

PLAINTIFFS' OPENING ARGUMENT

1
2 MR. MUCHNICK: May it please the Court, counsel
3 for defendant corporation, counsel for Mr. Light, Sharon and
4 Joe Bruemmer, ladies and gentlemen of the jury.

5 Before I begin, I think I speak for not only my
6 clients, Sharon and Joe Bruemmer, I think I can honestly say
7 that all attorneys are in agreement that you have been an
8 attentive bunch. We've kept you here longer than we wanted
9 to, we've kept you here longer than we anticipated, but we
10 kept you here, I think, for an important reason. I think on
11 behalf of not only Sharon and Joe Bruemmer, but on behalf of
12 all the parties in this lawsuit, we thank you for your
13 attentiveness and for the service that you've rendered up to
14 this point. And we're sure that on behalf of Sharon and Joe
15 that the twelve of you will do the right thing when it comes
16 time to deliberate for your verdict.

17 The Court read you some instructions. You're
18 going to get a copy of the Court's instructions when you go
19 upstairs. So in case you think you might have missed
20 something when she read over it, you'll have a copy, a full
21 set of the instructions for use in your deliberations. The
22 first thing you do when you get up there is select a
23 foreperson and then it's time to get down to work. And the
24 work consists of determining some issues of fact and
25 rendering a verdict that is just in all regards.

1 Ladies and gentlemen, throughout this trial we've
2 presented a mountain of evidence. I think plaintiff
3 submitted over a hundred fifty exhibits. We've got a box of
4 medical documents over here containing literally thousands of
5 pages of medical. We called some twenty-five witnesses to
6 the stand. There were a couple additional witnesses called
7 by the defendants. And we've taken at least two weeks of
8 your valuable time to hear this case and to determine the
9 issues in this case. This case really boils down to about a
10 fifteen or thirty second period that occurred on February 28,
11 1990, on Yaeger Road. Let's go back to February 28th if we
12 can.

13 We heard the testimony of four witnesses who were
14 at the scene describe this terrible accident. Each of them
15 described it in their own way. Each of them came into this
16 courtroom, I believe, and told you the truth of what they
17 remembered happening that day. But there's a couple things
18 that aren't in dispute. The first thing is that Joel
19 Bruemmer was downhill from this tow truck before it got
20 parked and that Joel Bruemmer was down there doing his job,
21 getting ready to take care of a power wire.

22 There's nothing in dispute that Tim Granich at
23 some time around five o'clock p.m. pulls up in a tow truck, a
24 1984 GMC one ton cab and chassis that had been modified to a
25 tow truck, which the evidence is is a reasonably foreseeable

1 use. And that at some time he parked his car near the side
2 of the road, above Joel Bruemmer, on a nine percent slope.
3 For a period of about fifteen to thirty seconds -- you can
4 recall what the evidence was from the different witnesses.
5 It varied. But from the time that he set the parking brake,
6 gathered his things in the truck, grabbed his gloves, walked
7 behind the truck, got out to the field, something happened.

8 What happened is the parking brake on the 1984 tow
9 truck lost tension for some reason. There's only one
10 explanation why this accident occurred, and that's because
11 the parking brake lost tension. The truck begins to roll.
12 And we get the horrible testimony of Conway and Reiter and
13 DeRienzo and Granich, in some respect, as to what exactly
14 happened. But now we know what did happen. And what
15 happened is this eighty-four hundred pound truck rolled down
16 the hill, gathered speed and, unbeknownst to Joel Bruemmer
17 until maybe a split second before impact, the truck ran over
18 Joe, dragged him and crushed him. Dragged him for some
19 sixty-five feet across the pavement to the area where the
20 truck came in to rest. This case boils down to fifteen or
21 thirty seconds, and that's how long that truck sat on that
22 hill unoccupied with the parking brake on. That's what this
23 case really boils down to.

24 Officer Reiter was the first witness we called.
25 Officer Reiter told you that he was sitting in a driveway

1 preparing a report from the first accident. He tells you
2 that at some point he gets alerted, he looks up, he sees the
3 tow truck rolling, and I think his testimony was at first he
4 didn't realize that it was unoccupied. Then it dawned on
5 him, either seeing the cab or seeing Mr. Granich over in the
6 field, that this thing was a runaway. A veritable runaway
7 missile. He's alerted to it by Randy Conway, the neighbor
8 who's watching all this unfold in front of him.

9 Officer Reiter, Mr. Conway, Julie DeRienzo, who
10 from her vantage point next to the truck saw this all take
11 place as well, they described the tragedy and they described
12 in some detail what happened to Joel Bruemmer. How Joe tried
13 to hang on to the front of the truck before he was eventually
14 ripped underneath it by the force of this moving truck,
15 dragged underneath it for some sixty-five feet, scraped
16 across the pavement and literally crushed to within minutes
17 or moments of his death.

