

## **Using the Reptile in a Disputed Liability Case**

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## **ESLICH V. JEDD ENTERPRISES**

### **Initial Unfortunate Facts:**

1. Plaintiff Diane Eslich was t-boned by a semi tractor trailer driven by Stephen Cart as she attempted to make a left turn at the intersection of Route 62 and Maple in Plain Township (Stark County).
2. Diane was cited for failing to yield.
3. There were no witnesses who could testify as to the color of the traffic signal.
4. Plaintiff had no memory of the color of the traffic signal when she began her left turn.
5. Plaintiff's orthopedic surgeon insisted that Plaintiff's two knee replacement surgeries which occurred several months later were unrelated to the crash.
6. Plaintiff fractured her right clavicle and humerus, was knocked unconscious, and experienced low back pain.
7. Robinson medicals were approximately \$21,000. Loss of income for was approximately \$7,000.

### **Outcome:**

- 8-0 Defendant Stephen Cart negligent
- 7-1 Defendant Cart reckless
- 8-0 Defendant JEDD Enterprises negligent hiring

**Compensatory Damages: \$220,000**

**Punitive Damages: \$250,000 plus attorney fees**

## ESLICH OPENING STATEMENT

### I. OPENING RULES:

GO TO SLIDE 1:



Because if they **run a red light**,  
And they **hurt somebody**,  
the truck driver,  
and the company who employs them,  
are **responsible for the harm**.

\*\*\*

The evidence will show this is a basic, common sense  
SAFETY RULE which is at the center of this case.

**(REPEAT THE RULE SLOWLY)**

You're also going to hear about another fundamental safety rule...

**GO TO SLIDE 2:**



If a company hires  
an **aggressive or reckless driver**,  
and the driver causes a crash,  
**the company is held responsible.**

\*\*\*

**You will hear testimony about how federal trucking regulations lay out this rule.** Again, just a **common sense safety rule** intended to **protect the entire community.**

**(REPEAT IT SLOW...)**

## II. THE STORY

Now let me tell you the story of what happened here...

### A. THE DEFENDANTS:

The primary defendant in this case is **Stephen Cart.**

Mr. Cart is an **interstate truck driver.**

He drives semi tractor trailers.

The second defendant is an **interstate** trucking company

called **JEDD ENTERPRISES.**

Mr. Cart's employer at the time of the crash.

### B. JULY 17, 2009

It's July 17, 2009.

A Friday afternoon.

**GO TO BATES #3212#**

**PHOTO OF INTERSECTION**

The intersection of Route 62 and Maple Street.

Plain Township.

Route 62 is a heavily traveled roadway.

The posted speed limit is 45 miles per hour.

Maple Street is residential.

**GO TO BATES #3225**

## PHOTO OF CROSSWALK

There are crosswalks on three sides of the intersection.

A long crosswalk extends across Route 62

on the western edge of the intersection.

So pedestrians can safely cross the busy road.

## THE HUMPBACK BRIDGE

To the east of the intersection,

GO TO EXHIBIT 12-A

## SATELLITE PHOTO OF BRIDGE

is a humpback bridge. Goes over railroad tracks.

Westbound traffic on Route 62

Comes over the bridge and descends downhill from the top of the bridge to the intersection at Maple Street.

A distance of 650 feet...

From the highest point of the bridge to the intersection.

## THE LANES:

GO TO BATES 3207#

## WESTBOUND PERSPECTIVE

There are two westbound lanes.

And as you get closer to the intersection,

GO TO BATES 3210#

## WESTBOUND PERSPECTIVE

A third lane, A LEFT TURN LANE BEGINS, begins.

## C. FOUR SECOND LIGHT

During this trial you will see certified records from Ohio Department of Transportation which confirm...

GO TO SLIDE 3:



The traffic signal for Route 62 at Maple Street

is timed

so the yellow light

is always

EXACTLY FOUR SECONDS LONG.

So after every green light,

There is a **four second yellow light**

and then... the light **turns red.**

## D. STEPHEN CART APPROACHES

### SET THE SCENE....

So let me tell you the story...

It's 5:15 PM.

Storm clouds are gathering.

The sky is darkening.

It's about to pour....

### INTRODUCE CART...

#### **The evidence will show....**

Stephen Cart is heading westbound on Route 62.

He's got a **load of ground up wood.**

You can probably smell it if you get close enough.

They burn it for boiler fuel.

He's driving for **JEDD Enterprises.**

They own the tractor ... and the trailer.

