

In The Matter Of:
~ [REDACTED] v. *Pemberton Truck Lines, et al.*~

Preston Cunningham
06/29/2017

Pope Reporting & Video, LLC
404-856-0966
www.popereporting.com



IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

██████████,

Plaintiff

vs.

CIVIL ACTION NO.
1:17-CV-00556-WSD

PEMBERTON TRUCK LINES, INC.;
CHEROKEE INSURANCE COMPANY;
WILLIAM EDWARD JOHNSON II;
AND JOHN DOES 1-3,

Defendants.

VIDEO & ORAL DEPOSITION OF

PRESTON CUNNINGHAM

11:26 A.M.

EXECUTIVE SUITES

9111 CROSS PARK DRIVE

KNOXVILLE, TENNESSEE 37923

Deborah West, LCR-314 (TN), CLR

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APPEARANCES OF COUNSEL

On behalf of the Plaintiff:

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On behalf of the Defendant:

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ALSO PRESENT:

Tom West, Video Specialist

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INDEX OF EXAMINATION

Page

WITNESS: PRESTON CUNNINGHAM

Examination

By Mr. Butler

8

	INDEX TO EXHIBITS	
		Page
1		
2		
3	Exhibit Number 14, 2013 Drivers Manual - Revised 6/1/13	14
4	Exhibit Number 15, Diagram of scene	18
5		
6	Exhibit Number 16, Color photograph - aerial view	20
7	Exhibit Number 17, Color Photograph of road	21
8		
9	Exhibit Number 18, Jump drive with video	22
10	Exhibit Number 19, Florida CDL handbook 2015-2016	30
11		
12	Exhibit Number 20, Idle Talk newsletter, February 2015	33
13	Exhibit Number 21, Idle Talk newsletter, March 2015	36
14		
15	Exhibit Number 22, Idle Talk newsletter, April 2015	37
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1
2
3
4
5
6
7
8
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STIPULATION

The deposition of PRESTON CUNNINGHAM, called as a witness by the Plaintiff, pursuant to all applicable rules on the 29th day of June, 2017, at the offices of Executive Suites, Knoxville, Tennessee, before Deborah West, Licensed Court Reporter and Notary Public in and for the State of Tennessee.

It being agreed that Deborah West, a Tennessee Licensed Court Reporter may report the deposition in machine shorthand, afterwards reducing the same to typewritten form.

It being further agreed that all formalities as to notice, caption, certificate, transmission, et cetera, are expressly waived, INCLUDING the reading of the completed deposition by the witness, and the signature of the witness.

1 (11:26 A.M.)

2 MR. BUTLER: This will be the
3 deposition of Preston Cunningham, taken
4 pursuant to notice and agreement, taken
5 pursuant to the Federal Rules of Civil
6 Procedure and the Federal Rules of
7 Evidence for all purposes permitted by
8 those rules, including use at trial.

9 Mr. Cunningham, if you need a break,
10 let me know and we can take one. I don't
11 expect that you will. We'll see. And if
12 I ask a question that is unclear, let me
13 know, and I will rephrase.

14 I forgot, I need to talk discovery
15 for a minute before we go on.
16 Immediately before the deposition of --
17 the 30(b)(6) depo, the defense produced
18 some pages of fuel receipts and drug
19 tests.

20 MS. HURLEY: Correct.

21 MR. BUTLER: I have looked over
22 those during the break and tried to pull
23 up the documents to which I would compare
24 them on my computer. I don't have a full
25 grasp of exactly what they mean. There

1 may come a time where I have to ask for a
2 second depo to talk with someone at
3 Pemberton about that.

4 MS. HURLEY: That's agreeable.

5 MR. BUTLER: With that, let's go on
6 video.

7 THE VIDEO SPECIALIST: Stand by.
8 All right. We are now on the record.
9 This is the videotaped deposition of
10 Preston Cunningham. Today's date is June
11 29, 2017. The time on the video monitor
12 is now 11:29.

13 Will all attorneys present please
14 identify yourselves for the record. And
15 our court reporter, Debbie West, will
16 swear in the witness.

17 MR. BUTLER: Jeb Butler on behalf of
18 ██████████, the plaintiff.

19 MS. HURLEY: Kathleen Hurley on
20 behalf of the defendants.

21

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25

1 PRESTON CUNNINGHAM,
2 called as a witness and having been first duly
3 sworn, was examined and testified as follows:

4 EXAMINATION

5 BY MR. BUTLER:

6 Q State your name and job title for
7 the record.

8 A **Preston Matthew Cunningham, and I am**
9 **the director of safety and human resources.**

10 Q For Pemberton Truck Lines, right?

11 A **For Pemberton Truck Lines.**

12 Q You live and work in the Knoxville,
13 Tennessee area?

14 A **I do.**

15 Q We are in Knoxville, Tennessee today
16 taking this deposition, right?

17 A **Yes.**

18 Q How many trucks does Pemberton
19 operate?

20 A **Approximately 150.**

21 Q I think it is primarily east of the
22 Mississippi River and south of the Ohio River; is
23 that right?

24 A **That's correct.**

25 Q A lot of trucks running through

1 Georgia?

2 **A Yes.**

3 Q You are in charge of safety at
4 Pemberton Truck Lines; is that true?

5 **A Yes.**

6 Q Isn't it also true that after any
7 wreck, the driver of the Pemberton truck is
8 supposed to call you?

9 **A No.**

10 Q No. Well, isn't it true that if it
11 is a wreck with injuries, they are supposed to call
12 you, even on your cell phone?

13 **A Not just me. So the answer would be
14 no if you're asking for me specifically.**

15 Q Well, let's look at Plaintiff's
16 Exhibit 3, which is in front of you there.

17 **A Okay.**

18 Q And that's going to be a copy of the
19 Pemberton employee driver handbook, right?

20 **A Uh-huh.**

21 Q Now, flip, if you will, to page 30.
22 Do you see it says in the middle there, "Accident
23 Reporting Procedures"?

24 **A Uh-huh.**

25 Q In all caps?

1 **A Right.**

2 Q Then it says, "Contact Preston
3 Cunningham," highlighted Number 3; isn't that
4 right?

5 **A That is correct.**

6 Q That is you, right?

7 **A That's correct. That's my cell
8 phone number.**

9 Q Okay.

10 **A That is their third choice, their
11 third option. That is if Number 1 doesn't work and
12 Number 2 doesn't work.**

13 Q Okay. Turn with me to the next
14 page, please. It says, "Injury Reporting
15 Procedures."

16 **A Okay.**

17 Q Here, Number 4, it has your cell and
18 home phone number, right?

19 **A Correct.**

20 Q Okay. You investigated this
21 collision that we are here about today, right?

22 **A I did.**

23 Q And you were the one who helped
24 Pemberton's lawyers, including Ms. Hurley, who is
25 seated to your right, answer the written discovery

1 requests, right?

2 **A Yes.**

3 Q By "written discovery," I am
4 referring to the interrogatories, request for
5 admissions, those type of things. Is that what you
6 understood me to mean?

7 **A Yes.**

8 Q Have you given a deposition before?

9 **A Yes.**

10 Q How many times?

11 **A I don't know exactly. Less than**
12 **ten.**

13 Q More than five, fewer than ten?

14 **A In that neighborhood.**

15 Q How many of them related to your
16 work at Pemberton?

17 **A I think all. I don't recall one**
18 **that was not work-related.**

19 Q How many of them related to
20 collisions involving Pemberton trucks?

21 **A I don't know the exact number.**

22 Q Well, were there any that didn't
23 involve collisions involving Pemberton trucks?

24 **A Yes.**

25 Q All right. Have most of them

1 involved collisions that involved Pemberton trucks?

2 **A Probably.**

3 Q Now, I wanted to ask you a little
4 bit about the rules that govern 18-wheelers and
5 large trucks. It is true, isn't it, that big
6 trucks have to obey certain safety rules, like the
7 Federal Motor Carrier Safety Regulations?

8 **A Absolutely, yes.**

9 Q They also have to obey the regular
10 rules of the road that govern four-wheel
11 automobiles and usually the Commercial Driver's
12 License Handbook or Manual, CDL; is that right?

