

IN THE STATE COURT OF [REDACTED] COUNTY
STATE OF GEORGIA

[REDACTED],

Plaintiff,

CIVIL ACTION

vs.

FILE NO.

[REDACTED] and [REDACTED]
[REDACTED],

[REDACTED]

Defendants.

RULE 30(b)(6) DEPOSITION OF

[REDACTED] by

[REDACTED]

Friday, March 15, 2019

10:17 a.m.

900 Circle 75 Parkway

Suite 1400

Atlanta, Georgia

Kate Cochran, RPR, CCR-2722



2741 Pangborn Road
Decatur, Georgia 30033
404-856-0966

APPEARANCES OF COUNSEL

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On behalf of the Plaintiff:

DARREN M. TOBIN, Esq.

[REDACTED]

404-578-8423

[REDACTED]

On behalf of the Defendants:

[REDACTED]

Videographer:

David Tobelman

- - -

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(Original Exhibits 1 through 4 have been attached to the original transcript.)

1 (Reporter disclosure made pursuant to
2 Article 10.B of the Rules and Regulations of the
3 Board of Court Reporting of the Judicial Council of
4 Georgia.)

5 (Plaintiff's Exhibit 1 was marked for
6 identification.)

7 MR. TOBIN: All right. This will be the
8 videotaped deposition of [REDACTED],
9 [REDACTED] This deposition is being taken pursuant to
10 agreement of counsel. I have here what I've marked
11 as Plaintiff's Exhibit 1, the amended notice of
12 videotaped deposition of [REDACTED]
13 [REDACTED]. We can go on the video record now.

14 THE VIDEOGRAPHER: We're now on the video
15 record. This is the beginning of video file No. 1.
16 The date is March 15, 2019. The time is 10:16 a.m.
17 Would the court reporter please swear in the
18 witness.

19 [REDACTED],
20 having been first duly sworn, was examined and
21 testified as follows:

22 EXAMINATION

23 BY MR. TOBIN:

24 Q. All right. I have what I've marked here
25 as Plaintiff's Exhibit 1. I'm going to show this to

1 you, sir. Have you seen that document before?

2 A. Yes, sir.

3 Q. Okay. And that's an amended notice that
4 says it's going to be of [REDACTED],
5 [REDACTED]; correct?

6 A. Yes, sir.

7 Q. All right. And [REDACTED],
8 [REDACTED], that is a business; correct?

9 A. It is a business, yes, sir.

10 Q. And [REDACTED] has
11 designated you as the corporate representative to
12 speak on its behalf; is that correct?

13 A. Yes, sir, it has.

14 Q. Okay. And the topics that I've listed
15 here on this amended notice that we've marked as
16 Plaintiff's Exhibit 1, are you familiar with those
17 topics? Would you be the best person to talk on
18 those topics?

19 A. Yes, sir.

20 Q. All right. Could you please state your
21 name for the record.

22 A. [REDACTED].

23 Q. Can you spell that for us, please.

24 A. [REDACTED]. Last name is [REDACTED] [REDACTED].

25 Q. Mr. [REDACTED], what is your position at [REDACTED]

1 [REDACTED]?

2 A. Corporate lead. On the records, I'm the
3 secretary. I'm also one of the owners.

4 Q. Are you an owner with -- I may be
5 pronouncing this wrong -- [REDACTED]?

6 A. It's [REDACTED].

7 Q. I'm sorry. [REDACTED]?

8 A. Yes, sir.

9 Q. Is that your wife?

10 A. That is my wife.

11 Q. Are you and [REDACTED] co-owners?

12 A. We are, yes, sir.

13 Q. 50/50 owners?

14 A. No, sir.

15 Q. Who is the owner?

16 A. She is 51. I am 49.

17 Q. I understand. Any other -- well, 51 plus
18 49 equals 100 percent. So the two of you?

19 A. That's correct.

20 (Plaintiff's Exhibit 2 was marked for
21 identification.)

22 Q. (By Mr. Tobin) All right. I'm going to
23 hand you what I've marked as Plaintiff's Exhibit 2.
24 Do you recognize this document?

25 A. Yes, sir.

1 Q. And that is the organizational chart for
2 [REDACTED]?

3 A. It is, yes, sir.

4 Q. On the bottom of that page, bottom right,
5 says [REDACTED] 000139. Do you see that?

6 A. I do, yes, sir.

7 Q. Okay. That document is a document that --
8 part of the discovery we requested from [REDACTED]
9 [REDACTED], and you provided that to your attorney
10 who in turn provided that to us; correct?

11 A. I did, yes, sir.

12 Q. Is this organizational chart correct
13 insofar as today, as we sit here on March the 15th,
14 2019?

15 Let me back up. The top line, [REDACTED]
16 and [REDACTED], both still owners; correct?

17 A. Correct.

18 Q. How about [REDACTED]? Is he still the
19 general manager?

20 A. He is, yes, sir.

21 Q. And beneath him, it looks like there's a
22 [REDACTED].

23 A. [REDACTED], yes, sir.

24 Q. He's still the operations and erosion
25 manager?

1 **A. He is, yes sir.**

2 **Q. And then [REDACTED] is maintenance?**

3 **A. Yes, sir.**

4 **Q. How about [REDACTED], construction**
5 **manager? Still there?**

6 **A. Yes, sir.**

7 **Q. [REDACTED] is the office manager?**

8 **A. She is, yes, sir.**

9 **Q. And then [REDACTED] is the estimator?**

10 **A. Correct.**

11 **Q. A line beneath [REDACTED], looks like**
12 **he's in charge of [REDACTED]; is that correct?**

13 **A. Correct.**

14 **Q. And he's also in charge of [REDACTED];**
15 **is that correct?**

16 **A. That is correct.**

17 **Q. And he's also in charge of [REDACTED] --**

18 **A. It's [REDACTED]. And he is no**
19 **longer at [REDACTED] company.**

20 **Q. Is he still with [REDACTED]**
21 **anymore?**

22 **A. No, sir. He's been terminated.**

23 **Q. Why was he terminated?**

24 **A. Failure to show up to work.**

25 **Q. When was that?**

1 A. I can -- I don't know off the top of my
2 head the exact time and date. But it's been
3 probably a few months.

4 Q. And the reason that [REDACTED] was terminated
5 is because failure to show up for work?

6 A. Failure to show up for work and stealing
7 time.

8 Q. What does that mean, for stealing time?

9 A. He was fattening his time sheet. GPS
10 data, as we just produced this morning, and other
11 things show us differently.

12 Q. Okay. So he would say he was somewhere,
13 and he wasn't really?

14 A. (Witness nods.)

15 Q. Okay. [REDACTED], is he still with you?

16 A. No, sir.

17 Q. Why is [REDACTED] not with you?

18 A. He actually resigned. He went to work for
19 a company making more money.

20 Q. [REDACTED]?

21 A. Yes, sir, he's still there.

22 Q. And [REDACTED]?

23 A. That is correct. He's still there.

24 Q. All right. And then beneath those
25 gentlemen we just mentioned, the titles for these

1 other -- those six names we just mentioned were crew
2 leaders and foreman; correct?

3 **A. Correct.**

4 Q. And beneath those gentlemen, it looks like
5 it's all men; is that correct?

6 **A. Yes, sir. Most are men, yes, sir.**

7 Q. Okay. And those men, their titles were
8 all erosion installer or it was just installer?

9 **A. Those are just bank positions. How it's**
10 **written.**

11 Q. Okay. Looks like underneath [REDACTED]
12 [REDACTED], who is a crew leader, there is [REDACTED]?

13 **A. Yes, sir.**

14 Q. Is he still there?

15 **A. He is.**

16 Q. How about [REDACTED]? Is he still
17 there?

18 **A. Actually, I'm not sure if he is or not.**

19 Q. Okay. [REDACTED], he's the codefendant
20 with you in this case; correct?

21 **A. Yes, sir.**

22 Q. And he was employed by [REDACTED]
23 [REDACTED] at the time of this crash; correct?

24 **A. Yes, sir, he was.**

25 Q. Has [REDACTED] sent out

1 document requests to any companies seeking records
2 in this case as far as you know?

