

The Deposition of Carlo Zalewski

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COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss. Superior Court

Civil Action No. 02-01159A

MARCIA RHODES, HAROLD RHODES, INDIVIDUALLY, HAROLD
RHODES, ON BEHALF OF HIS MINOR CHILD AND NEXT
FRIEND, REBECCA RHODES,
Plaintiffs

vs.

CARLO ZALEWSKI, DRIVER LOGISTICS SERVICES, PENSKE TRUCK
LEASING CORP., AND BUILDING MATERIALS CORP. OF
AMERICA d/b/a G.A.F. MATERIALS CORP.,
Defendants

DEPOSITION OF CARLO ZALEWSKI
Thursday, June 26, 2003, 9:12 a.m.
Brown Rudnick Berlack Israels LLP
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Boston, Massachusetts 02111

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Thursday, June 26, 2003

P R O C E E D I N G S 9:12 a.m.

CARLO ZALEWSKI after having been first duly sworn under oath, was questioned and testified as follows:

EXAMINATION BY MR. PRITZKER:

Q Would you state your full name, please?

A Carlo Zalewski.

Q Spell the last name.

A Z-a-l-e-w-s-k-i.

Q Where do you live, sir?

A 50 Beaconlight Avenue, Keansburg, New Jersey.

Q How long have you lived there?

A Oh, about fifteen or sixteen years.

Q What's your date of birth?

A April 23, 1944.

Q Have you ever testified in a deposition before?

A No.

Q I am going to be asking you questions; you're going to answer them. If you do not understand a question, please let me know. The idea is not to trick you; it is to get facts from you; okay?

A Okay.

Q If you need to take a break, all you've got to do is tell me. Hopefully we'll keep this thing moving right along and get you in and out as quickly as we can. Do you understand why you're here today?

A Yes.

Q What's your understanding of why you're here?

A For an accident I had with Mrs. Rhodes, and to either get my guilt or innocence on it, to get evidence on it.

Q Do you understand that you have been sued?

A Mm-hmm.

Q And that along with you, G.A.F. has been sued, and Penske has been sued?

A Right.

MR. SMITH: You have to speak up; answer verbally. Are we going to do stipulations, or do you want to put objections on the record?

MR. PRITZKER: I would just as soon stick with the Rules of Civil Procedure. If you guys have a problem with that, let me know, which I think is pretty close to what people usually stipulate to, anyway.

MR. SMITH: No; that is fine.

Q Are you married, Mr. Zalewski?

A No, I am not.

Q Have you ever been?

A Yes.

Q Do you have any children?

A Three.

Q How old are they?

A Thirty -- 34, 36 and 32.

Q Is the 32-year-old male or female?

A Female.

Q Is the 34-year-old male or female?

A Male.

Q And the 36-year-old?

A Is female.

Q How many times were you married?

A Once.

Q What is your present occupation?

A Truck driver.

Q For whom do you work?

A Right now, nobody.

Q You're unemployed?

A Yes.

Q Do you remember when the accident occurred, what the date was?

A January 9, 2002.

Q Since January 9, 2002, have you worked?

A No.

Q Have you sought work?

A Yes, I have.

Q As a truck driver?

A Yes.

Q Have you sought work for anything else besides being a truck driver?

A No.

Q Can you tell me what you've done in order to seek work?

A Telephone calls, applications, interviews.

Q Do you presently take any medications?

A No.

Q I notice from some of the documents I read that you suffer from time to time from hypertension.

A At a point I did, yes.

Q You do not take medication for that anymore?

A No.

Q And so therefore, I take it from your answer that you have not taken any medications today?

A No.

Q Do you know of any reason why your judgment to answer questions today would be impaired?

A No.

Q Can you tell me where you were born?

A Newark, New Jersey.

Q Where did you go to high school?

A Irvington Tech in Irvington, New Jersey, and East Side High in Newark, New Jersey.

Q Did you graduate high school?

A No.

Q What is the last grade that you attended?

A Ninth.

Q When did you first become a truck driver?

A I was working -- around 18 years old.

Q From the time that you were 18 years old until the date of the accident with Mrs. Rhodes, was your employment principally truck driving?

A Yes and no. It is a combination.

Q And as best as you can, will you track your employment -- let me do it differently. At the time of the accident, for whom were you working?

A For G.A.F. Oh, excuse me; for D.L.S. for G.A.F.

Q And for how long did you have the arrangement where you were working for D.L.S. for G.A.F.?

A It was about six months.

Q And prior to that, for whom did you work?

A Vanguard Services.

Q What kind of a company is Vanguard Services?

A It is the same as D.L.S. They had the contract for G.A.F.

Q So when you were working for Vanguard Services, were you also working for Vanguard for G.A.F.?

A Yes.

Q And for how long did that arrangement last?

A About four years, four and a half years.

Q Prior to working for Vanguard, for whom did you work? Well, let me ask you a question. During all the time that you were working for Vanguard Services, was it for the G.A.F. account?

A The first six months, no; but after that, yes.

Q Now let me ask you, prior to Vanguard, for whom did you work?

A Kuehne Chemical.

Q I did not hear it.

A Kuehne Chemical.

Q Spell Kuehne, if you can.

A K-e-n-q-u-i-n-e, I think.

Q How long did you work for the chemical company?

A Oh, three years.

Q Doing what?

A Driving a tanker.

Q Tanker truck?

A Yes.

Q Any relationship between that job and G.A.F.?

A No.

Q Prior to working for -- is it "KEEN-y" or "Ken-KEEN"?

A "KEEN-y."

Q Prior to working for Kuehne, for whom did you work?

A Allstate Power Vac.

Q Where is Allstate Power Vac located?

A It is in Linden, New Jersey.

Q Where is Kuehne Chemical located?

A South Kearny, New Jersey.

Q What did you do for Allstate Power Vac?

A Drove trucks.

Q What kind of trucks?

A Tank trucks, roll-offs, vacuum trucks, flatbeds, dump trucks.

Q What did Allstate Power Vac do?
A Mainly a chemical cleanup company. They cleaned boilers for electric companies and power plants.
Q How long did you work for Allstate?
A Two years.
Q Prior to Allstate, for whom did you work?
A George Frank Associates.
Q What kind of a business was George Frank Associates?
A Tank removal, tank cleaning, contaminated soil removal and disposal.
Q What did you do for George Frank Associates?
A Drove a truck, front-end loader. I drove a dump truck, flatbed, equipment trailer, front-end loader, backhoe, excavator.
Q So you were driving trucks and equipment?
A Yes.
Q How long did you work for George Frank Associates?
A George was about a year.
Q Where was George Frank located?
A Hazlet, New Jersey.
Q What was the job you had before George Frank Associates?
A Before George... I got all mixed up in there.
Q If you do not remember, sir, it is no harm in saying so. I know we are going back a long way.
A I do not.
Q Can you tell me approximately when it was that you worked for George Frank Associates?
A The date, no.
Q Can you tell me whether it was in the '80s or the '90s?
A '80s.
Q So is it fair to say that for the last fifteen years, your principal job has been truck driving?
A Yes.
Q And except for driving equipment like front-end loaders, it is been your only job?
A Yes. The chemical companies -- yes, working with chemicals and driving. It was a combination.
Q Now, do you presently hold any licenses, other than a New Jersey driver's license?
A No.
Q Do you hold a New Jersey driver's license?
A Yes, I do.
Q How long have you had the New Jersey driver's license?
A Since I was eighteen.
Q Has it ever been suspended?
A Yes. I had a surcharge on my insurance. I cannot -- they suspended the license.
Q Why did you have a surcharge on your insurance?

A Because my insurance ran out, I did not have the money to get insurance, and they put it in Motor Vehicle that I did not have the insurance, so they suspended the license.

Q So what kind of insurance are you talking about?

A Car insurance. Auto insurance.

Q So you had an automobile?

A Right.

Q You could not pay for the insurance?

A Right.

Q And consequently, the State suspended your license?

A Right.

Q Aside from that, has your license ever been suspended?

A Yes, when I was younger, on points. I was around twenty, twenty-three, twenty-four.

Q When you say on points you mean because of various violations?

A Yes.

Q And every time you got a violation you accumulated points?

A Mm-hmm.

Q And when you got enough points, the State suspended your license?

A Right.

Q Do you remember how many different incidents were involved before they suspended your license?

A Off-hand, no.

Q How long was your license suspended for?

A I think two months.

Q And your recollection is that you were in your twenties at the time?

A Yes.

Q Aside from that, has your license ever been suspended?

A No.

Q Has it ever been revoked?

A No.

Q Has it ever lapsed?

A No.

Q Now, do you know whether or not any of the jobs that you've described here today -- I know there are others -- but the ones that you described here today, do you know whether any of your driving responsibilities required separate certifications or driver's licenses?

A The chemical use -- the chemicals, for chemical use, we had to take hazardous-chemical tests.

Q And did you take those tests?

A Yes.

Q Did you pass the tests?

A Mm-hmm.

Q So you were certified to handle chemicals?

A Right.

Q What about any tests or certifications for driving trucks?

A No.

Q Never took any tests; never had any certifications?

A Only on entrance with any company, and the inner -- in the company they'd have somebody go with you. That is about it.

Q So you needed to be qualified by the company?

A Yes.

Q But you did not need, to your knowledge, to be qualified by the State?

A No.

Q Did you ever drive interstate routes?

A Yes.

Q Do you presently own a car?

A Yes, I do.

Q What kind of a car is it?

A Lincoln, 1988.

Q Is that your only car?

A Yes.

Q Did you own that car in January of '02?

A Yes, I did.

Q Now, on the date of the accident, I take it from your testimony that your license was in good order?

A Yes.

Q Valid --

A Yes.

Q -- driver's license?

A Yes.

Q Had you ever been in an accident prior to January of '02?

A About three years prior.

Q I am going to restate the question just so it is clear on the record. Were you ever in an accident prior to January 9 of '02?

A I think the year before, one of the drivers was following behind me and hit me in the rear end.

Q So another driver from --

A G.A.F.

Q A driver from G.A.F. --

A Right.

Q -- was following behind you?

A Right.

Q You stopped; he hit you?

A Yes.

Q Is that the way it happened?

A Yes.

Q So that was the year before; so that was sometime in '01?

A Yes.

Q Were you in any other accidents prior to that?

A Yes; there was one about a year and a half before that.

Q And what were the circumstances surrounding that accident?

A That, I was in New Jersey. I was making a U-turn through the median, and a woman came down behind me and went to the left instead of going around me to the right and wound up coming up the median. And I stopped the truck so she could hit my wheels instead of going under the truck; and that was it.

Q What happened to her?

A Nothing. Her mother was in shock or whatever, excited; so they took her in the ambulance.

Q Were the police at the scene?

A They came on the scene, yes.

Q Where did this occur?

A In -- oh, Christ. I do not remember the name of the town.

Q Was it in New Jersey?

A Yes.

Q You do not remember the name of the town?

A Bridgewater; Bridgewater, I think it was.

Q Were you driving to G.A.F. at the time?

MR. DESCHENES: Objection.

A Yes, I was.

Q Fair objection. Were you driving for either Vanguard or Driver Logistics Services?

A Vanguard.

Q And were you doing so for the customer G.A.F.?

A Yes.

Q Was a report made to G.A.F. --

A Yes.

Q -- of that accident?

A Yes.

Q Was a report made to Vanguard?

A Yes.

Q The accident that you described right before that, the one where you were rear-ended by a G.A.F. driver, was that reported to G.A.F.?

A Yes, it was.

Q For whom were you working at the time of that accident?

A For Vanguard.

Q Were you in any other accidents -- excuse me -- back to the one that you just described in, was it Bridgeport or Bridgeton?

A Bridgewater.

Q Bridgewater; I'll get it right.

A Close.

Q Were you cited by the police?

A Yes. Let's see. Making an improper change of lane, and they talked to the prosecutor and had it reduced. I forget what it was reduced to.

Q You actually went to court?

A Yes, because I did not feel I was guilty, but he said he had to give me the ticket. He commended me on stopping the way I did so she would hit my wheels instead of going under, because I was already out to the edge of the road. There was no traffic coming, and I was just going to pull out. And when I heard her coming, I looked, she was coming right towards my wheels. If I would have pulled up she would have went underneath the trailer.

Q So you were cited by the cops?

A Yes.

Q You went to court?

A Right.

Q Did you have a lawyer with you?

A No. No; I met the officer there.

Q Did anybody from Vanguard accompany you?

A No.

Q Did anybody from G.A.F. accompany you?

A No, no.

Q And what happened with the citation?

A The officer talked with the prosecutor and he reduced the ticket down.

Q To what?

A I am trying to think what it is. I do not really remember. And it was, I think, a \$25 fine. No points, no moving violation.

Q Was there ever a civil suit filed over that incident by either the driver or the mother?

A Not that I know of.

Q Prior to that incident, were you in any other automobile accidents?

A No.

Q You understand my question includes both for the truck or for your private car?

A Oh, okay. In the car, I had an accident with a police officer; yes.

Q That was unfortunate.

A And I did not get into trouble for that.

Q Where did that accident occur?

A That is going back. I am not really sure; It is going back a ways.

Q Well, can you tell me what happened?

A Yes. I was at a stop street, and I was going to make a left-hand turn. There was two cars coming down the road with their right directionals on. There was no cars coming down this way. I pulled out in the road to make the left, and the cop shot around the two cars who were making a right-hand turn and hit me in the front fender.

Q What car were you driving?
A It was a Mercury.
Q Does that help you target when this occurred?
A No.
Q Do you remember where it occurred?
A It occurred in, I would say, Hazlet. It is a split road there, one town, one town.
Q What's the other town?
A Kingsburg.
Q So it was either Kingsburg or Hazlet?
A Hazlet, Hazlet.
Q Was there a report filed?
A Yes.
Q Was anybody hurt?
A No, no.
Q Were you cited?
A Yes, I was, and the chief of police dropped the ticket.
Q Okay. Was the police officer with whom you were in the accident cited?
A No, definitely not by his own people.
Q Was there any damage to your vehicle?
A Yes.
Q Did you make an insurance claim?
A No. I had a small dent on the fender of my car.
Q Aside from the incidents that you've now testified to, have you ever been in any other accident?
A I do not recall any.
Q Either in a truck or in your private vehicle?
A No, I do not recall.
Q Were you ever in an accident in a vehicle that you did not own but that you were driving?
A No.
Q Prior to your experience with Vanguard, had you ever driven a truck on behalf of G.A.F.?
A Prior to Vanguard?
Q Yes.
A No.
Q And if I understand your testimony correctly, for the first six months that you worked for Vanguard, you did not drive for G.A.F.; true?
A Right.
Q And so for the last three and a half to four years that you worked for Vanguard, you were driving for G.A.F.?
MR. DESCHENES: Objection.
A Yes.
Q Were you driving exclusively for G.A.F.?

MR. DESCHENES: Just note my objection.

A Yes.

Q Can you tell me how it happened that you started driving for G.A.F.?

MR. DESCHENES: Objection.

A I was looking for a job.

Q You started working for Vanguard.

A Right.

Q During the first six months, for whom were you driving?

A National Starch.

Q And what were you doing, what kind of work were you for National Starch?

A Shuttling from the plant to the warehouse, from the warehouse to the plant; bringing raw material to the plant and bringing finished product back to the warehouse.

Q And from where to where?

A Bridgewater to... It is near Scotch Plains, but I do not know; I forgot the name of the town.

Q Outside of Scotch Plains?

A Yes.

Q And you did that for about six months?

A Right.

Q Then Vanguard asked you to change, right?

A No; they stopped -- National Starch stopped doing what they were doing. They stopped their trucking.

Q Okay.

A And they were moving the plant. So we left there, and I had told him before that, because I had other friends working over at G.A.F. --

Q You told who?

A Jerry at Vanguard, that I wanted to get into G.A.F.; and he said, as soon as there is an opportunity, he'll bring me in.

Q Okay.

A All right. So when they closed up, I was off a little while; and then he called me up and told me they had an opening there.

Q When you were off, did you work for anybody else?

A No.

Q How long were you off?

A I think about two to three months, something like that.

Q And then who told you there was an opening?

A Vanguard called.

Q Do you remember who called you on behalf of Vanguard?

A No.

Q You mentioned a guy's name, Jerry.

A Yes.

Q Jerry who?

A Jerry Springer, and --

Q So Jerry Springer worked for Vanguard?

A Yes.

Q What was his job at Vanguard?

A He more or less gave us our jobs. He was like a manager, I would say.

Q And so at some point he called you up.

A Right.

Q And in substance, what did he say?

A Do I still want to work over at G.A.F., and I told him yes.

Q Now, you mentioned that you had some friends that worked at G.A.F.

A Right.

Q Did they work for G.A.F. --

A Yes.

Q -- or did they work like you were working, through a company?

A They worked for Vanguard; for Vanguard at G.A.F.

MR. SMITH: Let him finish his question; okay?

Q Who were those friends?

A Ken Urban and Richard Howarth.

Q Howarth?

A Yes.

Q What were they doing at G.A.F.?

A Same thing: driving asphalt from New Jersey to Massachusetts.

Q Okay. So when you first came, or at some point while you were working for Vanguard, you told Jerry that you wanted to work for G.A.F.?

A Right.

Q Is that fair?