18 Randy Conway was the first one to realize what was
19 happening, and what did Randy do? He started screaming. Now
20 Randy Conway is another -- makes another interesting point.
21 Randy tells the police that he sees Mr. Granich do something
22 after the accident. I want to get to that in a little bit.

23 Julie DeRienzo comes to see Joe underneath the
24 truck. She runs down from the vantage point where she parked
25 the car. And remember what Julie told you was the first

1 thing our client said to her. "Help me, help me, they're
2 trying to kill me." Julie went from accident witness to
3 registered nurse, and she began to try and see if she could
4 comfort Joe or at least check his vital signs at that point.
5 I think she indicated that she was able to -- unable to get a
6 pulse because of his position under the truck. What did she
7 tell you at the scene?

8 Now the other thing to keep in mind is that these
9 witnesses at the scene, first off, they had no idea that six
10 years later they're going to be asked to come into court and
11 asked to testify about what took place that day. The other
12 thing to consider is that in the words of one of these
13 witnesses, the scene was chaos, and understandably so. A man
14 had just been run down, unbeknownst to him, run down by an
15 eighty-four hundred pound truck. The scene was obviously
16 chaos. There were people calling for emergency vehicles.
17 There were people scrambling to try and give aid to Mr.
18 Bruemmer. The place was in utter chaos.

19 Julie DeRienzo told you that at the scene, before
20 she tried to crawl under the truck to comfort and to give aid
21 to Mr. Bruemmer, she asked Tim Granich, "Is this truck
22 stable, is the brake on?" And Tim's reply to her was, "Yes,
23 I just put it on." Randy Conway told you that Tim Granich at
24 the scene got into the cab, placed his foot on the brake
25 pedal, and either activated or reactivated the parking brake.

1 The officer came in and gave testimony about the position of
2 the brake pedal. You'll recall his testimony. I recall it
3 as saying he thought and estimated that it was approximately
4 six inches from the floor. Again, you determine what he was
5 thinking by that.

6 Tim Granich. Tim came into this courtroom six
7 years after a tow truck which he was operating ran down a man
8 and almost killed him. Tim was concerned at the time,
9 obviously, and he was obviously concerned last week when he
10 came into this courtroom. I think what was really evident
11 from all the people who were there at the scene was that they
12 were really touched by the trauma themselves and the way it
13 has affected them at that time and up to the present time.
14 What did Tim say though? The important element about what
15 Tim Granich says is before he got out of the truck that day,
16 I set the parking brake. I stepped on it firmly. I couldn't
17 push it any further. That's what Tim Granich told you.

18 Now Mr. Hanson in his opening statement said think
19 about what people say and when they say it, because that's
20 important. These witnesses said certain things at the scene,
21 they said certain things years later when they were deposed,
22 they said different variations when they came into court, but
23 they all basically told you the same thing. That Joe
24 Bruemmer was an innocent victim of a tragic accident caused
25 by this runaway truck.

1 Who said what and when did they say it? Well, the
2 first thing that was said in this lawsuit was said in 1970.
3 In 1970, General Motors Corporation said something. They
4 said it through one of their agents, Philip Francis. On
5 March 30th, 1970, they applied for a patent, and the patent
6 application for a parking brake control states as follows --
7 you've heard this before. I think it's important to tell you
8 again. The invention relates to an improved parking brake
9 control. When a parking brake is activated, the force
10 applied is usually only sufficiently great to prevent the
11 vehicle from moving at the time it is parked. Any changes in
12 parking conditions or relaxation of force exerted through the
13 parking brake system components may allow the vehicle to
14 roll. That's the first thing that was said about this
15 accident. It was said in 1970.

16 The next thing that was said with regard to this
17 accident was shortly after Bill Light purchased the truck.
18 The truck was purchased early 1984. I think Mr. Light told
19 us that, as I recall, that he thought the truck was eighteen
20 thousand five hundred, but I think when when he saw the
21 receipt testifies actually more than that. About six months
22 after the purchase of this truck, Bill Light experiences
23 problems with the parking brake lever in his original truck,
24 and he had it replaced, and that's undisputed. That the
25 original parking brake when placed into the stream of

1 commerce was defective. Bill Light had it pop off on him and
2 then he had it replaced. He got a new one, he hadn't had any
3 problems with it.

4 The next thing that happens is John Cotham takes
5 over the truck from his father, who took it over from Bill
6 Light. And remember what John Cotham told you when he came
7 into court. I think it's important. John said that when the
8 truck -- when the emergency brake pedal popped off on him
9 approximately one year before this incident that decimated
10 Mr. and Mrs. Bruemmer, that he had it pop off. And he said,
11 you know, you don't get any warning when it pops off. It
12 just pops off. It may hold eight or ten or twelve times, and
13 then it just pops off. A second brake was replaced.