13 **A Yes.**

14 Q The reason for all those rules is
15 safety, correct?

16 **A I would think that would be
17 foremost. Certainly would be in my mind, yes.**

18 Q Because if a large truck gets in a
19 wreck, someone can get hurt, right?

20 **A Yes.**

21 Q I wanted to ask you about some of
22 the rules of the road. Specifically I want to talk
23 about passing other vehicles on a two-lane road.

24 **A Okay.**

25 Q Isn't it true that when you pass on

1 a two-lane road, you're supposed to do it only in a
2 passing zone?

3 **A Can you define that a little bit?**

4 Q Well, do you know what a passing
5 zone is?

6 **A I do.**

7 Q Isn't it true that when a driver
8 passes on a two-lane road, the driver is only
9 supposed to do it in a passing zone?

10 **A If there is proper markings that**
11 **identify that this is a passing zone, yes.**

12 Q That's like the little dotted
13 line --

14 **A The dashed line, yes.**

15 Q -- in the road, right? The dash
16 line.

17 Isn't it also true that before a
18 vehicle passes another, the passing vehicle is
19 supposed to be able to pass the vehicle and return
20 to the right lane before the passing zone ends?

21 **A I am not sure.**

22 Q Isn't it true -- well, I will tell
23 you what. I will show you what I have marked as
24 Plaintiff's Exhibit Number 14.

25

1 (Thereupon, the respective
2 document was marked as
3 Exhibit Number 14.)

4 BY MR. BUTLER:

5 Q That says, "Georgia Department of
6 Driver Services," on the front, right?

7 A Uh-huh.

8 Q It says, "Driver's Manual," right?

9 A Right.

10 Q Okay. This would be like the driver
11 test you have to take before you get your license
12 as a teenager, right?

13 A Right.

14 Q Turn with me, if you would, to page
15 23. You will see the numbers on the bottom right
16 of the pages there.

17 A Number 23 at the bottom right.

18 Q Do you see, "Passing," in red, bold
19 print in the middle of the top of the page?

20 A Bottom right? Okay. "Passing." It
21 is not the bottom right. It is the top middle.

22 Q Yeah. That's what I meant to say.
23 If I misspoke, excuse me. But anyway, it says
24 below that, "How to pass on a two-lane road,"
25 right?

1 **A Uh-huh.**

2 Q Then there is some highlighted text.
3 And that says, "You must have sufficient time and
4 space to execute your passing maneuver and return
5 your vehicle completely to the right lane before
6 the passing zone ends."

7 Did I read that right?

8 **A Yes.**

9 Q It is also true that a vehicle that
10 is going to pass another on a two-lane road needs
11 to be able to return to the right lane before
12 entering an intersection; isn't that right?

13 **A Yes.**

14 Q Okay. Isn't it true that in this
15 case --

16 **A But this isn't Georgia law**
17 **necessarily, is it? That's what I am confused**
18 **about. I don't know that I know Georgia law**
19 **specifically versus safe driving practices.**

20 Q Well, you know this collision
21 happened in Georgia, right?

22 **A Yes.**

23 Q That would mean that Georgia law
24 applies, right?

25 **A Yes.**

1 Q Isn't it true that the Pemberton
2 truck in this case had no chance of passing
3 [REDACTED] and getting back into the right lane
4 before the passing zone ended?

5 A **I don't know.**

6 Q You don't know?

7 A **I wasn't there. I have not been on
8 that stretch of road.**

9 Q Well, we established that you
10 investigated this collision, right?

11 A **Yes.**

12 Q Don't you think it is important to
13 know whether the Pemberton truck violated the
14 passing rules?

15 A **Sure. Yes.**

16 Q You have looked at the collision
17 report, right, the police report?

18 A **I have.**

19 Q Have you looked at pictures where
20 this wreck occurred?

21 A **I have.**

22 Q Can you not say that Mr. Johnson, in
23 the Pemberton truck, had no chance of passing
24 [REDACTED] and getting back into the right lane
25 before the passing zone ended? Isn't that

1 statement true?

2 **A I think that he had time to**
3 **completely complete -- I think he had time to**
4 **safely complete the pass.**

5 Q So you are saying he had time --
6 "he," that is Defendant Johnson in the Pemberton
7 truck -- had time to get around the garbage truck
8 and get back into the right lane before the passing
9 zone ended?

10 **A I am not sure if he could have done**
11 **that or not.**

12 Q Well, maybe my question is just a
13 bit unclear. But I am thinking that there have
14 been a couple of different answers to that
15 question. One of them was, "I don't know," which I
16 am thinking you said a couple of times. And one of
17 them was that [REDACTED] could have done it.

18 So for purposes of clarity, I will
19 ask it one more time.

20 **A That [REDACTED] could have done it?**

21 Q Well, I misspoke that time. That
22 Mr. Johnson in the Pemberton truck could have done
23 it.

24 Just so we are clear, I will ask it
25 once more: Isn't it true that the Pemberton truck

1 had no chance of passing [REDACTED] and getting back
2 into the right lane before the passing zone ended?

3 **A Again, I don't know. I would have**
4 **to go back and look at the diagrams.**

5 Q Well, let's look at a diagram. I
6 will show you now what I will mark as Plaintiff's
7 Exhibit Number 15, which is the diagram from the
8 police report.

9 (Thereupon, the respective
10 document was marked as
11 Exhibit Number 15.)

12 BY MR. BUTLER:

13 Q Do you remember seeing this when you
14 reviewed the police report?

15 **A Yes.**

16 Q Okay. Well, this shows -- you see
17 State Route 16 and Stapler Road there, right?

18 **A Yes.**

19 Q And in this one, the truck, the
20 Pemberton truck, which is labeled V-1, would have
21 been coming, basically, from the north headed down
22 on the page, right?

23 **A Uh-huh.**

24 Q And you can see it trying to pass
25 the garbage truck, which is labeled V-2, right?

1 **A Right.**

2 Q Now, according to Plaintiff's
3 Exhibit 15, this diagram, you can see the collision
4 occurs, the impact occurs right in front of Stapler
5 Road, correct?

6 **A Correct.**

7 Q So I printed off something from --

8 **A Based on the officer's**
9 **investigation, that is correct.**

10 Q Sure. Well, you didn't go to the
11 scene and investigate it, did you?

12 **A No.**

13 Q I mean, you didn't go look at the
14 road debris, did you?

15 **A No.**

16 Q You weren't there talking to the
17 witnesses, were you?

18 **A No.**

19 Q Do you have any reason to disagree
20 with the officer's conclusion about where the
21 impact occurred?

22 **A No. But I can only rely on that**
23 **opinion. I can't have 100 percent certainty.**

24 Q Okay. I will show you now what I
25 have marked as Plaintiff's Exhibit Number 16.

1 (Thereupon, the respective
2 document was marked as
3 Exhibit Number 16.)

4 BY MR. BUTLER:

5 Q I will represent to you that this is
6 a Google satellite sort of picture of the
7 intersection. You see Stapler Road and 16 labeled
8 there?

9 A Uh-huh.

10 Q If the officer is right about the
11 point of impact, the impact occurred in that red
12 circle, correct?

13 A Most likely, yes.

14 Q And you see in Plaintiff's Exhibit
15 16, the Google satellite image there, you see where
16 the passing zone ends, don't you?

17 A It is difficult to make out, but it
18 looks like it is -- this obviously doesn't have a
19 lot of clarity. But without absolute certainty, I
20 think I see where it ends.

21 Q Yeah. It is where the line becomes
22 solid, right?

23 A Uh-huh, yes.

24 Q I am going to show you another
25 picture that I have marked as Plaintiff's Exhibit

1 Number 17.

2 (Thereupon, the respective
3 photograph was marked as
4 Exhibit Number 17.)

5 BY MR. BUTLER:

6 Q And this one is a picture taken from
7 the scene of the collision. And I will represent
8 to you this picture is taken standing in the
9 intersection of Stapler Road and State Route 16.