A Right.

Q And when this opportunity came up, Jerry called you and said, there is an opportunity?

A Right.

Q Then what happened?

A I started working for G.A.F.

Q Well, but how did it happen that you started working for G.A.F.? Did you go over there? Did you have to fill out papers? Were you introduced to somebody?

MR. SMITH: Objection.

A We had -- D.L.S. already -- D.L.S.; Vanguard already had my worksheets, my application; everything was already in. And that is who I would be going in through.

Q Okay. Did they tell you who to report to?

A Yes.

Q Who did they tell you to report to?

A Well, they told me to come in; I would have to go pick up the truck, I would have to run the load up. It was just like starting off, and I would meet the people when I got up there.

Q I know this is quite a while ago, but it is important that we get the details. So Vanguard told you, come to where to pick up the truck?

A To Newark.

Q Was there a truck garage facility?

A Well, not a garage.

Q Or a lot?

A A lot, yes.

Q Who ran the lot?

A That was... It is another truck leasing company.

Q It was a truck leasing company?

A Yes.

Q But it was not Penske?

A No. They sold out to Penske.

Q When?

A I do not know; about six months before, before the accident. No; about three months. I think it was in November.

Q So it was after you moved from Vanguard to Driver Logistics Services?

A Yes.

Q Yes?

A Yes.

Q So if I understand correctly -- correct me if I do not -- when you first started working on behalf of G.A.F., you would go to a lot --

A Right.

Q -- that was owned and/or controlled by a truck leasing company?

A Right.

Q That truck leasing company ultimately sold out to Penske?

A Right.

MR. DESCHENES: Object. That was a long question; I wanted to get an objection in there at some point.

MR. PRITZKER: Your objection is noted.

MR. DESCHENES: Thank you.

Q To the best of your knowledge, the operation was the same, but the truck leasing company changed?

A Right.

Q And that was before the accident with Mrs. Rhodes?

A Yes.

Q Now, you go to the lot to pick up the truck, right?

A Right.

Q We are talking now the very first time.

A Right.

Q And after you went and picked up the truck -- how did you know which truck to pick up?

A No, excuse me; I went up with somebody.

Q With somebody?

A Test run.

Q I am sorry?

A I was on a test run.

Q You were on a test run?

A Right. I went up with Joe Green.

Q Who was Joe Green?

A He was another driver.

Q Working for Vanguard?

A Yes.

Q And working on behalf of G.A.F.?

A Right.

Q And they told you, somebody told you, to go with Joe?

A Right.

Q Pick up the truck?

A Right.

Q And go to G.A.F.?

A Right.

Q Who told you that?

A It was either Jerry or his partner, Ben.

Q So it was somebody at Vanguard?

A Right.

Q When you went to pick up the truck, did you go with Jerry? I am sorry; with Joe Green?

A Yes.

Q How did you get to the lot?

A I drove to the lot.

Q With Joe, or did you meet him there?

A No, I met him there.

Q How close was Vanguard to the lot?

A Vanguard's in Pennsylvania. We never went there.

Q Ah, okay.

A We never really had contact with them except for maybe once a year for a meeting.

Q Got it.

A Unless there was some kind of a problem that we had to talk; that is about it.

Q But you talked to them on the phone?

A On the phone, occasionally.

Q When you talked to Jerry or -- who was the other one?

A Ben. Like the ice cream, Ben and Jerry.

Q Was that on the phone?

A Yes, yes.

Q And when they called you up to tell you that there was this opening at G.A.F., was that on the phone?

A Yes.

Q So once again, they told you to meet Joe Green at the lot?

A Right.

Q That you were going to pick up a truck, and you were on a test run?

A Yes. Mainly to see where I was going, what the job entailed.

Q Did you do that?

A Yes, I did.

Q So the first day, you went with Joe from the lot?

A It was the first couple of days I was with Joe. First day, Joe drove, just to give me an idea where we were going. After that, then I drove and he drove. We both split on and off.

Q And did you understand that Joe was kind of looking over your shoulder to see whether you knew what you were doing?

MR. SMITH: Objection.

A Yes, yes, I did.

Q Now, where did you go that first day when Joe was driving?

A To Millis, Mass.

Q First you went to the G.A.F. plant?

A First we went to -- from the yard where the truck was, we picked up the truck. We went from Newark; that is about three miles, into South Kearny to a plant there --

Q Was that a G.A.F. plant?

A No. It is where we picked up the liquid asphalt.

Q Then I am going to stop you, just because I want some more detail on this. When you went to the lot to pick up the truck, was there any paperwork involved?

A Yes.

Q What paperwork was involved?

A General maintenance sheet: checking your lights, your tires, your air system.

Q So this was a form?

A Yes.

Q And was the form supplied by the truck leasing company?

A Yes.

Q So the first thing you did when you were learning how to do this --

A Was go over the truck.

Q First you had to go over the truck?

A Go over the truck with the form, yes.

Q The truck that is owned by the truck leasing company whose name you cannot remember, right? And then you had to fill out, after you went over the truck you had to fill out a form?

A Yes.

Q What kind of things were on the form?

A Lights, tires, belts, hoses, brakes, interior, interior lights, interior gauges, air system.

Q How did you -- well, let me ask a couple questions. Once the form was filled out, either you or Joe signed it?

A Yes.

Q Then what happened to the form?

A A copy went to G.A.F., and a copy went to the company, to the leasing company.

Q What about to Vanguard?

A No.

Q So one copy went to G.A.F.?

A Right.

Q And one copy went to the truck leasing company that owned the truck?

A Right.

Q Was there any employee from the truck leasing company helping you with this process?

A No.

Q Okay. How did you get the keys for the truck?

A They'd be locked up in a box. Go and take the keys out of the box, and go and get the truck.

Q How did you know which truck?

A We were assigned trucks.

Q By whom?

A Well, all the guys had their trucks when I got there; so the last truck that was left was mine.

Q But who told you that was yours?

A The dispatcher.

Q The dispatcher for whom?

A For G.A.F.

Q So now, we are still on this first day. Joe's driving; you're watching.

A Right.

Q You went and picked up some asphalt close by?

A Right.

Q And then what?

A From there, we went up to Millis, Mass. to the G.A.F. plant.

Q There was a G.A.F. plant in Millis, Mass.?

A Yes.

Q And you were hauling what?

A Liquid asphalt.

Q Full load?

A About 20 inches from the top.

Q Do you know how many pounds that is, approximately?

A Forty-something thousand.

Q Forty-something thousand pounds?

A Mm-hmm.

Q Had you ever driven a tanker truck with that much load in it before?

A Yes.

Q You had?

A Yes.

Q For whom?

A Allstate Power Vac, S&W Waste --

Q So it is fair to say you had some experience driving --

A Yes.

Q -- heavy tank trucks?

A Yes.

Q And therefore, you knew that when you had a full load in the tanker, that the truck would react in certain ways?

MR. SMITH: Objection.

Q True?

A Yes.

Q And I assume that is a little different than just driving around your passenger car, right?

A Yes.

Q There is issues with the shifting of the load from time to time?

A Shifting of the weight, yes.

Q It takes a little longer to stop than it would with an ordinary vehicle?

A Yes, yes.

Q And you knew all that before you started driving on behalf of G.A.F., right?

A Yes.

Q Now, you went to Millis. What happened in Millis?

A Went to Millis, pulled in. The truck was unloaded.

Q Who unloaded it?

A The men at the plant.

Q Did you assist in that process?

A No.

Q You were strictly the driver?

A Just the driver.

Q Well, on the first day you were just the --

A I was just --

Q The observer?

A I was just the watcher.

Q Okay.

A Or napper.

Q How long did it take to unload, approximately?

A To unload?

Q Yes.

A Anywhere from a half-hour, 45 minutes.

Q Then what?

A Then we would pull out and come back, back to Jersey.

Q Right back to Jersey?

A Yes.

Q Right back to the lot?

A Yes.

Q What was the process -- well, before we get there, when you were driving on this first day, and the load was unloaded, was there any paperwork that you were required -- "you" meaning you or Joe -- were required to fill out and/or sign?

A No, when we picked up the load, we signed the billing. When we got back to the yard, we turned it in.

Q When you say billing, you mean bill of lading?

A Yes.

Q And you signed it when you picked it up?

A Yes.

Q When you turned it in, who did you turn it in to?

A The dispatcher.

Q The dispatcher, for whom?

A Oh, excuse me; it is not -- at the gate, the guard at the gate.

Q So there is a guard at the gate --

A A guard at the gate weighs you in.

Q Which gate, now?

A At G.A.F.

Q Okay. So we are now down in Millis?

A Yes.

Q You got the bill of lading in your hand, or Joe has it in his hand?

A That is what we were talking about before, Millis.

Q Right. And you handed it to the G.A.F. guard?

A Right.

Q And what does he do with it?

A He makes out a scale ticket, puts the paperwork, the bill of lading in a box for the office which goes to the supervisor and foreman.

Q At G.A.F.?

A Yes.

Q Now, this is before the truck is unloaded?

A When we come in. Take a full weight; after we unload, we go out and they take an empty weight.

Q Still within the G.A.F. facilities?

A Yes.

Q So they tell you where to go to weigh it, right?

A The scale is right there.

Q Well, you unload it on the scale?

A No.

Q So you've got to be on the scale twice?

A Yes. You have to come back to the scale. Then he gives us a copy, he keeps a copy, and we leave.

Q Now, you said that the scale is close by? Close by the unloading?

MR. SMITH: Objection.

A No. The gate coming in.

Q So you've got a gate coming in Millis?

A Right.

Q Then you've got the scale?

A Right.

Q Then after the scale, how do you know where to go?

A There is only two places to unload: one inside the building -- It is in a courtyard -- that is where the main loads go; and maybe once a month, a half a load has to go around the back. But that is only when they direct us to go there.

Q Who's "they"?

A Anybody from Millis.

Q When you say from Millis, you mean from G.A.F.?

A Well, G.A.F.

Q So ordinarily you knew where to go to unload?

A Right.

Q If there was going to be a change in that, G.A.F. would tell you --

A Nine times out of ten, the guard, they'd tell the guard, and the guard would tell us to drop a half a load in the back.

Q So the guard, as far as you knew, worked for G.A.F.?

A Yes.

Q And he was taking instructions from somebody else?

A He takes instructions from them.

Q So now the load's empty. You've got to weigh back out?

A Right.

Q Are there ever lines for the scales?

A Sometimes, yes.

Q After you weigh out, you're left with some paperwork, right?

A Yes.

Q Which you have with you in the truck?

A Mm-hmm.

Q And you're heading now back to New Jersey?

A Right.

Q You go right to the lot?

A Right.

Q What do you do with the paperwork?

A Save that up and turn that in at the end of the week.

Q Turn it in to whom?

A To the dispatcher up at G.A.F.

Q So G.A.F. --

A That is how we got paid.

Q We are going to get to payments in a minute. But understand that with the few exceptions that we have just talked about, because you mentioned once or twice a month going to a different place to unload, we are talking still about this first day?

A Yes.

Q When you're with Joe; but I am going to ask you later on whether or not the process ever varied.

A Yes.

Q So on this first day, you come back; you've got the paperwork. You save it up in the truck, or do you take it --

A We keep it with us.

Q So in this particular instance, Joe would take the paperwork?

A Right.

Q Because you were just watching?

A Right.

Q How long did you observe with Joe? You said the first day he drove?

A Yes. The second day, we both drove.

Q So you split the --

A Yes, we split.

Q Did you drive with a full load or with the empty load, if you can remember?

A Both, both. On the way up, I think he drove up, we stopped for coffee in Connecticut; and then I drove up the rest of the way. And on the way back, we did the same thing; we split off.

Q Did you know Joe before this?

A No.

Q Did you get the sense, whether he said it or not, that he was looking out for the company, for Vanguard, to make sure you knew what you were doing?

MR. SMITH: Objection.

A That is more or less what he was supposed to be doing.

Q Now, was it for Vanguard, if you know, or for G.A.F.?

MR. DESCHENES: Objection.

A Probably for both.

MR. DESCHENES: Move to strike.

MR. PRITZKER: I am sorry?

MR. DESCHENES: I said, I move to strike. We have not reserved motions to strike, have we?

MR. PRITZKER: No, we have not.

MR. DESCHENES: Move to strike the answer.

MR. PRITZKER: Although I think under the rules they're reserved; but feel free.

Q The second day, you said that you split the driving.

A Mm-hmm.

Q Was there a time when you did all the driving but Joe was just observing?

A No.

Q How many days did you and Joe split the driving?

A It was just the one day.

Q So by the third day, you were on your own?

A Yes.

Q Now, did you have to attend any training on behalf of either Vanguard or G.A.F.?

A No.

Q You never attended any training?

A No.

Q Were you given any rules --

A Yes.

Q -- by either Vanguard or G.A.F.?

MR. SMITH: Objection.

A Vanguard.

Q Vanguard gave you some rules?

A Yes.

Q What kind of rules did they give you?

A All their company rules, a whole bookful of them.

Q Did any of them have to do with how you drove, how they expected you to drive?

A Yes, the same as any other company. Courteous, nice, and same general --

Q Do not violate the law?

A Right.

Q Try not to speed?

MR. SMITH: Objection.

A Watch where you're going, what you're doing; that is --

Q That was all part of something that Vanguard gave you --

A Yes.

Q -- when you first started driving, or when you started driving for G.A.F.?

A No; when we first started with Vanguard. It was their bylaws and --

Q But as far as the driving was concerned, you understood that they expected you to drive in a certain way --

A Yes.

Q -- that met their standards, true?

A Right.

MR. DESCHENES: Objection to "they."

MR. SMITH: Objection.

Q "They" meaning Vanguard?

A Vanguard, yes.

Q Now, did you ever receive anything similar from G.A.F.?

A No.

Q The procedure that you've just talked about that you learned from Joe, did that change at any time while you were driving for Vanguard?

A No.

Q Was your route always the same?

A Yes.

Q Yes?

A Yes.

Q So for the entire three and a half years to four years that you were driving for Vanguard on behalf of G.A.F., it was always the same?

A Yes.

Q Did G.A.F. ever ask you to take a different route, to go somewhere else?

MR. DESCHENES: Objection.

A No.

Q Did Vanguard ever ask you to go somewhere else?

A No.

Q So your job on behalf of G.A.F., from the time that you started with Joe, was always the same as that first day that you described?

MR. DESCHENES: Objection.

MR. SMITH: Objection.

A Yes.

Q Now, at some point you mentioned that you stopped working for Vanguard, and you started working for Driver Logistics Services; true?

A Yes.

Q Do you remember the date that that occurred?

A May 1, 2001.

Q Did anybody -- well, first tell me in your own words how that happened. How did that occur that you started working for Driver Logistics Services?

A G.A.F. was looking for a cheaper company. Driver Logistics Services was cheaper rates than Vanguard. So they dropped Vanguard and picked up G.A.F.

Q Now, so as far as you understand, the change of your employer was dictated by G.A.F.?

MR. DESCHENES: Objection.

A Yes.

Q Did you know of Driver Logistics Services prior to going to work for them?

A No.

Q How did you learn that you were going to be now an employee of Driver Logistics Services?

A We were told from G.A.F. that they were going from Vanguard to Driver Logistics Services. If we wanted to stay on, we could switch over to Driver Logistics Services.

Q So what G.A.F. told you is, if you want to keep driving for us, you've got to work for Driver Logistics Services.

MR. DESCHENES: Objection.

A Yes.

Q Is that fair? Is that a fair statement?

A Yes.

Q Who told you that?

A Mike Kelly, Carlo Melia. I think that was it.

MR. PRITZKER: Let's take a ten-minute break, if we can, and continue on.

(Recess taken)

Q When we broke, Mr. Zalewski, you were telling me that Mike Kelly and Carlo Melia told you about G.A.F.'s change to Driver Logistics Services?

A Right.

Q Was it both of them that told you at different times, or you cannot remember who told you?

A Both of them at different times.

Q And tell me as best as you can what Mike Kelly said.

A He said that we are changing over to another company.

Q Who did you understand "we" to be?

A G.A.F. And we, as drivers --

Q So he was telling that you the drivers were changing over to Driver Logistics Services?

A G.A.F. was changing over to Driver Logistics Services, and then if we wanted to stay, we could go over to Driver Logistics Services.

Q So he was -- "he" meaning Mike Kelly --

A Mike Kelly.

Q -- was giving you the choice --

A Right.

Q -- of either staying with Vanguard and losing driving for G.A.F.?

A Right.

Q Or moving to Driver Logistics Services and keep driving for G.A.F.?

A Right.

Q Who was Mike Kelly?

A He was our dispatcher.

Q When you say "our dispatcher," you mean the drivers --

A The drivers for G.A.F.

Q He dispatched them?

A Right.

Q Did he do that all the way through until the accident with Mrs. Rhodes?

A Yes.

Q And he was doing that on behalf of -- when you were driving for Vanguard as well?

A Yes. He was only there for about a year.

Q A year before the accident?

A Right.

Q So for the last few months that you were driving for Vanguard, Mike Kelly was your dispatcher?

A Right.

Q Now, who was Carlo Melia?

A I think his position is district manager or regional manager in charge of trucking.

Q For whom?

A For G.A.F.