14 And then at the time of the accident in February
15 28th, 1990, the same pedal mechanism that had been used for
16 years on General Motors' products, a similar pedal failed
17 again. And the pedal failed on February 28th, 1990. It
18 didn't give a warning it was gonna fail, but it failed. And
19 we think it's significant. Mr. Newssock made some mention
20 that there were no significant findings that these parking
21 brakes will fail. Now I think we've got a significant
22 finding now. We've got a significant finding that General
23 Motors, I think, was aware of. And they were aware of it
24 before, and they were aware of it at the time they came out
25 with the patent, and they're very much aware of it today.

1 I want to talk about Joe's injuries. Joe
2 Bruemmer, from the force of this four ton truck, sustained a
3 complete crush to the lower left leg. You can look at this
4 x-ray. It's been marked as Exhibit 124. You also heard Dr.
5 Shapiro discuss it. You can see a clear spot where his shin
6 bone should be. You can imagine the force that ripped
7 through his leg on that day. Exhibit 125 is a CT scan of
8 Joe's pelvis and hip. Remember what Dr. Shapiro told us?
9 That it was crushed in many places. The CT scan shows these
10 crushings. It shows the type of injury that he sustained.
11 You can imagine the force of this truck dragging Joe Bruemmer
12 and crushing the bones in his hip and in his pelvis. We've
13 got a plain view picture of Joe's hip. It shows a device
14 that was put on his hip to save his life, to save bleeding at
15 the time of the surgery. It's called an external fixture.
16 You can recall what Dr. Shapiro said about that and the
17 placement of it. It also shows dislocations and breakings to
18 the hip and the bottom of Joe's pelvis area. Other than the
19 destroyed left leg, the crushed pelvis and hip, Joe also
20 sustained numerous fractures to his chest plate and to his
21 rib cage. The force of the truck dragging him and rolling
22 him under the truck crushed this man's upper body.

23 He also sustained a severe closed head injury.
24 Dr. Shapiro talked about the CT scan of Joe's brain. This is
25 a CT scan of the head. It's been marked as Plaintiff's

1 Exhibit 127. It's in evidence. You can look at it. But I
2 think it was more important to remember what Dr. Shapiro said
3 about that. He said there was swelling in the brain, there
4 was bleeding inside the cavity of the brain, enough so that
5 they had to insert a catheter in there to relieve pressure
6 and also to be able to monitor the brain function. Dr.
7 Shapiro told us that the severe head injury was so gross and
8 traumatic that Joe was leaking brain fluid from bodily
9 cavities. His ears and his nose, I believe. We find out
10 that after Joe awakens from his four and a half month coma
11 and finally is able to recognize people talking to him, that
12 he has blindness, that he's completely blind in one eye and
13 that he's about ninety percent blind in the other eye.

14 To add insult to injury, while Joe lay under that
15 truck clinging to life, his back was resting against the
16 truck's muffler system. You heard Officer Reiter talk about
17 it. I thought it was pretty graphic. He talked about how
18 when he got to the scene he could actually smell burning
19 flesh. Joe sat there, clinging to life, begging for somebody
20 to help him, with this muffler system resting on his back.
21 He had skin grafts to his left flank of his back, taken from
22 his thigh. There was also some indication that he also had
23 skin grafts to other parts of his body, including his sex
24 organs. Joe's got extensive scarring throughout his body.
25 He's got scarring from the tracheostomy tube in his throat.

1 He's got a scar down the middle of his chest from the open
2 surgeries that occurred to his chest. He's got scarring on
3 his body from the skin grafts.

4 Six years and a couple months later, Joe's alive.
5 Joe's with us. Joe came into court. He was here basically
6 everyday from start to finish. Joe's alive in my opinion for
7 three reasons. The first reason that Joe is alive is that
8 Joe was fortunate enough to receive outstanding medical
9 treatment. And I don't think anybody can deny this. I think
10 he was lucky to a certain respect that Julie DeRienzo, a
11 registered nurse, was the first person on the scene. I think
12 he was also lucky to a certain extent that Glen Sinks and the
13 Mehlville Fire Department came on the scene and performed
14 miraculous jobs to get him stabilized. He was also fortunate
15 that he lives in a community where there's a grade one trauma
16 center down at St. Louis University. He was lucky that when
17 he got down there they had somebody like Dr. Shapiro to put
18 him back together. Joe received outstanding medical
19 treatment from everybody, and I don't think that's disputed.
20 In that respect, he's fortunate. Had this accident occurred
21 somewhere other than in the St. Louis metropolitan area, I
22 don't think Joe would have been able to tell us about what he
23 misses most today.

