign.  
5 Amazon is here for one reason because they want tens of  
6 millions of dollars. They're fishing for waves. They have  
7 waived dollar figures about Amazon and Amazon employees to  
8 try to inflame you like a red cape in front of a bull.

9 You'll be asked later and the Judge will explain to you  
10 how to fill out this form. And the first question is -- and  
11 the longer version of the instructions, this is a shortened  
12 version -- is, was Kevin an employee of Amazon or were MJV  
13 and Kevin independent contractor? The only way you can  
14 answer this question, yes, if not only Kevin is an employee,  
15 but so are the other 285,000 drivers out there on the road.

16 So as we go through this closing, I will give a little  
17 story, a scenario if you will. We will then review the  
18 evidence that has been presented. We will then talk a little  
19 bit more about how that evidence applies to the form. And  
20 finally at the end, I've got a couple of just greatest hit  
21 bullet points that I'd like to toss out because they were ear  
22 catching in this trial. I don't have any PowerPoint  
23 presentation. I don't have an army of assistance out there  
24 to help me. It's just me up here doing it myself. As you  
25 saw I was operating the slides.

1           So Let's cite, I hire a contractor to build me a house.  
2   Is that contractor my employee? Of course not. We all  
3   agree. Let's say I give that contractor a set of  
4   architectural plans. I want you to build this house exactly  
5   this way. Here's the plans. Do it this way. Does me giving  
6   my contractor architectural plans render them into my  
7   employee? Of course not. We again all agree with that  
8   scenario. My contractor hires subs, painters, electricians;  
9   they hire helpers, et cetera. Are those people my employees  
10   now? Of course not. I say here are the paint colors I want  
11   on my walls. Here's the fixtures I want in my bathrooms. I  
12   give very specific instructions. Does that make them my  
13   employees? Of course not.

14           Say -- say some rules if you're working on my house. If  
15   you're working on my house, I want no smoking and no muddy  
16   shoes. Does creating some house rules as contractors come in  
17   my house, does that make them my employees or do they still  
18   remain independent contractors? Of course they still remain  
19   independent contractors even if I tell the contractor don't  
20   bring your muddy shoes in my house. I'm allowed to create  
21   rules while still maintaining that independent contractor  
22   relationship.

23           We all live in that world. You are allowed to apply  
24   your common sense to this situation. We all live with that  
25   same -- when the person comes to work on your HVAC, they put

1 on little booties. You're allowed to have rules in your  
2 house that doesn't make them your employee. Say, this is a  
3 large project going on in my house and I tell the contractor  
4 and the subs, I want a list of everyone's name who's going to  
5 be on my property. That's a reasonable thing to do. There  
6 are various contractors, government contractors around here  
7 that they absolutely are allowed to have lists of the people  
8 who are coming in and checking in at the gates. You have a  
9 right to know who is working on your project. I'm allowed to  
10 know every plumber's helper who steps foot on my house.

11 And that does not transform that plumber's helper into  
12 my employee. It doesn't because I'm allowed to know that.  
13 And that exchange of information about the identity of who is  
14 doing the work does not transform that person from an  
15 independent contractor to an employee. You're starting to  
16 see a pattern here. Similar things with the way Amazon deals  
17 with its DSP and it's DA drivers. Some things in common  
18 here.

19 Say I ask for daily reports of how the construction's  
20 coming along because I want to know how this project is  
21 progressing every day. Say I install a camera in my lawn so  
22 I can watch them in real time as they're doing the work  
23 because I as the owner have a right to see how the project is  
24 coming along. And that flow of information about how the  
25 contractor is doing my work does not change them into an



1 employee from an independent contractor.

2 Say I say, you know what, there are contractors all over  
3 here, if you're going to be on my property, my neighbors are  
4 real picky. I've had so many problems with them. I want you  
5 to watch a little video I've made about our house rules here.  
6 Everyone who comes to my property, you're going to be here  
7 working on a major renovation. You're going to be here for a  
8 couple months. I've -- my wife has made a training video for  
9 you all to watch. If you're working on our house. Does  
10 making contractors watch my wife's training video make them  
11 into employees and not independent contractors? Of course  
12 not. That is common sense.

13 So if you ask the plumber's helper who's working on this  
14 construction project, the lowest band on the totem pole, who  
15 controls your work? That plumber's helper might say, they  
16 don't let me smoke. They make me wear booties. They tell me  
17 what time I need to arrive. In the beginning of the day,  
18 they told me what paint colors to use. It sure feels like  
19 they control my work. Sound familiar? Because if you ask  
20 Kevin, boy, he was uncomfortable up there. If you ask him  
21 the same question, enough different ways you can get to say  
22 yes, that the sky is purple and the grass is blue and his  
23 name isn't even Kevin. If you ask him enough times and he is  
24 so uncomfortable on that witness stand.

25 Kevin is one out of 285 other drivers in the Amazon DSP

1 system. He is an ant on the leg of an elephant. And you're  
2 asking that and about one out of 235, do you think they  
3 control your work? And as the Judge will tell you, you can  
4 evaluate the witness's position in the credibility. What  
5 we'll say is Kevin's opinion of whether Amazon controls his  
6 work is simply not the right place.

7 If you go -- we gave the example of what the difference  
8 between a franchise and a DSP, because again, that's a  
9 scenario many of us in our everyday lives common sense are  
10 familiar with. If I go to McDonald's, I can get the exact  
11 same cheeseburger and every single McDonald's around the  
12 country. It's made the same way. Why? Because it is every  
13 person is wearing the same uniform wherever I go. Why?  
14 Because that's the way it is. The stores are laid out in the  
15 exact same footprint. Why? Because it is. And if I go ask  
16 that person flipping the burgers at McDonald's, who do you  
17 work for? Maybe if they hadn't worked there that long, maybe  
18 if they don't have the most education, the most  
19 sophistication, they might say, I think I work for  
20 McDonald's. But that person does not work for McDonald's  
21 corporation in Oak Brook, Illinois even though every single  
22 McDonald's has the exact same cheeseburgers.