10 Can you see in this picture where
11 the passing zone ends?

12 A It looks to be, yes, just beyond the
13 intersection.

14 Q Where the line becomes solid, right?

15 A Uh-huh. Yes.

16 Q All right. And now I want to show
17 you a video. And I will tell you, this is a video
18 of the area where the collision occurred, and it is
19 taken from the perspective of the Pemberton truck.

20 Can you see it on your screen there?

21 A Uh-huh, yes.

22 Q All right. I am going to pause it
23 while I provide a copy to Ms. Hurley. All right.

24

25

1 (Thereupon, the respective
2 jump drive was marked as Exhibit
3 Number 18.)

4 BY MR. BUTLER:

5 Q Now we will start that video again.
6 We are going to play it --

7 A Is this supposed to be the same
8 route?

9 Q Yeah. This is the scene of the
10 collision from the perspective of the Pemberton
11 truck. And I will play it without sound here.

12 (Video played.)

13 BY MR. BUTLER:

14 Q Were you able to see that video?

15 A Yes.

16 Q We are looking now at the still
17 image from the very end of the video, right?

18 A Yes.

19 Q Do you see where Stapler Road comes
20 in on the left there?

21 A Yes. Well -- yes.

22 Q Can you see the end of the passing
23 zone up ahead?

24 A I can.

25 Q Would you pass another vehicle here?

1 **A** **Starting right where the truck is**
2 **sitting now?**

3 **Q** **Yeah.**

4 **A** **No. If I am where the video is now,**
5 **which is just at the corner of the road, I would**
6 **not attempt to pull out and pass.**

7 **Q** **Would you pass another vehicle**
8 **that's sitting here where this car is sitting that**
9 **the video is being taken from?**

10 **A** **I don't understand the -- well,**
11 **again, if I was in my lane, where this vehicle is**
12 **sitting, I would not attempt to pull out and pass**
13 **somebody from this starting point.**

14 **Q** **Let's just cut to the chase.**

15 **A** **This is the point of impact,**
16 **correct?**

17 **Q** **Yeah. This is the point of impact.**
18 **Is this a safe place to pass?**

19 **A** **Not where this vehicle is sitting.**
20 **The point of impact would not be a safe place to**
21 **pull out and attempt to pass.**

22 **Q** **This is not a good area for an**
23 **18-wheeler to be in the left lane trying to make a**
24 **pass. Do you agree or disagree with that**
25 **statement?**

1 **A** **Again, I don't think that where the**
2 **vehicle is sitting now, at the entrance to the**
3 **cross road, I don't think it would be a safe place**
4 **to make a left-hand -- to move over to the left**
5 **lane and attempt to pass.**

6 **Q** **Do you agree that at this point --**
7 **that is the very last frame in the video that we**
8 **just watched and marked as Plaintiff's Exhibit**
9 **18 -- that this frame is a bad place for an**
10 **18-wheeler to be in the left lane trying to make a**
11 **pass?**

12 **A** **Where this point -- where this**
13 **vehicle is in the lane would not be a safe place to**
14 **pull out and attempt to make a pass, not to begin a**
15 **pass.**

16 **Q** **Well, I am not just talking about**
17 **beginning a pass. My question is, isn't it true**
18 **that this screen we are looking at, the last frame**
19 **from Plaintiff's Exhibit 18 of the video, is a bad**
20 **place for an 18-wheeler to be in the left lane**
21 **trying to make a pass?**

22 **A** **I guess I don't understand. Because**
23 **you're asking if this would be a safe place to make**
24 **a pass, and this would not be a safe place to start**
25 **the pass, based on the picture I am looking at.**

1 Q Well, let me say this: I meant to
2 say this a second ago. If I didn't, then excuse
3 me. I am not asking about beginning a passing
4 maneuver.

5 What I am asking is this: Isn't it
6 true that in this image we are looking at, this is
7 a bad place for an 18-wheeler to be in the left
8 lane trying to make a pass?

9 A **It would be, in this picture,**
10 **because there is a car coming.**

11 Q Even without the car. With the
12 passing lane coming up ahead, isn't it true that
13 this is a bad place for an 18-wheeler?

14 A **I don't think it is necessarily a**
15 **bad place for the 18-wheeler to be completing his**
16 **pass.**

17 Q So you think this is okay, right?

18 A **It's not necessarily an unsafe place**
19 **to complete his pass.**

20 (Thereupon the last answer was
21 read by the court reporter to the
22 witness and counsel.)

23 BY MR. BUTLER:

24 Q So you think this is okay, for an
25 18-wheeler to be in the left lane, making a pass at

1 the point that's shown in the screen that we are
2 looking at?

3 A The difficulty in answering the
4 question as you're framing it is that making a pass
5 takes a certain amount of time and a pretty lengthy
6 distance. Okay?

7 Q How long does it take?

8 A There is a big difference from where
9 you start to make the pass and where you finish the
10 pass. The lines on the road indicate that,
11 according to the state and the law, that this is a
12 safe place to pass.

13 Q Well, I want to follow up on a
14 couple of things you said. You mentioned that it
15 takes a pretty lengthy distance for an 18-wheeler
16 to pass another car. Didn't you just say that?

17 A It takes a certain amount of time
18 and distance for any vehicle to pass any vehicle.
19 There are a lot of factors, obviously, that go into
20 that.

21 Q Well, how -- how much distance?

22 A It depends on speed, obviously.

23 Q How about in this case?

24 A I don't know the speeds of the
25 vehicles.

1 Q Well, have you asked anyone what the
2 speeds were?

3 A I know what our driver reported his
4 speed was. There is no speeds listed on the police
5 reports of either vehicle.

6 Q What did your driver report his
7 speed at?

8 A As approximately 45 to 50 miles an
9 hour.

10 Q He said he was going 45 to 50 while
11 he was passing?

12 A No.

13 Q No?

14 A That was the speed he was going when
15 the vehicle pulled out in front of him.

16 Q Well, at whatever speed it was, how
17 much distance should he have had to complete the
18 passing maneuver?

19 A I would have to calculate it based
20 on both the vehicles' speeds.

21 Q Can you give us an estimate now?

22 A I would rather not guess.

23 Q Okay.

24 A I don't know what the speed of the
25 other vehicle was.

1 MS. HURLEY: You can't talk over
2 each other.

3 MR. BUTLER: If he wants to talk
4 over me, let him do it.

5 THE WITNESS: I apologize.

6 BY MR. BUTLER:

7 Q Well, let me ask you this: Have you
8 thought about that question before?

9 A Yes.

10 Q So you have thought about how much
11 distance was necessary for Mr. Johnson to complete
12 this pass?

13 A No.

14 Q You have not thought about that
15 before?

16 A I thought about calculating
17 distances of passes before, but not in this
18 instance.

19 Q Well, you knew you were going to
20 give your deposition today, right?

21 A Yes.

22 Q We have established that you
23 investigated the collision, helped the defense
24 lawyer with all of those discovery responses, like
25 interrogatories and requests for admissions, right?

1 **A Yes.**

2 Q This collision happened now over two
3 years ago, right?

4 **A That's correct.**

5 Q Okay. Well, let's return to the
6 image on the screen here, which again I will say
7 for the record is the very last frame in the video
8 that is marked as Plaintiff's Exhibit 18.

9 Isn't it true that an 18-wheeler,
10 who's right beside the garbage truck in the -- at
11 the point that is shown on your screen there,
12 doesn't have any chance of completing that pass and
13 getting back in the right lane before the passing
14 lane ends?

15 **A I am not sure. Again, I don't know**
16 **the speeds of the vehicles. It looks like it would**
17 **have been difficult to complete it. It also would**
18 **have been difficult to see the -- when the passing**
19 **lane ends from the distance you started.**

20 Q Isn't it the duty of someone who
21 starts a pass to know when the passing lane is
22 going to end?

23 **A It is everybody's duty to do that.**

24 Q I want to ask you about some other
25 rules of the road. You have to have a commercial

1 driver's license to legally drive an 18-wheeler,
2 right?