24 The second reason Joe is alive is Joe's heart and
25 his desire. A lot of people, I think, would have cashed it

1 in a long time ago with the types of injuries and damages Joe
2 had. Joe's an ex-marine. I think that a lot of his desire
3 and heart stem from his former military training. He went
4 through about four and a half years of extensive physical
5 therapy. He lasted for four and a half months in ICU on a
6 breath machine, pumping life into him. He lasted another
7 three or four months out at Craig Hospital going to rigorous
8 therapy everyday. Joe's heart and desire has helped keep him
9 alive. He's also had a positive attitude, which I think was
10 evident from his testimony. I think that also has helped to
11 keep Joe alive and in such a condition that he is today.

12 There's one final reason why Joe is alive. And I
13 think that's obvious to everybody. That reason is his wife,
14 Sharon. I think that we can safely say that if Sharon had
15 not been Joe's wife on February 28th, 1990, I think it's a
16 safe bet that Joe wouldn't be with us today. Sharon told you
17 about what she's done, what she's been through. She
18 explained it in some detail. My heart goes out to Sharon for
19 everything she's been through and everything she did to keep
20 her husband alive.

21 Let's talk a little bit about the evidence
22 concerning the liability of these parts. We know certain
23 things, we know certain things are undisputed. We know that
24 on February 28th, 1990, the right rear brake shoe of this GMC
25 truck was soaked in axle oil. We know that the left rear

1 brake shoe was worn to the rivets. We know that information
2 because Bill Light saved the stuff. He took the brake shoes
3 off and he saved it and he preserved it. I can't tell you
4 why Bill Light did that, but I think it's got something to do
5 with Bill Light's mind and his quest to find the truth as to
6 what happened in this case. So he saves the brake shoes, and
7 they come under the custody of other people. They finally
8 get into the hands of this Al Beier.

9 Al Beier was Mr. Light's expert he retained. You
10 remember at Mr. Beier's test -- I'm not going to go through
11 the numbers, but Mr. Beier's test showed that in his opinion
12 these brake shoes, with the linings, had the capability of
13 holding on a nine degree slope under the conditions that were
14 in effect on the date of Joe's injury. Now there's no
15 dispute that the linings were in bad shape. Bill Light saved
16 them for us. We know that. That's not in dispute. And I
17 think under the evidence you're going to be asked to render a
18 verdict against Bill Light, and we believe on behalf of the
19 plaintiff that Mr. Light's maintenance of the machine may
20 have contributed to cause this accident, although it's my
21 personal opinion that this accident would have occurred --

22 MR. HANSON: Objection. Personal opinion is
23 irrelevant.

24 THE COURT: Sustained.

25 MR. MUCHNICK: I believe that the evidence sets

1 forth facts which would allow you to find that this accident
2 would have occurred with perfect brake shoes.

3 We brought in eight people into this courtroom to
4 talk about their experiences with the same brake pedal.
5 Remember these guys? They all came in. The only one that
6 really had an interest in this lawsuit was Bill Light, the
7 defendant. Bill Light was the first one that came in. He
8 told us six months after this truck was put into service the
9 brake pedal pops on him.

10 The next guy to come into court was by video
11 deposition was a gentleman by the name of Mike Crosby. Do
12 you remember Mr. Crosby? You got to see him on tape. You
13 got to determine whether or not Mr. Crosby was telling the
14 truth. Well, Mr. Crosby filed some complaints. This guy
15 kept the receipt for the replacement part that he got. And
16 you saw Mr. Crosby testify about this thing rolling down his
17 driveway after he placed the emergency brake on. And that
18 when he got there, the pedal had disengaged.

19 Alex Nuckles. We read Mr. Nuckles' deposition.
20 Remember poor Mr. Nuckles? He was the one that was washing
21 his window on a similar truck with a similar brake pedal. He
22 was washing the window while he was standing outside the
23 truck, and he actually heard the darn thing pop off. He's
24 the only one who was actually in a position up to that point
25 to have heard the thing pop off. That we know of. Remember

1 Mr. Nuckles, he got dragged down by the door as he was trying
2 to get back into the car, he ran into a tree, and he got his
3 leg crushed and broke his leg.

4 There was Mike Kroger. Mike Kroger was a guy who
5 had absolutely no interest in this lawsuit whatsoever. He
6 came into this courtroom and told you that he's got several
7 GMC trucks with the same part and that they've all popped at
8 one time or another.

9 Pete Gentili. Pete Gentili was the guy that
10 walked in with the stick. He walked in with about a two foot
11 section of a two-by-four, and we didn't know why he had the
12 stick when he came in, but we know why now. Pete Gentili
13 told you that the same parking mechanism on his truck pops
14 and he's lost so much confidence in it that he uses the
15 two-by-four to prop it up against the service brake to keep
16 this thing from rolling on him.

17 Don Fielder. Don Fielder was operating a tow
18 truck for another company. Same product, same brake pedal
19 pops off in his experience.

20 There was Jay Cotham who drove the same exact tow
21 truck involved in this incident. After the first brake had
22 been replaced, he had the next one pop off on him. He told
23 you about it. He was lucky enough to get back in the car.