He's headed to Coshocton.

The tractor trailer **weighs over 70,000 lbs.**

## E. INTRODUCING COREY CLAY

Corey Clay is also headed westbound on Route 62.

He is NOT a party to this case.

He is simply a witness to the events about to unfold.

He's driving a red delivery van.

He's driven this road many times....for many years.

He knows the intersection at Maple Street very well.

**COREY COMES TO A STOP:**

**GO TO BATES #3207**

**WESTBOUND PERSPECTIVE**

Corey comes over the top of the hump bridge.

He's in the second lane.

He's going 45 to 50 miles per hour.

He sees the traffic light TURN TO YELLOW

Corey hits his breaks HARD.

And brings the van to a complete stop at the intersection.

**TIME TO STOP:**

You will hear expert testimony

From an certified accident reconstructionist.

**GO TO SLIDE 4:**

# CLAY'S STOPPING TIME

**4.4 - 4.8  
Seconds**

He will show you how

**rules of basic physics**

**REQUIRE** that it takes **4.4 and 4.8 seconds**

For Corey Clay to bring his van to a complete stop.

**REPEAT AND SLOW IT DOWN...**

From the time Corey sees the light change to yellow

When he's going 45 to 50 miles per hour

until he comes to a stop....**4.4 to 4.8 seconds.**

## F. AFTER COREY STOPS

### THE BLACK IMPALA:

GO TO BATES #3217

WESTBOUND PERSPECTIVE

At the intersection, Corey sees  
a black Impala stopped across the intersection,  
facing eastbound,  
its left turn signal is activated.  
The Impala is waiting to make a left turn onto Maple Street.  
The Impala continues to wait after Corey stops.

### TIME PASSES:

Corey Clay will testify that **AFTER**  
he comes to a **complete stop**  
he then sits at that intersection for  
several seconds.

(PAUSE....)

### THE CRASH:

**You will hear testimony that....**

Corey then hears the sound of a truck  
**Accelerating down the hill** behind him.  
It's Stephen Cart.

GO TO BATES #3210

## WESTBOUND PERSPECTIVE

You will hear that

Mr. Cart has testified...

He is in the right lane,

**climbing gears** on the semi's manual transmission.

**Reaching 8<sup>th</sup> or 9<sup>th</sup> gear.**

**Accelerating** as he approaches the intersection.

He's in the curb lane.

Suddenly Cart slams on his breaks.

GO TO BATES #706

## SKID MARKS

Lays down a skid.

And crashes into the turning Impala.

GO TO BATES #0001

## CRASH PHOTO

Cart's truck pushes the **crumpled car**

**through the crosswalk**

And down the street.

GO TO BATES #0695

## CRASH PHOTO

The driver of the Impala is **knocked unconscious and badly injured.**

**(CART APPROACHES)**

Stephen Cart climbs out of the rig

And approaches the rubble.

You will hear testimony that Stephen Cart

Looks at the woman trapped inside the Impala

And believes she is **DEAD**.

**GO TO BATES #0002**

**CRASH PHOTO**

The evidence will show...

Mr. Cart later tells his boss that the woman was “**UNRESPONSIVE.**”

Asked to give a **written** statement to Sheriff’s deputies

responding to the crash,

Stephen Cart simply writes, “**NO COMMENT.**”

\*\*\*

**You will hear Corey Clay**

**sees people coming to the aid of** the injured woman.

**GO TO BATES #701**

**CRASH PHOTO**

He **does not stop to provide a statement** at the scene.

After reading a short article about the crash in the **Canton Repository**,

**Corey posts a brief statement**

about what he saw on the newspapers **website**.

## **DIANE ESLICH:**

**GO TO BATES #675**

### **CRASH PHOTO**

The woman in the black Impala is Diane Eslich.

She is on her way to pick up her three granddaughters.

The twins Kelsey and Kendall were two years old.

Reese is seven.

She babysits on Fridays evenings while her daughter goes to school.

The children live two blocks down Maple Street.

Firefighters have to cut her out of the car.

**GO TO BATES #676**

### **CRASH PHOTO**

The evidence will show that her injuries are extensive, but  
fortunately Diane survives the crash.

## **TRIAL:**

Diane is issued a traffic citation for failing to yield.

Corey Clay comes forward to testify in the Canton Municipal Court.

Stephen Cart also testifies and gives his first account of what happened in the crash.

After a full trial, the court finds Diane Eslich NOT GUILTY.

