

1 THE COURT: Defense.

2 MR. STEPHENSON: (Inaudible.)

3 (Counsel returns to trial tables.)

4 Okay, members of the jury, when I gave you the  
5 instruction on contributory negligence which is also  
6 covered in the written instructions, it's the Defendant  
7 has the burden of proving by preponderance of the  
8 evidence that the Plaintiff's negligent was the cause of  
9 an injury.

10 If I said it was the Plaintiff's burden I  
11 apologize.

12 Now, at the end of all argument I'll have some  
13 housekeeping instructions for the jury.

14 Please proceed.

15 MR. BRATT: Thank you, Your Honor.

16 CLOSING ARGUMENTS

17 BY MR. BRATT:

18 Good afternoon.

19 You can make an accident sound pretty  
20 complicated if you try really hard, right? I don't  
21 really think this is one of those situations. I don't  
22 think this is a complicated accident. I don't think that  
23 you should think this was a complicated accident.

24 You've heard exactly one version of how this  
25 accident happened today. The only person who said

1 anything about how it happened is the Plaintiff, Mr.  
2 Ervin. Why? Because Ms. Young testified that before  
3 this collision between her vehicle and the Plaintiff's  
4 she never saw his vehicle and she never saw the truck.

5 And the driver of the only Baltimore Tank Lines  
6 vehicle in that area says that he has absolutely no  
7 memory at all of what he did that day. Now he spent some  
8 time trying to tell you all what he normally does and  
9 from that they'd like you to decide that on this  
10 particular he did what he ordinarily does even though he  
11 wasn't even able to tell -- tell you that himself, okay.

12 There are a lot of things everybody agrees  
13 about about this accident. Everybody agrees that this is  
14 how Mattawoman Beantown Road is laid out. Everybody  
15 agrees that it goes from two lanes to four, okay.

16 Now, what you've heard is the Court instruction  
17 about how we make these kind of decisions and basically  
18 the standard is what's the preponderance of the evidence;  
19 what is more likely to have happened than not likely to  
20 have happened, okay.

21 And Mr. Ervin has the burden to show that one  
22 or both of these Defendant's was negligent; Baltimore  
23 Tank Lines and Ms. Young.

24 Now, what do we know about Baltimore Tank  
25 Lines. We know that they admit that Mr. Quade was their

1 employee at the time this accident happened. They admit  
2 that he was acting within the scope of his employment  
3 with them on this particular day. And they admit that he  
4 was the only driver that they had that was in the  
5 vicinity of this intersection and this accident at the  
6 time of this accident; around 12:00.

7 And what's Mr. Quade tell you? That yes, he  
8 could have been in this area because he goes through  
9 there all the time. He lives right by there. That's how  
10 he goes home. He can tell you that he usually comes  
11 through this intersection but he can't tell you if that's  
12 what he did on March 13th, 2006.

13 He can't tell you if he went straight on March,  
14 2000 -- March 13th. He can't tell you is he used a turn  
15 signal on March 13th. He can't tell you whether Ted  
16 Ervin's car was there on March 13th. He can't tell you  
17 if Ms. Young's car was there on March 13th.

18 Mr. Quade has nothing to say about how this  
19 accident happened other than what he normally does which  
20 he can't say happened in -- on this day.

21 And the reason I'm talking about that is is you  
22 just heard the instructions that the Court gave. The  
23 Judge talked about witness testimony and how do ya -- how  
24 do you evaluate that. And the instructions the Court  
25 gave don't tell you what to decide but they give you some

1 guidelines for making those kind of decision.

2 And what I want you to think is who had an  
3 opportunity to observe how the accident happened. Mr.  
4 Ervin did.

5 Did Mr. Quade observe how the accident  
6 happened? No. Did Ms. Young observe how it happened?  
7 No. She doesn't know anything that happened before there  
8 was a car in her lane.

9 Now, let me look at my notes because as much as  
10 I'd love to be able to remember all this stuff  
11 (unintelligible) I can't quite do it.

12 Now, what Mr. Ervin told you he did is that he  
13 started out here at some point behind this BTL truck.  
14 That as he traveled down the road at a constant speed of  
15 about 35 miles and hour, these two through lanes kept  
16 going through and then as you can see on the diagram, the  
17 two left turn lanes came into pos -- into existence.