3 **A. No, sir, we haven't.**

4 Q. You have not?

5 **A. I'm pretty sure we have not, no, sir.**

6 Q. All right. What I have here is -- I'm
7 going to show you [REDACTED] responses
8 to plaintiff's first request for admissions. Have
9 you seen -- go ahead and flip through it. Have you
10 seen that document before?

11 **A. I don't recall seeing this document, no,**
12 **sir.**

13 Q. All right. In part of this case, we asked
14 [REDACTED] and [REDACTED]
15 independently -- we asked them questions, and both
16 [REDACTED] and [REDACTED] provided
17 answers to those questions.

18 So what I'll do now -- those are called
19 request for admissions of fact. You don't remember
20 answering those questions with your attorney at some
21 point?

22 **A. I don't remember seeing this document, but**
23 **we may have answered the questions with the law**
24 **firm.**

25 Q. That's fair. Let me show you No. 9. Will

1 you turn. And I've highlighted No. 9 for you.

2 **A. Yes, sir.**

3 Q. It says here that -- the statement was you
4 will produce to plaintiff all records that you
5 receive -- request and receive from nonparties. And
6 [REDACTED] response was, this
7 defendant admits it will produce copies of the
8 plaintiff's medical records upon receipt of one half
9 of the cost to obtain them. It denies the remaining
10 allegations.

11 What does that mean?

12 Well, let me ask you this. Have you
13 received any records from nonparties?

14 **A. No.**

15 Q. If you do receive records from nonparties,
16 will you produce them to plaintiff?

17 **A. We'll produce them through the attorney,
18 and they can do so.**

19 Q. All right. Would you agree that if your
20 attorney produced -- or [REDACTED] to
21 your attorney, who produces it to us electronically,
22 it doesn't cost any money, would you agree with
23 that, via email transmission?

24 **A. Emails are free, yes. But the acquisition
25 of those documents, I don't know what that would be.**

1 Q. Okay. But email is free? To email
2 between people is free; correct?

3 A. I believe so, yes, sir.

4 Q. All right. Let's turn to page -- No. 17,
5 which is page 3. And I've highlighted that. That
6 request for admission says, [REDACTED]
7 is liable for the misconduct of [REDACTED], if any,
8 under the rule of respondeat superior. And the
9 response by [REDACTED] was, this
10 defendant admits respondeat superior applies to the
11 plaintiff's negligence claims against it and
12 Defendant [REDACTED] but denies the remaining
13 allegations.

14 What does that mean?

15 A. I'm not an attorney. I'm not sure exactly
16 what that means.

17 Q. Well, let me ask you. Does [REDACTED]
18 [REDACTED] take responsibility for this collision?

19 A. We do take responsibility for the
20 collision. It occurred.

21 Q. Who do you believe was responsible for the
22 collision?

23 A. Our driver, [REDACTED].

24 Q. And [REDACTED] was working for [REDACTED]
25 [REDACTED] at the time; correct?

1 A. He was an employee of [REDACTED]

2 [REDACTED], yes, sir.

3 Q. I know earlier you said that one of your
4 employees, [REDACTED], was terminated for
5 failure to show up and for stealing time.

6 A. Correct.

7 Q. At the time of this collision that we're
8 here about today, Mr. [REDACTED] was driving for [REDACTED]
9 [REDACTED] in the course and scope of his
10 employment; correct?

11 A. Yes, sir. He was an employee of [REDACTED]
12 [REDACTED] and driving.

13 Q. Okay. Let's turn to Page No. 4, No. 22.
14 Before the collision, [REDACTED] (or
15 someone working on [REDACTED] behalf)
16 had looked into [REDACTED] driving history.
17 Response denied.

18 Let me ask you this. Before [REDACTED]
19 [REDACTED] hired [REDACTED], did [REDACTED]
20 [REDACTED] look into [REDACTED] driving history?

21 A. Before hiring him?

22 Q. Yes, sir.

23 A. No, sir. He was not hired as a driver.

24 Q. All right. Before hiring him, [REDACTED]
25 [REDACTED] did not look into his driving history,

1 is that what you just said?

2 A. Before hiring him, we did not look into
3 his driving history.

4 Q. At some point after hiring him, did you
5 look into his driving history?

6 A. Before he was allowed to drive, the
7 insurance company -- we submit all the information
8 to the insurance company, and they did a background
9 check or a driving history.

10 Q. Did [REDACTED] independently
11 look at his driving history?

12 A. No, sir, we did not. We rely on the
13 insurance company to do that.

14 Q. Do you agree that if [REDACTED]
15 [REDACTED] puts drivers out there on the road, it
16 should know what kind of drivers they are?

17 A. We do once the insurance company -- they
18 let us know what the drivers are.

19 Q. Is it hard to run a driving history for
20 [REDACTED]?

21 A. It requires -- I don't know. We've
22 never -- we've never done it. The insurance company
23 has always done it for us. They've actually denied
24 individuals we wanted to drive because of driving
25 history. So they authorize and deny.

1 Q. Do you know how to go about getting a
2 driving history for someone?

3 A. We can request them do it themselves and
4 bring it to us.

5 Q. Why did [REDACTED] not do
6 that historically?

7 A. We made the assumption that the insurance
8 company does a more thorough background check.

9 Q. When did [REDACTED] become a driver for
10 [REDACTED]?

11 A. He had been driving for [REDACTED]
12 [REDACTED] for about a year, 14, 15 months prior to
13 this incident.

14 Q. Before this collision, had you -- had
15 anyone at [REDACTED] ever seen his
16 driving history?

17 A. Before he was allowed to drive, the
18 insurance company provided approval that he could
19 drive.

20 Q. All right. Well, let me ask you that
21 question again. Before he became a driver at [REDACTED]
22 [REDACTED], did [REDACTED]
23 company ever see [REDACTED] driving history?

24 A. No. Before he became a driver, no.

25 Q. Okay. Before hiring [REDACTED], did [REDACTED]

1 [REDACTED] ever obtain a motor vehicle report
2 on [REDACTED]?

3 A. So before we ever hired him, did we
4 acquire -- no.

5 Q. How about after you hired him? At any
6 point after you hired him, did you obtain a motor
7 vehicle report on [REDACTED]?

8 A. At the point that we considered him to be
9 a driver for our company, we submitted his
10 information to the insurance company, and they done
11 the report.

12 Q. Okay. But when you or when [REDACTED]
13 [REDACTED] decided to make him a driver, did [REDACTED]
14 [REDACTED] obtain a motor vehicle report on
15 [REDACTED]?

16 A. I thought we just answered that. No, we
17 did not.

18 Q. Before hiring [REDACTED] as an employee of
19 [REDACTED], did [REDACTED]
20 ever do a background check on [REDACTED]?

21 A. No, sir.

22 Q. Does [REDACTED] do background
23 checks on any of its employees?

24 A. No, sir.

25 Q. What does [REDACTED] offer

1 customers? You're a service industry business?

2 A. We are, yes, sir.

3 Q. All right. What services does [REDACTED]
4 [REDACTED] offer?

5 A. We're an erosion control installer. We're
6 also -- we do construction work services.

7 Q. What is erosion control?

8 A. Erosion control is silt fence.

9 Q. Salt fence?

10 A. Silt fence. It's the black fencing you
11 see all over Atlanta around construction sites.
12 Grassing, slope matting, inlet protection. We're --
13 it's to control the site, to keep sediment from
14 leaking into the site.