### **III. WHY WE FILED THIS LAWSUIT AGAINST STEVEN CART**

NOW, I WANT TO TELL YOU **WHY WE FILED THIS CASE...**

**The evidence will show ...**

Stephen Cart violated

**FOUR fundamental safety rules.**

Mr. Cart's safety violations caused this crash

and placed everyone in his path

**in grave danger.**

\*\*\*

#### **A. THE FIRST SAFETY RULE: RUNNING RED LIGHT**

Safety Rule Number 1 is pretty straightforward...

**GO TO SLIDE 5:**

## SAFETY RULE #1

A truck driver  
must never  
run a **RED** light.

The evidence will show that Stephen Cart entered the intersection  
**AFTER the light turned red.**

You as a jury will have the benefit of

**Science,**

**Common sense,**

and the testimony of **both Corey Clay and Stephen Cart**  
**to determine this truth.**

Now I want to be clear...

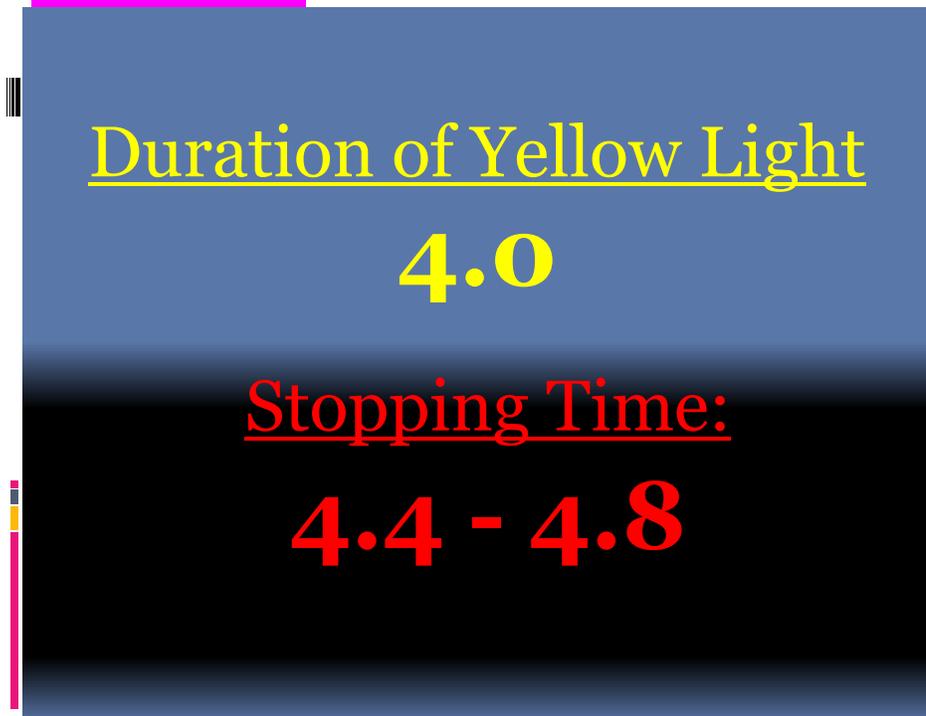
Corey Clay **will not** walk into this courtroom  
and **claim** that

he was looking at the color of the traffic signal  
at the exact moment

Mr. Cart's semi screeched by him  
and entered the intersection.

Corey Clay **will testify** that  
**he** brought his van to a complete stop  
**after the light turned to yellow.**

GO TO SLIDE 6:



Once again, the evidence will show  
the **length of that yellow light,**  
***FOUR SECONDS.***

You'll also learn that the **length of time**  
**scientifically required**  
**for Corey to recognize a yellow light and then**  
**go from 45-50 miles per hour**

**to a complete stop**

**is .... 4.4 TO 4.8 SECONDS.**

The evidence will show that by the time

COREY CLAY brought his van

to a complete stop

The light was already RED.

\*\*\*

And remember ... you will also hear Corey Clay then waits.

Stopped dead at the light.

**(PAUSE)**

You will hear that Corey has attempted to estimate

How long of a delay there was after he stopped at the light

BEFORE he heard

Mr. Cart's semi accelerating down the hill behind him.

Now it's **tough for anyone to estimate time,**

especially when witnessing an **unexpected event** like this,

but the the evidence will show that there was

some **noticeable, significant**

**passage of time**

from the moment Corey Clay stopped

until Mr. Cart's truck ultimately

entered into the intersection.