18 Mr. Ervin said that he -- started out in this  
19 lane. That as soon as he was able to merge over into the  
20 turn lane he did so. And that he was in the outermost of  
21 the two turn lanes, our clunky dialog for them is the  
22 left turn left -- left left turn lane and the right left  
23 turn lane.

24 He had to be in the right left turn lane  
25 because after he goes through this intersection, he makes

1 this left turn and then less than a quarter mile he has  
2 to make a right turn to get into where he lived.

3 Now, he testified that he had to work the day  
4 of this accident but that he had to be at work at 2:00.  
5 Accident happened at 2:00 in the afternoon and he was  
6 only about a quarter mile from his house so Mr. Ervin had  
7 no reason to be in a hurry. He had no reason to try to  
8 pass this vehicle because no matter what he did he was  
9 gonna be home in five minutes. Either way all he had to  
10 do was make it to the light, turn left and then turn  
11 right right away.

12 He wasn't trying to pass the vehicle. Nobody's  
13 testified that he was. When you have these kinds of  
14 questions what you need to do is, is you need to decide  
15 if Mr. Ervin has shown you more likely than not that a  
16 Baltimore Tank Lines vehicle came into his lane and  
17 caused the accident.

18 Now, you're gonna also have to look at --  
19 excuse me, when Mr. Ervin was cross examined he got asked  
20 a lot of questions about distances and exactly where he  
21 was and you saw the manner in which he answered those  
22 questions. He was straight forward. Mr. Ervin wasn't  
23 trying to say that his testimony at Deposition was  
24 anything other than what it was. Or that he really  
25 changed what he testified about.

1 All he said was is that he had to estimate the  
2 distances because he's not an engineer and he didn't have  
3 access to the exact measurements. But that when he did  
4 have a chance to look at the diagrams that were produced,  
5 he did the best he could to illustrate for you what  
6 happened.

7 Now, Mr. Ervin never told you that everything  
8 he has shown you on this diagram is exact to the foot and  
9 inch. But what he did do is, is he did use the diagram  
10 to show you what happened. And just like he testified,  
11 what he has here is he's got his vehicle, the Honda, and  
12 it's in -- established in his turn lane. He's already  
13 driving in that lane when the tractor trailer comes over  
14 into his lane.

15 Now, he said his brother worked for Baltimore  
16 Tank Lines so he knew what their trucks looked like. And  
17 more importantly, he knew that Baltimore Tank Lines hauls  
18 oil. Everybody knows that oil is dangerous. Everybody  
19 knows that a tractor trailer with an oil tanker on it is  
20 dangerous because in addition to the regular danger that  
21 you would have from any kind of a collision with a big  
22 vehicle like a tractor trailer, you've also got the added  
23 fire or explosion danger if that tanker had something in  
24 it.

25 And what Mr. Ervin said he did is he did, and

1 again we're back to the instructions that the Judge gave,  
2 he did what a reasonable person would have done. He was  
3 traveling at a constant speed in his turn lane when a  
4 very large vehicle that he thought was full of a  
5 flammable liquid came over. He did what a reasonable  
6 person would do which is he went in the opposite  
7 direction of that oil tanker as quickly as he could.

8 Be -- because he knew that it presented an  
9 immediate danger to him. And he testified that he didn't  
10 have time to see what was in the other lane because of  
11 the danger. And what the Judge told you about evaluating  
12 whether somebody was reasonable or not is, is that you  
13 have to look at the reasonableness of what they did in  
14 light of the situation that they were in.

15 And Mr. Ervin was in a situation where a large,  
16 dangerous vehicle came into his lane and he had to decide  
17 the best thing to do right away (fingers snapping) like  
18 that. He didn't have time to sit and think about it so  
19 he did what a reasonable person would do. He steered to  
20 the left in the opposite direction as quickly as he  
21 could.

22 Now, it turns out that there was another  
23 vehicle in that lane. Ms. Young is in the unfortunate  
24 position of being a party to this case because she  
25 happened to be in one of -- driving one of the cars that

1 was involved in this accident. You're gonna have to  
2 determine whether there's something she could have done  
3 to have avoided the accident. I -- I -- I can't guide  
4 you on that. You're gonna have to make that decision  
5 based on looking at her testimony.