24 Fortunately for these people that came in and
25 testified, other than Mr. Nuckles, none of these other guys

1 were downhill from this contraption. If they had been, I
2 guess we would have been bringing in their testimony some
3 other way.

4 Finally there was Herb Jones. Herb Jones, as you
5 recall, was the owner of a tow truck company. Herb came into
6 court and testified. We brought him down here by subpoena.
7 And you remember what Herb told you? Herb told you the first
8 time his brake popped off, he wasn't sure if he had set it.
9 He just wasn't sure. Then after that, he started to make
10 sure. He made a conscious effort to make sure that he set
11 the brake every time he got out of that thing. And what
12 happened to Herb next? Well, a couple days or whenever the
13 time period was after the first pop-off, Herb told us that he
14 was sitting inside his house, waiting for the truck to warm
15 up, and that he actually heard the thing pop off. And when
16 he looked outside, the thing had rolled down his driveway and
17 into his neighbor's yard. Remember when Herb Jones told you
18 that?

19 And what did Herb do in response to that? I think
20 this was pretty interesting. He takes the truck to the
21 dealer and says, "I'm having problem with the parking brake."
22 And the dealer says, "We can't find anything wrong with the
23 parking brake pedal. There's nothing apparently broke on it.
24 The teeth and ratchet appear to be in alignment. We can't
25 find anything wrong with it, Mr. Jones." What did Herb do?

1 What did he tell you he did? He said, "Okay, fine. I'm
2 gonna leave the thing running, I'm gonna park it in neutral
3 up on the hill up there, and I'm gonna park it in front of
4 your show case, and when I come up tomorrow morning to pick
5 it up, that thing will be in your show case." The dealer,
6 smartly, in retrospect, replaced the parking brake pedal for
7 Herb Jones.

8 Eight people with different experiences. Eight
9 people with no reason to come into this courtroom and
10 fabricate anything. Eight people, with absolutely no
11 interest in the outcome of this lawsuit, came in and told you
12 about the same pedal popping off on their trucks. Which gets
13 us back to the scene of the occurrence.

14 Everything comes back to February 28th, 1990, on
15 this hill. There were four eyewitnesses at the time. Every
16 one of them is interchangeable. You can replace those
17 eyewitnesses with anybody. Anybody else could have served
18 the part of Julie DeRienzo or Mr. Conway or Officer Reiter or
19 Tim Granich, for that effect. You can replace them.

20 You can actually replace the hill itself. I think
21 it's been determined that all we really need is a hill with
22 enough slope to propel this thing once it disengages or
23 relaxes. Nine degrees -- nine percent in this case was
24 enough to get it going. I don't know how much it would have
25 been to actually get this thing rolling. I would suspect one

1 or two percent would get it rolling. But that hill, you can
2 change the street. It can be Main Street anywhere in the
3 U.S.A. It can be any street with enough slope to get this
4 thing rolling. You can change the scene. You can change the
5 date. You can change the time of year. You can change the
6 weather conditions. You can change the time the accident
7 happened. The one thing that's constant and that you can't
8 take out of the equation for this accident to happen is the
9 GMC truck. Because it's the GMC truck that they knew in 1970
10 when they had the patent, it's the GMC truck that they knew
11 had the pop-offs, it's that truck that rolled down and
12 destroyed Joe Bruemmer from what he used to be.

13 There was some talk in voir dire when we were
14 selecting the jury about sympathy. We're not asking the
15 people to be sympathetic. Some of the jurors even said that
16 they couldn't set it aside. Well, Joe and Sharon aren't
17 asking you folks for sympathy. They're not coming into this
18 courtroom asking you for sympathy. Joe and Sharon get
19 sympathy every time they try and take themselves into a
20 restaurant that's not handicapped equipped. They get
21 sympathy when they can't get Joe into a public restroom
22 that's not handicapped equipped. They get sympathy when they
23 try and go to a friend's house or go to a party and can't get
24 up the walkway because of Joe's handicaps. They get sympathy
25 from their family, from their children, from their children's

1 children, and from their friends. They're not asking you
2 twelve to render sympathy at this point. Joe and Sharon come
3 into this courtroom like anybody else who's been the victim
4 of a tragedy, and they're seeking justice. And that's what
5 it boils down to. That's what you are going to have to come
6 up with when you deliberate.

7 At this time I'd like to talk to you about the
8 damages, ladies and gentlemen. Dr. Leroy Grossman came into
9 the courtroom. He's a professor at St. Louis University. He
10 put together some numbers. Now General Motors said what if
11 the interest rate goes up or what if it goes down. Won't
12 that affect the numbers? We're going to get to a ballpark
13 here. Some of them are fixed. There's nothing we can do
14 about those, but the other numbers come into your
15 deliberations and it comes into a sense of what is fair and
16 reasonable. You've got a couple of numbers here that aren't
17 in dispute.

