

INSTRUCTION NO. \_\_\_\_

Whether any of these elements of damage have been proven by the evidence is for you to determine. Neither sympathy nor speculation is a proper basis for determining damages. However, absolute certainty as to the damages is not required. It is only required that plaintiffs prove each item of damage by a preponderance of the evidence.

Nevada Pattern Civil Jury Instructions, Civil 10.19

INSTRUCTION NO. \_\_\_\_\_

The court has given you instructions embodying various rules of law to help guide you to a just and lawful verdict. Whether some of these instructions will apply will depend upon what you find to be the facts. The fact that I have instructed you on various subjects in this case, including that of damages, must not be taken as indicating an opinion of the court as to what you should find to be the facts or as to which party is entitled to your verdict.

Nevada Pattern Civil Jury Instructions, Civil 11.00

INSTRUCTION NO. \_\_\_\_\_

It is your duty as jurors to consult with one another and to deliberate with a view toward reaching an agreement, if you can do so without violence to your individual judgment. Each of you must decide the case for yourself, but should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. However, you should not be influenced to vote in any way on any question submitted to you by the single fact that a majority of the jurors, or any of them, favor such a decision. In other words, you should not surrender your honest convictions concerning the effect or weight of evidence for the mere purpose of returning a verdict or solely because of the opinion of the other jurors. Whatever your verdict is, it must be the product of a careful and impartial consideration of all the evidence in the case under the rules of law as given you by the court.

Nevada Pattern Civil Jury Instructions, Civil 11.01

INSTRUCTION NO. \_\_\_\_\_

If, during your deliberation, you should desire to be further informed on any point of law or hear again portions of the testimony, you must reduce your request to writing signed by the foreman. The officer will then return you to court where the information sought will be given to you in the presence of the parties or their attorneys.

Readbacks of testimony are time consuming and are not encouraged unless you deem it a necessity. Should you require a readback, you must carefully describe the testimony to be read back so that the court reporter can arrange his notes. Remember, the court is not at liberty to supplement the evidence.

Nevada Pattern Civil Jury Instructions, Civil 11.02

INSTRUCTION NO. \_\_\_\_\_

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence, as you understand it and remember it to be, and by the law as given you in these instructions, and return a verdict which, according to your reason and candid judgment, is just and proper.

Nevada Pattern Civil Jury Instructions, Civil 11.03

INSTRUCTION NO. \_\_\_\_\_

When you retire to consider your verdict, you must select one of your number to act as foreperson, who will preside over your deliberation and will be your spokesperson here in court. During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience. In civil actions, three-fourths of the total number of jurors may find and return a verdict. This is a civil action. As soon as six or more of you have agreed upon a verdict, you must have it signed and dated by your foreperson, and then return with it to this room.

Nevada Pattern Civil Jury Instructions, Civil 11.04

INSTRUCTION NO. \_\_\_\_\_

The plaintiff seek to establish liability on one or more different legal bases. One of the plaintiffs' claims is negligence. I will not instruct on the law relating to this claim.

Nevada Pattern Civil Jury Instructions, Civil 2011, 4NG.10

INSTRUCTION NO. \_\_\_\_\_

Defendant FIRST TRANSIT is legally responsible for the actions of its employee, Defendant JAY FARRALES, at all times when Defendant JAY FARRALES is acting within the scope of his employment with Defendant FIRST TRANSIT.

See Rockwell v. Sun Harbor Budget Suites, 112 Nev. 1217, 925 P.2d 1175 (1996).

INSTRUCTION NO. \_\_\_\_\_

“Common carrier” means any person or operator who is held out to the public as willing to transport by vehicle from place to place, either upon fixed route or on-call operations, passengers or property, including a common motor carrier of passengers.

Defendant FIRST TRANSIT is a “common carrier.”

See NRS 706.036 (modified)

INSTRUCTION NO. \_\_\_\_\_

The jury is instructed that the law requires a common carrier of passengers to exercise the highest practicable degree of care that the human judgment and foresight are capable of, to make its passenger's journey safe. Whoever engages in the business of a common carrier impliedly promises that its passengers shall have this degree of care. Failure to do this is negligence.