3 **A Yes.**

4 Q And this driver, Johnson, lived in
5 Florida, so he had a Florida commercial driver's
6 license, correct?

7 **A Correct.**

8 Q Now, isn't it true that one of the
9 rules is that the driver of an 18-wheeler should
10 usually drive with the speed of other traffic so he
11 doesn't have to be passing other vehicles?

12 **A I don't know about that.**

13 Q Well, let's take a look. I show you
14 now what I have marked as Plaintiff's Exhibit
15 Number 19. And that says, "Florida CDL Handbook,"
16 on the front of it, right?

17 **A Yes.**

18 (Thereupon, the respective
19 document was marked as Exhibit
20 Number 19.)

21 BY MR. BUTLER:

22 Q That would be Commercial Driver's
23 License Handbook, right?

24 **A Yes.**

25 Q With a picture of an 18-wheeler on

1 it, right?

2 **A Yes.**

3 Q All right. Go to page 2-15, which
4 is tabbed for you there.

5 **A Okay.**

6 Q You will see some highlighted
7 language in the bottom left. Do you see that?

8 **A Yes.**

9 Q That says, "If you go faster than
10 the speed of other traffic, you will have to keep
11 passing other vehicles. This increases the chance
12 of a crash and it is more tiring."

13 Did I read that right?

14 **A Yes.**

15 Q And then the last sentence of that
16 paragraph says, "Going with the flow of traffic is
17 safer and easier," right?

18 **A Yes.**

19 Q Now, another rule that applies to
20 18-wheelers and applied to Defendant Johnson in his
21 Pemberton truck was that if you're passing a
22 vehicle, you should drive carefully enough to avoid
23 a crash, even if the other driver doesn't see the
24 truck coming?

25 **A Say that again. Can you say that**

1 **again, please?**

2 Q Sure. Another of the rules that
3 governs, that applies to 18-wheelers is that if an
4 18-wheeler decides to pass another vehicle, the
5 18-wheeler should drive carefully enough to avoid a
6 crash, even if the other driver doesn't see the
7 truck coming?

8 A **Yes, I agree with that.**

9 Q All right. Isn't it also true that
10 there are some limits on how long a truck driver,
11 like Mr. Johnson, can be behind the wheel?

12 A **Driving the vehicle?**

13 Q Yeah.

14 A **Yes.**

15 Q And the reason for that is we don't
16 want drivers to drive too long and get too tired,
17 right?

18 A **Correct.**

19 Q Because tired drivers can make bad
20 decisions, right?

21 A **Right.**

22 Q Bad decisions made by the driver of
23 an 18-wheeler can have bad results, right?

24 A **It could, yes.**

25 Q And so that's why we have these

1 rules about -- they are called hours of service
2 rules, right?

3 **A Correct.**

4 Q Now, Pemberton paid Defendant
5 Johnson, in part, by the mile, I think; is that
6 right?

7 **A In part.**

8 Q But he was still governed by these
9 hours of service rules, correct?

10 **A Correct.**

11 Q Isn't it true that in the months
12 before this collision, Pemberton was in trouble for
13 its drivers violating hours of service rules?

14 **A Can you say that again?**

15 Q Yeah. Isn't it true that in the
16 months before this collision, Pemberton was in
17 trouble for its drivers violating the hours of
18 service rules?

19 **A In trouble with? No, not to my
20 knowledge.**

21 Q Okay. Well, let me show you what I
22 have marked as Plaintiff's Exhibit Number 20.

23 (Thereupon, the respective
24 document was marked as
25 Exhibit Number 20.)

1 BY MR. BUTLER:

2 Q Now, this says, "Idle Talk" up at
3 the top, right?

4 A Yes.

5 Q Then it says, "Pemberton Truck
6 Lines," and has a picture of a Pemberton truck?

7 A Right.

8 Q Idle Talk is like the monthly
9 newsletter for Pemberton, right?

10 A Correct.

11 Q And this one, if you look in the
12 bottom left, has a month and year of February 2015,
13 right?

14 A Correct.

15 Q That is two months before this
16 collision, right?

17 A Yes.

18 Q And it says -- highlighted there,
19 you can see what I am wanting to ask about. It
20 says, "Hours of service basic increased from 59
21 percent to 63 percent." Right?

22 A Yes.

23 Q And that meant that Pemberton was
24 real close to going in alert status with the
25 federal government for hours of service, right?

1 **A** **I don't know if I would call that**
2 **"trouble."**

3 **Q** Well --

4 **A** **That's an indicator as to national**
5 **averages.**

6 **Q** Well, isn't it true that Pemberton
7 was within two points of going into alert status
8 with the federal government for hours of service
9 violations?

10 **A** **For the CSA requirements, we were**
11 **within two points of our status, yes.**

12 **Q** What is CSA?

13 **A** **It is what they use to rule us with**
14 **on the --**

15 **Q** That's the federal government,
16 right?

17 **A** **Correct. Department of**
18 **Transportation.**

19 **Q** Isn't it true that the month before
20 this wreck, the federal government did put
21 Pemberton on alert status for hours of service
22 violations?

23 **A** **We have been in alert status before,**
24 **yes.**

25 **Q** And Pemberton was in alert status in

1 March of 2015, right?

2 **A I don't recall the dates.**

3 Q Okay. Let's look at what I have
4 marked as Plaintiff's Exhibit 21. That's another
5 Idle Talk newsletter, right?

6 **A Correct.**

7 (Thereupon, the respective
8 document was marked as
9 Exhibit Number 21.)

10 BY MR. BUTLER:

11 Q Turn with me, please, to the third
12 page. And this says hours of service increased
13 again, this time from 63 percent to 65 percent,
14 right?

15 **A Correct.**

16 Q And now it says Pemberton is in
17 alert status, correct?

18 **A Correct.**

19 Q Correct. And Pemberton stayed in
20 alert status during the month that this wreck
21 occurred, right?

22 **A I will say I don't recall.**

23 Q Okay. I will show you now what I
24 have marked as Plaintiff's Exhibit Number 22.

25 **A Okay.**

1 (Thereupon, the respective
2 document was marked as
3 Exhibit Number 22.)

4 BY MR. BUTLER:

5 Q And this is another Idle Talk
6 newsletter, right?

7 A Correct.

8 Q Here it says the hours of service
9 violations increased again now from 65 percent to
10 69 percent, right?

11 A Correct.

12 Q It says, "We are in alert status"?

13 A Yes.

14 Q That meant that Pemberton trucks
15 could be pulled onto the scales or stopped on the
16 roadway at any time for an inspection, right?

17 A They could be either way, but yes.

18 Q This newsletter, if we look in the
19 bottom left, this is from April of 2015, right?

20 A Correct.

21 Q That's the month of this collision,
22 right?

23 A Yes.

24 Q There is one other rule of the road
25 that I wanted to discuss with you. Do you know

1 what Defendant Johnson, the driver of the Pemberton
2 truck, did immediately after this collision?

3 **A No.**

4 Q He didn't stop there at the
5 intersection of State Route 16 and Stapler Road,
6 did he?

7 **A I don't know.**

8 Q Has anyone told you that he drove on
9 down the road about a quarter of a mile before he
10 stopped?

11 **A No.**

12 Q Have you asked anybody what Johnson
13 did immediately after the collision?

14 **A No. Not with regards to moving the
15 vehicle forward a little bit.**

16 Q Well, Defendant Johnson, after this
17 collision, he never did walk back to where the
18 garbage truck was in the ditch having run up
19 against the trees, did he?

20 **A I don't know.**

21 Q I mean, do you know -- are you aware
22 of anything he did to walk back and check on the
23 people in the garbage truck?