15 Q. And then you also mentioned there's
16 another part to the company that you offer.

17 A. We do some minor construction services for
18 the same thing. Like we'll install the rock
19 sometimes on the -- part of the BMPs on projects.

20 Q. BMP?

21 A. It's called best management practice.
22 It's part of the Green Book. Georgia has a soil and
23 water manual that you go by. And BMP is called best
24 management practices. It's the -- designed by the
25 engineer that designs this project. They put in

1 practices or measures to control the site so that
2 the state streams, creeks, lakes, ponds stay clean.

3 Q. I know you're mentioning a lot about the
4 state of Georgia. Do you ever do anything
5 residential?

6 A. We did prior to the recession. We do not
7 do any residential now.

8 Q. All right. When [REDACTED] was working
9 for [REDACTED], was he ever at any,
10 sort of, private residential sites?

11 A. I would have to look at our records. But
12 I would say no.

13 Q. All right. Now, can you tell me all the
14 steps that [REDACTED] -- and I keep
15 saying [REDACTED]. The name of the
16 business is technically [REDACTED],
17 [REDACTED]; right?

18 A. That's the full corporate name, yes, sir.

19 Q. Okay. But if I say [REDACTED]
20 [REDACTED], it's the same [REDACTED]?

21 A. That's correct.

22 Q. Can you tell me all the steps that [REDACTED]
23 [REDACTED] took to determine if [REDACTED]
24 was a good driver before saying, [REDACTED], you can
25 drive our company trucks?

1 A. He was hired. And once he proved himself
2 as a good, steady employee, he was there on time, he
3 worked hard, and he got his crew leader, which is
4 the current driver, said, we believe you'd make a
5 good driver for us -- at the point we submit his
6 information to the insurance company. They approve
7 him to drive under our insurance. If they do, then
8 he starts driving under that crew leader. And he
9 drives under that crew leader for several months,
10 until the crew leader proves that he has shown us
11 that he can drive the vehicle safely.

12 Q. All right. So the crew leader that he was
13 under, is that [REDACTED]?

14 A. [REDACTED], yes, sir.

15 Q. And [REDACTED] -- I think you just
16 mentioned that the way that [REDACTED]
17 determined that [REDACTED] was a -- I don't want to
18 what put words in your mouth, but can I say he was a
19 safe driver? Is that fair to say? That you
20 determined he was a safe driver?

21 A. I may have said safe driver. That he
22 could drive the vehicle safely, yes, sir.

23 Q. Okay. That he could drive a [REDACTED]
24 [REDACTED] vehicle safely was based on him being
25 on time, he worked hard, and his crew leader,

1 [REDACTED], said he'd be a good driver?

2 A. He never -- the steps to become a driver
3 is he has to be a dependable employee.

4 Q. Okay.

5 A. Because an individual that's not
6 dependable is not going to be dependable in any
7 field. If they can't show up on time and they can't
8 do the work correctly -- then you offer them a
9 promotion. A driver is a promotion. So they get
10 more money. So at the point that he became a
11 driver, we assessed him with [REDACTED] and also [REDACTED]
12 [REDACTED] assessed him. That's the logistics manager.
13 That's [REDACTED]'s boss.

14 Q. So back on that organizational chart --

15 A. It's right above Gar --

16 Q. I see that. [REDACTED].

17 A. [REDACTED].

18 Q. So Mr. [REDACTED], he observed [REDACTED]
19 [REDACTED] being a safe driver; is that right?

20 A. [REDACTED] is a CDL driver.

21 Q. What is a CDL driver?

22 A. Commercial driver's license. But he is
23 very knowledgeable in the DMV as far as operating a
24 vehicle safely, pulling any kind of attachments
25 behind trucks. So he will actually spend some time

1 with him out in the warehouse, in the field, in the
2 yard, and on the road to assess their driving
3 ability, to make sure they can drive our vehicles
4 safely.

5 Q. All right. So it's your testimony that,
6 No. 1, [REDACTED] proved to be a dependable
7 employee?

8 A. Correct.

9 Q. Then [REDACTED] spends time with [REDACTED]
10 [REDACTED] driving around; is that right?

11 A. He did drive him around. But at first off
12 he did spend time in the yard to make sure he can
13 operate the vehicle correctly. Because, you know,
14 there's certain steps that he takes. If he can
15 check the fluids in the truck, make sure the truck
16 is safe to operate, do a pretrip on the truck, back
17 the truck up to a trailer, hook a trailer up
18 safely -- that's just the basics. If he can do
19 that, then at that point we'll spend some time in
20 the business park and in our yard behind our shop
21 and make sure he can drive the truck safely.

22 Q. And who made sure he can drive the truck
23 safely? [REDACTED]?

24 A. [REDACTED] and also [REDACTED]. Both were there.

25 Q. All right. How many times did [REDACTED]

1 [REDACTED] go in the yard with [REDACTED]? What's the
2 typical time that [REDACTED] will spend with any
3 of these men to become drivers in the yard? A
4 one-time thing, two times, two weeks?

5 A. Probably spend twice, three times with him
6 in the yard.

7 Q. Two to three times in the yard?

8 A. Yes, sir. But we would drive the truck by
9 itself without pulling anything with his crew
10 leader, which was already --

11 Q. Let's just stay in the yard for right now.

12 A. Okay.

13 Q. So in the yard, [REDACTED], he
14 personally would spend two to three times with [REDACTED]
15 [REDACTED], watching him drive a truck?

16 A. Correct.

17 Q. All right. And in the yard [REDACTED]
18 also observed [REDACTED] driving a truck?

19 A. Yes, sir. He was with him.

20 Q. He was with him. You said him. [REDACTED]
21 [REDACTED] or [REDACTED]?

22 A. [REDACTED].

23 Q. [REDACTED].

24 A. [REDACTED] and [REDACTED] were both there.

25 Q. At the same time?

1 **A. Yes.**

2 Q. For two or three times?

3 **A. Two or three times and behind the shop,**
4 **yes, sir.**

5 Q. All right. And then once they got out of
6 the yard of your -- of [REDACTED] yard
7 and went out onto the public roads, did [REDACTED]
8 ever go for a ride-along with [REDACTED]?

9 **A. He would usually let -- he would usually**
10 **go -- he goes at least once with them, say, to a**
11 **vendor or to the store, to fill the truck, to make**
12 **sure they can operate the truck, just the truck, by**
13 **itself safely.**

14 Q. So I just want to make sure I understand.
15 So [REDACTED] at least one time would have sat in
16 a truck with [REDACTED], who would drive him to a
17 store or a field?

18 **A. He would ride with them, yes, sir, on a**
19 **short truck.**

20 Q. On a short truck. But they wouldn't be
21 trailing any sort of leaf blower or any sort of
22 trailer?

23 **A. No.**

24 Q. All right. And [REDACTED], did he do
25 a few -- more than one time, like [REDACTED]

1 did -- more than one time in the truck with [REDACTED]
2 [REDACTED]?

3 A. Well, at the point that [REDACTED] -- that they
4 felt that he could operate the truck safely, then he
5 would start driving the truck with [REDACTED] in the
6 truck. And they would spend -- they would spend at
7 least a month together before he would ever be
8 allowed to drive by himself. At any point that
9 [REDACTED] would say that [REDACTED] is not a safe driver or
10 that we had doubts that [REDACTED] could operate this
11 vehicle safely, he would be immediately demoted and
12 removed from driving.

13 Q. Did that ever happen with [REDACTED]?

14 A. No, sir.

15 Q. All right. Who is [REDACTED]?

16 A. [REDACTED] is a laborer. Works on the same
17 crew.

18 Q. All right. I'm looking at this chart,
19 this organizational chart. I don't see [REDACTED]
20 [REDACTED]. Maybe I'm just missing it. Is his name on
21 here?