23 So let's look at the evidence we have to apply to  
24 whether Kevin is an employee or an independent contractor.  
25 What evidence has come into this case? There are only a few

1 witnesses. There's the cell phone guy who said, I'm here  
2 from Tucson, Arizona. I can see that Kevin streamed high res  
3 videos on his personal phone. Okay, get it. How does that  
4 relate at all to whether Kevin was an employee of Amazon or  
5 an independent contractor? Not at all. Cell phone guy, Mr.  
6 Green has zero relevant evidence on whether Kevin was an  
7 independent contractor or an employee.

8 We have Kevin himself, as I said, Kevin is the ant on  
9 the leg of an elephant. Substantively what his testimony  
10 offers. Two, whether he's an employee or an independent  
11 contractor does not influence the greater weight of the  
12 evidence much. It's not entitled to much weight.

13 Next we have Kelvin Bugs, the owner of the DSP. He  
14 stated despite what they shoved under his nose and got him to  
15 sign in a deposition, that's their big piece of evidence.  
16 You saw how their questioning style goes, that they got him  
17 to sign something in his deposition. They shoved under his  
18 nose. But his testimony was I signed an independent  
19 contractor agreement. I understood it was my company. I  
20 understood I had authority to hire people and fire people and  
21 that I controlled them. I had my own safety meetings that we  
22 ended with them prayer every day. These are my employees.  
23 These are not Amazon employees.

24 So from a greater weight of the evidence, Kelvin's view  
25 of what he understood, he was in a relationship. What his

1 side of the relationship was is worth a lot of weight. From  
2 a greater weight of the evidence that is compared to the ant  
3 on the leg of the elephant, this is now to a boulder size.

4 So then the other piece of evidence we have on this  
5 independent contractor was PJ. This guy knows more about the  
6 Amazon DSP program than anybody else. Certainly more than  
7 Mr. Green the cell phone tech. He knows more about this  
8 specific topic of how the DSP program is run than probably  
9 anybody else in the world. And he clearly identified that  
10 these are independent contractors. They are all independent  
11 contractors. There are several thousand of them. And why?  
12 Because Amazon cannot employ 285,000 drivers. It can't. It  
13 doesn't want to. It foresaw that in 2013 when it set up  
14 these relationships. It has a legitimate business reason for  
15 running its business in this manner. And it does.

16 There is nothing PJ testified to that supports  
17 Plaintiff's case that Kevin is an employee and not an  
18 independent contractor. So when we get to the point of  
19 filling out this form, question one, on the issue of is Kevin  
20 an employee or an independent contractor? Clearly he's an  
21 independent contractor. Under the greater weight of the  
22 evidence in this case, he is an independent contractor. And  
23 you should answer this first issue, no. Because the only way  
24 you can answer this issue yes, is if you believe Amazon was  
25 responsible for him turning left that day and you believe

1 Amazon is equally responsible for every left turn taken by  
2 every DSP driver, all 285,000 of them. And your common sense  
3 tells you that no, that simply is not correct.

4 As to the issues of damages, I have nothing to add  
5 beyond what counsel for MJV said. We agree with the entire,  
6 I will shorten this that much.

7 But then we get to the punitive damages. This is a  
8 higher burden, even, the clear and convincing standard. We  
9 have presented, and it's been undisputed that in the month of  
10 September, 2021, Kevin had zero distracted driver readings  
11 from his phone. Zero. He had a fantastic rating. So the  
12 suggestion that somehow Amazon should have foreseen that he  
13 was a menace to society is not about facts, is not about  
14 common sense, it is about a big money grab by the Plaintiff  
15 because he had zero distracted driving. Even if it was  
16 distracted driving events. PJ explained distracted driving  
17 could be a bouncing in your cup holder. It's not necessarily  
18 a relevant piece of information.

19 So let's talk about some of the greatest hits in this  
20 case. Who could better testify about Mr. Shaw's condition  
21 before and after the accident than the girlfriend he lives  
22 with. They didn't call her to testify. We really would have  
23 liked to hear her perspective on all this, but they  
24 intentionally hid her from you. Why? His two children.  
25 Again, our hearts go out to his son who saw this change in

1 his dad. That could have been compelling testimony perhaps  
2 we will never know. And you cannot assume that because they  
3 hid those witnesses from you the jury.

4 MR. YARBOROUGH: Your Honor, that's a blatant  
5 misrepresentation. I'm sorry, I -- I have to object. Didn't  
6 -- I mean ---

7 MR. STEPHENSON: They did not call them as witnesses.

8 MR. YARBOROUGH: Your Honor ---

9 THE COURT: All right. Sustained. The second part was  
10 blatant.

11 MR. STEPHENSON: They did not call them as witnesses.  
12 And we -- at some point we have to figure out why they didn't  
13 call them as witnesses. They could have, but they didn't.

14 So next greatest hits, Mr. Shaw is asking for tens of  
15 millions of dollars and yet was only here for a very brief  
16 portion of this trial. Again, it would have been different  
17 in this trial if he had sat in that chair closest to you so  
18 that you could observe him during the trial. But he was not  
19 sitting there while asking, while his lawyers, plural, ask  
20 you for tens of millions of dollars. I only raise that as an  
21 odd point in this case because in many cases the Plaintiffs  
22 are in the courtroom and here wasn't. That's a little odd.

23 Actually one of the things that jumped out was when  
24 Kelvin was on the witness stand and was asked by his  
25 attorney, what would you say to Mr. Shaw if he was here in

1 the courtroom? And Kelvin said, I would apologize to him  
2 personally. Unfortunately, I can't. He's not here.

3 Other just sort of greatest hits some of these came up  
4 in the other closing. It's truly remarkable when you're  
5 treating doctor says, I wouldn't give you that test because  
6 it might not be admissible in Court. Really, Doctor, that's  
7 the standard. Or, oh, it might be too expensive. Well, not  
8 compared to the many tens of millions of dollars they're  
9 asking for here.

