

1 over as he said or for some other reason, I suggest to  
2 you that has nothing to do with my client. The fact is  
3 he came right into the path of her car. She should be  
4 held not negligent and I respectfully ask that you answer  
5 no.

6 Thank you.

7 MR. STEPHENSON: May I please the Court, Your  
8 Honor.

9 THE COURT: Proceed.

10 MR. STEPHENSON: Ladies and gentlemen of the  
11 jury, there are certain exhibits that have been admit --  
12 admitted into evidence and I'm holding them here --  
13 Defendant's Exhibits have been marked BTL in various  
14 letters and you'll be having the opportunity to take  
15 these back with you and to review these in conjunction  
16 with your deliberations.

17 And these are all scaled engineering drawings  
18 prepared by -- an engineer including scales drawings of  
19 the vehicles and you'll note the scale is at the bottom  
20 of -- of the pictures; I just want you to note that. And  
21 you'll note the A, B, C, D, -- which are broken down. If  
22 you look at the scale section you'll see the letters that  
23 -- that you can interpret that. I just bring all that to  
24 your attention.

25 And a lot of the pictures don't have any

1 pictures of trucks on them and then some of them do. And  
2 these are the Exhibits G, N, O, and H. And these are the  
3 Exhibits that Mr. Quade testified to that are  
4 representative of his usual practice; how he travels down  
5 Mattawoman Beantown Road and changes into the -- the turn  
6 lane. That's what he testified to.

7 Now, in conjunction with the Plaintiff's case,  
8 if you are to believe Mr. Ervin's version of events you  
9 must accept and believe that Mr. Quade failed to do what  
10 he does every single day.

11 You must accept that he did something different  
12 than he usually does because if he did on the date of  
13 this (unintelligible) what he did every single day  
14 there's no way the Plaintiff, who was traveling behind  
15 the tanker trailer, could have gotten around and he  
16 (unintelligible) changed lanes into him as he described.  
17 It couldn't have happened, it's physically impossible.

18 So you must accept for some reason or another  
19 Mr. Quade just didn't do what he usually does.

20 You must also accept, if you are gonna accept  
21 the Plaintiff's version of events, that Mr. Quade did  
22 something which was totally counter intuitive. Instead  
23 of just filtering straight into the left turn lane, the  
24 right left turn lane, straight shot -- straight in there,  
25 instead of doing that you'd have to accept that he said

1       nah, I'm gonna make life difficult for myself today. I'm  
2       not gonna filter straight into that left turn lane. I'm  
3       gonna stay on this side of the dividing line. I'm gonna  
4       travel down here -- down here on the through lane, on the  
5       left through lane, I'm not gonna bother filtering. I'm  
6       just gonna change lanes somewhere down the line; make  
7       life difficult for myself.

8                It's completely counter intuitive. Moreover,  
9       he would have had to have steered to the right to avoid  
10      the merge. The merge is just a straight shot. You come  
11      straight down into it. It doesn't make any sense.

12              So I would -- would respectfully submit to you  
13      that his testimony was very important and is very  
14      significant in this case. It's his routine behavior.

15              Moreover, after that you have the testimony of  
16      Ms. Young who testified -- I didn't pull it out of her.  
17      It just came out of her when she said; you think I would  
18      have seen the tanker truck. She volunteered that during  
19      her testimony. It's exactly my point. You think she  
20      would have seen.

21              I -- I just to make something very clear in  
22      case I didn't make this clear in Opening Statement.  
23      We're not pointing our finger at Ms. Young. We're not  
24      pointing our finger at (unintelligible). I'm not  
25      suggesting that she's done anything wrong in this case.

1 We're not suggesting that she's at fault in this case.  
2 We're not adverse to her in this case. I'm not  
3 suggesting that at all.

4 You heard her testify, you think I would have  
5 seen the tanker trailer and yes you certainly would of.  
6 Because the only way that Mr. Ervin could have gotten to  
7 where he said he was when the tractor trailer began to  
8 enter his lane is from the position of being behind him  
9 as if he came up and came around the left side of the  
10 tractor trailer. And that raised a very interesting  
11 point in his testimony.

12 They presented this diagram here which everyone  
13 else testified as completely inconsistent with their  
14 normal -- approach here and not consistent with Ms.  
15 Young's testimony. And now we find out it's not even  
16 consistent with Mr. Ervin's testimony.

17 I asked him specifically, where were you in  
18 conjunction with the tractor and tanker trailer when it  
19 commenced to enter your lane. He said, at the rear  
20 tandems. He never progressed any further forward than  
21 the rear tandem wheels. He was behind it; he came up  
22 around the inside of it. But he never got past the rear  
23 tandems.

24 You see in this diagram he's placed himself  
25 right up here beside the -- beside the drive axles of the

1 tractor. He admitted -- he testified to that today  
2 completely inconsistent with his Deposition testimony.  
3 This does not depict what he testified to at his  
4 Deposition.

5           Moreover, he's got the tanker trailer going in  
6 the right through lane. Why has he got that there going  
7 in the right through lane? I'll tell you why. Because  
8 if he placed this properly in the lane it wouldn't make  
9 sense. It would emphasize the fact that there's no room  
10 and there shouldn't be room for any other vehicles to try  
11 and overtake him on the left side of the tractor trailer  
12 if they're originally traveling behind.