18 Present medical to date -- and it's contained set
19 forth in Exhibit 106 if you want to look at that. That's a
20 summary of the medical. Mr. Bruemmer sustained in excess of
21 nine hundred ninety-eight thousand in medical bills to save
22 his life. Joe has incurred wage loss to date of three
23 hundred twenty-one thousand dollars. Sharon, who's had to
24 take off work since February 28th, 1990, has incurred a
25 hundred fifty-five thousand dollars. These numbers here are

1 not in dispute. There's nothing we can do about that. The
2 total fixed present damages that these people have incurred
3 as a direct result of this accident is one million four
4 hundred seventy-four thousand dollars.

5 I told you in opening statement that Missouri
6 allows for other damages, and it's those damages that I think
7 is gonna require some work and some consideration and some
8 deliberation from the twelve of you. The intent here is to
9 be fair and reasonable. Now it's difficult to put money
10 values on these types of things, and that's something that
11 you're going to have to wrestle with. The law requires that
12 if you believe Joe Bruemmer has pain and suffering, mental
13 anguish, and incurred a permanent disability from the date of
14 the accident until today that you have to give him fair and
15 reasonable damages. It's been six point two years from that
16 date. This is a difficult one. You've got the time of the
17 accident itself where he laid clinging to life underneath
18 that thing while the muffler is burning him and everything
19 else that you've heard about that. You've got to take that
20 into consideration in the first six point two years.

21 I've broken it down for past and then future. For
22 the six point two years here, you have to come up with a
23 number, and this will be part of your total figure. You
24 won't break it down in the verdict form. The verdict form
25 doesn't ask you to. I have a difficult time coming up with a

1 number here. I'm gonna make a suggestion. I'm going to
2 suggest the sum of six point two million dollars for his
3 damages to date. To put things into perspective, there are
4 people down the street playing professional baseball making
5 five million dollars a year. Think about that when you think
6 about what Joe's pain and suffering and mental anguish and
7 his permanent disability is worth. Think about what is fair
8 and reasonable to compensate the man for those losses. Think
9 about what it's been like for the last six point two years
10 for Joe, without being able to pick up his grandchildren,
11 without being able to take his walk in the morning, without
12 being able to go to work.

13 And, you know, that brings me back to -- remember
14 when Joe testified? Jerry Dunne asked him some questions
15 about what he misses doing and the types of things that he
16 used to do, where he grew up. But I think the thing that
17 choked Joe up was when Jerry asked him about working at Union
18 Electric. It became evident that Joe not only liked picking
19 up his paycheck on every other Friday, whenever he got paid,
20 but this man genuinely loved getting out in the field and
21 doing his job. He can't do that anymore. That's part of his
22 mental anguish, knowing that he can't go out and have self
23 worth enough to go out and earn a living. I'm going to
24 suggest the sum of six million two hundred thousand dollars.
25 You can look at that number. You can come to a conclusion.

1 If you think it's low, you can rectify that. If you think
2 that's high, you can rectify that. It's a suggestion.

3 We now have to come up with Joe's future damages.
4 We've got a mortality table into evidence which tells us that
5 Joe has a life expectancy of between sixteen and twenty-one
6 years. How do you compensate a man for the rest of his life?
7 The law requires that you give him a full cup of justice.
8 The law requires that you give him a life long dose of
9 justice. The law requires that you compensate him for his
10 future damages which he is reasonably certain to incur. A
11 couple of them again aren't in dispute.

12 Wage loss. Dr. Grossman testified and he gave us
13 different numbers. He gave us numbers for when Joe retires
14 at age sixty-five and age seventy, that its present value,
15 meaning what it would cost to provide him with that money
16 over that period of time, was between a hundred seventy-eight
17 thousand to four hundred thirty-nine thousand dollars. I
18 think it's clear that Joe was probably intending to retire at
19 the most by age sixty-five. There was some testimony by
20 Sharon, I believe, that they were thinking about -- or Joe
21 was thinking about retiring when he was sixty-two. What I've
22 done here is I've taken one year of future wage loss to when
23 Joe was sixty-two and up to sixty-five, which is a hundred
24 seventy-five thousand dollars present value. You can decide
25 from the evidence what you think is appropriate.

1 Dr. Grossman talked about nursing care. We read
2 the report of Mary Pecoraro. She would have come in and
3 testified, but her report basically said that for certified
4 nurse's aide in 1992, the going rate was nine dollars
5 ninety-five cents an hour. I had Dr. Grossman figure out
6 what that would cost for twelve hours a day. It's contained
7 on Exhibit 72A. CNA, twelve dollars a day at nine
8 ninety-five a day, times three hundred sixty-five days, comes
9 out to forty-three thousand five hundred eighty-one dollars a
10 year. For the term of Joe's life that comes up to six
11 hundred five thousand dollars present value what it will cost
12 to provide Joe with twelve hours a day.