10 Another thing with Dr. White that has kind of jumped  
11 out, he's been seeing him for two years. I think it is  
12 reasonable to assume Mr. Shaw is depressed. He's sitting at  
13 home for long hours. He's irritable, he's grouchy. Dr.  
14 White, have you considered referring him to any kind of  
15 therapy or -- the other question that wasn't asked -- is  
16 other non-pharmacological intervention, talk therapy, maybe a  
17 regular exercise program. Some of you may have heard the  
18 phrase, movement is medicine, get up and walk 10,000 steps  
19 every day, two months later, your life will be different.  
20 Things like that. That's common sense. And yet in the two  
21 years, Dr. White saw him and prescribed him pill after pill  
22 after pill, never once referred him to therapy, never once  
23 suggested he get outside and saw the shine sun in his eyes  
24 and walk.

25 So he's angry at his kids and asking for money because

1 he yells at his kids. On some level that sounds like they're  
2 asking us to pay for him to yell at his kids. That just  
3 sounds strange.

4 Ladies and gentlemen of the jury, thank you for your  
5 time and attention. I have gone far longer than I expected  
6 or intended to. I ask you to apply your common sense as well  
7 as the facts under the law that the Judge will give you.  
8 They are independent contractors. Plaintiffs cannot sustain  
9 their burden of proof by a greater weight of the evidence  
10 that they were employees and not independent contractors.  
11 Amazon was not responsible for Kevin turning left at that  
12 stop sign that day. Thank you again for your courtesy. Your  
13 Honor.

14 THE COURT: Counsel?

15 MR. YARBOROUGH: That was pretty unbelievable. Pardon.  
16 First of all, I made a decision not to put Kristen and  
17 15-year-old Blaze on the stand this week. Kristen is a mess.  
18 She's -- she -- every time I talk to her, she's -- she starts  
19 crying. The idea, the anxiety she had about coming up and  
20 having to get up there and talk about the role and how her  
21 role has gone from being a girlfriend to a caretaker, it was  
22 -- it was too -- it was too much for her. She was -- she was  
23 terrified. And I made a decision. We had -- you heard from  
24 the doctors, you heard from his ex-wife, you heard from Shaw,  
25 you heard from his coworker. I just didn't feel like I



1 needed to put her through it.

2 And same with 15-year-old Blaze. I've got a 15-year-old  
3 son. And I thought about putting him on that stand and  
4 having him to have to deal with what you just saw and that  
5 type of questioning, and I was like, I'm not going to do it.  
6 It's not worth it. They are here. She's -- she's here.  
7 She's been here around the courthouse all week. They had  
8 every right to call her again, more trickery, more smoke and  
9 mirrors. They, in their case, the Defense, the biggest --  
10 one of the biggest companies in the world with all of the  
11 resources in the world and the subpoena power of the Court.

12 If they wanted -- if there was something to hide, if  
13 there was something that they wanted you to hear from her,  
14 they would've put her up there and brought it out through  
15 her. The same with doctors. You did not hear from a single  
16 doctor on the side of the Plaintiffs -- they, I mean, on the  
17 side of the Defense. They, Amazon did not bring a single  
18 with all of their resources. They had the right to hire.  
19 It's done in cases routinely.

20 Both sides hire medical doctors and experts and whatnot.  
21 Here, we didn't have to do that. We didn't have to hire  
22 medical doctors in this case. You know why? Because  
23 Shannon's treating doctors all supported his injuries. They  
24 all were willing to come here and tell the truth because  
25 that's what -- that's how they -- how much they believe in

1 him. That's how much they want to help him. They were  
2 willing to come here and tell the truth.

3 You know what the Defense had the right to do? They had  
4 the right to go out and hire any medical expert they wanted.  
5 They could not find a medical physician in this State or in  
6 this country to come in here and dispute these injuries. If  
7 they could have, they sure would have, but they didn't. Not  
8 a single medical doctor.

9 MS. RAYNER: Objection ---

10 MR. YARBOROUGH: --- physician.

11 MS. RAYNER: --- Your Honor, this is similar to the  
12 objection he made during our closing suggesting that we're  
13 hiding something.

14 MR. YARBOROUGH: Your Honor, it's not.

15 THE COURT: You may continue.

16 MR. YARBOROUGH: Okay, thank you.

17 They had the right to call whatever witnesses they  
18 wanted to dispute the Plaintiff's treating doctors. And they  
19 didn't. All of the evidence, all of the medical evidence was  
20 put in by the Plaintiff. Not a single physician was called.  
21 And again, Sarah Lustig, you heard her talk, and I -- I --  
22 Sarah is a nurse, seems very professional to me. All Sarah  
23 was doing was taking the information from the doctors,  
24 analyzing it and putting numbers on it. If the Defense  
25 disagreed with that methodology or those numbers, they could

1 have brought their own life care planner in here to dispute  
2 that. And they didn't.

3 If they didn't agree with Tricia Yount's economic  
4 analysis of all of this information, they could have brought  
5 their own economist in here to dispute that. But they  
6 didn't. They did not put up a single witness to dispute any  
7 of the damages that you've heard. If they could have, they  
8 would have.

9 So now all you have, and remember, arguments of counsel  
10 are not evidence. Mr. Ervin who got up here talking about  
11 how Mr. Shaw doesn't have a brain injury, is not a physician.  
12 His belief and testimony is not evidence. The evidence that  
13 you'll have back in the jury room is the testimony of the  
14 physicians throughout the trial. The damages that are  
15 documented on the medical bill summary and in Tricia Yount's  
16 reports, the life care planning tables that are in there.

17 And look, if there's something in those life care  
18 planning tables that you disagree with, that you think, hey,  
19 we don't think he's going to need this. You know, we don't  
20 think he's going to -- we don't believe Dr. Battista. When  
21 he talked about the fact that someone who's had this type of  
22 cervical fusion in the future, more likely than not, is going  
23 to have to have adjacent level surgeries. So we're going to  
24 have to end up fussing the above and the below levels at some  
25 point in the future. And for that reason, I included it in

1 the plan.

2       You don't believe that's necessary, take it out. Take  
3 it out. Take out things that you think that Shannon is not  
4 going to need. If you disagree with anything his physician  
5 said, if you think that any of -- any of these  
6 recommendations made by his physicians are not going to put  
7 him in a position of being as close to whole as possible,  
8 then take them out and give the others, parse it out. Go  
9 through anything you think is not reasonable or necessary.  
10 You disagree with his doctors? Use your judgment. You have  
11 the power. You have that power today.