22 A. It is not.

23 Q. Why is his name not on this chart?

24 A. I don't know. This was -- it was probably
25 an error. But his name should be on there.

1 Q. And where would his name be on this --

2 A. He is an installer, laborer.

3 Q. Installer. So would he be along the same
4 line as [REDACTED]?

5 A. Yes. He's been with the company a long
6 time.

7 Q. Anyone else, as you look at this list,
8 whose names are missing?

9 A. I can get an updated list. But --

10 Q. Yeah, if you can get an updated list, that
11 would be good.

12 A. Okay.

13 Q. All right. Thank you.

14 Did you know that [REDACTED], before [REDACTED]
15 [REDACTED] hired him, had been arrested?

16 A. No, sir, we did not.

17 Q. During his employment with [REDACTED]
18 [REDACTED], did you know that he was arrested
19 during his employment with [REDACTED]?

20 A. No, sir, I had no idea.

21 Q. Did you know that before I just told you?

22 A. I just found out.

23 Q. Right now?

24 A. Right now.

25 Q. Had you known that [REDACTED] had been

1 arrested before you hired him, would you have still
2 hired him?

3 A. It depends on what he was arrested for.

4 Q. If he was arrested for a controlled
5 substance, would you have hired him?

6 A. We may have hired him for just an
7 installer. But he would -- it depends on the
8 insurance company. He probably would not have
9 become a driver.

10 Q. Well, let's talk about [REDACTED]
11 [REDACTED]. If you were the representative of
12 [REDACTED], would you have put him up
13 to be a driver had you known he had been arrested
14 for controlled substance?

15 A. There's a lot of variables there that
16 you're asking. Again, it depends on the individual.
17 And I don't know. Basically what you're asking me
18 is would I give somebody a second chance after they
19 made a mistake in life. And it depends on how they
20 showed us how they would act and how they had
21 changed, if we would have or not.

22 Q. How about a third chance? If they were
23 arrested a second time, would you have let them keep
24 driving?

25 A. I don't believe the insurance company

1 would let them drive for us.

2 Q. I understand that. How about [REDACTED]
3 [REDACTED]? Would [REDACTED] want
4 someone to continue to drive?

5 A. I don't see how that has -- if the
6 insurance company won't let them drive, we have no
7 decision but to not let them drive. We have no
8 option.

9 Q. All right. Well, we can -- I can talk to
10 the insurance company in their deposition.

11 But for your testimony as a representative
12 for [REDACTED], if you have an employee
13 who's been arrested two times, would you be okay
14 with having them continue to drive for you?

15 A. Again, you're throwing a broad statement
16 out there. Did they get arrested while they were
17 employed with us? Did they get arrested ten years
18 ago? Did they get arrested six months before they
19 became an employee? Can you clarify?

20 Q. If you knew someone had been arrested for
21 driving with no license, arrested for a battery
22 charge, arrested for a controlled substance, and for
23 weaving off the road, would you have let them drive
24 for your company?

25 A. Obviously you have details there. So I

1 **don't know. When did this occur?**

2 Q. I'll take your -- I mean, I'll take it as
3 a yes. I mean, that's what I'll take it. If you
4 know someone who's been arrested -- I'll repeat them
5 again -- for driving with no license, battery
6 charge, possession of a controlled substance, and
7 weaving off the road, would you want that person
8 driving for you? Would you get into an Uber with a
9 driver -- let me ask you this. Would you get into
10 an Uber -- do you ever take Uber?

11 **A. I do. And Lyft.**

12 Q. And Lyft. Okay. So if you had gotten
13 into an Uber, and the driver says, just so you know,
14 I've been arrested for not having a license. I was
15 also arrested for a battery charge. I was arrested
16 for a controlled substance. And I was also pulled
17 over for weaving off the read, all within the past
18 five years. I'm going to take you to your
19 destination now. Would you get into the Uber?

20 MR. [REDACTED] Object to the form. You can
21 answer.

22 THE WITNESS: What if the man had changed
23 his life? It was five years ago. What if he was a
24 different individual?

25 Q. (By Mr. Tobin) So you --

1 A. No. You're saying -- you're being very
2 broad in this statement. I believe that everyone
3 deserves a second chance. If he did that five years
4 ago and he can prove to us that he was a changed
5 individual -- no incidents, no wrecks, no speeding,
6 no traffic violations, he had made recompense to the
7 state. So you're basically asking me would I throw
8 him to the side and say, I don't want you. If the
9 man had proved to me that he had changed his life,
10 then we would submit his information to the
11 insurance company.

12 Q. How about if some of those were during his
13 time while he was employed with [REDACTED]
14 [REDACTED]?

15 A. He would have been terminated, more than
16 likely, if it had occurred. He would have been
17 terminated -- probably demoted back to a laborer,
18 not been driving anymore.

19 I'll be clear. He would have been demoted
20 if that occurred while he was driving and employed
21 with us.

22 Q. Have you read [REDACTED]'s deposition
23 testimony?

24 A. No, sir, I haven't seen it.

25 Q. Did you know he testified that he was

1 arrested while he was employed by [REDACTED]
2 [REDACTED]?

3 A. I had no idea, no, sir.

4 Q. Had you known that, you would have
5 terminated him?

6 A. Wouldn't have terminated. He would no
7 longer be allowed to drive a vehicle.

8 Q. Was [REDACTED] high when he was driving on
9 the date of the crash?

10 A. I have no idea.

11 Q. So before [REDACTED] started driving trucks, he
12 was in the yard, and [REDACTED] monitored him,
13 made sure he was driving safely. And [REDACTED]
14 monitored him to make sure he could drive safely.
15 And [REDACTED] did a ride-along with him in the
16 truck to make sure he could drive safely. And
17 [REDACTED] drove with [REDACTED] for a few
18 months in the truck to make sure he could drive
19 safely.

20 Is that [REDACTED] testimony?

21 A. Yes, sir, that's what happens.

22 Q. That's what happens?

23 A. That's what happens.

24 Q. Is that what happened with [REDACTED]?

25 A. That's what happens with each and every

1 driver.

2 Q. If [REDACTED] says that no one drove along
3 with him to test his abilities, is he a liar?

4 A. He is.

5 Q. Who is [REDACTED]?

6 A. That's my son.

7 Q. And is [REDACTED] in this chart anywhere? It
8 looks like [REDACTED] is underneath [REDACTED].

9 A. He is.

10 Q. And [REDACTED]'s title is NPDES and production?

11 A. It was at that time. He's now -- took
12 over IT management.

13 Q. I know you said [REDACTED] has a CDL.
14 Does [REDACTED] have any sort of CDL permit?

15 A. No, sir.

16 Q. Does he have an IT background?

17 A. He's just a kid. He's knowledgeable in
18 programming.

19 Q. Sorry. When you say he's a kid, how old
20 is your son?

21 A. He's 24. At my age, everybody is a kid, I
22 guess, if they're under 30.

23 Q. When you hire your employees, do you go
24 over the safety and health manual?

25 A. We do.

1 Q. All right. And the safety and health
2 manual is a document that [REDACTED]
3 has produced in discovery. It's dated from
4 March 2018. Is that the most recent edition?

5 A. I think that's when it was updated, yes,
6 sir, November 2018. It gets updated once a year.

7 Q. It gets updated once a year. All right.
8 So the next update will be November 2019?

9 A. This year, yes, sir.

10 (Plaintiff's Exhibit 3 was marked for
11 identification.)