6 And again, Ms. Young doesn't tell us anything  
7 about how the accident happened but she does tell us a  
8 few things that are important.

9 Mr. Young, the main thing that he -- Mr. Ervin,  
10 the main thing that he told you was this truck came over  
11 into his lane all of a sudden and he -- he had to get  
12 away from it.

13 Now, you can see that the distance where his  
14 truck is along the side of this tractor trailer, it -- it  
15 looks like a different position here than it does there.  
16 Again, he testified that he didn't measure it out; he  
17 gave his best estimate.

18 But what he -- what he is sure about is, is  
19 that he was somewhere in the middle of this tractor  
20 trailer whether it's closer to the front of it or closer  
21 to the back of it, but either way his car was next to  
22 this tanker as it came over into his lane.

23 And he testified to you that the first thing he  
24 said to Ms. Young when he talked to her at the scene was  
25 did you see the truck that just cut me off. And when I



1 talked to Ms. Young the main thing that I really wanted  
2 to get across to you folks is that she backed up what Mr.  
3 Ervin said. I asked her flat out, you know, isn't it  
4 true that the first thing he said to you was did you see  
5 the tractor trailer that cut me off. And she admitted  
6 that that is exactly what he had said. Mr. Ervin said  
7 the same thing to the police when they showed up; a  
8 tractor trailer cut me off.

9 Now, what's more likely than not. I think Mr.  
10 Ervin's version is more likely than not. He's a  
11 gentleman who's on his way home to get ready for work,  
12 something comes into his lane. He immediately goes in  
13 the opposite direction and then right at the scene the  
14 first thing that he says to the only other person that  
15 was right there and that stopped is, did you see that  
16 truck.

17 You know, he didn't sit and think of how the  
18 accident happened. He didn't sit there for 20 minutes  
19 and try to come up with a reason. He said exactly what  
20 had just happened to him moments before. You know, it's  
21 the one thing that Ms. Young clearly remembers about this  
22 accident is, is that Mr. Ervin said that immediately  
23 afterwards.

24 Now, Mr. Quade, he can't tell you for sure  
25 what, if anything, he did or what Mr. Ervin or Ms. Young

1 did. He has nothing to say about this accident other  
2 than he hopes you'll believe that he didn't do anything.  
3 But he hasn't offered any proof of it.

4 And the only proof as to what the actions of  
5 this trailer was are Mr. Ervin's story of how it happened  
6 and the comment that he made right afterwards to somebody  
7 who's also a Defendant in the case. Ms. Young doesn't  
8 have any reason to say that that's what Mr. Ervin said  
9 unless he said it. She has nothing to gain by supporting  
10 his version of the events in that respect.

11 So I -- I would submit to you that what she  
12 said that he said to her is very, very reliable because  
13 she has no reason to make it up. It happened right after  
14 the accident. She was very clear that that's what Mr.  
15 Ervin said.

16 And again there's been some discussion about  
17 what you actually have to do physically with your vehicle  
18 as you go through here. Mr. -- Mr. Quade's trying to say  
19 that you can just continue with -- from here -- that you  
20 just continue with your vehicle in a straight line and  
21 that as long as you don't do anything, you somehow will  
22 end up in this lane.

23 But I think the diagram that everybody has  
24 agreed is an accurate representation of the road doesn't  
25 support that. As you can see -- you know, if you -- if

1 you're gonna -- if you're gonna get into one of these  
2 turn lanes you've gotta cross that dividing line. You've  
3 gotta go from a through lane into a turn lane. And the  
4 instructions the Court just gave you say that when you  
5 have to do that you can (unintelligible) change lanes  
6 here when it's safe to do so. You gotta make sure it's  
7 safe to do so before you do it.

8           And what's more likely than not that happened  
9 in this accident is that the driver of the Baltimore Tank  
10 Lines vehicle didn't exercise due care. How we know they  
11 didn't exercise due care is because the driver didn't  
12 make sure that that turn lane was clear of vehicles  
13 before he got into it.