12       I -- it was my job to bring all this information to you  
13 and it's been a hard, long job. And today I'm transferring  
14 that burden to you. You guys now have that burden of  
15 deciding what's going to happen with Shannon's future and who  
16 is going to be responsible for Shannon's future medical care  
17 needs, any lost wages that you believe will exist, any loss  
18 of earning capacity you believe will exist. And then of  
19 course, that non-economic damages portion, which is a  
20 significant -- that's a significant issue that -- that you  
21 have back there to consider, what value to put on that.  
22 That's going to be your job.

23       The few other things that I want to address, the jury  
24 charges are long -- and I'm sorry, and it -- it -- they --  
25 they -- there's a lot of things the Judge is going to

1 instruct you -- they are 18 pages, so she's going to read you  
2 18 pages. You're going to -- it's -- you're going to --  
3 there's a lot to listen to. There's a lot of different  
4 elements. I would ask agency page 7, so you'll -- you'll  
5 hear six pages of things read to you and then you're going to  
6 get to this agency charge.

7         And again, we just heard some ridiculous story about  
8 building a house and contractors and subcontractors and  
9 employees and so on and so forth. I don't even understand  
10 what that was about. But it has nothing to do with this  
11 situation in this case. And Amazon, this company that built  
12 this empire, they built and designed this entire empire. And  
13 you heard it. They have 285,000 of these vans out on the  
14 roadways. Don't you think they should have responsibility  
15 for these vans and their drivers? Don't you want them to  
16 have responsibility for these vans and these drivers out  
17 driving around in your neighborhoods? You get to make that  
18 decision today.

19         And what the law says, and what this agency charge says,  
20 it's not about what they're called. It's about the right to  
21 control them. It's not about -- it's whether they have the  
22 right to control the means and the methods. The means and  
23 the methods.

24         This is the Plaintiff's evidence, documentary evidence  
25 alone that we put on in this case, independent contractor.

1 Think about the scales. Think about the burden of proof  
2 while you're back there. Think about when the Judge tells  
3 you that what a contract language and a contract declaring  
4 that a particular relationship is an independent relationship  
5 and not an agency relationship is not determinative. Rather,  
6 as I just instructed you, the fundamental test for whether an  
7 agency relationship exists is whether the facts demonstrate  
8 that the principle has retained for itself the right to  
9 control and direct the work to be performed.

10 Kevin was the face of Amazon. They controlled  
11 everything he did. Everything about the package delivery  
12 process. I was looking the other day at a email I got when  
13 an Amazon package got delivered to my home. And on that  
14 email, there's a picture of the package and it says,  
15 "Delivery by Amazon." Doesn't say delivery by the DSP. It  
16 says delivery by Amazon.

17 Finally, just going back to the damages common sense,  
18 ladies and gentlemen, what do you expect to happen when  
19 there's a body imprint in a face imprint in the side of the  
20 van? What do you expect to happen when the ferocity of the  
21 collision breaks a man's back in three places and tears up  
22 all of his other joints in his neck, back and shoulder? What  
23 do you expect to happen to the soft tissue of his brain? And  
24 you can use your common sense.

25 Again, you decide was Dr. White credible or not? Use

1 your common sense with regard to whether you've heard of  
2 other instances in the NFL or wherever in society where  
3 people have these cognitive difficulties, they still walk  
4 around, they still look normal, they still talk normal, but  
5 their brains just don't function the same and as they age, do  
6 you think it gets better? No. It's as they age that they  
7 have more problems and that's why there is all of that need  
8 for the future medical care that Dr. White talked about and  
9 that Sarah Lustig incorporated into her plan as a result of  
10 that.

11 I can tell you sitting over there in the corner, she was  
12 introduced to you at the beginning of the trial is Kelly  
13 Scott. She's with Amazon Global Risk Management. They're  
14 watching this trial. They are watching this trial. And what  
15 you the jury do will be determinative of what they do next.  
16 It will be determinative of whether or not they make a change  
17 in how they handle, monitor, and retain their fleet of  
18 285,000 drivers out on the roadways in your community and  
19 throughout the country and throughout the globe.

20 And that's again, you have the ability when you --  
21 that's the power that you have when you go back there in that  
22 room to -- to make that decision. Does the phone call that  
23 Kelly makes, when your verdict comes back, is that phone call  
24 going to be, got away with it? Business as usual? We're not  
25 -- we're not on the hook for our Amazon delivery drivers, so

1 we don't have to worry about it. We don't have to worry  
2 about what they do when they're driving. We don't have to to  
3 worry about their habits. We don't have to worry about any  
4 of that because it's always going to fall on the little guy.  
5 It's going to fall on the DSP.

6 I argue that's not fair. Amazon should share in the  
7 responsibility, they should share in the responsibility of  
8 safety and be held accountable for the safety of their  
9 delivery associates and they should also share in the  
10 responsibility of accountability for the damages and the  
11 harms caused by their delivery associate drivers.

12 And thank you ladies and gentlemen very much for your  
13 time and attention.

14 THE COURT: Ladies and gentlemen of the jury, it's now  
15 time for me to charge you on the law in this case. I remind  
16 you that during this trial you and I have certain duties to  
17 perform. As the trial judge, it's my responsibility to  
18 preside over the trial of this case and I also have the duty  
19 to rule on the admissibility of evidence offered during this  
20 trial. You are to consider only the evidence before you. If  
21 there was any testimony ordered stricken from the record  
22 during this trial, you must disregard that testimony. You  
23 are to consider only the testimony which has been presented  
24 from the witness stand, any exhibits which -- which have been  
25 made part of the record in this case and any stipulations of



1 counsel.

2 I have the additional duty to charge the law applicable  
3 to this case. It is your duty as jurors to accept and apply  
4 the law as I now stated to you. If you think you have any  
5 idea as to what the law is or what the law ought to be and it  
6 does not agree with what I tell you the law is, you must  
7 forget that idea because you are sworn to accept the law and  
8 apply the law exactly as I stated to you.