13 Now I've talked to Joe and Sharon about this.
14 Sharon's not going to leave her husband's side. She's not
15 going to leave his side for twelve hours a day. But she --
16 Sharon can use a break. Sharon is taking care of her husband
17 now twenty-four hours a day, seven days a week, every day of
18 the year. Sharon is tired, she's weary, she can use a break.
19 The number I've used for future nursing care, I've taken it
20 down to six hours a day, which is half of what Dr. Grossman
21 predicted. I don't think that's unreasonable. Every medical
22 practitioner who has testified in this case says he needs
23 round the clock care. Six hours a day comes out to a present
24 value of approximately three hundred thousand dollars.

25 The law requires now if you're reasonably certain

1 that this man is going to sustain pain and suffering, mental
2 anguish, and permanent disability in the future that you have
3 to compensate Joe Bruemmer for that. Again, this is
4 difficult. How do you put a value on what this man's
5 injuries and damages are worth for the next sixteen to
6 twenty-one years? It's difficult indeed. Not enough money
7 in the world is gonna come close to compensate Joe. We can't
8 put him back to the way he was on February 28th at three
9 o'clock in the afternoon before this accident. The law only
10 requires that we provide him with compensatory damages, money
11 damages. It may not be the best system, but it's the system
12 in this state and in this country, and that's what we do.

13 He's got sixteen to twenty-one years in addition
14 to the wage loss and nursing care that needs to be
15 compensated for. I'm going to suggest that taking into
16 account the wage loss and the nursing care, that you award
17 Joe ten million dollars. That's a lifetime dose of justice
18 for him. It doesn't come close to getting him back to where
19 he was, but it's what the law says you have to do, and you
20 have to be fair and reasonable. If you think that's fair and
21 reasonable, then you use that number. If you think that's
22 low, you can award more. If you think that number is high,
23 you can award less. We trust that the twelve of you will be
24 fair and reasonable.

25 Sharon Bruemmer. Joe and Sharon were married for

1 fourteen years at the time of this accident. They enjoyed a
2 fun life. I think they used the term that they were
3 comfortable in 1990. Sharon had a great job. Her kids were
4 grown. Her daughter, I think, was eighteen at the time,
5 graduating from college. Things were good. Sharon was going
6 to school. Joe was tinkering with the matters at home, the
7 small engines. Things were fun. They went out to dinner,
8 they went to movies, they visited with friends. They still
9 try and do those thing. They can't do it to a certain
10 extent. They also enjoyed a normal marital relation, which I
11 don't think we need to get into the details. But I'm going
12 to suggest for Sharon's damages, for her loss of consortium,
13 for her loss of his affection, for her loss of his
14 companionship, for the loss of Joe's services around the
15 house, cutting the grass, helping with the laundry, doing the
16 siding, all those things that Joe provided to Sharon as her
17 spouse, I'm going to suggest the sum of two and a half
18 million dollars. That includes up to this date and for the
19 rest of Joe's life on this planet. She's to be compensated.
20 She's unable to do the things they used to do. Now she's
21 made amends. Sharon got up here and testified, and I think,
22 if nothing else, it was evident that this is a strong woman
23 and this is a woman who is trying the best she can to cope
24 with a horrible situation.

25 Joe and Sharon both got up here, they took the

1 stand, they told you about their injuries, they told you
2 about their damages. What do you do for these people? What
3 can you possibly do to compensate them in a fair and
4 equitable manner? I've made suggestions. I don't know. The
5 law requires only that you be fair and reasonable.

6 The next issue that I want to talk to you about is
7 punitive damages against General Motors. There's an
8 instruction in here. It's Instruction No. 12. Instruction
9 No. 12 says about General Motors, if you find in favor of
10 plaintiff under Instruction No. 7, which is the one that
11 tells you to find that this parking brake on the truck was a
12 piece of junk when it was sold, and if you find the
13 following, at the time General Motors sold this 1984 GMC with
14 the piece of junk on it holding the truck, defendant knew of
15 the defective condition and danger as submitted in that
16 instruction and, secondly, that General Motors showed a
17 complete indifference to or a conscious disregard for the
18 safety of others -- I don't know about others. I certainly
19 know they showed a conscious disregard for my client, Joe
20 Bruemmer. They showed a conscious disregard for Alex
21 Nuckles. They showed a conscious disregard for all the other
22 people that had these trucks roll and miraculously didn't
23 have them roll over themselves or family members. They
24 showed a complete indifference and a conscious disregard from
25 1970 to 1984 when this piece of junk was placed into the

1 stream of commerce. Their patent says it. The claims that
2 they had before say it. And the instructions bear it out.