12 Q. (By Mr. Tobin) Let me hand you what we
13 marked as 3, please.

14 A. Are we through with this document, sir?

15 Q. You can put it aside for now. Thank you.

16 And this document, the safety and health
17 manual, can you explain to us what this is, please.

18 A. It's an operating manual for the [REDACTED]
19 [REDACTED] safety and health guidelines.

20 Q. Would this document address what drivers
21 are expected -- or what is expected of drivers?

22 A. It's just a standard safety and health
23 manual for day-to-day operations.

24 Q. Do you give this to every one of your
25 employees?

1 A. We offer it to them. We have it available
2 right in the kitchen area, the common area. And
3 it's available to anyone who wants a copy.

4 Q. Okay. When you hire your employees, do
5 you go over any safety policies with them?

6 A. We do.

7 Q. All right. Every employee?

8 A. Every employee gets a safety, yes, sir.

9 Q. Is that safety that they go through in
10 part of this document?

11 A. It is a part of this document plus, you
12 know -- yeah, it's in this document.

13 Q. All right. And [REDACTED]
14 has produced everything related to [REDACTED]'s
15 employment file; correct?

16 A. I believe so.

17 Q. I mean, I've asked for -- I've asked for
18 it. I can show you the request for production of
19 documents. And most recently we recently had a
20 conversation, your attorney and I, where [REDACTED]
21 [REDACTED] was going to produce everything. And
22 today, before the deposition, I was provided with
23 some recent -- well, not recent, but breaks and a
24 driving's log from that date.

25 Is there anything else that [REDACTED]

1 [REDACTED] has for [REDACTED]?

2 A. We provided everything that we have been
3 requested to drive.

4 Q. Okay. Did [REDACTED] go through this
5 safety procedures? Can I call it safety procedure?
6 What would you like me to call it? We can use
7 whatever terms you want.

8 A. Whatever you would like to call it. It's
9 a safety and health manual.

10 Q. Did [REDACTED] go through this safety and
11 health manual?

12 A. He did.

13 Q. Would he have signed any of these
14 acknowledgement forms anywhere? Do you -- let me
15 back up. Do you require your employees to sign any
16 forms that say they've reviewed these documents?

17 A. During the hiring process, yes, we do.

18 Q. All right. Did [REDACTED] sign these
19 forms?

20 A. He should have.

21 Q. All right. And if he did, I would have
22 been produced those documents? If I asked for them,
23 I would have been produced those; correct?

24 A. Yes.

25 Q. So let me ask you this question. If I

1 don't have those signed documents, do they exist?

2 **A. I'm not sure.**

3 Q. Who should I ask at [REDACTED]

4 [REDACTED]?

5 **A. I can get the answer for you. If they're**
6 **there, I can get them for you. But every employee**
7 **has gone through this, and they have certain**
8 **documents to sign before they become employed.**

9 Q. All right. So you can get that answered
10 for me. All right. That would be good. Let me
11 make sure for the record. Because you are the
12 representative for [REDACTED].

13 **A. That's correct.**

14 Q. All right. [REDACTED] has
15 designated you to speak on its behalf.

16 **A. Correct.**

17 Q. All right. If those records exist of [REDACTED]
18 [REDACTED] signing anything on the safety manuals
19 checklists, you will, on behalf of [REDACTED]
20 [REDACTED], produce those documents; is that right?

21 **A. That is correct.**

22 Q. If those documents are not produced, can
23 we agree that they do not exist?

24 **A. If we can't produce them, then they do not**
25 **exist.**

1 Q. Okay. What is the professional
2 employer -- excuse me, strike that. What is the HR
3 strategies employee handbook? It's in this
4 document.

5 A. HR strategies is our HR, human resources,
6 management company. They handle the payroll, and
7 they help us set up our safety and health manual.

8 Q. Okay. So HR strategies handles payroll,
9 and they help you set up this manual that we've
10 marked as Exhibit 3?

11 A. Correct, yes. Also insurance. They're
12 full human resources.

13 Q. Okay. Isn't it true that no one went
14 through the safety manual with [REDACTED]?

15 A. That is not true.

16 Q. And if someone did, there will be
17 signed -- his name having signed off that he went
18 through this?

19 A. There should be signed documents. But
20 everyone gets the -- goes through the safety manual
21 before they're hired, and then they have an
22 opportunity to get a copy if they would like one.

23 Q. How do you know that every single person
24 goes through this manual before they're hired?

25 A. It's part of the process. It's part of

1 **the hiring packet we have.**

2 Q. Do you give it to them and you say, go
3 ahead, take this home and read it?

4 A. **They have an opportunity to take it home**
5 **and go through it with their spouse or whoever they**
6 **want to or their parent, if they still live at home**
7 **with their parents. It's their tax documents. It's**
8 **their withholdings. It's their opportunities, once**
9 **they're in there 90 days, to get insurance. It's a**
10 **full compensation hiring packet.**

11 Q. All right. How about specifically safety.
12 The title says safety and health manual. So there
13 are safety procedures that are in this document;
14 right?

15 A. **There are, yes.**

16 Q. And so does anyone at [REDACTED]
17 [REDACTED] -- or does [REDACTED] sit
18 down and go over those safety procedures with
19 employees?

20 A. **Yes.**

21 Q. All right. Every single employee?

22 A. **Every single employee.**

23 Q. If [REDACTED] said that he had never seen
24 this document before, is he telling the truth?

25 A. **No. He's lying.**

1 Q. Why would he lie?

2 A. Because he's the reason the accident
3 occurred.

4 Q. So what do you mean?

5 A. It was driver error. Not only do they
6 have this manual, but every Monday morning we do a
7 safety meeting in the back office with every
8 employee at 7:00 a.m. And then we do safety
9 meetings before they start the job.

10 Q. Tell me --

11 A. Safety is a strong part of our company.

12 Q. Tell me about that safety meeting that you
13 do every Monday morning. What happens at that
14 safety meeting?

15 A. Usually, when incidents happen like this
16 with the [REDACTED] wreck, we use it as a learning
17 to explain to our current employees what happened,
18 our estimated reasons of why it happened, and how
19 for this not to happen in the future.

20 Q. Did you have a safety meeting after this
21 incident?

22 A. We did.

23 Q. All right. And do you remember what day
24 this crash was?

25 A. Not off the top of my head, I do not.

1 Q. Do you remember the date of the crash?

2 A. I think it was [REDACTED] -- was it 2018?

3 Q. Right. [REDACTED], 2018.

4 So the first date or the first
5 opportunity -- the first upcoming Monday after that
6 crash, you would have addressed this crash?

7 A. We did.

8 Q. All right. And tell me what was said at
9 that safety meeting.

10 A. We discussed that an accident occurred,
11 and [REDACTED] had rear-ended a vehicle, and that it
12 rear-ended another vehicle, and that he -- the
13 conditions that morning were he should have been
14 driving slower. He should have been more aware.
15 You know, the vehicle was being -- the vehicle had
16 been maintained. The vehicle was in good service.
17 Good tires. Good brakes. Good operating vehicle.
18 The vehicle obviously had the ability to stop.

19 But [REDACTED] obviously was either
20 distracted or not -- that's all we could come up
21 with. He was distracted by something and not paying
22 attention, which caused the accident. So we
23 explained to them that -- be aware of your
24 surroundings. Drive offensively, not defensively.
25 Be aware of the vehicles in front of, behind you,

1 beside you. Be aware of your coworkers on the job
2 site. I mean, we went into more detail. We
3 discussed the wreck and then discussed working
4 environments as well. We do it every Monday
5 morning.