\*\*\*

You will also hear that during Stephen Cart's deposition,  
Mr. Cart testified that  
he did NOT even **start** to brake  
until he saw the red van stopped at the intersection ahead.

\*\*\*

You will also hear that Mr. Cart **had**  
**no idea what the color of the light** was  
when he entered that intersection. Indeed, you will hear  
that Mr. Cart was unaware of the color of the traffic signal during his  
entire descent down the hill.

**(CART'S CLAIM OF GREEN)**

**GO TO BATES #3204**

**CRASH PHOTO**

You will hear that Mr. Cart contends that when he came over the top  
the hump back bridge, the light was green.

This claim is in direct conflict with the testimony of Corey Clay.

We have subpoenaed both Corey Clay and Stephen Cart.

You will have the opportunity as a jury to look them in the eye,  
to weigh their credibility,

**and to DECIDE.... WHO IS TELLING THE TRUTH?**

Corey Clay or Stephen Cart.

## **SECOND SAFETY RULE: STALE GREEN LIGHT**

The evidence will show

Defendant Cart's unsafe driving

**did not begin** at the moment he entered the intersection  
on a red light.

It actually began **8 – 9 seconds earlier.**

When he **came over the top** of that hump back bridge.

**650 feet before** the intersection.

### **STALE GREEN LIGHT**

You will hear testimony about

what the Commercial Driver's License Manual

Calls "**a stale green light.**"

A stale green light is a traffic signal

**Which I did not see turn to green.**

The first time I see the light,

it's **already green.**

So I have **no idea how long it's been green**

AND MORE IMPORTANTLY

I have **no idea how long it will STAY green.**

It is a "stale" green light.

According to the Commercial Driver's License Manual ... the CDL...

GO TO SLIDE 7:

## SAFETY RULE #2

A truck driver, who comes  
upon a stale green light,  
**must start slowing down  
and be ready to stop.**

...because if they don't,  
they may not have enough time  
to bring a  
70,000 pound semi tractor trailer  
To a complete halt **BEFORE** the light turns **RED**.

(REPEAT SLOWLY)

\*\*\*

IF you conclude that Mr. Cart is telling the truth...  
that the light was green  
when he first saw it coming over the top of the bridge.

HIS DUTY IS CLEAR

.....

GO TO BATES #3204

CRASH PHOTO

You will hear that in prior sworn testimony,  
Mr. Cart stated that after seeing a stale green light  
From the top  
of the hump back bridge,  
he **accelerated**  
***down the hill***  
**towards the intersection.**  
**Climbing gears.**

Mr. Cart has testified he **reached 8<sup>th</sup> or 9<sup>th</sup> gear.**  
The evidence will show Stephen Cart not only  
Failed to slow down,  
HE SPED UP.

\*\*\* You will also hear,  
After glancing at the light at the top of the hill,  
Mr. Cart never looked at the color of the traffic signal again.  
For approximately 650 feet.  
More than two football fields.  
Downhill.  
Never looked at the light.  
Until after he crashed into the Impala.

GO TO RULE #3

Whether the light was already YELLOW as Corey Clay contends,  
Or changed to yellow during Mr. Cart's descent down the hill,  
You will hear testimony that **a truck driver's duty is remains the same.**

GO TO SLIDE #8

## SAFETY RULE #3

A truck driver,  
who comes upon a  
yellow light,  
must approach the  
intersection with **caution.**

Stale green or yellow...

when Mr. Cart came over the top of the bridge,  
he was **required to approach with caution.**

Cart **did not do**

***anything ...***

**resembling caution.**

Not only did he accelerate down a hill,

He violated yet another critical safety rule....

**GO TO SLIDE 9 :**



**SAFETY RULE #4**

A truck driver  
approaching an intersection  
must always **pay attention**  
to the color of the  
traffic signal.

You will hear that during the Canton Municipal Court trial,

Stephen Cart testified under oath

That he failed to look at the color of the traffic signal,  
During his entire descent down the hill  
Because he was looking at his mirrors, changing gears, and  
splitting his switches.

GO TO BATES #3207

CRASH PHOTO

Ladies and gentlemen,  
the evidence will show Mr. Cart  
**chose** to take his **eye off the ball**  
**for more than two football fields.**  
For nearly, **nine full seconds.**  
At the end of the evidence, we are going to ask you to find that  
this **conscious choice** by Mr. Cart  
was **not simply negligent,**  
**It was willful, wanton, and reckless.**  
**He demonstrated a complete disregard for public safety.**

(JEDD ENTERPRISES)

GO TO BATES #0002

CRASH PHOTO

And that brings us to the second defendant Jedd Enterprises.  
The defendants have stipulate on that Stephen Cart was acting within  
the course and scope of his employment for JEDD.