3 Now you're going to be asked in the verdict form
4 to make a determination whether or not you believe that
5 General Motors is liable for punitive damages. I trust that
6 you'll take that into consideration, take into consideration
7 the evidence, and take into consideration what you've heard
8 from the witnesses in this case. And also take into
9 consideration the patent which is Exhibit 26.

10 On instruction --

11 THE COURT: Five minutes.

12 MR. MUCHNICK: That's the instruction that asks
13 you to find against General Motors. The elements are as
14 follows. First, that defendant sold the 1984 GMC one ton
15 truck in the course of its business. I don't think it's
16 disputed it's a GMC truck. General Motors sells cars and
17 trucks. That becomes a non-issue.

18 That the truck was in a defective condition when
19 put to a reasonably anticipated use. When a parking brake
20 mechanism pops off without warning, that's a dangerous
21 condition. That's a defective condition. It's unreasonably
22 dangerous, as evidenced by what happened to our client. Was
23 it put to a reasonably anticipated use? I think so. That's
24 undisputed. The shop manual, which has been into evidence,
25 Mr. Newssock, and everybody else that testified, said this

1 thing was supposed to be made for a tow truck. This 1984 GMC
2 one ton truck cab and chassis. It was reasonably anticipated
3 how it would be used.

4 That the defective condition existed when the 1984
5 truck was sold. This thing, this pedal in their truck
6 rendered this thing unreasonably dangerous. It's the same
7 pedal that was in it when Bill Light bought it. It's the
8 same pedal that was replaced, and it's the same pedal that
9 Cotham replaced. It's the same pedal that popped on Mr.
10 Nuckles. It's the same pedal that popped on Mr. Crosby.
11 It's the same pedal that popped on the other gentlemen that
12 came in here, local tow truck drivers. This thing was a
13 piece of junk when it was sold in 1984. This thing was a
14 piece of junk when it was replaced in 1990 -- or '89. This
15 thing is a piece of junk today. And, if nothing else, it
16 should be taken off the market.

17 With regard to Mr. Light, Bill Light doing
18 business as The Auto Shop, you must find against William
19 Light, doing business as The Auto Shop, if you believe that
20 he performed maintenance on the GMC one ton truck. That's
21 not disputed. That he failed to perform the maintenance with
22 ordinary care to discover the oil soaked and/or worn
23 condition of the rear brake linings. I think the testimony
24 from different -- from several of the witnesses was that the
25 worn linings and the oil on the drums should have been

1 discovered. It should have been. And I think, in
2 retrospect, Mr. Light wishes he had found it earlier.

3 The next question is the one that becomes an issue
4 with regard to Mr. Light. Because the next element requires
5 that not only that he failed to use ordinary care in
6 inspecting and maintaining the product, the brake shoes and
7 the brake drums or the brake linings, but that that problem,
8 the failure to inspect, caused this thing to roll or directly
9 contributed to cause it.

10 THE COURT: Two minutes.

11 MR. MUCHNICK: I think from the evidence you can
12 reasonably find that. You consider that when you get to that
13 verdict.

14 Now on Verdict A, which is what you're gonna have
15 to write down, there are some spots for you to make some
16 writing. One of you is gonna get to write on this thing.
17 You're all gonna get to sign it. The first thing says on the
18 claim of plaintiff Joel Bruemmer for personal injuries
19 against General Motors, we the jury find in favor of Joel
20 Bruemmer. On the claim of plaintiff Joel Bruemmer for
21 personal injuries against defendant William Light, we the
22 jury find in favor of Joel Bruemmer.

23 Your Honor, did you say ten minutes?

24 THE COURT: Two minutes.

25 MR. MUCHNICK: Two minutes.

1 You're then going to be asked to assess Joel
2 Bruemmer's damages. I suggested numbers here, and I added
3 them up. They come up to be about seventeen million dollars
4 and change. I'm going to suggest that you award Joel
5 Bruemmer seventeen million five hundred thousand dollars for
6 his compensatory damages. And I'm going to suggest that you
7 award Sharon Bruemmer two million five hundred thousand for
8 her loss of consortium. You write those in.

9 On the back page there's an indication of whether
10 or not you believe defendant General Motors is liable for
11 punitive damages. I think the evidence is overwhelming. I
12 think you've got no choice but to put in the spot that they
13 are. That the evidence supports a finding of punitive
14 damages. Then each of you sign it. Only nine of you need to
15 sign off on the verdict. I think that all twelve of you will
16 reach a unanimous verdict in this case.

17 On behalf of Joe and Sharon Bruemmer, I thank you
18 for allowing myself, my partner Jerry Dunne, Bernard Becton,
19 I thank you for allowing us to come in here and serve as
20 officers of the court in this case. I would only ask that
21 you give the other attorneys that come up after us the same
22 attentiveness and same consideration and courtesies that
23 you've given me. On behalf of Joe and Sharon, thank you.