13           Ladies and gentlemen, you hear -- we've heard a  
14 lot today about oh, the tractor's so dangerous, it's so  
15 flammable, its danger -- don't want to touch the tanker  
16 trailer.

17           Well, as a jury you'll draw on your common  
18 experience. I'm gonna guess a couple of you on the jury  
19 have probably traveled Mattawoman Beantown Road just a  
20 few times in your life; you're familiar with this  
21 location. You ask yourself, you're following behind a  
22 tanker trailer full of flammable fluid.

23           You're coming down the through lanes behind it  
24 and it's merging into a turn lane. Do you try and whip  
25 around the left side of it and overtake it? Draw on your

1 common experience. It's completely inconsistent with  
2 what makes sense for Mr. -- Quade to have done at the  
3 time.

4 If you are inclined to find that Mr. Ervin's  
5 version of events is more likely so than not,  
6 (unintelligible) that they have the burden. That's it's  
7 more -- if you say you know what, I just don't know who's  
8 more likely than not. I'm kinda here. I'm kinda there.  
9 He testified to this. He testified to that. I don't  
10 know.

11 If that is the state the scales of justice are  
12 evenly balanced and you have to find in favor of the  
13 Defendants because that's mean they haven't met their  
14 burden of proof.

15 But if they do meet their burden of proof and  
16 you find, I'm gonna answer yes to Question 2 as to  
17 Baltimore Tank Lines, he was negligent. Mr. Quade was  
18 negligent and yes that he caused the accident, when you  
19 get to Question 3 irrespective surely you are gonna find  
20 at a minimum that Mr. Ervin was at least contributorily  
21 negligent towards the collision. That's important.

22 The question is, "Was the negligence of  
23 Theodore Ervin a cause of the collision between him and  
24 Ms. Young on March 13th, 2006?" Not was his contributory  
25 negligence a cause of the lane change or anything to do

1 with the tanker trailer, was his contributory negligence  
2 a cause of the collision. And I would submit to you the  
3 overwhelming weight of evidence clearly shows he was  
4 contributorily negligent at a minimum.

5 He's only at the rear tandem wheels of the  
6 tanker trailer. But he never chooses to hit the brakes;  
7 hit the brakes, pull back. You're trying -- you -- you  
8 come from a position behind him. You're trying to  
9 overtake him on the -- on the inside, hit the brakes;  
10 ease off. No, doesn't do that.

11 Instead what he does is he checks his mirror  
12 which he admitted he did and he sees nothing in the left  
13 lane. He makes a decision, a mistaken decision, to make  
14 that lane change to the left. He missed Ms. Young. He  
15 didn't see her. He made a mistake.

16 And not only did he change lanes to the left  
17 but we've gotta account for this differential of speed.  
18 Now, Ms. Young said she's going 35, 40 miles an hour. We  
19 know that. We know Ms. Young applied her -- jammed on  
20 her brakes as she testified and applied them prior to the  
21 collision. So we know that she slowed down substantially  
22 prior to the collision.

23 We've got Mr. Ervin testifying he's going 35.  
24 40. Well now, I'm no advanced physicist but I understand  
25 you need to have speed differential in order for a

1 collision to take place. In other words Mr. Ervin has to  
2 have been going at a rate of speed slower than Ms. Young  
3 in order for the collision to have occurred.

4 Well, if she's going 35, 40 and she's hit the  
5 brakes and slowed down but a collision still occurs what  
6 do you think happened? Mr. Ervin went in the left lane  
7 and hit the brakes.

8 He testified there was no one in the left lane  
9 ahead of him, the left turn lane. He could have  
10 accelerated into the left turn lane. But instead -- you  
11 know, when I asked him, you remember I asked him, what  
12 happened when you went in the left lane. Did you  
13 accelerate? Did you decelerate? Did you hit the brakes?  
14 Don't know. Don't recall. Don't recall. That was his  
15 testimony.

16 Well, we know a collision took place. We know  
17 that she did everything she could to avoid that collision  
18 and managed to jam the brakes on before it happened.  
19 There must have been a substantial decrease in the rate  
20 of speed from Mr. Ervin's vehicle. At a minimum you'll  
21 find the answer to Question 3 was T -- Theodore Ervin  
22 negligent on March 13th; yes.

23 Was his negligence (unintelligible) cause of  
24 the collision? Yes, it was. Could have sounded his  
25 horn; didn't do it. Could have engaged his left turn



1 indicator; didn't do it. That's all violations of  
2 Statute; it's negligence.

3 I don't have a second opportunity to address  
4 you. The Plaintiff will have a second opportunity. We  
5 don't get to do a rebuttal that's cause it's their burden  
6 of proof.

7 So I would just like to finish by thanking you  
8 again for your time today and -- please bear in mind when  
9 the Plaintiff's attorney gets back up to present his  
10 rebuttal, view his rebuttal through the prism of  
11 skepticism bearing in mind all the points that I've made.

12 Ask yourself, what point would Mr. Stephenson  
13 point to in response to that.

14 Thank you for your time.

15 THE COURT: Rebuttal.

16 CLOSING STATEMENTS

17 BY MR. BRATT:

18 One thing I want to be clear about, you've  
19 heard all of talk about burden of proof. And some  
20 lawyers deal with it everyday but it's not something that  
21 everybody else does.

22 And what I want to make sure you absolutely,  
23 clearly understand about the burden of proof as it exists  
24 in this case, is that it cuts both ways.

25 Mr. Ervin has to prove if one or both of these