Q And you had a separate conversation with Carlo Melia?
A Yes.
Q And what was it that Mr. Melia said?
A Generally the same thing.
Q Was this a meeting where all the drivers were called together, or was it just having to pass --
A I forget whether he called me or I had seen him up there in Millis. I do not recall. But I know I talked to him; I talked to Mike. Mike I seen every time I went up there.
Q Now, you started with Driver Logistics Services in May --
A May 1.
Q -- of '01; is that right?
A Mm-hmm.
Q Is that true?
A Yes.
Q Did you have to fill out any separate paperwork for Driver Logistics Services?
A Yes. We had a job application; all their paperwork, all their employment papers.
Q And at some time did you receive any kind of manuals from Driver Logistics Services?
A Yes, we did.
Q And did they also talk in general terms about the way they expected you to drive?
A Safety and all, yes.
Q Yes?
A Yes.
Q Did you actually read them?
A Yes.
Q Now, except for the change from Vanguard to Driver Logistics Services, did your job change?
A No.
Q Would you say that it was exactly the same day after you started with Driver Logistics Services --
A Yes.
Q -- as the day before you started with Driver Logistics Services?
A Nothing changed.
MR. SMITH: Let him finish his question; okay?
Q Now, you also mentioned that at some time the truck leasing company changed.
A Yes. In October or November.
Q Of '01?
A Of '01.
Q Now, how did you learn about that?
A Because we had to go in there, and we had to deal with these people. These were the people that took care of the trucks.
Q So there was now a new set of personnel?
A Yes.

Q Well, did I understand from you, from your earlier testimony, that you understood that Penske had bought out the leasing company?

A Yes.

Q Well, if Penske had bought out the leasing company, why were you dealing with new personnel?

MR. SMITH: Objection.

A There were some new personnel. Generally the same people, but then they started cutting them.

Q Ah; okay. So -- Penske used their own company people. How did you actually know that Penske became involved?

A We got a letter.

Q Got a letter? You got a letter from whom?

A I think it was from Carlo Melia.

Q So once again, it was Carlo Melia who was in some kind of supervisory capacity at G.A.F., who was telling you about a change?

A He oversees everything as far as the trucking.

Q And do you remember what the letter said?

A Just that Penske was buying the other company out, and we'd still be at the same yard, and everything would be the same except for the name.

Q Did the truck change?

A No.

Q So once you were assigned to your truck, that was your truck?

A Right.

Q So that you knew every day when you went to the yard, you did not have to check to see what truck they were giving you, because you knew which truck you had?

A Right.

Q Were there ever times when you took another truck because your truck was in repairs or something?

A Yes.

Q And when that happened, how did you know which truck to take?

A If we had one of our trucks that was not being run, I would be able to take that.

Q When you say "when we had one of our trucks" who are you talking about?

A The G.A.F. drivers.

Q Okay.

A Or D.L.S. or Vanguard drivers, whatever you want to call them.

Q Were there other times when you had to take another truck?

A Yes.

Q How did you know that your regular truck was available, how did you determine which other truck to take? Who told you?

A The leasing company gave us a truck.

Q The leasing company. And who at the leasing company after Penske took over?

A Whoever was in charge of truck rentals.

Q So the person changed from time to time?

A Yes; it would be a salesman or -- we would just let them know that one of our trucks is down, is being worked on, and we need a truck to go.

Q And so whoever was there in charge at that time --

A Right.

Q -- would tell you, hey, take this truck?

A Which they rented trucks out, so -- I guess part of the lease.

Q Do you remember any names of any personnel at Penske after Penske took over?

A No.

Q Do you remember when Penske took over, approximately?

MR. SMITH: Object.

A October or November.

Q October or November of '01?

A Of '01.

Q So you had only been driving Penske Trucks for two to three months --

A Penske name. Same trucks.

Q Ah; it was the same truck?

A They took over the company, so the leased trucks were still leased trucks. The only thing that changed was the paperwork.

Q So at some point the maintenance forms that you were talking about that you had to fill out daily, they had the name Penske on them?

A After Penske took over, yes.

Q And do you remember, after Penske took over, the name of any Penske person that you were dealing with as it related to the trucks?

A No; because in that period of time, I did not have any real problems with the trucks, and I did not have to go in and see anybody.

Q Do you know that certain people remained at the yard after Penske took over?

A Well, after Penske took over, they wind up shutting the yard down in Newark, wind up going to Linden, which is a totally different operation. But the same thing; our trucks were parked there, and we just went and got our trucks and we left.

Q And it was the same truck? Yours was the same truck?

A Same truck.

Q Can you tell me how the truck was marked? Did it have a big Penske name on it?

A No.

Q Or did it have G.A.F.'s name on it?

A No.

Q Or neither?

A Our trucks had Building Materials Corp. on it.

Q Now, the truck is in two parts, right?

A Mm-hmm.

Q There is a tanker, and there is the tractor?

A Right.

Q Let's talk about the tractor first.

A Right.

Q You always had the same tractor?

A Right.

Q Did you always have the same tank?

A No.

Q So when you talk about the truck being the same, you're talking about the tractor?

A The tractor.

Q And what kind of a tractor was it?

A International.

Q Did it have -- obviously it had a cab, but did it also --

A No sleeper.

Q No sleeper?

A No. I seen what you were grabbing for.

Q Was there marking on the side of the tractor?

A Yes.

Q And what was that marking?

A That was Building Materials Corp.

Q What color was the tractor?

A Red.

Q What color was the --

A The tractor was white; the coloring was red. Excuse me.

Q Now, on the tankers, were those also picked up -- they obviously were, but I'll ask you the question -- were they picked up at the same lot?

A Yes. They're connected.

Q Were they connected when you got there?

A Mm-hmm.

Q Yes?

A Yes. Usually they're connected.

Q But from time to time the tanks changed?

A Yes.

Q Was there any reason why the tank would change?

A Yes. If I had a problem with my tank, and it had to go into the shop, there was another truck sitting there; I would disconnect his tractor, take his tank. When my tank was done, he would take my tank and go.

Q And then it never reversed itself, so now that was your tank until the next time there was a need --

A We constantly tried to reverse it back. Usually at the beginning of the week, like a Monday, you might be able to reverse it back if you got there -- of course, the week started on Monday, and I was the third driver, so if I had the fourth trailer, or he had my trailer, he would be able to switch back with me. The other two guys, they would be gone already, so I could not do nothing with them, except maybe Friday.

Q What kind of lettering was there on the tank?
A None.
Q What color was it?
A Silver, and the center was black, black stripe coming down.
Q There was no identity of Building Materials Corp. on the tank?
A No.
Q Was there any identity of the leasing company on the tank?
A No, except for small tags, you know, like stick-on tags. That is about it.
Q But do you remember ever seeing the Penske name on a tank?
A No.
Q Now, you mentioned earlier that you thought you got a letter advising you of the new owner of the trucks.
A Mm-hmm.
Q Do you happen to have kept that letter?
A No. I had it; I got rid of most of the stuff I had.
Q Did you look for it? Have you looked for it?
A I got rid of almost everything I had from the company.
Q When did you get rid of it?
A About six months ago, something like that.
Q At the time that you got rid of everything, do you remember seeing the letter?
A Offhand, no.
Q What other kind of stuff did you get rid of?
A Just about everything I had: letters, notes, any kind of paperwork I had, I just got rid of it.
Q Did you get rid of it before or after the lawsuit was filed?
A I am not sure.
Q How much stuff was there?
A A lot of trivial stuff. It was a stack like this.
Q When you say a stack like that, you put your hand off the table about three inches?
A About two.
Q Two inches; okay. Were the manuals that you received from either Vanguard or Driver Logistics Services --
A In that pile? Yes.
Q They were in that pile?
A Yes.
Q And do you think the letter advising you of the change to Penske was in that pile?
A More than likely, yes.
Q Do you think there was any correspondence relating to the change from Vanguard to Driver Logistics Services in that pile?
A Mm-hmm.
Q Yes?
A Yes.

Q And you did not keep any of it?

A Now you're shaking your head no; is that correct? No, I did not keep any.

Q Did you ever talk to your lawyer before throwing it out?

MR. SMITH: Objection.

A No.

Q I am going to show you a document, Mr. Zalewski, that is your responses to our request for production of documents.

MR. SMITH: May I see it first, please?

MR. PRITZKER: Sure.

MR. SMITH: Thank you.

A Is that the one my lawyer called me with –

MR. SMITH: Just let him ask the questions.

Q Have you ever seen that before?

A Yes. This was sent to me. The documents were gone before I got this.

Q The documents were gone before you got this?

A Everything I had.

MR. PRITZKER: Could we have that marked as an exhibit, please?

(Exhibit 1 was marked.)

Q This response, Mr. Zalewski, although you did not sign it, is dated April 28, '03. Do you see that?

A Yes.

Q And at some point, did you see a request for production of documents prior to filing or having your lawyer file that response?

A I got a set in the mail. I do not remember exactly when.

Q And when you got a set in the mail, how much before that had you gotten rid of the documents?

A A while before that.

Q What do you mean by a while?

A I cannot say positively.

Q Did anybody help you get rid of them?

A No; I did not need no help. I just took them and threw them in the garbage.

Q Where did you keep them prior to throwing them out?

A I used to keep them at the house; I used to keep them in a box, all my company papers. Since I was not with the company, the company disconnected themselves from me, I had no interest in having anything left and I threw it out.

Q When you say that the company disconnected themselves from you, did they fire you?

A Yes, they fired yes.

Q Did they fire you because of the accident with Mrs. Rhodes?

A Supposedly. But that was -- they were going to do it anyway, no matter what.

Q When you say no matter what, what do you mean by that?

A They were playing a game.

Q I am not sure I understand.

A They had no copy of the accident report. The following day, they called me, and I was asking them when I was going back to work. They finally got the accident report. By then, they got together and did, went over the accident report, and found that I should be fired because of the accident.

Q So they told you, at least, that they were firing you because of the accident?

A Right.

Q Who told you?

A Tom Schaeffer.

Q Who is Tom Schaeffer?

A He was our contact through the company.

Q Which company?

A D.L.S., D.L.S.

Q So it was Driver Logistics Services who fired you?

A Yes.

Q Did you have any communication with G.A.F. about the accident?

A No. I wouldn't have been fired unless G.A.F. wanted it.

Q How do you know that?

MR. DESCHENES: Objection.

A Carlo Melia tells them what to do.

Q When you say that Carlo Melia tells them what to do, "them" is Driver Logistics Services?

A Right.

Q How do you know that?

A Through dealing with them. Anything we wanted or did not want, whatever statement Carlo made, that is the statement they would come out and give us.

Q So in your mind, whose decision was it to fire you?

MR. DESCHENES: Objection.

A I would say Carlo Melia's.

Q Did you ever talk to him about it?

A No.

Q Did you ever talk to anybody at G.A.F. about it?

A No.

Q How did you know not to go back to work after the accident?

A Tom Schaeffer says, you need time to come out of this, and we have to investigate it; and supposedly they were investigating for a month. But for that month they did not have the accident report, so actually, they could not have been investigating. And then the following day, I was fired.

Q Where was Tom Schaeffer located?

A Springfield, Mass.

Q Did you ever visit the Driver Logistics Services facilities?

A No.

Q So you dealt --

MR. SMITH: Objection, back to that last question.

Q Is there more than one facility that you dealt with?
A They have a few facilities.
Q Any that you dealt with?
A The only one I dealt with was Tom.
Q The only person you dealt with; and to your knowledge, Tom was located in Springfield?
A Right.
Q Okay. And you never visited him in Springfield?
A No.
Q Did he ever visit you?
A I seen him at G.A.F. in Millis, Mass., yes.
Q How many times?
A Two, maybe three times.
Q What were the circumstances of him being -- if you know?
A Just him being there and me coming up with a load, running into him.
Q How did you know who he was?
A The first time I met him, we exchanged the papers. I gave him the paperwork I had, and --
Q What paperwork?
A - I met him. Getting into the company, my entry into the company.
Q So that actually occurred at G.A.F.?
A Yes. That was the initial meeting. And I seen him once or twice after that, just running into him.
Q Do you know who took your place, driving?
A No, no.
Q Have you ever had contact with anybody at G.A.F. since the accident?
A Yes.
Q Who?
A Ken Urban, Richard Howarth, Brian Rapp. That is about it.
Q Were those all drivers?
A Yes.
Q Was your contact with them at the G.A.F. facility in New Jersey, or elsewhere?
A New Jersey.
Q Where in New Jersey?
A Down by my house, down by their house.
Q Are these guys that you were socially friendly with?
A Yes.
Q Let's talk about January 9 of '02. Do you remember what day of the week it was?
A Wednesday.
Q You had driven on Monday of that week?
A Yes, I did.
Q Same route?
A Same route.

Q You had driven on Tuesday of that week?

A Yes, I did.

Q Same route?

A Same route.

Q On Wednesday, what time did you leave New Jersey?

A I am not sure.

Q What was your typical day?

A Usually I leave around 4:00.

Q A.m.?

A Yes.

Q And is that up to you, or does somebody tell you when to leave?

A My starting time is scheduled for 12:00 delivery, and whatever I have to do to get it there for 12:00.

Q Who gives you the starting time?

A That was the starting time that I was given in the beginning of the job, and that is -- we are set up for eight loads a day. We have got four trucks, eight drivers. And it is running shifts. One driver has to be in by 12:00 in the afternoon, the next guy's got to be in three hours later, three hours later -- every three hours, there was a load coming up.

Q Who initially determined that schedule?

A That is the way they had it set up before I started working there.

Q Who told you about the schedule?

A I really do not remember.

Q Was it somebody from G.A.F., or somebody from Vanguard?

MR. DESCHENES: Objection.

A As far as Vanguard, it wouldn't be Ben or Jerry because they do not know anything about it; so it would have to be G.A.F. or one of the other drivers.

Q And you pretty much stayed on the same schedule? Your schedule was that particular shift, whatever you called it?

A Right.

Q And in order to meet a 12:00 delivery in Millis -- or is it 12:00 delivery back in New Jersey?

A No; 12:00 in Millis.

Q In Millis -- you left at 4:00 a.m.?

A I left at 4:00 a.m., and I got up there earlier. If I could get it unloaded, I got it unloaded; if I could not get it unloaded, I would wait for it.

Q So in order to pick up the truck at 4:00 a.m., what time did you get up in the morning?

A 1:00, 2:00.

Q And what time did you go to bed, typically?

A I do not know; 7:00, 8:00.

Q In the evening?

A Yes.

Q Do you remember anything different about Wednesday, January 9, 2002, as far as your schedule is concerned?

A No, except it was taking me longer because of the ice and the rain.

Q So you encountered ice and rain on the way up?

A Yes, up all the East Coast.

Q But you started at the same time?

A I am not positive. It could have been later than that.

Q Do you remember whether it was later than that?

A No, I am not sure.

Q Do you remember being anxious because it was taking a long time?

MR. SMITH: Objection.

A No. It is typical.

Q Do you remember whether you were carrying a full load?

A Like always, about 20 inches from the top.

Q So therefore, somewhere around 40,000 pounds?

A Right.

Q Were you taking any medications that day?

A No.

Q Had you taken any medication the night before?

A No.

Q Were you at the time taking medication for hypertension?

A No.

Q You were taking no other medications at all?

A No.

Q Do you drink?

A On occasion.

Q Had you been drinking the night before?

A No.

Q Do you know of any reason why your ability to drive the truck might have been impaired?

A No.

Q Had you gone through the maintenance routine?

A Yes, except for one part of going underneath and checking the brake drums.

Q You did not do that?

A No.

Q And the reason you did not was because of the weather?

A Freezing rain, and we were in a dirt yard; there were puddles of water. And to get soaking wet and have to go home and change my clothes to come back was.

Q Did you so indicate on the maintenance report that you had not checked it?

A No, because I had done a manual check with the brakes on the road, and they were operable.

Q Okay, but your usual routine would be to go under and look at the drums?

A Whenever we can, yes.

Q What would you be looking for?

A For the armature on your brake drums, slack adjusters, to see if they're out; try and see down by the pads, see if the pads are away from the drum.

Q But on this particular morning, you did not do that?

A No.

Q When you left, it was still dark; true?

A Yes.

Q How do you check it in the dark?

A With a flashlight.

Q You keep the flashlight in the tractor?

A Yes.

Q So you got to the yard; you're not sure exactly what time?

A Right.

Q You did your maintenance check, other than going under the vehicle?

A Right.

Q Filled out the paperwork? What did you do with the paperwork after you filled it out?

A The paperwork at the end of the week then went back to G.A.F.

Q But that day, what did you do with it, the Wednesday?

A I think I brought it home with me.

Q So after filling it out, you put it in the tractor, right?

A Yes.

Q I do not want to put words in your mouth if that is not so.

A No; it was in the tractor. Wait. The paperwork for that day, as far as the maintenance, was in the tractor.

Q Where did you keep it in the tractor?

A There is a slot in the back between the seats.

Q And were there other reports in there for the Monday and Tuesday as well?

A Yes. It is in book form.

Q Did you see anybody that you remember at the yard when you pulled in, the morning of the accident?

A No.

Q So you got there, did your inspection. Are the keys typically in the tractor?

A No; I had a set of keys.

Q You had your own keys?

A Yes.