9 And every case tried in this Court before a jury, the  
10 jury becomes the sole and exclusive judge of the facts. A  
11 trial judge cannot comment on or make any statement about the  
12 facts in the case. Since you are the sole judges of facts,  
13 do not think by anything I have said during the trial that I  
14 have any opinion about the facts in this case. The law does  
15 not allow me to have an opinion about the facts.

16 The burden of proof in this case is by preponderance of  
17 the evidence. A preponderance of the evidence simply means  
18 the greater weight of the evidence. It is evidence which as  
19 a whole shows that the facts ought to be proved is more  
20 likely true than not true. This can be illustrated by  
21 imagining a set of scales when the case begins the scales are  
22 even. After all of the evidence has been presented if the  
23 scales remain even or if they tip even slightly in favor of  
24 the Defendant, then the Plaintiff has failed to meet the  
25 burden of proof and would not be entitled to recover in this

1 case.

2 If on the other hand the scales tip even slightly in  
3 favor of the Plaintiff, the Plaintiff will have met the  
4 burden of proof and you should return a verdict for the  
5 Plaintiff.

6 The preponderance of the evidence is not determined by  
7 the number of witnesses. Instead it determined by the  
8 greater weight of all of the evidence.

9 There are two types of evidence generally presented  
10 during a trial, direct evidence and circumstantial evidence.  
11 Direct evidence is the testimony of a person who claims to  
12 have actual knowledge of a fact such as an eye witness. It  
13 is evidence which immediately establishes the main fact to be  
14 proved.

15 Circumstantial evidence is proof of a chain of facts and  
16 circumstances indicating the existence of a fact. It is  
17 evidence which immediately establishes collateral facts from  
18 which the main fact may be inferred. Circumstantial evidence  
19 is based on inference and not on personal knowledge or  
20 observation. It is proof that does not actually establish  
21 the fact in question, but that asserts or describes something  
22 else from which you may either reasonably infer the truth of  
23 the fact or at least reasonably infer an increase in the  
24 probability that the fact is true.

25 For circumstantial evidence to be sufficient to warrant

1 the finding of a fact, the circumstances must lead to that  
2 fact with reasonable certainty. The facts and circumstances  
3 should be considered in light of ordinary experience and  
4 common sense. The existence of a fact cannot be based on  
5 speculation, surmise or conjecture.

6 The law makes absolutely no distinction between the  
7 weight or value to be given to either direct or  
8 circumstantial evidence. Nor is a greater degree of  
9 certainty required of circumstantial evidence than of direct  
10 evidence.

11 Necessarily, you must determine the credibility of  
12 witnesses who have testified in this case. Credibility  
13 simply means believability. It becomes your duty as jurors  
14 to evaluate the evidence and determine which evidence  
15 convinces you it is true.

16 In determining which the believability of witnesses who  
17 have testified in this case, you may believe one witness over  
18 several witnesses or several witnesses over one witness. You  
19 may believe a part of the testimony of a witness and reject  
20 the remaining part of the testimony of that same witness.  
21 You may believe the testimony of a witness in its entirety or  
22 reject the testimony of a witness in its entirety.

23 You may consider whether the witness has an interest in  
24 the result of the trial, whether the witness is prejudiced  
25 towards either the Plaintiff or the Defendant the opportunity

1 of the witness to have seen the matters and the things about  
2 which the witness may testify and the way that the witness  
3 acts on the witness stand.

4 The rules of evidence or nearly do not permit witnesses  
5 to testify to opinions or conclusions. An exception to this  
6 rule exists for witnesses that we call expert witnesses. A  
7 witness who by education and experience has become an expert  
8 in some art, science or profession, may give an opinion as to  
9 the subject the witness claims to be an expert in and also  
10 give the reasons for the opinion. You should consider any  
11 expert opinion given by a witness and like any other  
12 evidence, give it the weight that you think it deserves. If  
13 you decide that an expert witness's opinion is not based on  
14 sufficient education and experience, or if you decide that  
15 the reasons given in support of the opinion are not sound or  
16 that the opinion is outweighed by other evidence, you may  
17 disregard the opinion entirely.

18 An expert witness's testimony is to be given no greater  
19 weight than that of other witnesses simply because the  
20 witness is an expert, and you do not have to accept an expert  
21 opinion even though it is not contradicted, even though it  
22 is uncontradicted.

23 Testimony was presented to you by a video deposition.  
24 This video contains sworn testimony given by a witness  
25 outside of the Court in the presence of lawyers for each

1 party who ask questions of the witness. The testimony is  
2 entitled to the same consideration and is to be judged as to  
3 the credibility and weighed by you in the same way as if the  
4 witness were present and gave the testimony from the witness  
5 stand. It is for you the jury to determine the effect value,  
6 weight, and the truth of the testimony given in the  
7 deposition.

8 I need to charge you on a matter of evidence. The  
9 Plaintiff alleges that the defendants have committed what is  
10 called spoliation of evidence which occurs when a party  
11 destroys or otherwise fails to preserve relevant evidence for  
12 use at trial. I instruct you that when a party fails to  
13 preserve material evidence for trial, it is for you to  
14 determine whether the party has offered a satisfactory  
15 explanation for that failure. If you find that the  
16 explanation is -- is unsatisfactory, then you may infer and  
17 presume that the unpreserved evidence would have revealed  
18 facts unfavorable to that party.

19 The parties do not dispute that the Defendant Kevin  
20 Anthony Blekicki was an employee of Defendant MJV Logistics  
21 Inc. And that the parties agreed that Mr. Blekicki was  
22 acting within the -- the course and scope of his employment  
23 with MJV Logistics at the time of the subject incident.  
24 Defendants also admit that Mr. Blekicki was negligent and  
25 that this approximately caused at least some damages to the

1 Plaintiff.

2 I instruct you that under South Carolina law an employer  
3 is vicariously liable for the acts and admissions committed  
4 by an employee within the scope of their employment and which  
5 approximately caused injury to another person. When these  
6 issues are admitted as to -- because these issues are  
7 admitted as to MJV Logistics, you do not need to decide them  
8 and instead must accept them as established. You do need to  
9 decide the following. The Plaintiff also claims at the time  
10 of the collision either MJV Logistics, Mr. Blekicki or both  
11 were serving as agent of Amazon defendants and acting within  
12 the course and scope of their agency with the Amazon  
13 defendants.