6 Q. And he was terminated as a result of this
7 crash?

8 A. He was terminated due to his refusal to
9 take a drug screen.

10 Q. You said a drug screen. Does that mean he
11 refused to take a drug test?

12 A. After every incident or accident, however
13 you want to word it, we require the driver and
14 whoever is in the vehicle that he wants to -- the
15 other gentleman said he didn't want to go. He
16 wanted to go to work. But [REDACTED], since he was
17 driving the vehicle, has to go be checked out. Part
18 of the health checkout process at a doctor's office,
19 they do a drug screen.

20 Q. Why do they do a drug screen?

21 A. Just to verify there was no substances in
22 his bloodstream that shouldn't have been there.

23 Q. And so --

24 A. It's insurance requirement as well, I
25 believe.

1 Q. Well, let me ask you this. Does [REDACTED]
2 [REDACTED] -- let's take insurance off the
3 table. Does [REDACTED] require its
4 drivers to take drug screens after an incident?

5 A. Yes.

6 Q. And [REDACTED] refused to take one after
7 this crash; is that right?

8 A. He did, yes, sir.

9 Q. Why do you think he refused?

10 A. He -- I don't know, to be honest with you.

11 Q. He was a dependable employee you had
12 testified.

13 A. He was dependable.

14 Q. He showed up on time.

15 A. He did.

16 Q. Now that you know he'd been arrested for
17 controlled substance, do you think he was high at
18 the time? Could that be the reason?

19 A. I'm not going to assume anything.

20 (Plaintiff's Exhibit 4 was marked for
21 identification.)

22 Q. (By Mr. Tobin) So what I'm going to show
23 you now are the photographs. These were produced by
24 [REDACTED]. I'm going to mark these as
25 4. This will be composite 4.

1 Do you recognize these photographs?

2 There's three of them.

3 **A. I do, yes, sir.**

4 Q. All right. Those are the photographs of
5 the back of my client's minivan; right?

6 **A. Yes, sir.**

7 Q. And the second one is the front of her
8 minivan?

9 **A. Correct.**

10 Q. And then that third photograph is the
11 truck and the leaf blower that [REDACTED] was
12 driving for [REDACTED]?

13 **A. Correct.**

14 Q. Do you know how much that truck weighs?

15 **A. Truck probably weighs in around
16 6,000 pounds.**

17 Q. How about that straw blower? How much
18 does that weigh?

19 **A. It's around 2,500.**

20 Q. If I have a manual that says the truck,
21 the FINN straw blower, is 4,800 pounds, would you
22 have a reason to disagree with that manual?

23 **A. No.**

24 Q. All right. How would you describe what
25 you're looking at in those photographs in terms of

1 the extent of the damage to the back of the minivan?

2 A. [REDACTED] ran into the van.

3 Q. Okay. I understand that. What kind of
4 adjective would you use to describe that damage? Is
5 that a bump, a scratch, crash, severe damage?

6 A. That's severe damage.

7 Q. Do you do an annual companywide safety
8 training with all of your drivers?

9 A. No, sir. We discuss safety. And driving
10 is part of the safety meeting every Monday morning.

11 Q. Now, on your Monday morning safety
12 meetings, why does [REDACTED] have
13 those meetings?

14 A. It's just good practice.

15 Q. Who leads those meetings?

16 A. Usually [REDACTED] and/or [REDACTED].

17 Q. [REDACTED] or [REDACTED]?

18 A. Usually [REDACTED] now and -- but [REDACTED]
19 also usually attends when he's there.

20 Q. Why did you decide -- [REDACTED] is IT
21 management? Is that his role now?

22 A. He's IT management and safety coordinator.
23 So he handles making sure we have everything in the
24 office we need as far as personal protective
25 equipment, hard hats, vests, gloves, eyewear, ear

1 protection. And then he coordinates making sure --
2 checking all the records as far as the safety
3 meetings, the OSHA 300 forms, anything and
4 everything like that -- dealing with safety.

5 Q. And who attends those meetings?

6 A. All the staff attend those meetings, every
7 Monday, 7 o'clock, all the laborers.

8 Q. Okay. So looking back on that
9 organizational chart --

10 A. The office manager would not be there.
11 The estimator would not be there. Because they're
12 in the office.

13 Q. Would [REDACTED] be there?

14 A. [REDACTED] is usually there, yes, sir.

15 Q. And [REDACTED] and his crew?

16 A. Yes, sir.

17 Q. And then [REDACTED] and his crew?

18 A. That is correct.

19 Q. We know [REDACTED] has resigned.

20 A. He has resigned.

21 Q. Who replaced [REDACTED] as a crew leader?

22 A. No one yet.

23 Q. So who does [REDACTED] and [REDACTED]
24 report to?

25 A. They've actually been split up. He

1 actually works with [REDACTED] now. We took these
2 gentleman and kind of filled in some of these blank
3 spots, the red areas. Yeah, [REDACTED] actually works
4 with [REDACTED] now.

5 Q. All right. And then [REDACTED] and
6 [REDACTED], they attend these meetings and the
7 guys beneath them?

8 A. Correct, yes, sir.

9 Q. How do you find your employees?

10 A. LinkedIn. On our website, we have an
11 advertisement. We also do it through -- like I say,
12 we'll post hiring positions on LinkedIn. We also
13 use hiring sites. Not Monster, but trying to think
14 of the other big one.

15 Q. Indeed?

16 A. Indeed. And then also word of mouth.

17 Q. Word of mouth. Do you pay like -- I know
18 some companies will pay their employees almost like
19 a finder's fee or a referral fee if they recommend
20 someone and they end up getting hired.

21 A. If they recommend someone that gets hired,
22 they get a referral fee of \$200.

23 Q. Is that how a lot of your drivers --
24 excuse me. I won't use the word drivers yet. Is
25 that how a lot of your employees find the company?

1 **A. A lot, yes. Yes. People want to work**
2 **with someone that they believe will work as hard as**
3 **they do. So they usually bring in someone they**
4 **like.**

5 Q. Is there any record of what's discussed at
6 the Monday morning meetings?

7 **A. There is, yeah.**

8 Q. Would there be a record of what was
9 discussed on that Monday morning meeting
10 immediately -- the first one after this crash?

11 **A. I would have to look. It's been a while.**
12 **I'd have to look.**

13 Q. If there is, will you agree to produce it?

14 **A. Yes, sir.**

15 Q. Do you keep a record of who attends those
16 meetings?

17 **A. We do, yes, sir. They sign off.**

18 Q. If you would, can you turn with me,
19 please, to 2.12, the bottom of 2.12. We're in your
20 safety and health manual. That's Bates stamped as
21 0059. Yup. So if you go to 000 -- four zeros and a
22 59.

23 **A. All right.**

24 Q. I see there's some highlighted sentences
25 in your manual.

1 **A. Correct.**

2 Q. Could you please read for me the
3 highlighted portions starting from the top.

4 **A. No employee shall -- rules for drivers of**
5 **vehicles. No employee shall operate vehicles**
6 **without adequate training and proper authorization.**
7 **Drivers must not take chances. At all times be**
8 **cautious of other drivers on the road. Positively**
9 **no tailgating. Maintain a proper distance between**
10 **you and all other vehicles.**

11 Q. Okay. Those first few sentences -- you've
12 testified that [REDACTED] did received adequate
13 training from [REDACTED].

14 **A. Yes.**

15 Q. All right. The third sentence you read,
16 at all times be cautious of other drivers on the
17 road. On the date of the crash, would you agree
18 with me that he, [REDACTED], was not cautious of the
19 vehicle ahead of him?

20 **A. Yes.**

21 Q. Would you agree with me that he violated
22 that fourth sentence, maintain a proper distance
23 between you and all other drivers?

24 **A. Yes.**

25 Q. All right. Then we look further down. Do

1 you see the highlighted part where it says, if an
2 accident occurs, the driver must follow? Do you see
3 that sentence?