Q Hopped in the tractor and took off?

Q Did you already have the bill of lading?

A No.

Q In other words, did you pick up the bill on the way in or on the way out?

A No; pick it up when we go to get loaded.

Q So when you left the yard, you had the billing of lading?

A No. When I got over to get the load, I got the bill of lading.

Q And you had that in your tractor when you left the yard?

A Yes.

Q Do you remember who gave you the bill of lading that morning?

A Whoever was on the scale. I do not know; I do not remember.

Q You do not remember who that was?

A No.

Q But you remember there was somebody there?

A Yes, because the truck has to be weighed in and out.

Q And that was a Driver Logistics Services employee, to the best of your knowledge? I am sorry; a Penske employee?

A No.

Q Who was it?

A That is where we picked up the load. Penske, we do not do bill of ladings.

Q I apologize.

A When I go to a plant to get my tar, that is when I get my bill of lading.

Q So when you left the yard, you did not have the bill of lading?

A No.

Q And you did not see anybody at the yard that morning?

A No.

Q You then went to pick up the load?

A Right.

Q And when you picked up the load, you got your bill of lading?

A Right.

Q Who gave you the bill of lading?

A The man on the scale.

Q Do you know who he works for?

A Owens-Corning -- Owens-Corning.

Q And once the truck was loaded -- approximately how long does that take, the process take?

A About fifteen minutes to a half-hour, depending on how it is going.

Q And then you have to get out of the yard? You have to be weighed and get out of the yard?

A Right.

Q So from the time you go into the yard to the time you leave the yard, how long does it take?

A Anywhere from a half-hour to an hour.

Q And you're talking about the Owens-Corning, or whoever the manufacturer of the asphalt is?

A Yes.

Q So approximately what time, to the best of your memory, did you get on the road?

A I am not sure.

Q Do you remember stopping for food?

A Before I went in, I stopped to get coffee, and I stopped to get coffee for the guy that loads the truck; but he already had coffee, so I left the coffee on the side of the seat.

Q Now, did you get the coffee while you were still in your private vehicle --

A No.

Q -- or did you get coffee after you picked up in the truck?

A In the truck, on the way there. There is a diner between.

Q So you stopped to get coffee?

A Yes.

Q Anything to eat?

A No.

Q Was this a typical routine for you, that you would stop and get the coffee?

A Yes.

Q And when you left, you had the two coffees with you?

A Yes.

Q Did you drink your coffee while you were waiting for the load?

A Right.

Q And you had the extra coffee because the loader had his?

A Right.

Q Got it.

A He wound up with his own coffee, so.

Q Did you drink it on the way up?

A No.

Q Did you stop for something to eat on the way up?

A On the way up? No.

Q You went straight through from New Jersey to Millis, Massachusetts?

A Right.

Q What route did you take?

A I went up out of Jersey, I took Route 17 to 87, towards Albany; came down onto 87. I took 87 straight up to the Mass. Pike.

Q And then the Mass. Pike in?

A Mass. Pike to 495; 495 to Exit 19.

Q Do you have any recollection of what time you got to the Mass. Pike?

A No.

Q Do you remember whether it was already beyond rush-hour traffic?

A I do not remember.

Q Do you remember stopping for fuel?

A No.

Q Do you remember making any stops at all?

A One stop, about -- where the heck was it? Exit 72, I think it was, on 87, in Connecticut.

Q Bathroom stop?

A No; just a tire check.

Q Was there bathroom facilities, any kind at all --

A Yes.

Q -- on the truck?

A Oh; on the truck, no.

Q But you did not stop for bathroom facilities during the trip?

A No.

MR. PRITZKER: Off the record.

(Discussion off the record)

MR. PRITZKER: Back on the record.

Q From Mass. Pike, you said you got to 495.

A Right.

Q Then where?

A Onto 109.

Q And from 109, where were you headed?

A To Millis, Mass.

Q Was the plant right on 109?

A No.

Q Where was it?

A It was off a cross road. There are cross roads; I do not know what the street is.

Q Is this the route --

A Actually, It is between -- 109 goes around it. It is on both sides, toward the front end and the back.

Q Is this the route you always took?

A Yes.

Q So you had been taking this route for approximately four to five years?

A Yes. It varies; there is times that I come in the other way. There is a couple ways to come in. But mainly this is the way I have been running.

Q So you were on 109?

A Mm-hmm.

Q Almost daily, "daily" meaning your workdays --

A Yes.

Q -- for four and a half to five years?

A Yes.

Q So it is fair to say you were familiar with Route 109 --

A Oh, yes.

Q -- when you got off of 495?

A Mm-hmm.

Q Can you describe 109 when you get off of 495?

A 109, when you come down to the bottom of the hill to the ramp, you have a diamond. This side goes straight across; this side turns to the right. You have two lanes, fresh paved. As you're going straight across, you have the ramp going back onto 109 on the

other side. You make the left, and you come to the ramp coming down off 109, to 109. There is, beyond that there is an equipment company on the side.

Q Rental place?

A Yes.

Q You're on 109 now? You're on 109. And you're beyond 495; you've left 495, the ramps are all behind you?

A Right.

Q You've got an equipment rental place on the right-hand side?

A On the right-hand side.

Q Is it a straight shot --

A Yes.

Q -- from there on --

A Yes.

Q -- on 109?

A Yes.

Q At some point does it form a hill?

A Yes, it does.

Q About how far beyond the tool rental place, or the equipment rental place?

A I do not know; about four, five blocks up.

Q And then how long is the hill?

A The hill -- from the tool place?

Q Yes -- no; once you're on the hill, how long is the hill?

A It is about four or five blocks. It starts inclining there.

Q Inclining or declining?

A Inclining.

Q And then does it start going down?

A Yes, about four or five blocks later, yes.

Q And once you're on the down part of the hill, how long were you going down?

MR. SMITH: Objection.

A I measured it out; but from what the reports say, It is about 700 feet, to Trotter Drive, and that is the next street after the hill.

Q It is a straight shot?

A Straight shot.

Q Was your visibility impaired in any way?

A No.

Q No trucks bigger than yourself in front of you?

A No.

Q When you were traveling on 109, about how fast were you going?

A About 30 miles an hour.

Q Do you remember whether there were any cars at all traveling in front of you?

MR. SMITH: Objection.

A Down at the bottom of the hill, there was a car that was about a block, two blocks that was making a left-hand turn, and I had to slow down for that. After that, there was nothing.

Q And what about before that?

A That was the only car I seen.

Q So the only car you saw from the time that -- well, let me ask you a question. From the tool rental place, down to Trotter Lane, the only car you saw was a car coming out of Trotter?

A No. After I come off 109, I pass the tool rental place.

Q Yes.

A Up about a block or two blocks up, there was a car in front of me, making a left-hand turn.

Q Ah; it was on 109?

A On 109.

Q And it was making a left?

A In front of me; it was making a left-hand turn.

Q So you slowed down for that?

A I slowed down for that and I picked my speed up to make it up the hill.

Q So this was on the incline part of 109 that you described earlier?

A Right.

Q And is this the only car that you saw --

A Yes.

Q -- in front of you --

A Yes.

Q -- prior to the accident?

A Yes.

Q Now, you make it to the top of the hill?

A Right.

Q You've now picked up speed, because the car that was taking the left is out of the way; true?

A I got my speed up to about 30, yes.

Q And now you crest and start to go down the hill.

A Mm-hmm.

Q When you go down the hill, are there any cars driving in front of you?

A None that I saw, no.

Q Now, at some point -- well, let me ask you, what's the next thing you remember seeing?

A I got about partially down towards Trotter Drive, and there was a car came out to the road.

Q From Trotter Drive?

A From Trotter Drive.

Q Was that car coming --

A And it was sitting there.

Q Was that car coming from your right or your left?
A My right. And as I was coming down, that whole road is constantly cars cutting you off. It is the only way for them to come out. So I was watching that car. That was the only thing I was paying attention to on the road, because that is the only thing I saw on the road.

Q Okay.
A As I got closer to it, it finally came out, cut across, and went to my left.

Q So you're watching this car sitting at Trotter Drive?
A Right.

Q Waiting to come out on 109?
A Right.

Q And at some point the car comes out onto 109?
A Right.

Q Did it cut you off?
A To a point. It was not close enough to hit me, but, you know.

Q Were you close enough to hit it?
A If I was going faster, yes.

Q But given the speed you were going at, which you say was about 30
A Right.

Q -- the car was able to go in the opposite direction --
A Shot out, and the back end started to swerve over, and it looked like it was going to come into the side of the truck, the front end.

Q Into the side of the truck?
A Into the side of the truck.

Q So you're looking now in your rear-view mirror?
A I checked the rear-view mirror. He straightened out. As soon as I seen he was not going to hit the truck, I turned my head back.

Q What did you see?
A I seen a car up ahead. I hit my brakes. And I have anti-lock brakes on it. So in order to stop and lock the brakes up, I had to jam the brake on and hold it. When I did it, it did not do nothing, did absolutely nothing; it just kept on going, and the brakes should have locked up.

Q So you're saying that the brakes did not lock up?
A No.

Q Did the brakes pulsate, the way anti-lock brakes typically operate?
A No, no.

Q Nothing happened to the brakes?
A Nothing. And then all of a sudden they grabbed.

Q And as a result -- when they grabbed, where were you?
A They started to grab just before I hit the car.

Q Now, I am going to back up for a minute.
A Okay.

Q And I am going to show you a very carefully crafted diagram of 109.

A Right.

Q Which is also called Milford Street, Trotter Drive, and I am going to give you a pen; okay? Can you identify from that, just very generally, because understand this is not to scale, where the car you hit was on Route 109?

A I am not exactly sure. It was up here somewhere.

Q And would you put an R in there for Rhodes?

A Okay.

Q Now, would you also draw a picture of where the car was waiting to come out onto Route 109 from Trotter Drive?

(The witness complied.)

Q And would you put a picture of where you are coming down on Route 109?

MR. SMITH: Object. When?

MR. PRITZKER: That is a very good question.

Q When you first saw the car waiting on Trotter Drive, where were you?

(The witness drew on the diagram.)

A This would be the hill; the bottom of the paper would be the hill.

Q So I want you to put a Z on the truck.

(The witness complied.)

Q And let's put a P for passenger car, for the one coming out of Trotter Drive.

(The witness complied.)

Q Now, would you please just put an arrow as to the direction that the Z truck is traveling?

(The witness complied.)

Q And would you put a dotted line with arrows as to where --

MR. SMITH: Let him instruct you first.

Q -- as to where the passenger car coming out of Trotter Drive, the path that it took as you were observing it?

(The witness complied.)

Q Did you ever see the Rhodes car move, before the accident?

A No.

MR. PRITZKER: Can we have that marked as the next exhibit, please?

(Exhibit 2 was marked.)

MR. SMITH: Could I have two seconds?

MR. PRITZKER: Sure.

MR. SMITH: I just want to talk to him real quick.

(Recess taken)

MR. SMITH: Thank you.

Q Now, I am going to give you another one, the same diagram; and if you would first put in the Rhodes car, the same way you had it.

(The witness complied.)

Q And now what I would like you to do is put where your car, where the Zalewski truck was, at the time you first started to look at the passenger car through your rear mirror.

(The witness complied.)

Q And at that time, where was the passenger car?

(The witness drew on the diagram.)

MR. PRITZKER: And can we have that one marked as Exhibit 3, please?

(Exhibit 3 was marked.)

Q Can you estimate for me how much time elapsed between the time that you saw the passenger car start to move out of Trotter Drive until the time you started looking at the passenger car through your rear-view mirror?

A I do not know. I am not sure.

Q Obviously it was a matter of seconds, right?

Q When I said rear-view mirror, it was the side-view mirror you were looking at this car from, was it not?

A Yes.

Q Not the rear-view?

A No. No rear-view mirror on that.

Q When you first looked in your side-view mirror, were you able to see the car?

A Yes.

Q So it had already passed the front, at least, of the tractor?

A Yes.

Q So it had pulled in front of you?

A Mm-hmm.

Q And passed the tractor when you started looking at it in your side-view mirror?

A I followed it around.

Q So first you're looking at the car itself?

A When it came around, yes.

Q So you're looking at it out of the windshield?

A Out of the windshield, yes. Came around, and as I was coming around with the car, there is my rear-view mirror. The car seemed to be coming this way, so I kept my eyes there for a second. When I straightened out, I was able to look back in the road.

Q When you looked back in the road, you indicated that you saw the Rhodes vehicle?

A Yes.

Q Did you ever see a cop?

A Right after I saw her.

Q Before you hit her?

A No; I think I seen him either as I hit her or right after I hit her.

Q Did you ever see any workmen working on the side of the road?

MR. SMITH: Objection. When?

Q Ever.

A Yes.

Q When? When was the first time that you noticed work --

A The first time I seen the work, it was in unison with the officer.

Q So you saw them both about the same time?

A At the same time.

Q And that was as you were hitting the car?

A Right.

Q When you saw the passenger car come out of Trotter Drive, did you brake?

A No. I took my foot off the fuel pedal, and I was going to brake; but it was already coming to my side --

Q So there was no need?

A So there was no need for it. So I was continuing on; I was going to put my foot back onto the gas and keep going. That is when I looked back this way.

Q Now, I am going to give you one more of my cleverly crafted diagrams.

A Are you marking these?

Q What I want you to put is where -- first of all, put in the Rhodes vehicle.

A Okay.

MR. SMITH: When?

Q Directly prior to the accident, before the truck moved the Rhodes vehicle.

(The witness complied.)

Q Now, what I want you to do is, I want you to place the passenger car and the truck when you first hit your brakes.

A Her car?

Q The passenger car, the one coming out of Trotter Drive; and where your truck was when you first hit the brakes.

A I have no idea where that car was.

Q Then we'll leave that out.

A No idea.

Q Where was your truck when you first hit the brakes?

(The witness drew on the diagram.)

Q Do you have any estimate as to how far that was from the point of impact?

A This distance in here, I am not sure how far up she was.

Q Now, put the Z in there, if you would.

A Cannot forget that.

(The witness complied.)

Q And I just want to be clear that this is your best memory of when you took your foot off of the accelerator and put it onto the brake. For her, prior to seeing the car?

A For her, yes.

A Yes.

MR. PRITZKER: Then we'll mark that as Exhibit 4.

(Exhibit 4 was marked.)

Q Can you tell me how much time elapsed from the time that you first applied the brakes to the time of impact?

A Seconds.

Q Pretty quick?

A Yes, yes.

MR. SMITH: Objection.

Q Do you have any way of estimating?

A No. At that point, I knew I was going to hit her. there was -- the brakes weren't stopping the truck. I could not go to my left. And if I tried to turn the wheel too much, I had to worry about jackknifing that truck, and I just -- it scared the shit out of me.

Q Did you know you were going to hit her even before you put the brake on?

A No. No; I should have stopped.

Q You thought that you had enough time and I did not think; I knew I had time to stop. I knew I had time to stop. It is like I told the cop on the site, I do not understand why that truck did not stop.

MR. SMITH: Let him ask you a question.

Q How long is your truck?

A Sixty feet.

Q How many truck lengths were there --

A Excuse me?

Q -- between Z and R on Exhibit 4?

MR. SMITH: Can you just clarify, that his memory's clear on what Exhibit 4 represents in terms of the period of time? Because I am not sure I remember.

Q Do you remember, Mr. Zalewski?

A Yes. That is the Rhodes car when I hit the brakes.

Q Yes.

MR. SMITH: Thank you.

Q How many truck lengths?

A I cannot say for sure, because I am not exactly sure where she was. I know she was past the intersection, but I do not know exactly how far.

Q Give me your best estimate.

A I would say, from where my truck ended up, there was 40 feet of skid marks. From here, I would have to say three truck lengths.

Q So there were three truck lengths between your truck and the Rhodes vehicle when you applied the brakes?

A Mm-hmm.

MR. SMITH: Objection.

Q And your best estimate is that you were doing about 30 miles an hour?

A About, yes.

Q Once the vehicle was struck by your truck, how far did your truck go?

A I felt it went a short distance. Everybody else was saying It is a hundred and something feet, but I know I did not push her that far. As soon as I crumpled -- I watched the roof crumple, and then the car dropped out of sight. It scared the shit out of me. I thought it went underneath the truck. That had to have been when her rear wheels were broken, busted. And then a continuation of skid marks after that. As far as I say, 17 feet, and I feel that is all I pushed her was the 17 feet, because the car did not start moving until I

actually crinkled the roof up on the impact. And then after the tires blew and it went down, that is when it started moving.

Q Well, the truck and the car did not stay intact until the car came to a resting place, right?

A Right.

Q The car went off into the woods?

A Right.

Q You kept going fairly straight?

A Right.

MR. SMITH: Objection.

Q So at some point --

A Fairly. I was starting to drift off to the left.

Q And Mrs. Rhodes' vehicle went to the right?

A Yes.

Q Into the woods?

A Right.

Q So I do not understand your testimony about the 17 feet.

A Everybody's saying I hit her from the intersection. I know she was not in the intersection. In the intersection, I could have gotten around her with no problem. Beyond the intersection, I could not go around her to the right because of the woods; I could not go around her to the left because of the cars. And the only thing I could see -- I know she was up further, and everybody's saying she was not -- but the only thing I could see is, once them tires went down, that is what created her 17 feet of skid marks. And that was where the impact was, at the start of her skid marks. So that would give her 17 feet I pushed her, and she went off.