See Sherman v. Southern Pac. Co., 111 P.416 (Nev. 1910); see also Forrester v. Southern Pac. Co., 134 P.753 (Nev. 1913).

INSTRUCTION NO. \_\_\_\_\_

“Disability” means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual, such as, caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and work.

HARVEY CHERNIKOFF was disabled.

See NRS 706.361(6); 49 C.F.R. 37.3

INSTRUCTION NO. \_\_\_\_\_

When a carrier is aware that a passenger is mentally disabled so that hazards of travel are increased as to him, it is the duty of the carrier to provide that additional care which the circumstances reasonably require. The failure of the defendant to fulfill this duty is negligence.

Nevada Pattern Civil Jury Instructions, Civil 2011, 4NG.45; See American President Lines, Ltd. v. Lundstrom, 323 F.2d 817 (9<sup>th</sup> Cir. 1963).

INSTRUCTION NO. \_\_\_\_\_

The plaintiff seek to establish liability on one or more different legal bases. One of the plaintiffs' claims is negligent training and supervision. I will not instruct on the law relating to this claim.

INSTRUCTION NO. \_\_\_\_\_

In order to establish a claim for negligent training and supervision, plaintiff must prove the following elements:

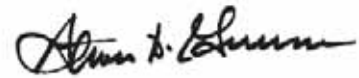
1. Defendant FIRST TRANSIT owed a duty of care to plaintiffs and to the deceased, HARVEY CHERNIKOFF, to reasonably train and supervise its employee, Defendant JAY FARRALES, to ensure that he was fit for his position;
2. Defendant FIRST TRANSIT breached that duty by failing to reasonably train and supervise its employee, Defendant JAY FARRALES, to ensure that he was fit for his position;
3. That Defendant First Transit's breach of this duty was the cause of HARVEY CHERNIKOFF's death; and
4. Plaintiff JACK CHERNIKOFF and Plaintiff ELAINE CHERNIKOFF suffered damages.

See Vaughn v. Harrah's Las Vegas, Inc., 124 Nev. 1515, 238 P.3d 863 (2008); see also Hall v. SSF, Inc., 112 Nev. 1384, 930 P.2d 94 (1996).

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TRAN



CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

JACK CHERNIKOFF,  
ELAINE CHERNIKOFF,  
  
                    Plaintiff,  
  
vs.  
  
FIRST TRANSIT INC.,  
  
                    Defendant.

CASE NO. A-13-682726  
DEPT NO. XXIII

**TRANSCRIPT OF  
PROCEEDINGS**

BEFORE THE HONORABLE STEFANY MILEY, DISTRICT COURT JUDGE

**JURY TRIAL - DAY 8**

FRIDAY, FEBRUARY 26, 2016

## APPEARANCES:

For the Plaintiff:

BENJAMIN P. CLOWARD, ESQ.  
CHARLES H. ALLEN, ESQ.  
ALISON M. BRASIER, ESQ.

For the Defendants:

LEANN SANDERS, ESQ.  
KIMBERLEY A. HYSON, ESQ.  
J. BRUCE ALVERSON, ESQ.

RECORDED BY MARIA GARIBAY, COURT RECORDER  
TRANSCRIBED BY: KARR Reporting, Inc.

KARR REPORTING, INC.

**I N D E X****WITNESSES FOR THE DEFENDANT:**

JENNIFER McKIBBINS

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1 LAS VEGAS, NEVADA, FRIDAY, FEBRUARY 26, 2016, 9:42 A.M.

2 \* \* \* \* \*

3 (Outside the presence of the jury.)

4 THE COURT: Good morning, everyone. Do we have  
5 anything we need to address before we bring the jury in? Mr.  
6 Cloward is still -- oh, and actually I'm glad Kathy reminded  
7 me. Yesterday before the jury went out we received two notes  
8 from Mr. Shakespear. Do you guys want to come up and look at  
9 them? They might come up during questioning.