4 **A. Yes. Procedures as outlined in the**
5 **substance abuse program.**

6 Q. Okay. And so what I want to do now is --
7 if you would, let's turn to 00077 -- I think I
8 tabbed that. Is that 77 at the bottom?

9 **A. That is correct.**

10 Q. And it says here that refusal to comply
11 with substance abuse policy -- do you see that
12 portion?

13 **A. I do, yes, sir.**

14 Q. All right. Could you read that first
15 sentence.

16 **A. Any employee who refuses to submit a urine**
17 **or blood sample for testing under this policy will**
18 **be treated as a positive drug test and terminated.**

19 Q. So under your -- under [REDACTED]
20 [REDACTED] policy, when [REDACTED] refused to take
21 the drug test, he was treated as a positive drug
22 test?

23 **A. That's the way we treated it, yes. But we**
24 **have no proof because he didn't take the drug test.**

25 Q. I'm sorry. Say that again?

1 **A. We didn't have any proof of that because**
2 **he refused to take the drug test. So there's no**
3 **actual, like, blood work or anything.**

4 Q. I understand. I'm just saying, what [REDACTED]
5 [REDACTED] policy says --

6 **A. Yeah. When he refused to follow the**
7 **policy, then he basically was terminated.**

8 Q. No. But I'm just reading the policy. It
9 will be treated as a positive drug test. I
10 understand you may not have independent proof. But
11 that's what the policy says.

12 **A. That's our policy, yes.**

13 Q. At the time that he was driving the truck
14 and pulling the FINN -- what was he pulling? Can
15 you tell us what that was?

16 **A. It's a FINN straw blower.**

17 Q. Is that a two-man sort of -- can a FINN
18 straw blower be operated by one person, or does it
19 require two people?

20 **A. One person.**

21 Q. All right. At the time that he was
22 driving the truck and pulling the FINN straw blower,
23 was that FINN straw blower properly secured to the
24 truck?

25 **A. It was, yes, sir.**

1 Q. Was that truck in good, operable working
2 condition?

3 A. It was, yes, sir.

4 Q. Was it overloaded at the time of the
5 crash?

6 A. No, sir.

7 Q. Did [REDACTED] ever share with you or
8 anyone at [REDACTED] that he thought
9 the truck was too heavy to drive with that FINN
10 straw blower attached to it?

11 A. The truck was too heavy?

12 Q. Yes, sir.

13 A. No.

14 Q. All right. You questioned my question, so
15 I'll make it easier. Did [REDACTED] ever express to
16 you or anyone at [REDACTED] that when
17 he drove and would pull the FINN straw blower, that
18 he felt it was too heavy a vehicle to drive?

19 A. No, sir.

20 Q. Did you or anyone at [REDACTED]
21 [REDACTED] ever say to [REDACTED], it's not too
22 heavy; you're just being a little girl about it?

23 A. No, sir.

24 Q. Have you ever heard anyone use racist
25 comments at [REDACTED]?

1 **A. No, sir.**

2 Q. If [REDACTED] said that he's heard racist
3 comments, is he lying?

4 **A. Yes, sir.**

5 Q. Do you know when you purchased that
6 Ford -- it was a Ford truck; right?

7 **A. Correct. F-250, yes, sir.**

8 Q. Do you know what year that truck was
9 purchased?

10 **A. Truck, I believe, was a 2006 model. We**
11 **purchased it a year before this incident.**

12 Q. Yeah, I have the title being March 3rd of
13 2017.

14 **A. Okay.**

15 Q. All right. So that was -- so was it --
16 the truck was 11 years old when -- the truck was
17 12 years old when [REDACTED] was driving it?

18 **A. Correct. I believe the mileage was fairly**
19 **low, though.**

20 Q. And [REDACTED], they
21 purchased the truck? It's their truck?

22 **A. Yes, sir.**

23 Q. Do you still have that truck?

24 **A. No. It was totaled.**

25 Q. It was totaled as a result of the crash?

1 **A. Yes, sir.**

2 Q. When you say totaled, that means the
3 damage was too extensive for it to be repaired?

4 **A. Yes.**

5 Q. Do you have -- do you put any
6 responsibility for this crash on my client?

7 **A. No, sir.**

8 Q. Do you put any responsibility for this
9 crash on the vehicle ahead of my client?

10 **A. No, sir.**

11 Q. So [REDACTED] is 100 percent at fault for
12 this crash?

13 **A. Yes, sir.**

14 Q. Has [REDACTED] performed any
15 surveillance on my client since the crash?

16 **A. No, sir.**

17 MR. TOBIN: Let's take a five-minute
18 break, and then we can come back, and I'll be close
19 to being done.

20 THE VIDEOGRAPHER: Going off video record
21 at 11:13 a.m.

22 (Recess from 11:13 a.m. to 11:18 a.m.)

23 THE VIDEOGRAPHER: We're back on video
24 record at 11:18 a.m.

25 Q. (By Mr. Tobin) Would you take a look at

1 those request for admissions. It's got like where
2 it says deny or admit in bold.

3 **A. This one, yes.**

4 Q. Let's look at No. 51. That's page 9. And
5 it says, after the collision, [REDACTED]
6 [REDACTED] created a report or other document that
7 described the collision. And [REDACTED]
8 [REDACTED] response was admit.

9 So [REDACTED] did prepare
10 some sort of document that addressed this crash?

11 **A. Yes, sir.**

12 Q. All right. Would that document -- would
13 this be the form if you -- if you go look at the
14 safety and health manual, Bates stamp 122 --

15 **A. I don't know if it's exact form, but it's
16 very similar to this.**

17 Q. All right. As far as my file, I don't
18 have that.

19 MR. [REDACTED] I think we produced that. I
20 can print it out if we didn't.

21 Q. (By Mr. Tobin) All right. Let me ask you
22 this. If that document does exist, will you produce
23 that as well?

24 **A. Yes, sir.**

25 Q. All right.

1 MR. TOBIN: Yeah, I don't think -- I don't
2 think I have it. So if I can get a copy of that as
3 well. You can make a note for that. Thank you.

4 MR. [REDACTED] Yeah.

5 Q. (By Mr. Tobin) If you go back to those
6 request for admissions.

7 A. Okay.

8 Q. And if you look at the next page, No. 52,
9 it says that, after the collision [REDACTED]
10 [REDACTED] took steps to make sure that a collision
11 like this would not happen again. And [REDACTED]
12 [REDACTED] admitted to that.

13 A. Yes, sir.

14 Q. If you would, just tell me those steps,
15 please. I understand there was a safety meeting on
16 Monday morning, which is a regular thing that [REDACTED]
17 [REDACTED] does.

18 A. Every Monday, yes, sir.

19 Q. Any other steps?

20 A. We just -- after the collision, that was
21 the main thing, was to make this -- I mean, you
22 never want an accident to happen. But when it does,
23 you try to use it to teach and learn from yourself,
24 but to teach everyone what can happen and how to
25 avoid that from happening in the future.

1 Q. So I understand that that was the purpose
2 of the meeting. And beyond that meeting, was there
3 anything else?

4 A. Internally just making sure that, I mean,
5 everyone was aware of what was going on and that we
6 were -- I guess that's it.

7 Q. Has [REDACTED] changed its
8 policy on how it trains its drivers beyond a crew
9 leader identifying a dependable employee, and then
10 that crew leader and Shane Corley kind of doing yard
11 review, and then 1 or 2 trips out there on the road?
12 Is that still the same policy as you described
13 earlier?

14 A. It's still the basic policy. But now
15 we -- there's a little more oversight as far as
16 verifying with the crew leader on a -- we usually go
17 past a month now. We usually go about 6 to 8 weeks
18 to make sure they're -- you know, the crew leader is
19 reporting. And we actually, you know, talk to them
20 and make sure everyone is doing as they should be.