The evidence will show Mr. Cart's negligence as well as his recklessness  
Proximately caused Diane Eslich's injuries and damages.  
JEDD is responsible for the harm caused by Mr. Cart.

\*\*\*

But as an interstate trucking company has another responsibility as well...

GO TO SLIDE 10:



The evidence will show that  
**prior to being hired** by JEDD Enterprises,  
Stephen Cart had rung up speeding tickets  
in **Michigan, Pennsylvania, Massachussets,**  
**and multiple counties in Ohio.**

You will see certified copies of **seven speeding convictions** from **Ashtabula and Geauga County alone.**

You will also hear that Mr. Cart testified that he

**has more speeding convictions than he can remember.**

The evidence will also show that prior to being hired by JEDD,

Mr. Cart **caused a freeway crash on Interstate 90** in Lake County.

\*\*\*

The evidence will show that JEDD Enterprises

violated their duty to conduct a thorough background check.

The company claims they were

unaware of any moving violations

when they hired Mr. Cart to drive a semi.

You will hear that many of Mr. Cart's violations are easily found on the internet.

\*\*\*

The evidence will show that

JEDD's negligent hiring of Stephen Cart

put **dangerous, aggressive driver**

in control of a semi tractor trailer

and **proximately caused** Diane's injuries and damage.

**AND PLACED THE ENTIRE COMMUNITY IN DANGER.**

#### **IV. THE DEFENSES**

Now **before we decided to bring this case to trial,**

We raised several critical questions...

- 1. How does Diane Eslich meet her burden of proof if she was knocked unconscious and can't remember very much about the crash?**

You will hear

that's why we conducted a full field investigation

to identify independent witnesses.

You will hear that we even made a

records request of the Canton Repository

to try to reach Corey Clay.

\*\*\*\*

**(HE SAID, SHE SAID)**

At this point, this case is NOT a "he said, she said"

Between Stephen Cart and Diane Eslich.

You will be asked to weigh the

testimony and credibility of Stephen Cart

against the testimony and credibility of Corey Clay.

The evidence will show that Stephen Cart is a

Man who uses multiple aliases when signing his name on legal

documents.....

**GO TO SLIDE 11:**

## CART'S ALIASES:

**Stephen Cart**  
**Stephan Cart**  
**Steven Cart**

The evidence will show Mr. Cart has told

two completely different stories about this crash.

Both times under oath.

Once in Canton Muny Court and then in his videotaped deposition.

Mr. Cart has been subpoenaed to be in this courtroom this morning

so you will have the opportunity to fully assess his credibility.

**2. HOW DOES DIANE ESLICH MEET HER BURDEN OF PROOF IF NOBODY SAW THE COLOR OF THE LIGHT AT THE MOMENT STEPHEN CART ENTERED THE INTERSECTION?**

That's why we brought in an experienced accident reconstructionist to examine all of the evidence and testimony in this case.

You will hear that Dale Dent is not only experienced and certified, he has been retained in other trucking cases by Mr. Williams' law firm, to serve as a defense witness.

**3. HOW CAN ANYONE EXPECT COREY CLAY TO BE ABSOLUTELY ACCURATE ON HIS ESTIMATES OF TIME AND DISTANCE?**

You'll hear from Dale Dent that his determination that the light was red when Mr. Cart entered the intersection is based upon the time it would have taken for Corey Clay to bring his van to a complete stop.

Not upon any subjective estimate of time or distance by Corey Clay.

**4. REGARDLESS OF STEPHEN CART'S CONDUCT, DOESN'T DIANE HAVE A DUTY TO BE CAREFUL WHILE MAKING A LEFT TURN?**

Of course she does, but after taking the depositions of Corey Clay and Stephen Cart, we have yet to find anyone who can identify anything Diane Eslich did wrong. You will hear that even Mr. Cart was unwilling to blame Diane for the crash during his deposition.

## **5) DIANE HAS LOT OF OTHER HEALTH PROBLEMS, HOW DO WE IDENTIFY THOSE INJURIES WHICH WERE CAUSED BY THE CRASH?**

You will hear that Diane has two bad knees which have both been replaced. She had two knee surgeries after the crash. The knee problems were not caused by the crash.