10 Were you sitting there all along?

11 MR. CLOWARD: I'm sorry.

12 THE COURT: I didn't even see you.

13 MR. CLOWARD: Just in the back just in the corner  
14 doing some -- taking some notes and stuff.

15 THE COURT: I didn't even see you.

16 MS. SANDERS: I think the questions are fine, but I  
17 think it probably will be covered in --

18 THE COURT: Okay.

19 MS. SANDERS: -- in the direct and so maybe hold  
20 onto them.

21 THE COURT: Yeah, I sure will until the end. All  
22 right, you guys. If there's nothing else, let's go ahead and  
23 bring the jury in.

24 (Pause in the proceedings.)

25 (In the presence of the jury.)

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1 THE COURT: Good morning, everybody.

2 All right. Ms. McKibbins, if you'd like -- it looks  
3 like our jury is here. Ms. McKibbins if you would like to  
4 come back up. Ms. McKibbins, you were placed under oath  
5 yesterday. You are still under oath at this time, ma'am.

6 JENNIFER MCKIBBINS, DEFENDANT'S WITNESS, PREVIOUSLY SWORN

7 DIRECT EXAMINATION - (Continued)

8 BY MS. SANDERS:

9 Q Good morning, again.

10 A Good morning.

11 Q Ms. McKibbins, when we were talking yesterday we  
12 were kind of going through your background and your training  
13 and that kind of thing, but would you tell the jury how it was  
14 that you got to -- to First Transit, being involved with First  
15 Transit?

16 A Laidlaw was purchased by First Transit in 2007, so  
17 any work that Laidlaw was doing was absorbed by First Transit  
18 end of 2007, beginning of 2008.

19 Q Okay. And what was your job at the time that that  
20 happened?

21 A At the time of the actual transition I was still a  
22 training -- training manager. I became the safety, security,  
23 and training manager in May of 2008, so shortly after the  
24 transition.

25 Q And what kind of training did you have to have in

1 order to become the safety -- safety security training  
2 manager?

3 A Yes. Well, I had a lot of on the job training as  
4 the training manager, but I had to obtain my TSSP  
5 certification that I spoke about yesterday, the Transportation  
6 Safety and Security Program certification. And I had to take  
7 a few other classes through TSI, Transportation Safety  
8 Institute, and the U.S. Department of Transportation.

9 Q Okay. And how long did you hold that job?

10 A Until 2014.

11 Q And then in 2014 what job did you get?

12 A Director of corporate safety.

13 Q How did your job duties change when you became  
14 director of corporate safety?

15 A Now instead of being responsible for one project or  
16 one location, now I offer assistance and guidance to the  
17 directors of safety for the other regions, for all 200-plus  
18 locations that we have.

19 Q During the time that you were the -- can I just  
20 shorten it to safety director?

21 A Whatever you like.

22 Q Okay. During the time that you were the safety  
23 director for the First Transit location here in Las Vegas, can  
24 you just explain a little bit about what your job duties were?

25 A I was responsible for making sure that our operation

1 complied with all federal, state, and local regulations, along  
2 with contractual requirements. I was responsible for making  
3 sure that we met all of the DOT requirements as far as  
4 licensing, driver qualifications, OSHA regulations, drug  
5 testing. I was responsible for risk management, any accident  
6 incident, I did accident investigation, accident  
7 preventability determination. I was responsible for  
8 overseeing the entire training program and ensuring that all  
9 of our operators were trained to standard, making sure that we  
10 met all of our contractual requirements with the RTC.

11 Q Okay. That's quite -- quite a lot of work to do.

12 A It is.

13 Q The jury has heard a little bit about the ADA and  
14 the provisions that would apply for paratransit service. Can  
15 you explain a little bit in general your understanding of the  
16 requirements that the ADA has for providing paratransit  
17 service?

18 A Well, it's my understanding that the reason why  
19 paratransit service exists in the first place is because of  
20 the ADA. And any city that has a fixed route or main mass  
21 transportation system has to have a paratransit system that is  
22 the equivalent or mirrors the fixed route system. So we have  
23 to provide service within the same service area, we have to  
24 operate the same hours that fixed route does, and we basically  
25 provide the same service that fixed route does, other than

1 we're doing it for passengers with disabilities and/or who are  
2 elderly and/or who are unable to ride the fixed route service  
3 for whatever reason. Under the ADA there are certain  
4 requirements that our drivers would have to be trained to  
5 standard and those requirements really pertain to mobility  
6 device transportation and sensitivity.