21 We have area managers watch, and they'll
22 actually, you know, follow them around now. So
23 we're just making sure they're operating the vehicle
24 safely. This was a major accident. So we don't
25 ever want it to happen again.

1 MR. TOBIN: All right. Thank you very
2 much for your time. I appreciate it.

3 THE WITNESS: Yes, sir.

4 MR. [REDACTED] I just have 1 or 2 follow-up
5 questions.

6 THE WITNESS: Yes, sir.

7 EXAMINATION

8 BY MR. [REDACTED]

9 Q. In the safety manual, it says that failure
10 to take -- failure to do the drug test is treated as
11 a positive drug test. Is that treated as a positive
12 drug test in terms of staying employed or treating
13 it as a positive drug test in terms of you thinking
14 the person was actually on drugs?

15 A. It's treated as -- it's worded here and
16 it's treated as a positive drug test as far as
17 employment goes.

18 Q. Okay. So you don't think he was actually
19 on drugs based on his failure to take a drug test?

20 A. Again, I don't want to assume anything.
21 But that's -- we just -- when they refuse it, we
22 make the assumption. You know, that's our reasoning
23 for terminating them.

24 MR. [REDACTED] Okay. I think that's all I
25 have.

1 FURTHER EXAMINATION

2 BY MR. TOBIN:

3 Q. Let me -- do you have a brother who works
4 with you at the company?

5 A. (Witness shakes head.)

6 Q. No?

7 A. No, sir.

8 Q. How about a brother-in-law?

9 A. Yes.

10 Q. Who is your brother-in-law?

11 A. [REDACTED]. He's on the -- he's our
12 maintenance.

13 Q. [REDACTED] is?

14 A. Maintenance. Right under [REDACTED],
15 general manager. Straight down.

16 Q. He's on the same line as [REDACTED]?

17 A. Yes, sir.

18 Q. He would be in a supervisory role above
19 [REDACTED], who was --20 A. No. He's -- [REDACTED] is above. If
21 you look at the lining of the structure. [REDACTED]
22 is above [REDACTED].23 Q. Would [REDACTED] ever have any sort of
24 communications with [REDACTED]?

25 A. No, except for maybe conversations of, you

1 know, if -- a crew leader always has the -- they
2 have the controlling factor of tagging out a truck,
3 tagging out a piece of equipment, tagging out a
4 piece of -- a trailer. Like if they deem it unsafe
5 to operate that day, they have the full authority to
6 tag it out themselves.

7 Now, [REDACTED] would be the one they would
8 explain to their reasoning for tagging something
9 out. Well, the tire was slack, or the lights didn't
10 work on a trailer, or the truck had a funny sound
11 when I cranked it up. So he can -- that's the
12 conversations [REDACTED] would have with all the crew
13 leaders and everyone in the field, is basically
14 getting their information, feedback, so he can
15 address the situation with a vehicle or trailer or
16 tractor.

17 Q. Have you known [REDACTED] a long time? He's your
18 brother-in-law?

19 A. He's my brother-in-law.

20 Q. Have you ever heard him make racist
21 comments?

22 A. No, sir.

23 Q. Never?

24 A. Never. Not at work.

25 Q. If [REDACTED] heard him make racist

1 comments at the workplace, would you have said
2 something?

3 **A. We would have definitely said something.**

4 Q. Before he -- before [REDACTED] was hired
5 by [REDACTED], do you know what he did
6 for work?

7 **A. I don't recall, no, sir.**

8 Q. He worked for Pilgrim's Pride. Have you
9 ever heard of Pilgrim's Pride?

10 **A. Yes, sir. It's a chicken hatchery, eggs,
11 chickens.**

12 Q. Yeah, he worked in poultry. His job was
13 hanging chickens. Nothing to do with driving. Did
14 you know that before today?

15 **A. No, sir.**

16 Q. After the crash -- let me ask you this.
17 Does [REDACTED] have any policy on what
18 is supposed to happen in the minutes following a
19 crash?

20 **A. The first step is to assess the occupants
21 of the vehicle, make sure they're okay. Make sure
22 the environment is safe. Fluids on the ground,
23 things leaking. Then reach out. And once the
24 occupants of their vehicle is safe, address the
25 other -- if there was other vehicles involved, reach**

1 out to them, make sure they're okay. Then they are
2 to -- of course, I guess the first step would be --
3 sorry -- back up. Call 911, like everyone does.
4 And then start addressing the situation.

5 After everything on site is safe, call the
6 office, area manager, or a manager in general will
7 come out to the site. And then start making sure
8 everyone is okay themselves. Document with
9 pictures. And then, like I said, assess the driver,
10 make sure he's checked out. And any of his members
11 in his vehicle, make sure they're okay, get them
12 checked out.

13 Q. So first -- so they call 911.

14 A. Yes.

15 Q. Then they should check on themselves and
16 the other occupants within their vehicle.

17 A. Correct.

18 Q. Then are they -- make sure I get this
19 right. Are they supposed to go check on the
20 occupants of the other vehicle, if there was another
21 vehicle --

22 A. It's not written down. But it's common
23 decency to go check on the other vehicle.

24 Q. All right. But it's not an actual policy
25 that they have to do that?

1 A. No, I don't believe so. No, sir.

2 Q. But it is common decency to do that?

3 A. It is common decency.

4 Q. Did you ever -- in your safety meetings
5 Monday mornings, did you ever talk to your drivers
6 about what happens if there's an accident?

7 A. We mentioned this accident. I'm not sure
8 if that exact policy was discussed. You know, go
9 check on other drivers. This accident was pretty
10 severe. From what I understand, her vehicle -- I
11 think she was out of the vehicle when they got out
12 of the truck. After the accident, there was already
13 people around her vehicle, assessing it. So we
14 wouldn't want to cause more undue stress on that
15 driver by bombarding her vehicle. People were
16 saying she was okay. That was what [REDACTED] told me.

17 Q. So [REDACTED] is [REDACTED]?

18 A. Yes, sir.

19 Q. And [REDACTED] was called to the crash site?

20 A. He was, yes, sir. He was the closest
21 person there, so he went to the crash site.

22 Q. And [REDACTED] is the one who took photographs
23 of --

24 A. Yes, sir.

25 Q. A lot of those photographs we looked at

1 [REDACTED] took; right?

2 A. [REDACTED] took, yes, sir.

3 Q. All right. And so did anyone from [REDACTED]
4 [REDACTED] talk with my client at the crash
5 site?

6 A. No. I think by the time we got -- no, we
7 did not talk to her. I think [REDACTED] said she was
8 taken off or in an ambulance to be checked out.

9 Q. Did you know that [REDACTED] did not talk
10 with my client at the crash site?

11 A. I did not. Like I said, I'm assuming
12 he -- [REDACTED] said when he got there -- as soon as we
13 found out, [REDACTED] was already on his way. He was the
14 closest person there. She was already in the
15 ambulance leaving.

16 So we didn't get a lot of conversation
17 with [REDACTED]. We took him straight to the hospital
18 once the officer released him. And he refused a
19 drug test. Came back to the office. He refused to
20 sign his termination papers. He refused to sign
21 anything. Basically quit.

22 Q. He quit or he was fired?

23 A. He was fired. But we asked him to sign
24 his termination papers, and he would not.

25 MR. TOBIN: All right. Those are all the

1 questions I have. I appreciate your time. Thank
2 you much, sir.

3 THE WITNESS: Yes, sir.

4 MR. [REDACTED] Nothing further from me as
5 well.

6 THE VIDEOGRAPHER: Going off video record
7 at 11:30 a.m.

8 (Deposition concluded at 11:30 a.m.)

9 (It was stipulated and agreed by and
10 between counsel and the witness that the signature
11 of the witness be waived.)

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