Q When you said that everybody said that she was --

A All the reports. They're saying she was --

MR. SMITH: Let him ask you a question.

Q Do you remember talking to anybody at the scene?

A Yes, I do.

Q Who did you talk to?

A Well, I talked to Boultenhouse.

Q Tell me the best you can remember what you said to Officer Boultenhouse and what he said to you.

A We did not speak that much about it. We were both mainly interested in Mrs. Rhodes at the time.

Q Do you remember anything that was said about the accident?

A No. As far as Boultenhouse, no.

Q Did you talk to anybody else?

A Yes; the patrolman that done the investigation, and I explained to him what happened.

Q Pretty much the way you explained it to me?

A Yes.

Q Anybody else that you talked to at the scene?

A No.

Q Is it fair to say --

A Oh; the state trooper. Excuse me.

Q There was a state trooper at the scene as well?

A Yes. He's the one that done the inspection on the truck.

Q Were you cited at the scene?

MR. SMITH: Excited?

A No --

MR. PRITZKER: Cited.

MR. SMITH: Oh.

Q Did you receive a citation at any time for a motor-vehicle violation?

A Yes, when we got back to Millis.

Q Before you got back to Millis, what else, if anything, did you do at the scene?

A At the scene?

Q Yes.

A Nothing, really.

Q Is it fair to say you were fairly shook up?

A Yes, yes.

Q Things kind of a blur?

A Mentally, yes.

Q You knew that Mrs. Rhodes was pretty seriously hurt?

A From the look of it, yes.

Q I am going to show you a series of pages which appear to be pages that came from Driver Logistics Services, Inc., from --

MR. PRITZKER: I'll give you a copy in a minute.

MR. SMITH: You have copies?

MR. PRITZKER: Yes.

Q -- concerning the accident.

A Oh; you gave me yours. You're all right.

MR. SMITH: Take a look at the whole document; okay?

MR. PRITZKER: Off the record.

(Recess taken)

Q Mr. Zalewski, have you seen any parts of the document that I have handed in front of you?

A Yes. This is when I went and got checked, after the accident.

Q If you keep thumbing through the document, the reason that I have given you this document in this fashion is because this is the way it was produced by one of the parties; okay? It seems to be a lot of different things in this package. And if you look down at the bottom right, you'll see some numbers. Do you see those?

A On the front page?

Q On the front page you'll see there is a number, 001105?

A Yes.

Q If you keep going forward several pages, you will see a page 001112, which says D.L.S. Accident Report. Do you see that?

A Yes.

Q Have you seen that before?

A Yes.

Q And if you go four pages beyond that, to 001115, there is a driver's signature on it.

MR. SMITH: The next one.

A Yes.

Q Is that your signature?

A Yes.

Q And the statement of the accident that appears right above that, is that your handwriting?

A Yes.

Q Could you read that into the record?

A "I was driving on Route 109. A car came out on my right, out in front of me. I turned to my left to see the car. I looked back and saw the car stop in front of me. I stepped on the brakes. The brakes locked up."

Q And?

A "And the truck slid into the car."

Q Now, you wrote this two days after the accident, right?

A Right.

Q Was that the best memory that you had of how the accident occurred on --

A No; I just wrote it --

Q Let me finish the question -- on January 11 of '02?

A I wrote it down, because I was doing -- when I went in to get checked up, this was faxed back and forth at the health center. This was all faxed back and forth to Florida.

Q This statement that you wrote is in your own handwriting, true?

A Yes, it is; yes, it is.

Q Was there anybody telling you what to say?

A No.

Q And were you on any medication when you wrote that?

A No.

Q Now, if you go back to the page before the one We have just been reading, which is 001114, do you see the diagram?

A Yes, I do.

Q Did you do that diagram?

A No.

Q Do you know who did?

A The woman that I was talking to on the phone in Florida for D.L.S.

Q Did she fax it back to you?

A Yes.

Q And did you look at it?

A I do not even remember if I looked back at it.

Q Well, was that part of the document when you signed it?

A Yes.

MR. PRITZKER: Could we have this marked as the next exhibit, please?

(Exhibit 5 was marked.)

Q I have put in front of you a report that was generated from the Medway Police Department, and ask whether you've ever seen it before.

A The 13th, yes; yes.

MR. PRITZKER: Could we have that marked as the next exhibit, please?

(Exhibit 6 was marked.)

Q Turning your attention to the page numbered 3 of Exhibit 6, the patrolman, at the very bottom of the page, the last line, say, "I also was able to speak with Zalewski, who was the operator of the tractor-trailer unit." Do you see that?

A Yes.

Q And it goes on to say that "Zalewski stated he had been driving eastbound on Milford Street." Milford Street is also Route 109, right?

A Right.

MR. SMITH: Objection, hearsay.

Q "He stated that his attention had been diverted by a vehicle that had pulled out of Trotter Drive and had then proceeded westbound."

MR. SMITH: Objection.

Q Do you remember telling him that?

A Yes.

Q "He stated that he thought this vehicle was driving too close to his truck, so he was watching it in his side mirror and not watching what was in front of him."

MR. SMITH: Objection.

Q Do you remember stating that to him?

A Yes.

Q "He stated that when he turned his attention back to the road in front of him, he saw the Toyota stopped in front of him, but was unable to stop before striking the Toyota."

MR. SMITH: Objection.

Q Do you remember stating that to him?

A No. My recollection, I told him that I hit the brake.

Q You remember telling him that you hit the brake?

A Yes.

Q Well, is there anything about what Patrolman Kingsbury said that you did not tell him?

MR. SMITH: Objection.

A He asked me about the -- I told him I hit the brakes and I could not, it did not stop. And then he kept asking me constantly about the other car, the passenger car. What I knew, I told him. I seen the white car. I did not have any time to look for anything else.

Q The sentence that I read to you earlier, he stated that when he turned his attention back to the road in front of him, he saw the Toyota stopped in front of him, but was unable to stop before striking the Toyota. Did you say that to him?

MR. SMITH: Objection.

A I am not sure. It could have come out that way.

Q That is not an untruthful statement, is it? I mean, you did see the Toyota in front of you, and you were unable to stop, right?

A Right.

Q And you struck the car, right?

A Right.

Q Do you remember -- I have asked you this before -- but you do remember talking to Sergeant Boultenhouse, right?

A Yes.

Q Do you remember what he was wearing?

A Boultenhouse?

Q Yes.

A Either dark blue or black uniform.

Q Do you know that he had an orange traffic vest?

A Yes.

Q You do remember that?

A Yes.

Q And do you remember that he was wearing white gloves?

A I do not remember the gloves, but I remember the vest, because he ripped that off when he went to the Rhodes car.

Q So you remember him having it on and ripping it off after the accident?

A Yes.

Q Do you remember seeing the work truck that was on the side of the road?

MR. SMITH: Objection. When?

Q At any time.

A Yes.

Q What color was it?

A Black.

Q Do you remember seeing any of the workers that were working in the work truck, or around the work truck?

A Yes.

Q What were they wearing?

A I do not remember if he was wearing a uniform or not.

Q Do you remember what you were cited for by the police?

A Driving recklessly so as to endanger.

Q And do you remember that there was a hearing on that?

A Yes, I do.

Q Well, before we get to that.

MR. SMITH: Was the police report marked as Exhibit 6?

THE WITNESS: Yes.

MR. PRITZKER: Yes, I think so.

MR. SMITH: Did you mark it?

MR. PRITZKER: Yes. It should be in front of you.

Q Is that the citation that was issued to you, the document I have just handed to you?

MR. SMITH: Objection. Copy of?

MR. PRITZKER: Copy.

A Yes.

MR. PRITZKER: Could we have that marked as the next exhibit, please?

(Exhibit 7 was marked.)

Q Do you remember that there was a criminal hearing on that citation?

A Yes, I do.

Q In the Wrentham District Court of Massachusetts?

A Yes.

Q You were there?

A Yes, I was.

Q And do you remember pleading to facts sufficient to warrant a guilty finding?

A Yes, yes, I do.

Q And do you remember that the judge warned you that if you violated the terms that he was setting forth, that you would have a guilty finding imposed without the right to a jury because of the way you pleaded?

A He said I would have to appear for the charge again, but I wouldn't be able to ask any questions of any witness.

Q But he said more than that, did not he, Mr. Zalewski?

MR. SMITH: Objection.

A As far as?

Q Do you remember the judge saying the following to you: "And you are going to be on probation for two years. What you're saying to the court is, listen, there are sufficient facts there that if the court, and if the court believes them, could impose a guilty finding based on what I have heard here today, and I could -- okay; I am not doing it, but I could -- you are on probation for two years. If you violate probation, sir, you cannot come back and say now I want to try this case, because I want to get a not guilty." And you said, "Uh-huh." And the judge says, "You understand that?" And you said, "Yeah." Do you remember that dialogue?

MR. SMITH: Objection to the dialogue.

A Not that wording.

Q What did you understand that you were doing when you admitted to the court that there were sufficient facts to warrant a finding of guilty?

A There could be sufficient facts that the jury might take as guilty.

Q You did not understand, Mr. Zalewski, that you were pleading to the fact that there were sufficient facts for a guilty finding?

A No; I took it that was my only way of staying out of jail for two years.

MR. SMITH: Objection.

Q So you thought that if you did not take this plea, you might go to jail for two years?

A I more or less knew I would; not from the evidence.

Q You mentioned earlier that the truck had anti-lock brakes. What is your understanding of what anti-lock brakes do?

A The anti-lock brakes prevent the truck from locking the brakes up.

Q So if you have anti-lock brakes, the brakes are not supposed to lock, right?

A Except for an override in an emergency.

Q Now, is there a way on the tractor that you were driving, the Penske tractor, to turn off anti-lock brakes?

A No. The only thing to do is override it by slamming the brake down and holding it, and not releasing it.

Q If you slam the brake down, I thought that anti-lock brakes are supposed to stop the brakes from locking.

A They are.

Q Well, would you explain to me again how, if when you slam the brakes on, the anti-lock brake system is supposed to stop the brakes from locking, how you expected the brakes to lock?

A It is what we were told --

Q Who told you?

A Different mechanics, other drivers.

Q Is it your opinion that there was something wrong with those brakes?

A Yes.

Q And those brakes were supposed to be maintained by whom?

A By Penske.

Q And your position is that Penske did not maintain the brakes because given whatever you did, the brakes should have locked?

MR. TOBIN: Objection.

Q Is that your testimony?

A I am not a mechanic. That is what I would say, yes.

Q If the brakes had locked, you would have been at risk of jackknifing the truck, would you not?

A I was at risk of jackknifing the truck anyway.

Q Even with the anti-lock brake system working?

A The way it was going, yes.

Q So you were willing to take the risk of jackknifing the truck at the particular junction right before you hit Mrs. Rhodes?

A I did not want to. That was my only alternative.

Q So you intentionally tried to lock the brakes?

A Yes.

Q And they did not lock?

A No.

Q At least they did not lock immediately?

A No.

Q Do you know of any testing that was done on the brakes after the fact?

A No, I do not.

MR. PRITZKER: This is probably a good place to stop for lunch, because I am going to go back now into some of the employment stuff with some documents. And I would guess I have got 45 minutes.

MR. SMITH: 45 minutes, approximately, left of examination?

MR. PRITZKER: Off the record.

(Luncheon recess taken)

Q Mr. Zalewski, just going briefly back to the criminal hearing on the citation, you were represented by counsel, were you not? Yes, I was.

Q Do you remember who that counsel was?

A Oh, God. John Coughlin.

Q Did anyone provide that counsel for you?

A No.

Q You hired him yourself?

A Yes.

Q And I assume he advised you concerning the criminal proceedings?

A Yes.

Q From the time that you started driving for G.A.F., did you wear a uniform?

A No.

Q What was your typical dress for driving?

A Jeans, work pants; anything.

Q There was no requirement --

A No.

Q Did you have any clothing identifying yourself with G.A.F.? T-shirts, hats?

A Every once in a while hats came out, but the drivers were more -- we were more or less not G.A.F.; we were D.L.S. or, you know, we weren't brought in with the rest of the group. Some guys would get jackets; some guys wore them. Some guys would get hats; some guys wore them.

Q Did you ever get a hat?

A Yes.

Q Did you ever get a jacket?

A No.

Q Did you wear the hat?

A Of course.

Q While you were driving?

A While I was driving, while I was out, yes.

Q Who did you consider your supervisor to be?

A Mike Kelly.

Q And who did Mike Kelly work for?
A G.A.F.
Q What was his role?
A Dispatcher.
Q And what was your relationship with Mike Kelly?
A It was fairly good. I would say friends.
Q How often did you interface with him?
A Almost every day.
Q And for what purpose?
A While the truck was getting unloaded, and I had nothing to do. Every once in a while I'll get down there, and he knows I am coming in to pick up lunch. We'll have lunch together, go have coffee together, you know, sit and talk; whatever.
Q How long was Mike Kelly the dispatcher?
A I think for about a year.
Q Prior to that, who was your supervisor?
A I do not remember his last name. Bob.
Q Was it also a dispatcher at G.A.F.?
A Yes.
Q And did you have the same interface with Mike Kelly's predecessor?
A No, no.
Q Because you weren't friendly with him?
A We were friendly, but he was doing more things; he was into more things, running around.
Q So Mike was more just supervising the drivers of the trucks?
A Well, he was taking on Bob's responsibilities when Bob left; but he was generally in the area of the plant.
Q You said you considered him your supervisor. What did he supervise?
A He supervised the drivers. He was our dispatcher; he told us -- actually, we had our own scheduled times, but if anything changed, he would call us and he would change it. If something had to be done, Carlo Melia made a request, he would get in touch with Mike; Mike would get in touch with us.
Q Do you know the name Tom Schaeffer?
A Yes.
Q Who is Tom Schaeffer?
A Tom Schaeffer is from D.L.S.
Q What was his role?
A I guess managing the men, the drivers, of D.L.S.
Q So did you interface with Tom Schaeffer from time to time?
A We went over this before. Yes. Yes, I did.
Q In what way? Is he the one by telephone?

A Yes, if anything was going on. I met him the first time I went up there, when they first took over. I seen him a couple times after that. But other than that, I only talked to him on the phone.

Q And when you talked to him on the phone, what kinds of things did you talk about?

A Typical stuff. What was going on, just normal talk.

Q You said that he was the manager of the men. How did he manage you?

A Well, he was in charge -- for D.L.S., he was in charge of us drivers.

Q You were paid by D.L.S., right?

A Yes.

Q How often were you paid?

A Every week.

Q How were you paid? In other words --

A By check.

Q Okay. Were you on a salary?

A No.

Q So how were you paid?

A We were paid by the mile, driving up and back, and any standing time, like waiting to get loaded, waiting to unload, anything we done like that there, we got paid \$15 an hour.

Q So you got \$15 an hour for standing time?

A Right.

Q And how much a mile?

A At the time it was, I think, 39 cents.

Q And do you know the term W-2 form?

A Mm-hmm.

Q Did you get one at the end of the year?

A Yes.

Q From D.L.S.?

A Yes.

Q Did they take taxes out of your pay?

A Yes.

Q How were expenses treated?

A Expenses, we had a \$300 bank. Then they went to the Easy Pass, and we were supposed to start returning it. Anything we needed, we put out the cash, we would put the receipts in at the end of the week, and they would give us the cash back for it.

Q Who's "they"?

A Well, we put it in to G.A.F., and G.A.F. would okay it, and D.L.S. would pay it.

Q So if there were any expenses, you would have to have a receipt or something, right?

A Right.

Q And you would take that receipt and give it to whom?

A It would go in with our paperwork to Mike Kelly.

Q At G.A.F.?

A Right.

Q Yes?

A And Mike Kelly would go over the paperwork, put down our hours and whatever we had there, expenses, whatever; and then he would call it in to D.L.S.

Q And then it would show up in your next paycheck?

A Right.

Q Who's -- I think I may have asked you about before -- but who's Mark McLeish?

A Who?

Q Mark McLeish? Is that a name you know?

A Mark McLeish... I know the name, but.

Q How about Gregory McDaniel?

A No.

Q Did you receive health benefits?

A Yes.

Q What kind of health benefits?

A Hospitalization, dental, eyeglasses.

Q Who provided that for you?

A Through G.A.F. -- through, what was it? Through D.L.S.

Q And before that, Vanguard?

A Yes.

Q Did it change?

A Yes.

Q Did the health benefits change at the time that D.L.S. took over?

A Yes.

Q How had it changed?

A I think all the prices went up a little bit. That is about it.

Q Well, did you have to pay for your health benefits?

A A percentage.

Q A percentage; okay. So your employer also paid a percentage?

A Yes.

Q And to your understanding, it was D.L.S. that made those payments for your health benefits?

A Yes.

Q Did you have any other kind of benefits besides health?

A No.

Q Did you have vacation time that you were entitled to?

A Oh, vacation, yes.

Q Were you paid for your vacation time?

A Yes.

Q How was it calculated?

A I think it was one week the first -- one week's vacation; after three years, two weeks; after five years, three weeks.