7 Q Is there anything in the ADA that provides for or  
8 requires first aid training for paratransit drivers?

9 A Not to my knowledge there is not.

10 Q As far as the relative roles between RTC, the jury  
11 has heard a little bit about that, and First Transit, can you  
12 just kind of explain in overview what First Transit's role was  
13 versus RTC?

14 A Sure. The RTC is the actual transit agency that is  
15 responsible for providing the transportation. They opt to  
16 contract that out to a private contractor. First Transit is a  
17 private contractor. We do transit contracting and transit  
18 management. We have two different types of service that we  
19 provide. In this case with the RTC we are transit  
20 contractors. So what happens is the RTC puts out what's  
21 called an RFP or request for proposal. And in that they  
22 outline specific requirements that they expect the contractor  
23 to provide if they are awarded that contract. And then as the  
24 -- the contractor that was awarded that contract, we would be  
25 responsible for adhering to whatever they put forth in said

1 contract.

2 Q Did First Transit have any responsibility or  
3 involvement in determining eligibility of a passenger to ride  
4 the paratransit?

5 A No, that's strictly through the transit agency,  
6 which is the RTC.

7 Q As far as a day to day operation is concerned, what  
8 was First Transit to do? And let's talk specifically about  
9 here in Las Vegas.

10 A We operate the contract. That's what we did. RTC  
11 provided the buses, RTC did all of the scheduling, they did  
12 the eligibility determination to determine who could ride the  
13 buses. They -- if somebody needed to have a ride scheduled,  
14 they would call the RTC; RTC would schedule their ride. It  
15 would be up to the RTC to give us the information for  
16 manifests, which you saw yesterday, so that our drivers would  
17 know where they were supposed to go and who they were supposed  
18 to pick up. We would be responsible for maintaining the  
19 vehicles, hiring the drivers, training the drivers, and  
20 putting the drivers out in service. We would be responsible  
21 for the day to day operational tasks that go along with  
22 picking up passengers.

23 Q Let's let the jury know a little bit about First  
24 Transit. What -- what is First Transit as a company?

25 A As I said before it's a private contractor. We do

1 transit management contracting and transit contracting  
2 contracting. And I know that that sounds weird because I'm  
3 using the word contracting so much, but it all comes down to  
4 requests for proposals from the transit agencies. And we have  
5 competitors. And if you've heard to Veolia Transportation or  
6 Transdev or MV Transit or Keolis Transit America, we all do  
7 the same thing. We operate transit fixed route services  
8 across the country; we operate paratransit services across the  
9 country. We also have contracts in other countries besides  
10 the United States. We have contracts in Canada, we have  
11 contracts in Panama, Panama City, Panama, in India. We're all  
12 over the place.

13 Q Okay. How many states does First Transit have  
14 locations in?

15 A 43, I believe it is.

16 Q At the time of the incidence here in 2011 was it the  
17 same or different?

18 A I'm pretty sure it was the same.

19 Q Now, do all of the states that First Transit  
20 operates in have the same sets of regulations, rules,  
21 statutes, that kind of thing that they are required to comply  
22 with?

23 A As far as federal regulations, yes, each state does  
24 have some -- some different requirements that they have. But  
25 for the most part, because transit and paratransit work is

1 really -- it's -- the transit agency gets a grant from the  
2 FTA, which you heard about yesterday, Federal Transit  
3 Administration, and so there are certain things that they have  
4 to do, that they have to comply with under the FTA. So states  
5 generally follow what those federal requirements are, however,  
6 there are some states that have a few different regulations,  
7 either more or less lenient than Nevada. It just depends on  
8 the state. Example, California, they have much more strict  
9 regulations than what most other states have. New York State  
10 is another one that has very strict regulations. Just  
11 different.

12 Q So if you're in New York you would be required to  
13 follow whatever the state or local regulations are there  
14 versus Nevada, whatever they are here?

15 A That is correct.

16 Q Okay. Was part of your job to be sure that there  
17 was compliance with whatever state or local regulations might  
18 apply to the business?