24 **A I couldn't say if he did or didn't.**

25 Q Did you ask anybody about that?

1 **A I did not ask anyone.**

2 **Q Is it important to you?**

3 **A Is the safety of the person in the**
4 **wreck important to me?**

5 **Q Is it important to you whether your**
6 **driver went back to check on the people in the**
7 **garbage truck?**

8 **A It would be important to me that**
9 **somebody was at the scene checking on the person.**

10 **Q Well, pull out that CDL Manual**
11 **again, if you would.**

12 **A Which one is that?**

13 **Q It is the one marked as Plaintiff's**
14 **Exhibit Number 19, the Florida CDL Manual. It's**
15 **the big one. And turn with me, please, to Rule**
16 **2.20.**

17 **A It's not marked?**

18 **Q No. It's not tabbed, but go -- it's**
19 **page 2-38. The page numbers are in the bottom**
20 **right.**

21 **A Okay.**

22 **Q And you see Rule 2.20 there?**

23 **A Yes.**

24 **Q It says, "Accident Procedures"?**

25 **A Yes.**

1 Q And it says that "when you're in an
2 accident and not seriously hurt, you need to act to
3 prevent further damage or injury. The basic steps
4 to be taken in any accident are to protect the
5 area, notify authorities, and care for the
6 injured."

7 Did I read that right?

8 **A Yes.**

9 MR. BUTLER: Thank you. No further
10 questions.

11 MS. HURLEY: You're done.

12 THE VIDEO SPECIALIST: We're going
13 to go off the record. The time is 12:02.
14 That will be the end of this deposition.

15 COURT REPORTER: Copy of the
16 transcript?

17 MS. HURLEY: Yes.

18 COURT REPORTER: Copy of the
19 exhibits, too?

20 MS. HURLEY: No.

21 MR. BUTLER: Etran and copies of the
22 exhibits, please. And then on both, I
23 would like a synced copy of the video.

24 MS. HURLEY: Go ahead and give me a
25 copy of the exhibits.

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FURTHER THE DEPONENT SAITH NOT.

(12:02 P.M.)

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REPORTER CERTIFICATE

STATE OF TENNESSEE

COUNTY OF KNOX

I, Deborah West, Licensed Court Reporter, LCR #314, in and for the State of Tennessee, do hereby certify that the deposition of PRESTON CUNNINGHAM, was reported by me and that the foregoing transcript, pages 1 through 42, inclusive, is a true and accurate record to the best of my knowledge, skills and ability.

I further certify that I am not related to, nor an employee or counsel of any of the parties to the action as defined under T.C.A Section 24-9-136, nor am I financially interested in the outcome of this case.

In witness thereof, I have hereunto set my hand on this the 11th day of July, 2017. The witness HAS waived signature.



Deborah West; 7/10/2017
14:43:55 PM; Knoxville,
Tennessee; TN LCR 314,
expires 5-6-2018;

FIRM DISCLOSURE

Pursuant to Article 10(B) of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia, Pope Reporting & Video, LLC, makes the following disclosure:

- Pope Reporting & Video, LLC, was contacted by the party taking the deposition to provide court reporting services for this proceeding;
- The reporter for this proceeding is here as a representative of Pope Reporting & Video, LLC, to report this matter;
- Pope Reporting & Video, LLC, is not taking this deposition under any contract that is prohibited by O.C.G.A. 15-14-37 (a) and (b) or Article 7.C. of the Rules and Regulations of the Board for the taking of this deposition; And any and all financial arrangements beyond our usual and customary rates have been disclosed and offered to all parties.

Transcripts: The transcript of this proceeding as produced will be a true, correct, and complete record of the colloquies, questions, and answers as submitted by the certified court reporter.

Exhibits: No changes will be made to the exhibits as submitted by the reporter, attorneys, or witnesses.

Password-Protected Access: Transcripts and exhibits relating to this proceeding will be uploaded to a password-protected repository, to which all ordering parties will have access.

WORD INDEX

< 1 >

1 4:3 10:11 42:8
1:17-CV-00556-WS
D 1:1
100 19:23
11:26 1:1 6:1
11:29 7:12
11th 42:17
12:02 40:13 41:2
13 4:3
1-3 1:1
14 4:2, 3 13:24
 14:3
15 4:4 18:7, 11
 19:3
150 8:20
16 4:4 18:17
 19:25 20:3, 7, 15
 21:9 38:5
17 4:7 21:1, 4
18 4:4, 7 22:3
 24:9, 19 29:8
18-wheeler 23:23
 24:10, 20 25:7, 13,
 15, 25 26:15 29:9
 30:1, 9, 25 32:4, 5,
 23
18-wheelers 12:4
 31:20 32:3
19 4:10 30:15, 20
 39:14
1932 2:4

 < 2 >
2 10:12
2.20 39:16, 22
20 4:6, 10 33:22,
 25
2000 2:9
2013 4:3
2015 4:12, 13, 15
 34:12 36:1 37:19
2015-2016 4:10
2017 5:4 7:11
 42:17

21 4:7, 13 36:4, 9
2-15 31:3
22 4:9, 13 36:24
 37:3
23 14:15, 17
2-38 39:19
24-9-136 42:14
250 2:4
275 2:10
29 7:11
29th 5:4

< 3 >

3 9:16 10:3
30 4:10 6:17 9:21
30092 2:10
30319 2:5
314 42:5
33 4:12
36 4:13
37 4:15
37923 1:1

< 4 >

4 10:17
404 2:5
42 42:8
45 27:8, 10

< 5 >

50 27:8, 10
587-8423 2:5
59 34:20

< 6 >

6 4:3 6:17
63 34:21 36:13
65 36:13 37:9
69 37:10

< 8 >

8 3:5

< 9 >

9111 1:1

< A >

A.M 1:1 6:1
ability 42:10
able 13:19 15:11
 22:14
absolute 20:19
Absolutely 12:8
Accident 9:22
 39:24 40:2, 4
accurate 42:9
act 40:2
ACTION 1:1
 42:13
admissions 11:5
 28:25
aerial 4:6
ago 25:2 29:3
agree 23:24 24:6
 32:8
agreeable 7:4
agreed 5:9, 13
agreement 6:4
ahead 22:23 25:12
 40:24
alert 34:24 35:7,
 21, 23, 25 36:17, 20
 37:12
amount 26:5, 17
answer 9:13 10:25
 25:20
answering 26:3
answers 17:14
anybody 38:12, 25
anyway 14:23
apologize 28:5
APPEARANCES
 2:1
applicable 5:4
applied 31:20
applies 15:24
 31:19 32:3
Approximately
 8:20 27:8
April 4:15 37:19
area 8:13 21:18
 23:22 40:5
asked 27:1 38:12
asking 9:14 24:23

25:3, 5
ATLANTA 1:1 2:5
attempt 23:6, 12,
 21 24:5, 14
attorneys 7:13
authorities 40:5
automobiles 12:11
averages 35:5
avoid 31:22 32:5
aware 38:21

< B >

back 16:3, 24 17:8
 18:1, 4 29:13
 38:17, 22 39:6
bad 24:9, 19 25:7,
 13, 15 32:19, 22, 23
Based 19:8 24:25
 27:19
basic 34:20 40:3
basically 18:21
beginning 24:17
 25:3
behalf 2:2, 7 7:17,
 20
best 42:9
beyond 21:12
big 12:5 26:8
 39:15
bit 12:4 13:3
 17:13 38:15
bold 14:18
bottom 14:15, 17,
 20, 21 31:7 34:12
 37:19 39:19
break 6:9, 22
Butler 2:3 3:5
 6:2, 21 7:5, 17, 17
 8:5 14:4 18:12
 20:4 21:5 22:4, 13
 25:23 28:3, 6
 30:21 34:1 36:10
 37:4 40:9, 21
Butler-Torbin 2:3

 < C >
calculate 27:19

calculating 28:16
call 9:8, 11 35:1
called 5:2 8:2
 33:1
caps 9:25
caption 5:14
car 23:8 25:10, 11
 26:16
care 40:5
carefully 31:22
 32:5
Carrier 12:7
case 15:15 16:2
 26:23 42:15
CDL 4:10 12:12
 30:15 39:10, 14
cell 9:12 10:7, 17
certain 12:6 26:5,
 17
Certainly 12:17
certainty 19:23
 20:19
certificate 5:14
 42:1
certify 42:6, 11
cetera 5:15
chance 16:2, 23
 18:1 29:12 31:11
charge 9:3
chase 23:14
check 38:22 39:6
checking 39:9
CHEROKEE 1:1
choice 10:10
circle 20:12
CIVIL 1:1 6:5
clarity 17:18 20:19
clear 17:24
close 34:24
CLR 1:1
collision 10:21
 15:20 16:10, 16
 19:3 21:7, 18
 22:10 28:23 29:2
 33:12, 16 34:16
 37:21 38:2, 13, 17
collisions 11:20, 23