14 Defendants deny this and claim that MJV Logistics was an  
15 independent contractor and that neither MJV Logistics nor Mr.  
16 Blekicki was an agent of the Amazon defendants.

17 I instruct you that agency is a consensual relationship  
18 whereby a person, the agent acts on behalf of another, the  
19 principal subject to the principal's system. A principal is  
20 liable for the acts of its agent while the agent is acting  
21 within the scope of the agent's authority. This is true even  
22 where the -- even where the agent may be acting against the  
23 instructions of the principal. The test to determine the  
24 existence of agency is whether the purported principal has  
25 the right to control the conduct of its purported agent. The

1 exercise of actual control over the agent by the principal  
2 does indeed prove agency, but actual control is not necessary  
3 to prove agency. Rather, the fundamental test is merely  
4 whether the principal has retained for itself the right and  
5 authority to control and direct the work to be performed by  
6 the agent, such as the means and methods of performing the  
7 work, the details of the work to be performed and how it is  
8 to be done, and whether the work shall stop or continue.

9 An independent contractor is someone who engages to  
10 perform a certain service for another according to his own  
11 means and methods, free from the control and direction of the  
12 principal in all matters connected with the performance of  
13 the service except as to the result of the work. Where the  
14 principal is interested only in the result of the work and  
15 not how the work is accomplished and the principal retains no  
16 right to control the worker as to the means or methods of  
17 accomplishing the desired result, then the person performing  
18 the work is an independent contractor, not an agent or  
19 employee.

20 I instruct you that language in a contract declaring  
21 that a particular relationship is an independent contractor  
22 relationship and not an agency relationship is not  
23 determinative. Rather, as I just instructed you, the  
24 fundamental test for whether an agency relationship exists is  
25 whether the facts demonstrate that the principle has retained

1 for itself the right to control and direct the work to be  
2 performed.

3 Evidence that shows a right to control and thus an  
4 agency relationship includes, one, direct evidence of a right  
5 to exercise control or direct evidence of the actual exercise  
6 of control. Two, the method of payment. Three, the  
7 furnishing of equipment or tools. And four, the right to  
8 terminate the principle is not liable for the negligent or  
9 reckless acts of an independent contractor. However, the  
10 principle is liable for the negligent or reckless acts of an  
11 agent.

12 A corporation can only act through its agents or  
13 employees. Therefore, a corporation is responsible for any  
14 negligent acts or omissions of its agents or employees while  
15 -- while they are acting within the scope of their employment  
16 which approximately caused injury to another person.

17 In addition to vicarious liability, Plaintiff Shannon  
18 Shaw claims that the Defendant MJV Logistics and the Amazon  
19 defendants were independently negligent or reckless in  
20 hiring, training, supervising and/or retrain -- and/or  
21 retaining Kevin Blekicki as a delivery driver and that this  
22 negligence or recklessness approximately caused the  
23 Plaintiff's damages. Defendants deny this claim.

24 If an employer is in some way negligent or reckless in  
25 the hiring, training, supervising or retaining an employee or



1 agent and such negligence approximately causes harm to a  
2 third party, then the employer or principal is directly  
3 liable to the third party. Direct liability is a claim  
4 against the employer or principal that is separate and  
5 independent of a claim against the employer or principal for  
6 vicarious liability -- liability on which I instructed you a  
7 few minutes ago.

8 An employer or principal may be held directly liable for  
9 negligent hiring or failing to select an employer or agent  
10 who is competent to perform the work. A basis of  
11 responsibility under the negligent hiring doctrine is the  
12 employer or principal's own negligence in hiring an  
13 incompetent employer agent who the employer or -- or  
14 principal knew or should have known, or by the exercise of  
15 reasonable or ordinary care should have known was incompetent  
16 or unfit, thereby creating an unreasonable risk of harm to  
17 another.

18 An employer or principal may also be directly liable to  
19 a third person for its negligence in the training or  
20 supervising its employee or agent. To invoke the theory of  
21 liability based on negligent supervision, it is necessary to  
22 show the employer or principal knew or should have known its  
23 employer or agent behaved in a dangerous or otherwise  
24 incompetent or unfit manner and that the employer or  
25 principal fail to adequately supervise the employee or agent.

1           There may be circumstances which the only way to  
2 effectively control the employee or agent's conduct is for  
3 the employer or principal to terminate the employee or agent.  
4 Therefore, an employer or principal may subject itself to  
5 direct liability by failing to terminate an employee or agent  
6 who the employer or principal knows or should know has the  
7 habit of conducting himself in a manner dangerous to others.

8           It has been admitted by Mr. Blekicky was negligent and  
9 that his actions approximately caused at least some damages  
10 to the Plaintiff. Therefore, you asked to decide how much  
11 money the Defendant should be required to pay. Actual  
12 damages are to compensate the Plaintiff for the Plaintiff's  
13 injuries or loss and to put the Plaintiff as near as possible  
14 in the same position that the Plaintiff was in before the  
15 incident occurred. In other words, actual damages would be  
16 the actual losses and expenses which the Plaintiff has  
17 suffered because of the Defendant's negligence.

18           A person who suffers personal injuries because of  
19 negligence or recklessness of another may recover the  
20 reasonable value of all necessary and reasonable expenses  
21 incurred as a result of the injuries. This includes all such  
22 expenses incurred up to the time of trial and those expenses  
23 to be incurred in the future.

24           Accordingly, a Plaintiff may recover reasonable and  
25 necessary amounts incurred for past and future medical care

1 including, but not limited to, hospital physician and nursing  
2 care costs, medications and physical, vocational and other  
3 rehabilitation expenses.

4 In addition to the loss of wages between the time of the  
5 incident in this trial which are recoverable, the Plaintiff  
6 claims that the incident approximately caused him to incur a  
7 loss of earning capacity in the future. Earning capacity  
8 refers to the capability of a person to sell his labor or  
9 services in any market reasonably accessible to him taken  
10 into consideration his general physical and cognitive  
11 functional impairments resulting from the wrongful conduct of  
12 the Defendant.