19 A That is correct.

20 Q We heard Matt Daecher yesterday talk a little bit  
21 about some of the federal regulations that apply. To your  
22 understanding what kind of federal regulations would have been  
23 applicable to First Transit here in Las Vegas?

24 A Well, for the most part the federal regulations that  
25 -- that govern transportation is under the 49 CFR, Code of

1 Federal Regulations, and there's different subparts of that.  
2 383, for example, talks about driver qualifications. Pretty  
3 much the whole 300 subsection talks about different aspects of  
4 transportation. We follow 49 CFR part 40, which talks about  
5 federal drug testing, 49 CFR part 655, which also talks about  
6 federal drug testing. So we are required to comply with all  
7 of those things.

8 Q Okay. And in -- in Nevada was there any kind of  
9 state or local regulation or requirement that paratransit  
10 drivers be trained in first aid?

11 A No.

12 Q In July of 2011 when the incidents in this case  
13 occurred, describe the First Transit operation here. How --  
14 how many employees were there? What did you do?

15 A We had roughly 580 to 600 employees at the time.  
16 Most of them being drivers, but on top of that we had  
17 technicians, 50 or so mechanics, technicians, fueler, washers,  
18 people who fuel and wash the bus, trip editors, people who are  
19 responsible for reconciling all of the information that's on  
20 that paper manifest that you saw with the information that's  
21 input into the MDT or computer system that's on the bus. We  
22 had a dispatch center with window dispatchers who give out  
23 routes, radio dispatchers who actually speak to operator when  
24 they have any type of issue while they're out on the road,  
25 call center personnel who is responsible for answering the

1 what's known as the where's my ride line that RTC had set up.  
2 Plus we have managers, supervisors, street supervisors, road  
3 supervisors, whatever you want to call them, an entire  
4 training department, a scheduling department, a payroll  
5 department. So, I mean, a large operation, probably one of  
6 the largest across the country for paratransit.

7 Q Of those 580 to 600 employees, how many -- you said  
8 many of them were drivers. About how many of those people  
9 were drivers?

10 A Close to 500, pretty close.

11 Q And can you estimate about how many disabled  
12 passengers First Transit served in, say, a week's time?

13 A It's easier if I tell you by day.

14 Q Sure.

15 A We did approximately 3,000 to 4,000 trips per day.  
16 So obviously on Saturdays and Sundays there's a more reduced  
17 service than during the week, so the bulk of our trips were  
18 done Monday through Friday. By the end of the month we did  
19 anywhere from on a low month would be 80,000. On a high month  
20 we'd do 120,000.

21 Q You mentioned earlier that there was a contract in  
22 place between RTC and first Laidlaw, and then -- and then  
23 First Transit. Was part of your job duties to be familiar  
24 with the information that's in the contract?

25 A Yes.

1 Q Okay. Would you take a look at the first exhibit  
2 there that's in front of you?

3 A Sure.

4 Q Have you reviewed that -- that document?

5 A Yes.

6 Q Okay. And can you tell the jury what that is? It's  
7 Exhibit A16.

8 A Sure. This is the contract between the Regional  
9 Transportation Commission of Southern Nevada and Laidlaw  
10 Transit Services, which I mentioned before was absorbed by  
11 First Transit.

12 MS. SANDERS: Okay. Your Honor, I would move for  
13 admission into evidence Exhibit A16, please.

14 MR. CLOWARD: Your Honor, no objection to the  
15 admission of the document. But just to preserve the record,  
16 we're objecting as to a foundation on this witness's ability  
17 to testify to it.

18 THE COURT: All right. Admitted.

19 (Defendant's Exhibit A16 admitted.)

20 MR. CLOWARD: If you'll just allow me an ongoing  
21 objection, then I won't interrupt Ms. Sanders.

22 THE COURT: Okay. Ongoing -- I mean, admitted and  
23 yes.

24 MR. CLOWARD: Thank you.

25 BY MS. SANDERS:

1 Q Now, when was this contract entered into to your  
2 knowledge?

3 A It's dated March 8, 2007.

4 Q Okay. Were you involved in the negotiations or  
5 anything that went into the contract?

6 A No.

7 Q Were you, nevertheless, familiar with the contract,  
8 had to review the contract for purposes of doing your job?

9 A Correct.

10 Q Okay. Now, this contract was originally entered --  
11 it's dated March 8, 2007. It was originally entered between  
12 Laidlaw and RTC. When was it that First Transit actually took  
13 over and replaced Laidlaw?