Q When Driver Logistics Services took over from Vanguard, did it go back to one week or --

A No, it stayed the same; stayed the same.

Q So they gave you credit for the time that you --

A Oh, yes, yes.

Q -- that you spent with Vanguard?

A Right.

Q And how was the amount of money that you got calculated since you were paid on a wait time and a miles time?

A They calculated it on, they called it local driver's pay. If we did not have the runs to do up here and we did something like take a truck or tanker to be repaired or something, to get them washed, whatever, that would be a local driving, and that would be \$18 an hour.

Q I see. And they figured so many hours a week for your vacation?

A That is right. 40 hours a week, \$18 an hour.

Q You obviously, because you were paid on the hour, had to turn in hourly reports, right?

A Yes.

Q Did you do that on a daily basis, a weekly basis, or some other basis?

A Weekly.

Q To whom did you turn them in to?

A Mike Kelly.

Q At G.A.F.?

A Yes.

Q And then it was Driver Logistics Services that paid you?

A Right.

Q And you did that every week that you worked for Driver Logistics Services?

A Yes.

Q Now, you had to keep a logbook, did not you?

A Yes.

Q Can you tell me first of all what the logbook included?

MR. SMITH: Objection. Go ahead.

A That is your hours, where you stopped, where you're going, starting point, destination, stops in between, where you stopped -- the time of the stop, the amount of time you stopped. Fuel stops.

Q Who dictated the logbook policy?

A The state.

Q Who gave you the logbook?

A D.L.S.

Q Who at --

A Excuse me; G.A.F. They're G.A.F. logs, with their logo.

Q Are you sure, by the way, that Kelly worked for G.A.F.?

A He might have been working for Driver Logistics Services, but all his orders and everything came from Carlo Melia, so.

Q And Melia was?

A G.A.F.

Q G.A.F. So the pecking order, if you will, is that Melia would give an order, Kelly would implement it --

A We'd have to carry it out.

Q -- and you would carry it out; got it. I am going to show you a series of documents that look to me like a lot of different things, but they include logbook entries, and they may all be logbook entries. So I want you to take a look at the package. I am going to show you a document, anyway, and ask if you recognize it. It looks like the form of what I have handed you is the same, but there is different information on each one. Do you see that?

A Yes.

Q Have you seen this form before?

A Yes.

Q And in fact, does your signature appear --

A Yes, it does.

Q -- on each page of the form?

MR. PRITZKER: Could we get that marked as the next exhibit, please?

(Exhibit 8 was marked.)

Q Can you tell me what Exhibit 8 represents?

A That is driver's maintenance.

Q So these are the maintenance reports --

A Yes.

Q -- that you --

A Do in the morning.

Q -- described this morning; okay. Do you see at the top of the first page of Exhibit 8, it says Rollins Vehicle Inspection Report?

A Yes, that is the company.

Q Does that refresh your recollection --

A That is the company. Thank you.

Q That is the company that preceded Penske?

A Yes.

Q Now, in fact, aside from the fact that you could not remember the name Rollins, is this the form that every morning you had to fill out?

A Yes.

Q And you did so first at the request of Rollins, and then a similar form later at the request of Penske?

A Yes.

Q And then you signed it?

A Right.

Q Now I am going to show you another series of documents, which appear to be several pages attached together. So take a look at all the pages first and tell me if you recognize what any of those pages are. First of all, do you recognize any of the pages?

A Yes.

MR. PRITZKER: Then could we have that marked as the next exhibit, please.

(Exhibit 9 was marked.)

MR. DESCHENES: Off the record.

(Discussion off the record)

Q Now, on Exhibit 9, the first page looks like a fueling receipt.

A Yes.

Q And you signed that, right?

A Yes.

Q You fueled at Penske?

A Yes, we did.

Q At least after Penske took over?

A Yes. While Rollins -- Rollins, we fueled at, also.

Q So when Rollins was the truck leasing company you fueled at Rollins?

A Yes.

Q When Penske was the truck leasing company you fueled at Penske?

A Yes.

Q And then you had to sign. Who required you to sign?

A Rollins and Penske.

Q Now, the next page of Exhibit 9 appears to be the same kind of maintenance report as on Exhibit 8 --

A Right.

Q -- but this time with Penske's logo at the top. Do you see that?

A Yes.

Q And you signed that as well, right?

A Right.

Q Who required you to sign that?

A Penske.

Q Now, the next document in Exhibit 9 has at the top, electronic scale ticket. Now, is that the ticket you got when you were weighing either in or out?

A This is the ticket we got -- this is at G.A.F. This is a scale ticket, where they scale us in and out.

Q This does not have your signature on it, right?

A No.

Q But you were handed this, were you not?

A Well, when we go in, we bring the truck on the scale; they take a weight. We go and unload; we come back out. We go back on the scale. They take another weight. We have to go in and sign the ticket. We get a copy; they keep a copy. The copy goes in with our pay. All our paperwork goes in together at the end of the week.

Q So am I correct that on this particular page of Exhibit 9, it shows two weights, does it not?

A Yes.

Q It shows what appears to be going in at 35,300 pounds, right?

A No. It is 81,140 going in; and It is 35,300 coming out.

Q Because you're emptying?

A Right.

Q I was on the other end.

A No; you were just backwards that time.

Q Which is the story of my life. In any event, does that tell you that the empty weight of the truck and the trailer was approximately 35,000 pounds?

A Yes.

Q And that the full weight of the truck and the trailer was approximately 81,000 pounds?

A Yes.

Q So when we were talking earlier about the approximate weight of the cargo, that did not include the weight of the truck and the trailer itself; true?

A Right.

Q In any event, who required you to sign off on the weight scales?

MR. SMITH: Objection. I do not believe he signed off on it.

MR. PRITZKER: I think he said he did.

A Not on this one.

Q But did not you testify when a copy of this was left for you --

MR. SMITH: Okay.

A When I do a load, I sign off on it.

Q That is what I thought, and who required you to sign off on it?

A G.A.F.

Q Now, the next page is on a Penske Truck Leasing logo, and it has your signature, right?

A Yes.

Q What is it?

A This is a daily sheet. It is like a log.

Q But is this different than the logbook?

A Yes.

Q So in addition to filling out the logbook, are you the person who also filled out this --

A This sheet, yes.

Q This sheet; you are?

A Yes.

Q So we have not talked about this sheet before, but tell me basically what kind of information you were required to put on here.

A Okay. The date, the month, day, year; the state you started from at that time; every state you went through; the interstate or highway that you drove on; whether you were loaded or empty; miles from one to the other; and the other one is the weight and the axles.

Q Now, there is something there that also apparently was the odometer reading?

A Yes. That gave you your daily miles.

Q Did you fill this out?

A Yes, I did.

Q And then signed it?

A Right.

Q Who required you to fill this out?

A Penske.

Q And did you do this every day?

A Every day.

Q And you kept this with your other paperwork in the truck and then submitted it at the end of the week?

A Yes. This was more like an envelope. So what we did, all of our paperwork for the day we would shove in one envelope. So for the week, you would have five envelopes. Staple them together and they all go together up to Millis.

Q Now, the next page on Exhibit 9 looks like a bill of lading with Owens-Corning's logo on it. Do you see that?

A Yes. That is our loading bill of lading.

Q And that is the one you testified about earlier?

A It is Owens-Corning and Trumbull.

Q Who required you to keep the bill, or to handle the bill of lading? Who gave you the procedure for doing it?

A It is in the DOT rules.

Q So this is something you just knew because you were an interstate driver?

A Yes.

Q Exhibit 9 ... Strike the question.

A There is another sheet that goes with it.

Q There is another sheet?

A It is on this one.

Q That all goes with the bill of lading?

A Yes.

Q Strike the question. I am going to show you another document, the first page of which is a fax cover sheet. I am going to ask you whether or not you've seen that before. Do you recognize the document first? And maybe not with --

A This, no.

Q -- the fax cover sheet; but what about the doc

A Okay.

Q Do you recognize them? Documents behind the fax cover sheet?

A Yes.

MR. PRITZKER: Then let's have this next document marked as Exhibit 10.

(Exhibit 10 was marked.)

MR. SMITH: Off the record.

(Discussion off the record)

Q Now, I take it you have not seen the cover sheet of Exhibit 10, the first page?

A No.

Q But let's go to the second page of Exhibit 10, and can you tell me first of all, does your signature appear on it?

A Yes.

Q Does it appear on it twice?

A On two different copies.

Q Well, same page?

A Yes.

Q And that is because on this particular photocopy, there are two different documents that have been copied on one page, right?

A Yes.

Q The top one appears to be a log for January 8, '02?

A Right.

Q And the bottom of the page is the log for January 9, '02; am I correct?

A Right.

Q Is this the log that you were testifying about earlier?

A Yes.

Q Who required you to fill out this log?

A The requirements are federal, federal law.

Q But did anybody tell you that you had to follow a log policy?

MR. DESCHENES: Objection.

A Yes, really.

Q In fact, I am going to show you another document before we get back to Exhibit 10 which appears to be a driver log policy. I am going to ask if you've ever seen that before.

MR. SMITH: Off the record.

(Discussion off the record)

A This, I do not remember seeing.

Q You do not remember seeing this?

A No.

Q Are you testifying that you remember not seeing it, or you do not remember seeing it?

A I do not remember seeing this.

Q Are you denying that you might have seen this?

A I might have.

Q Well, let's go through it.

A I am not saying I didn't, but.

Q Let's go through it and see whether or not at least you agree with some of the statements in it; okay? But before we do that, I think we should have it marked.

(Exhibit 11 was marked.)

Q If you look at the -- do you see the numbers down at the bottom right of the document, that start with 0164?

A Uh-huh.

Q If you go to 0168. Do you see where it says, Driver Log Procedure?

A Yes.

Q And do you see No. 3, that says, "A driver must log all time spent at the driving controls of a commercial motor vehicle in operation," on apparently Line 3 of the grid? Do you see that?

A Yes.

Q And in fact, if you go back to Exhibit 9, is there a Line 3?

MR. SMITH: Where, on Exhibit 9? Top or bottom?

MR. PRITZKER: Both.

A Yes.

Q And is that what this particular rule is referring to?

A While you're driving, yes.

Q And you knew that, right?

A Yes.

Q And you knew that without looking at the driver log policy that is Exhibit 10?

A Right.

Q Now, if you'll look at the next page, do you see where it says Log Retention Period? It says, "The logs will be retained" -- It is on Page 0169. Of Exhibit 10; I am sorry. Have you got it?

A Yes.

Q Do you see where it says Log Retention Period about the middle of the page?

A Yes.

Q And it says, "Logs will be retained along with supporting documents at the assigned or employing motor carrier for six months from the date of receipt."

A Yes.

Q Do you know who retained the logs in your case?

A G.A.F.

Q You know that G.A.F. did?

A Yes.

Q How do you know that?

A Because Mike had his files right on the site.

Q Mike Kelly?

A Yes.

Q But I thought we talked before --

A He carried all our paperwork.

Q I thought we talked before, you're not sure who Mike Kelly worked for. Right?

A He either works for Logistics or he works for G.A.F., but he is --

Q Mike was the one, however, that kept --

A He kept the logs.

Q -- and retained the logs; is that your testimony?

A Yes.

Q That is what I wanted to be clear on; okay.

A He had, one, two, three, four -- four file cases to put them in. The file case had everybody's charts in it.

MR. SMITH: Let him ask you a question.

Q On Page 0172 of Exhibit 11, it says, under Log Submission, do you see that, about the middle of the page?

A Yes.

Q It says that "D.L.S., Inc. and our customers require all drivers to submit daily logs in a timely manner." Did I read that right?

A Mm-hmm.

Q You knew that, did not you?

A We did it at the end of every week.

Q You knew that D.L.S. required it, right? And you knew that the customers, in this case, G.A.F. required it; is not that so?

A D.L.S. is supposed to have it. G.A.F. is the one that got it. What Mike done with it after that, if D.L.S. got it or did not get it, I have no idea. That is between him and them.

Q Now, let's go back, if we can, to Exhibit 10, which is the log itself. Every day, you submitted a log that looks similar to the top and the bottom of Page 2 of Exhibit 10, right?

A Mm-hmm.

Q And you did that every day that you worked --

A Every day.

Q -- on behalf of G.A.F.?

A Yes.

Q And you did that pursuant to the policy of both G.A.F. and D.L.S., right?

MR. DESCHENES: Objection.

A Yes.

Q Now, this particular page that we are looking at is the log for the day before and the day of the accident.

A Right.

Q Does that help you in any way to determine the time that you left New Jersey?

MR. SMITH: On the day of the accident?

Q On the day of the accident.

A Let's see. Yes; I got there about 4:00.

Q Can you take me through the timing on this driver's log?

A Okay.

Q And we are now talking about the log for the date of the accident, which is January 9 --

A The bottom one.

Q The bottom.

A I came in at 4:00. The truck was not in. I went for coffee. I came back at 5:00. The truck was in. I took -- checked over the truck, got it ready to go, and I left at quarter to 6:00. From there I went to South Kearny. I loaded. I think I fueled up -- I stopped for fuel. That was on the highway on the way to get loaded.

Q Why did you have to stop for fuel? Because the truck was late coming back, and so Penske had not fueled it?

A Their fuel bays were shut down at night. They do not open up until like 6:00, 7:00, so... And they usually have a line going around the building when they do. So to save time, they let us -- there was a stop in -- a station in Linden and one in South Kearny that we could fuel up at that we had accounts with. So I fueled up, and I got loaded.

Q Looks like you stopped to eat about 10:30?

A Yes.

Q Do you remember that?

A I remember the stop, but I do not remember eating. I must have.

Q And then what's the next one under stopped to eat?

A I had the accident.

Q There is something -- safety check?

A Yes.

Q That looks like about noontime? You tell me.

A That was when I stopped. Before I left, I went around the truck and made sure everything was okay.

Q And then the next line item is, you had the accident?

A Right.

Q I am going to show you a document that looks like it says Driver Data Sheet. Have you ever seen that before?

MR. SMITH: This particular document, or the form itself?

Q Well, does this have your signature on it?

A Yes, it does.

Q So I assume you've seen it before?

A Yes.

MR. PRITZKER: Could we have it marked?

(Exhibit 12 was marked.)

Q Whose driver data sheet was this?

A It would have to be mine.

Q Well, I know that; but who was the company that wanted you to fill this out?

A I do not remember.

Q Well, do you see down at the bottom, it says, "Certification of qualified driver"?

A Mm-hmm.

Q And It is signed by a C. Wright?

A Yes.

Q Do you know who that is? Well, does the date help you? This was April 16 of '01. That was right around the time that Driver Logistics Services took over, is not it?

A You know, it was after they took over.

Q Is there any particular reason why you were being certified under a driver data sheet for casuals, new hires, or other temporary driver?

A No, unless they needed it for their paperwork.

Q Who's "they"?

A D.L.S. This might have been in their package. I do not know. I do not remember. They gave us about an eight-, ten-page package.

Q Did you ever attend any meetings at Driver Logistics Services?

A No.

Q Did you ever attend any meetings at G.A.F.?

A Yes.

Q What kind of meetings?

A Safety meetings once a year.

Q So G.A.F. required you -- or did they require you to attend a safety meeting?

MR. DESCHENES: Objection.

A Yes. And it is G.A.F., but it is Vanguard and D.L.S. Supposedly it is their meetings. But it is mainly run by G.A.F.

Q The meetings took place at G.A.F.?

A Yes.

Q The ones that you attended?

A Yes.

Q How many did you attend?

A Oh, three, I think.

Q And who presented at those meetings? Who spoke?

A We had it at a hotel one time.

Q In Massachusetts?

A In Jersey. All the drivers are from Jersey. Carlo Melia was there, heading the whole thing. Ben and Jerry were there from Vanguard. And it would be the drivers.

Q That was one at a hotel?

A Sometimes from the leasing company, the truck leasing company.

Q Rollins?

A Rollins, they would be there. Now probably Penske is at the meeting, so.

Q Well, not who probably did, but do you remember attending a meeting, a safety meeting, within a year of the accident?

A Within a year?

Q Within a year prior to the accident.

A There was a meeting I did not attend.

Q Where was that --

A That was in December.

Q Where was that meeting?

A That was in New Brunswick, New Jersey, at one of the warehouses G.A.F. transfers materials at.

Q How did you know about the meeting?

A I was supposed to be there.

Q How did you know you were supposed to be there?

A From a letter from Victor Melia -- Carlo Melia, and I never got there. I was on vacation.

Q So since you weren't there, you do not know who else was there, if anybody, right?

A Yes, I know. It was all the drivers except for me, and G.A.F.

Q Do you know who was there on behalf, if anybody, from G.A.F.?

MR. DESCHENES: Objection.

A Carlo Melia.

Q Do you know anybody from G.A.F. that you know of?

MR. DESCHENES: Objection.

A No, I am not sure.

Q Do you know if Mr. Kelly was there?

A I think he was supposed to be there. I am not positive of whether he made it or not.

Q This was in December of '01, right?

A Yes.

Q Do you know whether anyone from Penske was there?

A Penske should have been there, but I am not positive; I am not positive.

Q And once again, where was the meeting?

A In New Brunswick.

Q New Jersey?

A New Jersey.

Q Did you ever receive any safety training manuals?

MR. SMITH: Objection.