Diane is only seeking damages related to the injuries she sustained in the crash. How do we identify those? Well, we talked to her doctors and requested all of her medical records.

## **6) OBESE**

And finally, there is one issue we did not anticipate before deciding to take this case to trial...

You will hear it raised by Mr. Cart's lawyer during his cross-examination of Dr. Barnett ---one of Diane's treating physicians.

Mr. Cart, through his attorney, seems to imply that Diane's chronic pain has more to do with the fact that she is overweight.

The evidence will show that Diane was broadsided by a 70,000 pound truck at high rate of speed, fractured multiple bones, and was knocked unconscious.

If she weighed less, would it hurt less?

We're going to ask you to rely upon your common sense to decide whether Diane's injuries were caused by the truck or simply the result of being a bit overweight.

## V. CAUSATION AND DAMAGES

Now at the end of the trial

we are going to ask you to hold

Stephen Cart and JEDD Enterprises

accountable for the consequences of their misconduct.

\*\*\*

### (VERDICT FORM)

The court is going to give you a verdict form

where you are going to be asked to award a specific

amount of money related to the negligence of Mr. Cart and JEDD.

### (HARMS AND LOSSES)

To figure it out, you are only permitted to take into account one thing....

The level of harms and losses.

Nothing else.

I think Mr. Williams will agree and Judge Haas will tell you...that's the law. That's your duty.

\*\*\*

So I need to lay out the harms and losses you will hear about through the evidence.

So you will have a basis to make your decision.

This is not about sympathy.

It's about accountability.

## **(CHAIN OF CAUSATION)**

**Stephen Cart** negligence caused the semi tractor trailer to broadside Diane's car at a significant rate of speed.

The evidence will show and the pictures will confirm that the semi **penetrated 3-4 feet into** the interior of the car.

The force knocked Diane **unconscious**,  
Causing her **to hit both front and back**  
of her head during impact.

It also:

Fractured her **right clavicle**,  
Fractured the **right humerus** bone in her upper arm,  
Fractured a **rib**,  
Did damage to her **neck and back**.  
**Severely bruised** her chest, torso, arms, and legs.  
And cracked her teeth.

### **a. Clavicle and Humerus**

You will hear orthopedic surgeon Dr. Gerald Klimo testify how he had to perform two surgeries as a result of this crash:

1. First, to drill plates and screws into both the humerus and clavicle bones;
2. Afterwards Diane developed an infection in her shoulder.

Dr. Klimo had to go back in several months later to remove the infected hardware from her clavicle bone.

You will hear from Diane how the pain and limited Movement from the shoulder injury resulted in the loss of her job as a dental assistant.

## **b. CONCUSSION**

You will also hear testimony that for approximately one year after the crash, Diane struggled with the after effects of the concussion.

She struggled with memory, fogginess, and headaches.

## **c. LOWER BACK: PAIN MANAGEMENT**

The evidence will show that Diane went through extensive effort to deal with the chronic pain throughout her body.

Particularly in her lower back.

Ultimately she went through multiple spinal injections which gave temporary relief.

And finally, she underwent radio nerve ablation. Three times.

This is a procedure in which a physician inserts long needles in the patient's back while they are awake.

This is necessary so they can give him feedback on where they feel pain.

He then uses radio frequencies to literally burn the nerve.

Diane's final treatment was completed this spring.

You will hear that it has given her great relief and hope for the future.

#### **d. THE KNEES LIMITATION**

We want to be absolutely clear, Diane is NOT asking you to hold the defendants accountable for any damage to her knees.

#### **e. SUMMARY OF HARMS AND LOSSES**

Her harms and losses should include:

1. The medical bills related to the crash;
2. The lost income she sustained while recovering from the shoulder surgeries.
3. And the damage this did to her quality of life over the course of the past two years.

#### **(PUNITIVE DAMAGES)**

The Verdict Form will also ask you to decide on punitive damages.

If you find that Stephen Cart acted with a reckless disregard for the safety of others.

We will ask you to impose punitive damages and attorney fees to hold him accountable for his CHOICE to place everyone in his Path in grave danger.

Punitive damages are NOT intended To hold Mr. Cart accountable for Diane's harms and losses.

Punitive damages are intended to  
Discourage Mr. Cart and other truck drivers  
From engaging in reckless conduct.

## **VI. CONCLUSION**

This is a very important case.

And you have an incredibly important role.

To examine the facts,

Evaluate the credibility of witnesses.

And to enforce the law.

By holding violators of community safety rules

Fully accountable.