14 A Well, the date of the actual merger is somewhere  
15 around October/November 2007, however -- that's the date on  
16 record. However, the actual rebranding and change of -- of  
17 names and logos and things like that, that was a process that  
18 started in 2008 and took months to actually rebrand and turn  
19 everything into First Transit. But for all intents and  
20 purposes, the end of 2007, beginning of 2008.

21 Q Okay. To your knowledge were there any changes made  
22 to the contract with RTC once First Transit took over?

23 A Not to my knowledge.

24 Q Okay. Does the contract identify the type of  
25 training it required for paratransit drivers?

1 A Yes.

2 Q Can you point to where in the contract there's  
3 discussion about that?

4 A I can look through it and find it. I don't know off  
5 the top of my head anymore. It's been --

6 Q You might want to take a look at first page 46.

7 A Okay. All right. Yes, on page 46 there is a  
8 section for training about what all the operators are required  
9 to be trained on.

10 Q Is that just general information? Is there anything  
11 more specific?

12 A More specific than this would be whatever the First  
13 Transit had actually proposed. Let me just explain a little  
14 bit. In the RFP process, the request for proposal, the RTC  
15 puts out a requirement. This is -- this is what we're asking  
16 you to do. Then as First Transit, as the company that is  
17 proposing that they can do the work, they will supplement that  
18 with whatever they're minimum required training hours are, or  
19 above that if they feel that there is a topic on here that  
20 needs to be expanded on for additional time. For example, it  
21 says ADA sensitivity as one of their required topics. So they  
22 don't put a time limit for the amount of time that a driver  
23 needs to be trained. So, for example, since RTC puts emphasis  
24 on ADA sensitivity, we may have -- First Transit may have put  
25 in additional hours of training for ADA sensitivity.

1 Q Okay. Does the contract have something listed  
2 somewhere as far as the actual training that was going to be  
3 given?

4 A Yes, there should be an exhibit attached to the  
5 contract or an addendum attached to the contract, whatever  
6 it's called.

7 Q How about looking at maybe page 128.

8 A Okay. This is --

9 Q It's -- I'm sorry. It's the RTC128.

10 MR. CLOWARD: Okay.

11 MS. SANDERS: The numbers are a little -- yeah.

12 MR. CLOWARD: 116 on the exhibit.

13 BY MS. SANDERS:

14 Q Okay. Can you explain what this page is?

15 A Sure. This is the breakdown of what the classroom  
16 training hours are. So to the very left it has the topic of  
17 what topics would be covered. The next column says First  
18 Transit required minimum. So that is what the company  
19 standard is across the country that we would use for any other  
20 transit agency. The Las Vegas current time, that's what we  
21 were -- we were training at. That was what the original  
22 contract had called for. This is what we had proposed and  
23 what we had agreed to do. The final column where it says  
24 amended training time, I don't remember what year it was but  
25 there was -- the RTC had requested concessions from First

1 Transit, meaning they were looking for a price cut. So they  
2 wanted to know where we could give concessions back, and one  
3 of those areas was in some of the training. Because we are  
4 already doing more than the First Transit required minimum and  
5 we were able to shave some of that off and give them some  
6 concessions on that.

7 Q Okay. But the training that you already were  
8 providing was in excess of what was required?

9 A That is correct.

10 Q Okay. Is there anything in the RTC contract that  
11 requires that paratransit drivers be trained in first aid?

12 A No.

13 Q We've talked a lot about first aid training. Are  
14 there any markets that First Transit does operate in where  
15 first aid training is provided?

16 MS. SANDERS: You can take that down.

17 THE WITNESS: There are. It's less than 20. I  
18 don't know exactly how many it is, but it's less than 20. And  
19 I know that most of them are in more rural type areas. I  
20 mean, I can tell you the ones, the big contracts that I know  
21 that we don't do it in, but I can't tell you off the top of my  
22 head which ones we do it in.