A No.

Q Do you remember that as a requirement of the criminal proceedings, you were to take a driver training course?

A Yes.

Q Did you take it?

A Yes, I did.

EXAMINATION BY MR. DESCHENES:

Q Good afternoon, Mr. Zalewski. My name is Greg Deschenes, and I represent Building Materials Corporation of America, d/b/a G.A.F. Materials Corporation; and throughout my questioning to you I am going to refer to it as G.A.F. You understand who G.A.F. is?

A Yes.

Q You testified earlier about applying for a job at Driver Logistics Services. Do you recall that?

A Yes.

Q And first of all, where did you get the paperwork to fill out a job application with Driver Logistics Services?

A At G.A.F.

Q And who at G.A.F. supplied you with the paperwork?

A Mike Kelly.

Q What did the application process involve?

A Normal application for a job. That is about it.

Q Did you speak with somebody from D.L.S.?

A Afterwards, yes, Tom Schaeffer.

Q After filling out an application form?

A Yes.

Q And did Mr. Schaeffer interview you for the job?

A Not really. I already had the job.

Q Did you speak with him over the phone, or did you meet with him in person?

A I met with him in person and spoke to him on the phone.

Q Where did you meet with Mr. Schaeffer in person?

A At G.A.F. in Millis, Mass.

Q And was that before or after you had the job?

A Just before, I think it was.

Q And did you also speak with Mr. Schaeffer over the phone?

A At times, yes.

Q And did you have to fill out any form of any kind in applying for a position with D.L.S.? Do you recall that?

A Application -- I cannot remember all the paperwork. It was about an eight- or ten-page.

Q It was about an eight- or ten-page application form? Is that what you're saying?

A Yes, with the W-4, all the papers attached. Then we had all your job paperwork in there.

Q What kind of job paperwork?

A The W-4, the income tax, for your hospitalization; all your paperwork.

Q Did you have to supply them with your driver's history or records?

A On the job application, yes.

Q And once again, I am referring to the D.L.S. job application.

A D.L.S.

Q Did you have to undergo any kind of medical examination?

A At that time, no. I think we went on my card.

Q What card are you referring to?

A My medical card. I had to get a medical every two years.

Q And was that required under law?

A Yes, federal law.

Q For driving a truck?

A Yes.

Q Let me show you a document.

MR. SMITH: Do you mind if I take a look at it first?

MR. DESCHENES: Sure; not a problem.

MR. SMITH: Thank you.

A Thanks.

Q Sir, let me show you a document, and I'll just ask you to take a moment to review it.

MR. SMITH: Do you want him to review the entire document, or are you going to point at specific things?

MR. DESCHENES: Well, to just flip through it; and I am going to ask him whether any part of that document is the application form which he filled out when he applied for a job with D.L.S.

MR. SMITH: Look at the whole document, all right?

THE WITNESS: Mm-hmm. (Pause)

MR. SMITH: There is no question pending, right?

MR. DESCHENES: I asked him to look at the document. I told him what my question was going to be.

MR. SMITH: Okay.

MR. DESCHENES: My question is, once again, does he recognize any part of this document that I put before him --

A Yes.

MR. DESCHENES: -- as the application form that he filled out when he applied for a job with D.L.S.

A It would seem to be.

Q Can you identify which parts of the document seem to be the application form that you filled out?

A This --

Q Sir, so we can get this clear for the record, you're referring to the second page of this document?

A Yes.

Q And your signature on the bottom there?

A Yes.

Q And it says Carlo Zalewski and the date there is 4-9-01, right?

A Right.

Q And at the top of this document it says Policy and Information Booklet, Acknowledgment and Receipt?

A Yes.

Q Do you recall signing this document when you applied for a job at D.L.S.?

A Not really.

Q But you recognize your signature at the bottom?

A I had a package of papers. I came in to Millis, Mass. with a load. By the time my truck got unloaded I had to be back on the road and have all these papers signed. I did not look at half of the paperwork. I signed what had to be signed, and I gave them what they needed to turn over; and that was it.

Q Do you recall, when you signed this form, that they gave you, as you testified, I think, previously, an eight- to ten-page booklet of some kind of terms?

A Just a bunch of papers that they put in front of me. You got to do this for the employment records. They put them in front of me; whatever just had to be signed, I just signed. I did not have time to read it all, like I wouldn't have time to read all this in 45 minutes and know what was going on with it.

Q I understand, sir. Can you identify any other documents, going to the next page, that were involved in the application form? The W-4 form is the next page, Page 3?

A It has my signature, so I had to do it.

Q And that is dated 4-9-01?

A Yes.

MS. PATTEN: For clarity of the record, could we have the Bates numbers?

MR. DESCHENES: There are no Bates numbers on this document.

Q And then you see the next page. Was this part of your application form as well?

A It had to be; it is got my name on it.

Q At the bottom -- hold on for a second, sir. It is dated April 24, 2001; is that correct? You see that at the top of the document?

A Yes.

Q And It is on D.L.S. stationery; is that correct?

A Yes, it is.

Q And at the bottom, your name is there. It says Carlo Zalewski?

A Mm-hmm.

Q And is that your signature?

A Yes.

Q And you recognize this as part of your application form to D.L.S.?

A No; this letter -- they brought up our three hundred to four hundred. This is a separate letter.

Q So this is something that was outside of your application?

A Yes.

Q The next document, was this part of your application form, on the next page?

A That is right.

Q Which is Page 5 of this document?

A I did not type anything.

Q And the next page, Page 6?

A I did not type anything there, either.

Q And the next page, Page 7?

A No.

Q You do not recognize that as part of your application form?

A No.

Q Okay.

A Nobody asked questions.

Q And then the next page, do you recognize that as part of the application form to D.L.S.?

A No.

Q No?

A No.

Q And that page, it says Medical Examination at the top of the page, right? Do you see that? It is kind of cut off.

A Okay, yes; all right.

Q And then the next page, it says at the top, Testing Medical Examiner, Complete Section 3 through 7. Do you recognize this document as part of your application to D.L.S. for a job?

A No.

Q No?

A No.

Q And then the next page says, Medical Examination Report. Do you see that?

A Yes.

Q Do you recognize this page as part of your application to D.L.S.?

A No.

Q No?

A No.

Q Okay. The next page, if you turn with me, it says, Driver Qualification File Checklist. Do you see that?

A Yes.

Q And is that your name at the top, Carlo Zalewski?

A Yes.

Q And the date is 4-12-01? Do you recognize this document? The answer is no, you do not recognize it?

A No.

Q Do you recognize any of the handwriting?

A Yes.

Q Which part of it do you recognize?

A That is my handwriting up on the top.

Q Is that your handwriting up at the top?

A Yes.

Q Do you recognize any of the other handwriting?

A No, none of it.

Q Was this document a part of your application to D.L.S. for a job?

A Not that I remember.

Q If you could turn to the next document. It looks like two typewritten pages. Do you recognize this?

A Yes.

Q And what are the two typed pages?

A Just job information.

Q Your employment history, sir?

A Yes.

Q And did you submit this to D.L.S., this two-page document with your employment history?

A I do not remember doing it, but it is here, so I must have.

Q Is this document, the two-page document, with your employment history something that you prepared, sir?

A Yes.

Q And these two pages that are typewritten, was this part of your application to D.L.S. for a job?

MR. SMITH: He's referring to these two.

Q I am referring still to the two pages that are the typewritten.

A If they got them, then they went with my application.

Q And if you turn to the next page, it says D.L.S. and Customers Drug and Alcohol Policy. Do you recognize this document, sir?

A Yes, I do.

Q What is this?

A Pre-employment drug testing.

Q And is that your signature on both lines there?

A Yes, it is.

Q And It is dated 4-9-01?

A Right.

Q And one of them refers to pre-employment consent agreement, and the other one refers to receipt of drug and alcohol policy?

A Right.

Q Do you recall signing these forms in connection with your job application?

A Yes.

Q And turning to the next page, do you recognize that document?

A No.

Q You do not recognize it? Okay.

A It is got my signature on it, but I do not --

Q You recognize your signature down at the bottom?

A Yes, I do.

Q And that is dated 4-25-01. Do you see that?

A Yes, I do.

Q Do you recall whether you filled out this document in connection with your application to D.L.S.?

A That was all done by the 9th.

Q So you're not sure whether this was done in connection with your application?

A No.

Q The next document, it says at the top, DAS Services, Notification Release Form. Do you recognize your signature there at the bottom?

A Yes, I do.

Q And It is dated 4-9-01; is that correct?

A Yes, it is.

Q Is this a document that you signed in connection with your application for a job to D.L.S.?

A It has to be.

Q And the next page appears to be a photocopy of medical examiner's certificate as well as your driver's license and Social Security number.

A Right.

Q Did you submit these in connection with your application for a job to D.L.S.?

A Yes, I did.

Q And the next page, once again, is medical examiner's certificate; is that correct, sir?

A Yes, it is.

Q And did you submit these documents in connection with your application to D.L.S. for a job?

A Yes.

Q And then the next document says, Certificate of Violation, Annual Review of Driving Record. Do you see that?

A Yes.

Q Do you recognize the handwriting on this document?

A Mine.

Q Is it yours, sir?

A Yes.

Q At the top?

A Yes.

Q And about midway down the page, is that your signature?

A Yes.

Q And the date is 4-9-01; is that correct?

A Yes.

Q Did you submit this document in connection with your application to D.L.S. for a job?

A 4-9, yes; that is when I did it.

Q The next page is a computerized typewritten page. Do you recognize that at all?

A No.

Q No?

A No.

Q If you turn to the next page, there are three pages of past employer inquiries. Do you see that, sir?

MR. SMITH: Do you see that?

Q Do you see that?

A Yes.

Q For the next three pages, did you fill out these documents in connection with your application to D.L.S. for a job?

A I did not fill them out. I signed them.

Q Do you recognize your signature on those documents?

A My signature. The rest of the handwriting is not mine.

Q Okay, but you do recognize your signature and the date of 4-9-01?

A Yes, I do.

Q And did you fill out these documents in connection with your application to D.L.S. for a job?

A I must have.

MR. SMITH: Objection to that. He did not say he filled these out; he said he signed those.

MR. DESCHENES: Signed them.

MR. SMITH: Okay.

MR. DESCHENES: Yes.

MR. SMITH: I just wanted to clarify that.

MR. DESCHENES: No; that is fair.

Q Do you recall signing these forms in connection with your application to D.L.S. for a job?

A Like I said, I do not remember any of the paperwork I filled out. They were all done on 4-9-01. Anything done on that day, that is the day that I did the application, and I just signed what I had to sign, gave them what I had to give them. That is it.

Q I understand. I am just going through this to try to establish which documents you signed on that date. The last document is Notice to Drivers and Certificate of Compliance. Do you see that? The second-to-the-last document.

A Right.

Q And is that your signature down at the bottom there?

A Yes, it is.

Q And the date is 4-9-01; is that correct, sir? Do you see that?

A Yes.

Q And do you recall signing this document in connection with your application for a job to D.L.S.?

A It is got 4-9-01; it is got to be.

Q And then the last document in the bunch is the driver data sheet, which I think you've already testified about.

A That is 4-9-01. That is... Same thing.

MR. DESCHENES: Let's mark this as the next exhibit.

(Exhibit 13 was marked.)

Q Did you meet with anybody else from D.L.S. when you were applying for a job there besides Mr. Schaeffer?

A No.

Q And do you recall at all your initial conversation with Mr. Schaeffer about the job application?

A No. It was just, transfer over, and that was it.

Q And did D.L.S. hire you as a result of your application?

A No; they hired me because it was a takeover. I was going anyway.

Q But as a result, you got a job with D.L.S.; is that correct?

A Yes. We all did.

Q I think you testified before a little bit about your compensation and benefits from D.L.S. I just have a few follow-up questions for you on that.

A Yes.

Q Did you meet with anyone from D.L.S. about your compensation and benefits?

A No.

Q Did Mr. Schaeffer explain to you what your compensation and benefits were going to be?

A Yes. It was supposed to be the same package, and then they went to another carrier, and it was brought down. They cheaped out. What can I say? Company policy.

Q So who did you find out about your compensation and benefits from? Mr. Schaeffer?

A Either it would come through a telephone call or a letter to the drivers or they'd tell Mike Kelly, and Mike Kelly would tell us, you know.

Q And Mr. Kelly, you testified before, you're not sure whether he was an employee of D.L.S. or G.A.F.; is that correct, sir?

A I am pretty sure he was D.L.S., but he was G.A.F.

Q Well, you're pretty sure that he was an employee of D.L.S.; is that your testimony?

A Yes, yes.

Q And you think that he got paid by D.L.S.; is that correct?

A Yes.

Q And in terms of your compensation, I think you mentioned your wages. Was there also a 401(k) profit-sharing plan of any kind that was offered through D.L.S.?

A Yes.

Q Did you participate in that?

A No.

Q Were there any bonuses that D.L.S. gave to its employees?

A No.

Q Were you ever paid overtime by D.L.S.?

A No, nothing really counted as overtime, because you cannot make 40 hours plus mileage.

Q So there was no overtime pay?

A No.

Q Was there any other form of compensation that you received through D.L.S.?

A No.

Q And I think you mentioned the benefits that you received through D.L.S. You mentioned medical and dental; is that correct?

A Medical, dental, eyeglasses.

Q Did you also receive disability coverage through D.L.S.?

A Yes.

Q And did you receive workers' compensation coverage through D.L.S.?

A Yes.

Q And I think you testified about vacation time as well; is that correct?

A Right, yes.

Q And all of the compensation and benefits that you have described, you received through D.L.S.; is that correct, sir?

A Yes.

Q Did you ever receive any compensation or benefits from G.A.F.?

A No.

Q At any time?

A No.

Q The booklet that you described that you received from D.L.S. when you applied for a job there, was that the booklet you were referring to earlier in response to Mr. Pritzker's questions that contained certain rules and regulations?

A That I got rid of? Is that what you're --

Q Well, I am asking whether that booklet contains certain rules and regulations of conduct.

A Are you talking about the one I said I got rid of?

Q If you did, yes. Did you get rid of that?

A My question to you: You asked me about the booklet.

Q Yes.

A Now I am asking you which booklet: the one I said I got rid of?

Q My question is, and let me see if I can get to the bottom of this -- I do not mean to trip you up or ask you any questions that are confusing -- I think you testified that you received some sort of booklet when you applied for a job from D.L.S., and you testified also about a booklet that you received that contained certain rules and regulations. Do you recall that?

A Yes; okay.

Q Do you recall that, that D.L.S. gave you a booklet with certain policies or rules and regulations?

A Yes; okay.

Q Now, turning to the January 9, 2002 date, on that date, sir, were you an employee of D.L.S.?

A Yes.

Q So you were not an employee of G.A.F.; is that correct?

A No, I am not.

Q And on January 9, 2002, were you receiving a paycheck from G.A.F.?

A From D.L.S.

Q You were receiving a paycheck from D.L.S.; is that correct?

A Yes.

Q And on January 9, 2002, were you receiving any compensation or benefits from G.A.F.?

A On the 9th, compensation or benefits? No.

Q Have you ever received a paycheck from G.A.F.?

A No.

Q And are you a member of G.A.F.'s retirement savings or profit-sharing plan?

A No.

Q When you started work for D.L.S., who did you primarily report to?

A Mike Kelly.

Q And you would interact with him on a daily basis; is that correct?

A Yes.

Q And It is your understanding that he was employed by D.L.S.; is that correct?

A Yes.

MR. SMITH: Objection, asked and answered. Asked five times.

Q And would Mr. Kelly approve of your vacation time, if you wanted to take a vacation?

A I do not know. I would have to put it in to him, and where he goes with it, I have no idea.

Q Well, if you wanted to ask for vacation time, would you interact with anybody besides Mr. Kelly?

A No. Give it to him, and find out if it was approved.

Q And if you had sick-leave time, is the same true; you would go through Mr. Kelly?

A Right.

Q Would you have any kind of periodic reviews of your work, sir?

A Not really.

Q Did you ever have any kind of job reviews when you were an employee of D.L.S.?

A No.

Q And if you were unable to do your route, would D.L.S. assign another driver to do your route?

A If they could get one; but usually no.

Q Well, if you had vacation time or sick-leave time, was there somebody else who would do your route for you?

A No; the guys would just work around it, usually.

Q And how would they work around it?

A Eliminate it, or somebody else would take my shift.

Q And who else would take your shift?

A Whoever they wanted.

Q Another D.L.S. driver?

A Yes.

Q When you had changes in scheduling like that, would it be Mr. Kelly who would handle that?

A Usually, yes.

Q And was it Mr. Kelly who assigned the routes?

A They were established before he came.

Q But if you had any changes in scheduling of routes, was it Mr. Kelly who would handle that?

A It would either be Kelly or Carlo Melia.

Q Did you have any direct interaction with Mr. Melia?

A Oh, yes.

Q How often would you interact with Mr. Melia?

A Sometimes too much. I do not know; whenever he wanted something done, he would just bug the hell out of you.

Q Now, would he come to you, or would he go directly to Mr. Kelly first?

A Well, after a while he started going to Kelly because I stopped answering his calls, and I was hanging up on him. It was like, you're driving down a highway, 60 miles an hour, and he's calling you every two minutes, so.