12:1
Color 4:6, 7
come 7:1
comes 22:19
coming 18:21
 25:10, 12 31:24
 32:7
Commercial 12:11
 29:25 30:5, 22
COMPANY 1:1
compare 6:23
complete 17:3, 4
 25:19 27:17 28:11
 29:17
completed 5:16
completely 15:5
 17:3
completing 25:15
 29:12
computer 6:24
conclusion 19:20
confused 15:17
Contact 10:2
copies 40:21
copy 9:18 21:23
 40:15, 18, 23, 25
corner 23:5
Correct 6:20 8:24
 10:5, 7, 19 12:15
 19:5, 6, 9 20:12
 23:16 29:4 30:6, 7
 32:18 33:3, 9, 10
 34:10, 14 35:17
 36:6, 15, 17, 18, 19
 37:7, 11, 20
COUNSEL 2:1
 25:22 42:12
COUNTY 42:3
couple 17:14, 16
 26:14
COURT 1:1 5:6,
 10 7:15 25:21
 40:15, 18 42:4
crash 31:12, 23
 32:6
CROSS 1:1 24:3
Cruser 2:8
CSA 35:10, 12

CUNNINGHAM
 1:1 3:3 5:2 6:3, 9
 7:10 8:1, 8 42:6
Cunningham, 10:3
cut 23:14

< D >
damage 40:3
dash 13:15
dashed 13:14
date 7:10
dates 36:2
day 5:4 42:17
Debbie 7:15
Deborah 1:1 5:6,
 9 42:4
debris 19:14
decides 32:4
decisions 32:20, 22
Defendant 2:7
 17:6 31:20 33:4
 38:1, 16
Defendants 1:1
 7:20
defense 6:17 28:23
define 13:3
defined 42:13
Department 14:5
 35:17
depends 26:22
depo 6:17 7:2
DEPONENT 41:1
DEPOSITION 1:1
 5:2, 10, 16 6:3, 16
 7:9 8:16 11:8
 28:20 40:14 42:6
Diagram 4:4 18:5,
 7 19:3
diagrams 18:4
difference 26:8
different 17:14
difficult 20:17
 29:17, 18
difficulty 26:3
director 8:9
disagree 19:19
 23:24

discovery 6:14
 10:25 28:24
discovery, 11:3
discuss 37:25
distance 26:6, 15,
 18, 21 27:17 28:11
 29:19
distances 28:17
DISTRICT 1:1, 1
ditch 38:18
DIVISION 1:1
document 14:2
 18:10 20:2 30:19
 33:24 36:8 37:2
documents 6:23
dotted 13:12
DRIVE 1:1 2:10
 4:9 22:2 30:1, 10
 31:22 32:5, 16
driver 9:7, 19 13:7,
 8 14:6, 10 27:3, 6
 30:4, 9 31:23 32:6,
 10, 22 38:1 39:6
Drivers 4:3 32:16,
 19 33:13, 17
Driver's 12:11
 14:8 30:1, 5, 22
driving 15:19
 32:12
drove 38:8
drug 6:18
Druid 2:4
duly 8:2
duty 29:20, 23

< E >
easier, 31:17
east 8:21
EDWARD 1:1
either 27:5 37:17
employee 9:19
 42:12
ended 16:4, 25
 17:9 18:2
ends 13:20 15:6
 20:16, 20 21:11
 29:14, 19

entering 15:12
entrance 24:2
Esquire 2:3, 8
established 16:9
 28:22
estimate 27:21
et 5:15
Etran 40:21
everybody's 29:23
Evidence 6:7
exact 11:21
exactly 6:25 11:11
EXAMINATION
 3:1, 4 8:4
examined 8:3
excuse 14:23 25:2
execute 15:4
EXECUTIVE 1:1
 5:5
Exhibit 4:2, 4, 4, 7,
 7, 10, 10, 13, 13
 9:16 13:24 14:3
 18:7, 11 19:3, 25
 20:3, 14, 25 21:4
 22:2 24:8, 19 29:8
 30:14, 19 33:22, 25
 36:4, 9, 24 37:3
 39:14
EXHIBITS 4:1
 40:19, 22, 25
expect 6:11
expressly 5:15

< F >
factors 26:19
faster 31:9
February 4:12
 34:12
Federal 6:5, 6
 12:7 34:25 35:8,
 15, 20
fewer 11:13
financially 42:14
finish 26:9
first 8:2
five 11:13
flip 9:21

Florida 4:10 30:5,
 5, 15 39:14
flow 31:16
follow 26:13
follows 8:3
foregoing 42:7
foremost 12:17
forgot 6:14
form 5:12
formalities 5:13
forward 38:15
four-wheel 12:10
frame 24:7, 9, 18
 29:7
framing 26:4
front 9:16 14:6
 19:4 27:15 30:16
fuel 6:18
full 6:24
further 5:13 40:3,
 9 41:1 42:11

< G >
garbage 17:7
 18:25 29:10 38:18,
 23 39:7
Gaston 2:8
GEORGIA 1:1
 2:5, 10 9:1 14:5
 15:16, 18, 21, 23
getting 16:3, 24
 18:1 29:13
give 27:21 28:20
 40:24
given 11:8
go 6:15 7:5 18:4
 19:10, 13 26:19
 31:3, 9 39:18
 40:13, 24
going 9:18 15:10
 20:24 21:22 22:6
 27:10, 14 28:19
 29:22 31:16 34:24
 35:7 40:12
good 23:22
Google 20:6, 15
govern 12:4, 10
governed 33:8




government 34:25
 35:8, 15, 20
governs 32:3
grasp 6:25
guess 24:22 27:22

< H >
hand 42:17
handbook 4:10
 9:19 12:12 30:23
Handbook, 30:15
happened 15:21
 29:2
he, 17:6
headed 18:21
helped 10:23 28:23
hereunto 42:16
highlighted 10:3
 15:2 31:6 34:18
Hills 2:4
home 10:18
hour 27:9
hours 33:1, 9, 13,
 17 34:20, 25 35:8,
 21 36:12 37:8
human 8:9
Hurley 2:8 6:20
 7:4, 19, 19 10:24
 21:23 28:1 40:11,
 17, 20, 24
hurt 12:19 40:2

< I >
identify 7:14 13:11
Idle 4:12, 13, 15
 34:2, 8 36:5 37:5
II 1:1 2:9
image 20:15 22:17
 25:6 29:6
Immediately 6:16
 38:2, 13
impact 19:4, 21
 20:11, 11 23:15, 17,
 20
important 16:12
 39:2, 4, 5, 8
INCLUDING 5:15

6:8 10:24
inclusive 42:8
increased 34:20
 36:12 37:9
increases 31:11
INDEX 3:1 4:1
indicate 26:10
indicator 35:4
injured 40:6
injuries 9:11
Injury 10:14 40:3
inspection 37:16
instance 28:18
INSURANCE 1:1
interested 42:14
interrogatories
 11:4 28:25
intersection 15:12
 20:7 21:9, 13 38:5
investigate 19:11
investigated 10:20
 16:10 28:23
investigation 19:9
involve 11:23
involved 12:1, 1
involving 11:20, 23
its 33:13, 17

< J >
Jeb 2:3 7:17
jeb@butlertobin.co
m 2:6
job 8:6
JOHN 1:1
JOHNSON 1:1
 16:22 17:6, 22
 28:11 30:4 31:20
 32:11 33:5 38:1,
 12, 16
July 42:17
Jump 4:9 22:2
June 5:4 7:10

< K >
Kathleen 2:8 7:19
keep 31:10
  
knew 28:19

know 6:10, 13
 11:11, 21 13:4
 15:18, 18, 20 16:5,
 6, 13 18:3 26:24
 27:3, 24 29:15, 21
 30:12 35:1 37:25
 38:7, 20, 21
know, 17:15
knowledge 33:20
 42:10
KNOX 42:3
KNOXVILLE 1:1
 5:5 8:12, 15