14           And Mr. Ervin testified that as soon as he was  
15 able he got into this clear lane and continued on. And  
16 that had that vehicle not come over into his lane he  
17 would have gone up to the light, made his turn and gone  
18 home.

19           And that's the long and the short of what  
20 happened here. I think that it's common knowledge that  
21 nobody has exact recall of anything particularly  
22 something that happened two years ago.

23           But what's material, what's important, the  
24 important parts all make sense because if a tractor  
25 trailer didn't come into Mr. Ervin's lane why would he

1 jump over into the next lane. He'd have no reason to do  
2 that and if he was gonna get into that lane he would be  
3 in the wrong place because he has to make a right after  
4 he makes this turn.

5 So Mr. Ervin's got no reason to ever be in this  
6 left-most lane unless something forces him into it which  
7 would be the truck that Ms. Young didn't see before the  
8 accident but when Mr. Ervin pointed it out to her at the  
9 light she saw it and she admitted that too.

10 So, we know that a Baltimore Tank Lines vehicle  
11 was there. We know that it came into Mr. Ervin's lane  
12 and we know that that caused the accident. I'd submit to  
13 you that that's what more likely than not and I'd ask you  
14 when you fill out that Verdict Sheet what it should say,  
15 it should say that Baltimore Tank Lines was negligent and  
16 that Baltimore Tank Lines negligence was a -- a cause of  
17 this accident.

18 And conversely, it should say that Mr. Ervin  
19 was not negligent. Why? Because like you heard the  
20 Judge instruct you right at the end, the burden's change.  
21 The person that's asserting a claim or defense has the  
22 burden of establishing it beyond -- within the -- with --  
23 by the preponderance of the evidence.

24 In terms of his claim of negligence against  
25 Baltimore Tank Lines or Ms. Young, Mr. Ervin has the

1 burden to show that that's more likely than not if the  
2 accident happened the way he says it did.

3 If any of the Defendant's want to argue that  
4 Mr. Ervin was contributorily negligent, that burden  
5 shifts to them. They have to show you by preponderance  
6 of the evidence that he was contributorily negligent.  
7 And I submit to you that they can't do that because  
8 nobody saw what happened except for Mr. Ervin. And in  
9 the absence of any direct evidence that he was negligent  
10 you should find that he wasn't.

11 So I'm gonna ask you to render a verdict that  
12 Baltimore Tank Lines was negligent and that their  
13 negligence was a cause of the accident. And I'm gonna  
14 ask you to render a verdict that Mr. Ervin was not  
15 negligent.

16 And I'm gonna let you decide whether Cindy  
17 Young was negligent because it's a close call. You'll  
18 have to -- looking at the circumstances, decide whether  
19 there was enough time for Ms. Young to decide to do  
20 something else. If there was time for her to do  
21 something else then maybe she was negligent. If there  
22 wasn't time then maybe she's not. But you'll have to  
23 make the decision.

24 But what the evidence does show is that  
25 Baltimore Tank Lines vehicle caused this accident and

1 there's nothing that contradicts it.

2 Thank you ladies and gentlemen.

3 THE COURT: Mr. Ford.

4 MR. FORD: Thank you, Your Honor.

5 Madame Forelady and ladies and gentlemen, I'm  
6 just gonna take a -- a very brief time. You've heard  
7 lawyers say this I'm sure but I will be brief.

8 There are two pages on your Verdict Sheet and I  
9 respectfully suggest to you that the very first question  
10 has to do with my client, Cindy Young, and that your  
11 answer should be a quick no. She was not negligent. She  
12 did not cause this accident.

13 Let me take a moment to tell you that what you  
14 just heard from Plaintiff's Counsel is interesting  
15 because he is saying that Baltimore Tank Lines through  
16 its operator should be responsible for this accident for  
17 two reasons. One, the operator of that truck abruptly  
18 changed lanes right in front of Mr. Ervin without a  
19 signal and caused an accident.

20 It's interesting to note that that same  
21 scenario that he describes as being the basis for his  
22 claim against Baltimore Tank Lines is exactly what Mr.  
23 Ervin's did so far as my client is concerned.

24 He abruptly changed lanes right into her path  
25 without a signal, without applying his brakes, without a