Q And what would he call you about?

A He'd want me to do a certain stop, or he'd want me to do something or ask me a question. "Two months ago, you got stuck on the road. You were out of fuel." I was not out of fuel; my fuel line was clogged. He'd charge you for fuel. He'd go back and forth all

day with it; but I am driving a truck, and I cannot sit on the phone, so I would hang up on him. Then he calls Mike and tells Mike to talk to me. Does that answer your question?

Q It answers my question. Did you have flexibility, sir, in picking which roads you would take --

A Yes.

Q -- in your assigned route?

A Yes.

Q So G.A.F. did not tell you which roads you would have to take in your route?

A No.

Q You had total control over that; is that right?

A Yes, yes.

Q And I think you mentioned in the beginning when you were assigned a tractor-trailer that there was a dispatcher for G.A.F. who assigned you your tractor-trailer; is that correct?

A Well, actually, the guys all had their trucks, and when I came on I took what was left, so.

Q So no one really assigned you a tractor-trailer; you just took whatever truck was left over?

A No; they said, that is your truck. It is the only one there, so that is your truck.

Q So you took over whatever truck was left over; is that correct?

A Right, right. There is one guy out of the slot and I moved into the slot. That is all it was.

Q And if you had a problem with your tractor-trailer and --

A While we had Rollins, I would take it to Rollins.

Q My question was, if you had a problem, who would you notify?

MR. SMITH: Objection. When?

MR. DESCHENES: During the entire time.

A Mechanical problem?

Q If you had any kind of issue or problem with the tractor-trailer, who would you notify about that?

A Mechanical problem, first I would call for service.

Q And would that be at the leasing company?

A Yes.

Q Whether it was Rollins or Penske?

A Right; through their 800 number, and they'd send somebody out there. And then while I was sitting and waiting, then I would call G.A.F.

Q You mentioned also safety meetings that you attended. Do you recall attending any of these safety meetings?

A Yes.

Q And which meetings do you recall attending?

A I did not make the one in December of '02.

Q December of '01, you mean?

A I mean '01; excuse me. Thank you. 2000, '99, and I think '98. It would be like the end of the summer.

Q You recall attending meetings in '98, '99 and 2000; is that correct?

A Yes.

Q And was that when you were working for Vanguard?

A Yes.

Q And was somebody from Vanguard also present at these meetings?

A Yes.

Q And who was that person?

A From Vanguard? It would be either Ben or Jerry or both of them.

Q Jerry Springer?

A Yes.

Q And Ben -- what was Ben's last name?

A I forget Ben's last name.

Q And do you recall what topics were presented at the meetings?

A Usually whatever Carlo had a bug about. It could be anything: safety issue, anything.

Q But you do recall that Jerry and Ben would present at these meetings?

A Yes, yes.

Q And would Carlo also speak at these meetings?

A Oh, yes.

Q And do you recall whether any other people would be presenters at these meetings?

A Rollins had a safety man one year, and --

Q Who from Rollins? Do you recall who that was from Rollins?

A No. He was their safety man. I do not know his name. What was the manager's name?

Brian, I cannot think of his last name.

Q Brian from Rollins?

A Yes. He was head mechanic. He was there.

Q Now, you testified that you could take whatever routes that you wanted from New Jersey to Millis; is that correct?

A Yes.

Q And did you feel like you had control over your own daily activities on the road?

A Yes.

Q You already testified that you do not remember ever being reviewed, your job being reviewed, by D.L.S. on a periodic basis; is that correct, sir?

A Mm-hmm.

Q Yes?

A Yes.

Q Do you recall whether G.A.F. ever had annual reviews or periodic reviews of your work?

A Not that I remember.

Q The day of the accident, on January 9, 2002, do you recall, sir, whether there were any signs posted on Highway 109 of work being done ahead?

A No, no signs; nothing.

Q You have a specific memory of there not being any signs at all?

A Yes, oh, yes.

Q And can you describe for me what the road conditions were like on that day?

MR. SMITH: On Route 109?

MR. DESCHENES: On Route 109.

A Parts of the road were wet, parts were icy.

Q Was the road, right where the accident occurred, wet or icy, sir?

MR. PRITZKER: Objection.

A The whole road was wet; the whole road was wet.

Q And you recall that the road was wet?

A Wet.

Q Do you recall there being any ice on the road?

A Towards the side of the road, yes.

Q And I am talking once again specifically at the scene of the accident.

A Yes.

Q And do you recall, I think you've testified about there being a work crew of some kind off to the side of the road; is that correct, sir?

A Yes.

Q And as you were headed on the eastbound lane, were they on the right-hand side of the road, sir?

A Yes, they were.

MR. DESCHENES: Off the record for a second.

(Discussion off the record)

Q Sir, let me put this diagram in front of you, and you've testified that there was a work crew of some kind at the site that day.

A Right.

Q Can you take a pen and, as close as possible, approximate where the work crew was working at the time of the accident? And why do not you just draw it in a circle. And then I am going to ask you --

(The witness complied.)

Q Okay.

A It is more off the road.

Q I would ask you to put a T, for tree company. T for tree.

(The witness complied.)

Q And you've put them on the right-hand side of Milford Street as you're traveling on the eastbound lane; is that correct?

A Correct.

Q And it was past Trotter Drive, correct?

A Yes.

MR. DESCHENES: Let's mark this as Exhibit 14.

(Exhibit 14 was marked.)

Q Sir, you testified that you wouldn't have been fired unless G.A.F. wanted you to be fired; you said that this morning.

A Yes.

Q You have not had any communication with anybody from G.A.F. about your being fired; is that correct?

A No.

Q So you have not had any communication with anybody from G.A.F. about your being fired; is that correct?

A No.

Q And the only person you communicated with about that was Mr. Schaeffer of Driver Logistics Services; is that correct, sir?

A Right.

MR. DESCHENES: I think that is all I have.

(Discussion off the record)

EXAMINATION BY MR. TOBIN:

Q Mr. Zalewski, my name is James Tobin, and I am representing Penske here this afternoon. I have just got a few questions for you. You testified earlier that sometime in October or November, there was a change of leasing companies; is that right?

A Yes.

Q The leasing companies went from Rollins to Penske?

A Penske, yes.

Q And was that on both the tractor and the trailer?

A Yes, I am pretty sure it was. On everything; they took over the yard.

Q Was the trailer also leased?

A Yes.

Q You're sure of that?

A Yes.

Q You also testified that during the period of October and November or December, which were the months preceding the date of the accident we are here for today, that you did not have any problems with the rig, tractor-trailer?

A None.

Q No problems?

A No.

Q Now, you made this trip from New Jersey to Millis, Mass., every day?

A Yes.

Q Five times a week?

A Yes.

Q And you had been doing that for three or four years?

A Yes.

Q So you must have known the route like the back of your hand; is that correct?

A Yes, I do.

Q Now, on the morning of January 9, which is the date of the accident --

A Right.

Q -- you testified that you were unable to check the brake pads because of weather conditions?

A Right.

Q And could you describe those weather conditions for us?

A At the time, we had some freezing rain. The ground was wet with puddles. You're in the dirt, dirt and snow in the lot.

Q When last before the date of January 9 did you check the brake pads?

A I do not think I checked them the day before or the Monday; I would just come back from vacation. I remember going around the truck. I do not remember going under it. I cannot say definitely that I did, you know. And that is not my tank, usually; that is somebody else's tank.

Q Was it your practice to check them on a daily basis?

A No. Mainly we went under them once in a while and checked them. Mainly we road-checked them. When I leave there, I have to go up Route 109. It is stop-and-go traffic; you have a lot of lights. So when I go through there, I check the brakes, the air pressure, make sure the air pressure is not going down too quick on them. I check my engine brake. I check the brake pedals. Starting and stopping, before I take off, I lock up my back wheels, try to pull away with the tractor. If the back wheels do not move, they're locking up; they're holding. You've got good brakes.

Q And did you make that test on the morning of the --

A I do that every day.

Q I am a little slow, so you'll have to wait for me to complete my question. On the date of accident, did you conduct the type of test that you just described?

A Yes.

Q And what time was it, and where was it, that you did that?

A On the way to get loaded, Route 109. After I got loaded, on the way out, going to the Turnpike, that is like about half a mile down the road, there is a traffic light by the post office. I had to stop for that; I had no trouble stopping. Once I got onto the Turnpike, I had to stop for the toll booth, and I usually check my engine brake and my brakes. I put the engine brake on, the engine brake's loaded down, I stopped the truck. I had no problem.

Q What was the condition of the weather at the time you conducted those tests?

A Wet, raining.

Q When you say raining, was it a mist? Was it a rain?

A It was on and off. All that day was misty, heavier rain, freezing rain, all the way up the coast.

Q What was the temperature, if you know?

A No idea. It was cold.

Q Below freezing?

A Yes.

Q Below 32?

A In the area of 32. It was not solid ice on the ground, but we kept getting freezing rain in spots.

Q Now, when you got off Route 495, you got off on Exit 19?

A Yes.

Q And you come down into a -- you describe the area. It is a main street?

A It is a regular straight road.

Q What was your speed on the exit ramp from 495?

A From 495 I slowed down to about 30 miles an hour coming down. When I get down to the bottom, I have got to stop; it is a stop sign.

Q And everything worked fine?

A Everything was fine.

Q Now, you described for us the ABS system. And you said it was an anti-lock brake system. Does that operate differently in wet and dry pavement?

A I do not know; it is all computer. That is the first truck I really drove with the ABS system.

Q And how long had you been driving that truck?

A About eight months.

Q And you did not have any problems with it?

A No, never.

Q Would you say it operated fine, under all conditions?

A Normal, yes.

Q But you did not find any difference under wet and dry road conditions on the ABS system?

A No.

Q No?

A Excuse me; say that --

Q No, you did not find any difference in the operation of the ABS brake system?

A Normally? Normally, no.

Q Normally, no. And that again --

A Until I came to an emergency, try to make an emergency stop. That is the only time it ever failed.

Q Do you know what a trolley valve is?

A Yes.

Q What is that?

A That is the hand valve up on the wheels, to lock up the back brakes.

Q Did you use that on the day of the accident?

A No, no.

Q And was there some reason you did not use it?

A Because I had my brakes locked up. They weren't locking. I had my hands on the wheel and I was pressing down on the pedal, and I did not have time to go grab it for the brake end.

Q Where is the trolley valve located --

A Under the steering wheel.

Q You're going to have to wait for me to finish my question. Where is the trolley valve located in the truck?

A It is underneath the wheel on the column.

Q Is it on the steering column?

A It is on the column, yes.

Q So it is under your left hand?

A Right.

Q I am sorry; your right hand. Okay. You said it is easily accessible?

A Yes, it is.

Q Now, you testified earlier that a car had exited Trotter Drive.

A Right.

Q That is a business-park complex; is that right?

A Yes.

Q And is it fair to say that there is a lot of traffic in and out of it?

A Yes.

Q And you have experienced that --

A Yes, I have.

MR. SMITH: Let him finish his question.

Q You have experienced that condition over the many, many times that you drove down 109; is that right?

A Yes.

Q And I believe you testified that cars that exit out of there have to do so on the fly, that because of road conditions, they have to exit while they can, and a lot of times close calls; is that right?

MR. PRITZKER: Objection.

MR. SMITH: Objection to the form.

A Yes.

Q Yes? Now, you testified this car came out of Trotter Drive, went in front of your truck. Did you put on the brakes at that time?

A Like I said before, no.

Q What was your speed at that time?

A Roughly about 30 miles an hour.

Q And how close were you to that car when it came out in front of you?

A When it came out, maybe a car length ahead of me and just shot out around.

Q When the car went in front of you, was a car length --

A Yes, about here to the window; 10, 20 feet, something like that.

Q But you did not apply the brakes?

A I started to take my foot off the gas, and he was already going across the line. There was no need to brake for it.

Q Was it a he that was operating this car?

A I think so, yes.

Q Can you describe this car for us in any way?

A It was a white compact car. To me, they all look alike.

Q And what was your concern with this car, after it got by you?

A The only concern I had, when he came around the side of me, his back end started to fish over; and it looked like he was facing towards the truck. And I thought he was going to run under my trailer wheels. So I looked in my mirror. When I seen he was straight, I turned my head back.

Q And when you turned your head back, what did you see?

A I seen the back of Ms. Rhodes' car.

Q The Toyota?

A Right.

Q That is been described as the Toyota car?

A Right, right.

Q And I think you testified that it was about three trailer lengths in front of you?

A Something like that.

Q And your trailer, you testified, was 60 feet?

A Mm-hmm.

Q Is it fair to say, 180 feet?

MR. SMITH: Objection.

A Yes.

Q Yes?

A Yes.

Q And upon seeing it, what is the first thing you did?

A I jammed my foot on the brake.

Q Did you know when you saw it the first time, Mr. Zalewski, that you were going to hit it?

A I had an idea I might, but I figured the brakes would stop it. That is why I got on the brakes and held them down.

Q And when you depressed the brake pedal, you pressed it all the way down and held it?

A Right.

Q Then what happened?

A Nothing. It felt like I had nothing at all. The truck just kept on rolling. And then the brakes locked up later.

Q Did it go into a skid, or did it go into -- did you feel the tires locked up and the vehicle skidding, or --

A No, no.

Q What did you feel?

A The truck was just rolling, like I had no brakes at all, like there was absolutely nothing.

Q And then what happened?

A And then they started to lock up. I hit her, and that was it.

Q How long after you felt this move sensation, after you applied the brakes, did the brakes lock -- or grab?

A A little before I hit her.

Q Was it a second?

A This whole thing, as far as time, parts of it that are so small seemed like it took forever; and other parts that seemed like it was -- like that, I mean. The amount of time, I really do not know.

Q Do you know what your rate of speed was at time of contact with Mrs. Rhodes' vehicle?

A I would have to say 30 miles, or just a little below it.

Q Do you know what happened to the rig after the accident?

A Towed it over to G.A.F.

Q And do you know what happened to it from there?

A They kept the tractor, and I think the trailer went back on the road.

Q They kept the tractor?

A Yes.

Q Do you know whether the tractor went back out on the road?

A I do not think the tractor went back on the road until May.

Q Until May?

A Yes.

MR. TOBIN: I have nothing further. Thank you.

MR. PRITZKER: I do have a couple follow-up.

MR. SMITH: I just had a quick question, Mr. Zalewski.

EXAMINATION BY MR. SMITH:

Q Obviously you know who I am.

A No; I have no idea.

Q Earlier, Attorney Pritzker was asking a few questions about your driver's license. Do you recall that?

A Yes.

Q And you testified you have a driver's license issued by the State of New Jersey, correct?

A Yes.

Q Now, is that just a regular driver's license, or is there some sort of classification you have on your driver's license?

A Classification.

Q And what is that classification?

A CDL tanker Class A.

Q And did you have to take a test in order to get that classification?

A Yes.

Q And did you pass that test?

A Yes, I did.

Q And did you have a CDL license at the time of this accident?

A Yes, I did.

MR. SMITH: I have nothing further; thank you.

MR. PRITZKER: I just have a couple of follow-up questions.

EXAMINATION BY MR. PRITZKER:

Q Maybe I misheard you, but did you testify that there was ice on the roadway where you were driving the truck directly before --

A Parts.

Q -- please let me finish -- directly before the accident?

A Parts of the roadway, yes.

Q Where your tires were?

A Yes. There was also wet sawdust in the road. There was puddles to the side of the road. The road was wet. It was freezing conditions.

Q I am now talking, Mr. Zalewski, about that portion of the roadway, not on the side of the road, further than where your right wheels were. Is it your testimony that your right wheels were driving over ice?

A In patches, yes.

Q Directly before the accident, on the hill going down?

A On the hill going down, I am not sure. Where the accident was, there were spots, and -- the top of the hill, I cannot really say. I did not feel no sliding or anything. I am only going by what was there when I was on the ground.

Q Do you know whether anyone else observed ice who was investigating this accident?

A They should have, because everybody's feet were freezing out there.

Q That is a little different question. Do you know whether anybody observed ice on the road?

A I have no idea, none.

Q As you were going down the hill, before the passenger vehicle came out from Trotter Drive, from the top of the hill to where the accident occurred, was there anything that was obstructing your vision?

A No.

Q You mentioned that from time to time, while you were on the road, Mr. Melia would call you and order you around?

A Yes.

Q What kind of orders?

A Well, not actually order. You know, ask questions about stupid -- stupid crap.

Q Were they business questions?

A Yes. Like he'd ask you questions about something you had done three months ago, picking up fuel or getting a fuel ticket, you know; something that you're not going to remember.

Q But something that was bothering him?

A Yes. It bothered him at the time, and until he was happy, he would bust your chops.

Q Did he ever ask you to change your route and make another delivery or make a stop?

A No.

Q Did he ever ask you to either speed up or slow down the progress of your route?

A No, no, no.

Q So they were mostly just things that had to do with what you had done in the past?

A Right, right.

Q How often would this occur?

A Maybe a couple times a month, until I started hanging up on him; then he stopped doing it.

Q When did you start hanging up on him?

A I do not know; I guess it was about six months before the accident.

MR. PRITZKER: I have no other questions. Anybody else?

MR. SMITH: We are all done.

MR. PRITZKER: Thank you very much.