 < L >
labeled 18:20, 25
 20:7
lane 13:20 15:5,
 11 16:3, 24 17:8
 18:2 23:11, 23
 24:5, 10, 13, 20
 25:8, 12, 25 29:13,
 14, 19, 21
language 31:7
large 12:5, 18
law 15:16, 18, 23
 26:11
lawyer 28:24
lawyers 10:24
LCR 42:4
LCR-314 1:1
left 22:20 23:23
 24:4, 10, 20 25:7,
 25 31:7 34:12
 37:19
left-hand 24:4
legally 30:1
lengthy 26:5, 15
License 12:12
 14:11 30:1, 6, 23
Licensed 5:6, 10
 42:4
limits 32:10
line 13:13, 14, 16
 20:21 21:14
LINES 1:1 8:10,
 11 9:4 26:10

Lines, 34:6
listed 27:4
little 12:3 13:3, 12
 38:15
live 8:12
lived 30:4
long 26:7 32:10, 16
look 9:15 18:4, 5
 19:13 30:13 34:11
 36:3 37:18
looked 6:21 16:16,
 19
looking 22:16
 24:18, 25 25:6
 26:2
looks 20:18 21:12
 29:16
lot 8:25 20:19
 26:19

 < M >
machine 5:11
making 25:25 26:4
maneuver 15:4
 25:4 27:18
Manual 4:3 12:12
 39:10, 14
Manual, 14:8
March 4:13 36:1
mark 18:6
marked 13:23
 14:2 18:10 19:25
 20:2, 25 21:3 22:2
 24:8 29:8 30:14,
 19 33:22, 24 36:4,
 8, 24 37:2 39:13,
 17
markings 13:10
Matthew 8:8
mean 6:25 11:6
 15:23 19:13 38:21
meant 14:22 25:1
 34:23 37:14
mentioned 26:14
Meridian 2:9
middle 9:22 14:19,
 21

mile 33:5 38:9
miles 27:8
mind 12:17
minute 6:15
Mississippi 8:22
misspoke 14:23
 17:21
Mitchell 2:8
monitor 7:11
month 34:12
 35:19 36:20 37:21
monthly 34:8
months 33:11, 16
 34:15
Motor 12:7
move 24:4
moving 38:14

 < N >
name 8:6
national 35:4
necessarily 15:17
 25:14, 18
necessary 28:11
need 6:9, 14 40:2
needs 15:10
neighborhood 11:14
never 38:17
newsletter 4:12, 13,
 15 34:9 36:5 37:6,
 18
Norcross 2:10
north 18:21
NORTHERN 1:1
Notary 5:7
notice 5:14 6:4
notify 40:5
Novitz 2:8
Number 4:2, 4, 4, 7,
 7, 10, 10, 13, 13
 10:3, 8, 11, 12, 17,
 18 11:21 13:24
 14:3, 17 18:7, 11
 19:25 20:3 21:1, 4
 22:3 30:15, 20
 33:22, 25 36:9, 24
 37:3 39:14

numbers 14:15
 39:19

 < O >
obey 12:6, 9
obviously 20:18
 26:19, 22
occurred 16:20
 19:21 20:11 21:18
 36:21
occurs 19:4, 4
officer 20:10
officer's 19:8, 20
offices 5:5
Ohio 8:22
Okay 9:17 10:9,
 13, 16, 20 12:24
 14:10, 20 15:14
 18:16 19:24 25:17,
 24 26:6 27:23
 29:5 31:5 33:21
 36:3, 23, 25 39:21
once 17:25
operate 8:19
opinion 19:23
option 10:11
ORAL 1:1
outcome 42:15

 < P >
P.M 41:2
Page 3:2 4:2 9:21
 10:14 14:14, 19
 18:22 31:3 36:12
 39:19, 19
pages 6:18 14:16
 42:8
paid 33:4
paragraph 31:16
PARK 1:1
part 33:5, 7
parties 42:13
pass 12:25 13:19
 14:24 15:10 17:4
 18:24 22:25 23:6,
 7, 12, 18, 21, 24
 24:5, 11, 14, 15, 17,
 21, 24, 25 25:8, 16,

19, 25 26:4, 9, 10,
12, 16, 18 28:12
29:12, 21 32:4
passes 13:8, 18
28:17
passing 12:23 13:2,
4, 9, 11, 18, 20
14:20 15:4, 6 16:2,
4, 14, 23, 25 17:8
18:1, 2 20:16
21:11 22:22 25:3,
12 27:11, 18 29:13,
18, 21 30:11 31:11,
21
Passing, 14:18
pause 21:22
PEMBERTON 1:1
7:3 8:10, 11, 18
9:4, 7, 19 11:16, 20,
23 12:1 16:1, 13,
23 17:6, 22, 25
18:20 21:19 22:10
31:21 33:4, 12, 16
34:5, 6, 9, 23 35:6,
21, 25 36:16, 19
37:14 38:1
Pemberton's 10:24
people 38:23 39:6
percent 19:23
34:21, 21 36:13, 13
37:9, 10
permitted 6:7
person 39:3, 9
perspective 21:19
22:10
phone 9:12 10:8,
18
photograph 4:6, 7
21:3
picture 20:6, 25
21:6, 8, 10 24:25
25:9 30:25 34:6
pictures 16:19
place 23:18, 20
24:3, 9, 13, 20, 23,
24 25:7, 13, 15, 18
26:12

Plaintiff 1:1 2:2
5:3 7:18
Plaintiff's 9:15
13:24 18:6 19:2,
25 20:14, 25 24:8,
19 29:8 30:14
33:22 36:4, 24
39:13
play 22:6, 11
played 22:12
please 7:13 10:14
32:1 36:11 39:15
40:22
point 20:11 23:13,
15, 17, 20 24:6, 12
26:1 29:11
points 35:7, 11
police 16:17 18:8,
14 27:4
practices 15:19
PRESENT 2:12
7:13
PRESTON 1:1
3:3 5:2 6:3 7:10
8:1, 8 10:2 42:6
pretty 26:5, 15
prevent 40:3
primarily 8:21
print 14:19
printed 19:7
Probably 12:2
Procedure 6:6
Procedures 9:23
10:15 39:24
produced 6:17
proper 13:10
protect 40:4
provide 21:23
Public 5:7
pull 6:22 23:6, 12,
21 24:14 39:10
pulled 27:15 37:15
purposes 6:7 17:18
pursuant 5:3 6:4, 5
put 35:20

< Q >
quarter 38:9

question 6:12
17:12, 15 24:17
26:4 28:8
questions 40:10

< R >
read 15:7 25:21
31:13 40:7
reading 5:16
real 34:24
reason 12:14
19:19 32:15
recall 11:17 36:2,
22
receipts 6:18
record 7:8, 14 8:7
29:7 40:13 42:9
red 14:18 20:11
reducing 5:11
referring 11:4
regards 38:14
regular 12:9
Regulations 12:7
related 11:15, 19
42:11
rely 19:22
remember 18:13
rephrase 6:13
report 5:10 16:17,
17 18:8, 14 27:6
reported 27:3 42:7
Reporter 5:7, 10
7:15 25:21 40:15,
18 42:1, 4
Reporting 9:23
10:14
reports 27:5
represent 20:5
21:7
request 11:4
requests 11:1
28:25
requirements 35:10
resources 8:9
respective 14:1
18:9 20:1 21:2
22:1 30:18 33:23