13 Earning capacity does not necessarily mean the actual  
14 earnings that -- that one who suffers an injury was making at  
15 the time the injuries were sustained, but rather refers to  
16 the wages or income by which by virtue of his education,  
17 training, experience, and business acumen possessed the  
18 Plaintiff would have been capable of earning in the future if  
19 his injuries had not occurred.

20 In determining whether and how much to award  
21 compensation to the Plaintiff for loss or impairment of  
22 future earning capacity, you shall consider the following.  
23 One, loss of future earning power which requires a  
24 consideration of all matters that relate to this issue of any  
25 impairment. Two, the effect that the impairment will have on

1 the Plaintiff's capacity to work. Three, the extent to which  
2 the disability will impair the Plaintiff's earning capacity.  
3 Four, the present value of all financial losses due to the  
4 Plaintiff's impaired earning power, and five, evidence of  
5 what the Plaintiff had previously earned with the -- when  
6 employed in the past is a factor upon which any loss or  
7 impairment of earning capacity may be based.

8 If the Plaintiff's injury and impaired earning capacity  
9 are permanent, then the recovery for impaired earning  
10 capacity should be granted for the Plaintiff's life  
11 expectancy and awarding damages for loss of impairment to  
12 earning capacity. The law provides that a person who is  
13 injured may recover for the loss or diminution of his earning  
14 capacity during his entire expectancy of life and is entitled  
15 to such amount as will compensate him for his entire loss.

16 Therefore, if you determine the Plaintiff is entitled to  
17 damages for impairment or loss of earning capacity, then you  
18 should calculate such damages using the South Carolina life  
19 expectancy table as a guide. Pain and suffering compensates  
20 the Plaintiff for physical discomfort and emotional response  
21 to the sensation of pain caused by the injury itself. There  
22 is no definite standard by which to compensate the Plaintiff  
23 for pain and suffering. You have the authority to determine  
24 the amount, if any, to be allowed for pain and suffering  
25 using calm and reasonable judgment to ensure that the damages

1 are just and reasonable in light of the testimony and the  
2 evidence that was presented in this case.

3 Loss of enjoyment of life compensates the Plaintiff for  
4 limitations on the Plaintiff's ability to participate in and  
5 derive pleasure from the normal activities of daily life. In  
6 deciding the future -- the issue of future damages, it will  
7 be necessary for you to decide the probable life expectancy  
8 that the Plaintiff Shannon Shaw has remaining. A person's  
9 life expectancy is determined by a life expectancy table,  
10 which has been adopted by our state legislature and is part  
11 of the laws of this state. The life expectancy table is only  
12 an estimate of the probable average remaining length of the  
13 life of all persons in the in our state of a given age.

14 The Plaintiff Shannon Shaw is currently 45 years old.  
15 According to the life expectancy table, Mr. Shaw has a  
16 remaining life expectancy of 33.69 years. If you find that  
17 the Plaintiff has proved he will incur future damages, then  
18 the life expectancy table may be considered by you. I charge  
19 and instruct you that the issue of whether any party has  
20 insurance is not a proper factor for consideration in  
21 reaching your verdict. The question of whether there is any  
22 insurance coverage in this matter or how much is not a  
23 question before you end this trial. Your role is to  
24 determine whether the Plaintiff has proved his claim against  
25 the defendants, and if so, what is an appropriate monetary

1 amount to award as damages.

2 In reaching these decisions, you're prohibited from even  
3 considering the existence or amount of insurance coverage.  
4 The Plaintiff claims that the Defendants acted with  
5 recklessness, willfulness and wantonness and that therefore  
6 the Plaintiff is entitled to punitive damages from the  
7 Defendants. Recklessness means a conscious failure to use  
8 reasonable care. A person who is negligent acts carelessly.  
9 However, a person who acts recklessly, willfully and wantonly  
10 is not only careless but is also aware -- is also aware that  
11 he's being careless.

12 If you find that the Defendant's conduct was willful,  
13 wanton or reckless, you may award the Plaintiff punitive --  
14 punitive damages. To support an award of punitive damages,  
15 the Plaintiff must prove by clear and convincing evidence  
16 that the conduct complained of included a consciousness of  
17 wrongdoing at the time of the conduct.

18 Clear and convincing is more than just a preponderance  
19 or greater weight of the evidence, which requires only proof,  
20 which persuades you that a party's claim is more likely true  
21 than not true. On the other hand, clear and convincing proof  
22 is not as high as standard as the burden of proof in criminal  
23 cases, which is proof beyond a reasonable doubt. Clear and  
24 convincing proofs -- proof needs leaves no substantial doubt  
25 in your mind. It means that the evidence is not ambiguous,

1     doubtful, equivocal or contradictory. Convincing means  
2     persuading by proof or argument -- argument causing one to  
3     believe the truth of what is asserted. Clear and convincing  
4     proof establishes in your mind not only that the fact is  
5     probable, but that is highly probable.

6             Before awarding punitive damages you must consider and  
7     weigh four elements which may be pertinent to the facts of  
8     this case. You must first consider the relationship between  
9     any punitive damage award and the harm caused. Any penalty  
10    imposed should take into account the reprehensible ability of  
11    the conduct, the harm caused, the Defendant's awareness of  
12    the conduct's wrongfulness, the duration of the conduct and  
13    any concealment. Thus, any penalty imposed should bear a  
14    relationship to the nature and the extent of the conduct and  
15    the harm caused including compensatory damage award made by  
16    you.

17            Secondly, any penalty imposed should take into account  
18    as a mitigating factor, any other penalty that may have been  
19    imposed or which may be imposed for the conduct involved,  
20    including any criminal or civil penalty or any other punitive  
21    damages award arising out of the same conduct.

22            Third, you should consider whether the award of and the  
23    amount of any punitive damages award may deprive the  
24    Defendant of any -- any profits derived from the improper  
25    conduct and whether the ill-gotten profits should be properly

1 awarded to the Plaintiff.

2 Finally, any award of punitive damages must be limited  
3 to punishment and thus may not affect the economic -- may not  
4 affect economic bankruptcy. To this end, the Defendant's  
5 ability to pay any punitive damage award should be  
6 considered. However, the economic bank -- bankruptcy factor  
7 is not an absolutely bar to the award of punitive damages.