36:7 37:1
responses 28:24
results 32:23
return 13:19 15:4,
11 29:5
reviewed 18:14
Revised 4:3
right 7:8 8:10, 16,
23 9:19 10:1, 4, 6,
18, 21, 25 11:1, 25
12:12, 19 13:15, 20
14:6, 8, 9, 12, 13, 15,
17, 20, 21, 25 15:5,
7, 11, 12, 21, 24
16:3, 10, 17, 24
17:8 18:2, 17, 22,
25 19:1, 4 20:10,
22 21:14, 16, 22, 23
22:17 23:1 25:17
28:20, 25 29:3, 10,
13 30:2, 16, 23
31:1, 3, 13, 17 32:9,
17, 20, 21, 23 33:2,
6 34:3, 7, 9, 13, 16,
21, 25 35:16 36:1,
5, 14, 21 37:6, 10,
16, 19, 22 39:20
40:7
River 8:22, 22
Road 2:4 4:7
12:10, 22, 23 13:1,
8, 15 15:10 16:8
18:17 19:5, 14
20:7 21:9 22:19
23:5 24:3 26:10
29:25 37:24 38:5,
9
road, 14:24
roadway 37:16
Route 18:17 21:9
22:8 38:5
rule 31:19 35:13
37:24 39:15, 22
rules 5:4 6:5, 6, 8
12:4, 6, 10, 14, 22
16:14 29:25 30:9
32:2 33:1, 2, 9, 13,

18
run 38:18
running 8:25

< S >
safe 15:19 23:18,
 20 24:3, 13, 23, 24
 26:12
safely 17:4
safer 31:17
safety 8:9 9:3
 12:6, 7, 15 39:3
SAITH 41:1
Sanches 2:8
satellite 20:6, 15
saying 17:5
says 9:22 10:2, 14
 14:5, 8, 23 15:3
 30:15 31:9, 16
 34:2, 5, 18, 20
 36:12, 16 37:8, 12
 39:24 40:1
scales 37:15
scene 4:4 19:11
 21:7 22:9 39:9
Scientific 2:10
screen 21:20
 24:18 26:1 29:6,
 11
seated 10:25
second 7:2 25:2
Section 42:14
see 6:11 9:22
 14:15, 18 18:16, 24
 19:3 20:7, 14, 15,
 20 21:10, 20 22:14,
 19, 22 29:18 31:6,
 7, 23 32:6 34:19
 39:22
seeing 18:13
sentence 31:15
seriously 40:2
service 33:1, 9, 13,
 18 34:20, 25 35:8,
 21 36:12 37:8
Services, 14:6
set 42:16
shorthand 5:11

show 13:23 18:6
 19:24 20:24 21:16
 30:13 33:21 36:23
shown 26:1 29:11
shows 18:16
signature 5:17
 42:18
sitting 23:2, 8, 8, 12,
 19 24:2
skills 42:10
solid 20:22 21:14
somebody 23:13
 39:9
sort 20:6
sound 22:11
south 8:22
space 15:4
Specialist 2:13 7:7
 40:12
specifically 9:14
 12:22 15:19
speed 26:22 27:4,
 7, 14, 16, 24 30:10
 31:10
speeds 26:24 27:2,
 4, 20 29:16
Stand 7:7
standing 21:8
Stapler 18:17 19:4
 20:7 21:9 22:19
 38:5
start 22:5 24:24
 26:9
started 29:19
Starting 23:1, 13
starts 29:21
State 5:7 8:6
 18:17 21:9 26:11
 38:5 42:2, 5
statement 17:1
 23:25
STATES 1:1
status 34:24 35:7,
 11, 21, 23, 25 36:17,
 20 37:12
stayed 36:19
steps 40:3

STIPULATION 5:1
stop 38:4
stopped 37:15
 38:10
stretch 16:8
sufficient 15:3
Suite 2:4, 9
SUITES 1:1 5:5
supposed 9:8, 11
 13:1, 9, 19 22:7
sure 13:21 16:15
 17:10 19:10 29:15
 32:2
swear 7:16
sworn 8:3
synced 40:23

< T >
T.C.A 42:13
tabbed 31:4 39:18
take 6:10 14:11
 26:7 30:13
taken 6:3, 4 21:6,
 8, 19 23:9 40:4
takes 26:5, 15, 17
Talk 4:12, 13, 15
 6:14 7:2 12:22
 28:1, 3 34:2, 8
 36:5 37:5
talking 19:16
 24:16
teenager 14:12
tell 13:22 21:17
ten 11:12, 13
TENNESSEE 1:1
 5:6, 8, 9 8:13, 15
 42:2, 5
test 14:11
testified 8:3
tests 6:19
text 15:2
Thank 40:9
thereof 42:16
things 11:5 26:14
think 8:21 11:17
 12:16 16:12 17:2,
 3 20:20 24:1, 3

25:14, 17, 24 33:5
thinking 17:13, 16
third 10:10, 11
 36:11
thought 28:8, 10,
 14, 16
time 7:1, 11 15:3
 17:2, 3, 5, 7, 19, 21
 26:5, 17 36:13
 37:16 40:13
times 11:10 17:16
tired 32:16, 19
tiring 31:12
title 8:6
TN 1:1
today 8:15 10:21
 28:20
Today's 7:10
told 38:8
Tom 2:13
top 14:19, 21 34:3
traffic 30:10 31:10,
 16
transcript 40:16
 42:8
transmission 5:14
Transportation
 35:18
trees 38:19
trial 6:8
tried 6:22
trouble 33:12, 17,
 19 35:2
TRUCK 1:1 8:10,
 11 9:4, 7 12:18
 16:2, 13, 23 17:7, 7,
 22, 25 18:19, 20, 25
 21:19 22:11 23:1
 29:10 31:21, 24
 32:7, 10 34:5, 6
 38:2, 18, 23 39:7
trucks 8:18, 25
 11:20, 23 12:1, 5, 6
 37:14
true 9:4, 6, 10
 12:5, 25 13:7, 17,
 22 15:9, 14 16:1
 17:1, 25 24:17

25:6, 12 29:9 30:8
 32:9 33:11, 15
 35:6, 19 42:9
trying 18:24 23:23
 24:10, 21 25:8
Turn 10:13 14:14
 36:11 39:15
two 29:2 34:15
 35:7, 11
two-lane 12:23
 13:1, 8 14:24
 15:10
type 11:5
typewritten 5:12

< U >

Uh-huh 9:20, 24
 14:7 15:1 18:23
 20:9, 23 21:15, 21
unclear 6:12 17:13
understand 23:10
 24:22
understood 11:6
UNITED 1:1
unsafe 25:18
use 6:8 35:13
usually 12:11
 30:10

< V >

V-1 18:20
V-2 18:25
vehicle 13:18, 18,
 19 15:5, 9 22:25
 23:7, 11, 19 24:2,
 13 26:18, 18 27:5,
 15, 25 31:22 32:4,
 12 38:15
vehicles 12:23
 26:25 27:20 29:16
 30:11 31:11
versus 15:19
VIDEO 1:1 2:13
 4:9 7:6, 7, 11
 21:17, 17 22:5, 12,
 14, 17 23:4, 9 24:7,
 19 29:7 40:12, 23

videotaped 7:9
view 4:6
violated 16:13
violating 33:13, 17
violations 35:9, 22
 37:9
vs 1:1

< W >

waived 5:15 42:18
walk 38:17, 22
want 12:22 21:16
 26:13 29:24 32:16
wanted 12:3, 21
 37:25
wanting 34:19
wants 28:3
watched 24:8
way 37:17
Well 9:10, 15
 11:22 13:4, 22
 15:20 16:9 17:12,
 21 18:5, 16 19:10
 22:21 23:10 24:16
 25:1 26:13, 21
 27:1, 16 28:7, 19
 29:5 30:13 33:21
 35:3, 6 38:16
 39:10
went 39:6
We're 40:12
West 1:1 2:13
 5:6, 9 7:15 42:4
wheel 32:11



WILLIAM 1:1
WITNESS 3:3 5:3,
 16, 17 7:16 8:2
 25:22 28:5 42:16,
 18
witnesses 19:17
work 8:12 10:11,
 12 11:16
work-related 11:18

wreck 9:7, 11
 12:19 16:20 35:20
 36:20 39:4
written 10:25 11:3

< Y >

Yeah 14:22 20:21
 22:9 23:3, 17
 32:13 33:15
year 34:12
years 29:3

< Z >

Zimet 2:9
zone 13:2, 5, 9, 11,
 20 15:6 16:4, 25
 17:9 18:2 20:16
 21:11 22:23