8 Ladies and gentlemen of the jury, your verdict must be a  
9 unanimous verdict, which of course means that all 12 of you  
10 must agree on the verdict. You will have a verdict form in  
11 the jury room and -- where is Ms. Outlaw (ph). Ms. Outlaw,  
12 I'm going to appoint you as the foreperson of the jury, which  
13 means that you'll sit here on this very end chair when you  
14 come back -- when you reach your verdict. As the jury  
15 foreperson, it will be your duty to fill out the verdict form  
16 and it has been gone over for you a little bit during the  
17 closing arguments, but it's rather self-explanatory. It goes  
18 through the questions that you must properly answer, that all  
19 12 of you must agree on.

20 Each of the answers, there are blanks if you do decide  
21 to award damages on each of the -- the issues that have been  
22 presented before you. Once you finish filling out the  
23 verdict form, if you would sign and date the verdict form and  
24 knock on the door, we will bring you back in here to receive  
25 your verdict. Before you begin your deliberations, please



1 wait till all the exhibits are brought into the Court -- into  
2 your jury room, you -- you have received the verdict form.  
3 Again, don't begin your deliberations in case I forgot to  
4 instruct you on anything. It doesn't seem like it, but  
5 hopefully not. And then once you receive all that, you may  
6 begin your deliberations, and we will separate the two  
7 alternates for now. Thank you. And you may return to your  
8 room.

9 (JURY EXITS)

10 THE COURT: Are there any exceptions or objections to  
11 the charge on law from either the Plaintiff or the Defense?

12 MR. YARBOROUGH: No, Your Honor.

13 MR. STEPHENSON: No, Your Honor.

14 MS. RAYNER: No, Your Honor.

15 THE COURT: All right, counsel, if you all make sure to  
16 gather up all the exhibits. Try not to wander off too far so  
17 we can notify you if you get a verdict. And any objections  
18 for me to go ahead and release the alternates?

19 MR. YARBOROUGH: No, Your Honor.

20 MR. ERVIN: No objection.

21 MR. APPLEGATE: One of the witnesses has been having  
22 trouble getting here. You know, if they carry on ---

23 THE COURT: He's actually on the main jury.

24 MR. APPLEGATE: Yeah, he's saying that in case something  
25 happens.

1 THE COURT: Okay.

2 MR. APPLGATE: (Inaudible) something happens to him ---

3 THE COURT: I got you. Okay.

4 MR. APPLGATE: -- need the alternate.

5 THE COURT: All right, we'll put him in the separate  
6 room. Just on the (inaudible) alternate, yes. All right.  
7 Thank you.

8 (Off the record.)

9 THE COURT: It's my understanding that we -- the jury  
10 has reached a verdict. Anything before I bring the jury out?

11 MR. YARBOROUGH: No, Your Honor.

12 MR. ERVIN: No, Your Honor.

13 MS. RAYNER: No, Your Honor.

14 THE COURT: Let's have our jury, please.

15 (JURY ENTERS)

16 THE COURT: Madam Clerk, has the jury reached a verdict?

17 THE CLERK: Yes, ma'am.

18 THE COURT: Madam Clerk, please publish the verdict.

19 THE CLERK: State of South Carolina, county of  
20 Dorchester, Shannon Shaw versus Amazon.com Inc., Amazon.com  
21 LLC, Amazon.com Services Inc., and Amazon Logistics, Inc.,  
22 MJV Logistics, LLC and Kevin Anthony Blekicki. In the Court  
23 of common pleas for First Judicial Circuit; case number  
24 2021-CP-1802173.

25 Did the Amazon defendants have the right to control MJV

1 Logistics, LLC or Kevin Blekicki? Yes. Please state the  
2 amounts of the damages sustained by Shannon Shaw. Past  
3 medical expenses, \$453,728. Future of medical expenses,  
4 9,000,333 -- \$339,251. Lost wages to date, \$210,721. Future  
5 losses of earning capacity, \$1,108,407. Non-economic  
6 damages, \$3,300,000.

7 Do you find by clear and commencing evidence that Kevin  
8 Blekicki acted in the reckless, willful, or wanton manner,  
9 that is this conduct proximity cause and damages to Shannon  
10 Shaw? Yes. The punitive damages do you award against Kevin  
11 Blekicki? \$175,000. Do you find by clear and convincing  
12 evidence that MJV Logistics, LLC stated -- acted in the  
13 reckless, willful, and wanton manner -- manner and that this  
14 conduct approximately causes damage to Shannon Shaw? Yes.  
15 And the amount of punitive damages do you award against MJV  
16 Logistics, LLC \$50,000? Do you find by clear and convincing  
17 evidence that the Amazon Defendants acted in a reckless,  
18 willful, wanton manner and that this conduct approximately  
19 causes damage to Shannon Shaw? Yes. The amount of punitive  
20 damages you awarded against the Amazon defendants? \$30  
21 million.

22 And this is signed by the foreperson dated 12/7/23.  
23 Ladies and gentlemen of the jury, is this your verdict? And  
24 if so, please indicate by raising your right hand.

25 THE COURT: Ladies and gentlemen, anything further from

1 either party?

2 MR. YARBOROUGH: No, Your Honor.

3 THE COURT: From the Defense?

4 MR. ERVIN: No, Your Honor.

5 MR. STEPHENSON: No, Your Honor.

6 THE COURT: Thank you. Ladies and gentlemen of the  
7 jury. If you would please return to jury room momentarily.  
8 I'll be in there to release you.

9 (JURY EXITS)

10 THE COURT: All right, counsel, anything before I  
11 release to the jury?

12 MR. YARBOROUGH: No, Your Honor.

13 MR. STEPHENSON: No, Your Honor.

14 MR. ERVIN: No, Your Honor.

15 THE COURT: Thank you, counsel.

16 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT  
17 8:00 P.M.)

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**CERTIFICATE OF TRANSCRIBER**

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I, NATASHA BARRIENTOS, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 1 of Dorchester County, South Carolina, on the 7th Day of December, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 30, 2023

Natasha Barrientos  
Transcriber