23 BY MS. SANDERS:

24 Q What are the -- what are the big ones that you don't  
25 do it in?

1           A     We operate service for WMATA, Washington  
2 Metropolitan Area Transit Authority. We do paratransit  
3 service there. We do not train in first aid. There's not a  
4 contract requirement or a First Transit requirement. We  
5 operate paratransit service for Chicago Pace in the Chicago  
6 area. That is another paratransit contract. They do not  
7 require that we operate -- or train on first aid and we don't  
8 do it there. Houston paratransit, we operate there and we  
9 don't provide first aid and it's not required.

10          Q     The jury has heard that first aid training was not  
11 provided here in the Las Vegas market. Can you explain why  
12 that was?

13          A     It wasn't required by contract. It's not one of our  
14 required minimum topics for the company. And it's just like  
15 any other of the big cities. There are, and you heard this  
16 yesterday from Mr. Daecher, you get good response time from  
17 911. These people are trained. They're trained much better  
18 than even the minimal training that -- that we could give them  
19 for first aid training. These folks are trained much better,  
20 their response time is much quicker, and these are people that  
21 -- that can come and provide the type of first aid that a  
22 person may need.

23          Q     Was that considered to be a better and safer way to  
24 deal with medical emergencies than having first aid training?

25          A     Absolutely.

1           Q     I had mentioned to the jury earlier that there was a  
2 collective bargaining agreement in place. Can you explain to  
3 them a little bit about that?

4           A     We had a collective bargaining agreement that went  
5 into place in 2010. I believe it was November of 2010. And  
6 if you know anything about collective bargaining agreements,  
7 ours was with Teamsters. And in that they set forth some  
8 information that is required for the company to follow as it  
9 pertains to those that are covered under the collective  
10 bargaining agreement.

11          Q     Okay. Was there any requirement under the  
12 collective bargaining agreement that paratransit drivers be  
13 trained in first aid?

14          A     No, ma'am.

15          Q     Let's talk a little bit more specifically about the  
16 training that Jay Farrales had. At the time that he was hired  
17 were you in a training position?

18          A     I was, yes.

19          Q     Okay. Were you involved in training Jay himself?

20          A     Yes.

21          Q     Okay. At the time what was the -- what were the  
22 requirements that, well, I guess it would have been Laidlaw at  
23 the time, had for a paratransit driver?

24          A     We were required to follow certain topics that had  
25 to be trained on. The introduction, for example, security

1 awareness, Smith system, defensive driving, they had to go  
2 through passenger relations, radio communication, map reading,  
3 emergency procedures, code of conduct training. That's all  
4 done in the classroom. It's about 40 hours of classroom  
5 training.

6 Q I want to back up from there. As far as the  
7 application process is concerned, when somebody applied or  
8 when Jay applied for the job as a paratransit, were there any  
9 kind of background checks, anything like that that he needed  
10 to go through in order to be considered for the position?

11 A Yes. When a person comes in and applies for a job,  
12 once their application is -- is reviewed and they're  
13 interviewed and offered a position, they have to go through a  
14 pre-employment drug test, prequalification, DOT physical which  
15 is laid out in 49 CFR part 383, I believe it is. We use the  
16 DOT medical form and they go to a clinic that is authorized to  
17 perform that medical examination. We do MVR, motor vehicle  
18 record check. They were required to bring in a ten-year DMV,  
19 Department of Motor Vehicle history printout. But in addition  
20 to what they brought to us, we were required to do an  
21 additional background check, motor vehicle record check,  
22 criminal background check, national sex offender registry,  
23 which is known as a widescreen criminal check, along with an  
24 employment history record check.

25 Q Would you take a look at the next exhibit, Exhibit

1 A12 in front of you, and tell me if you can identify that  
2 document.

3 A Yes, this is application for employment for Jay  
4 Farrales.

5 Q Have you reviewed that document?

6 A I have seen it, yes.

7 MS. SANDERS: Your Honor, may I move for admission  
8 into evidence of Exhibit A12, please.

9 MR. CLOWARD: What is the document, again?

10 MS. SANDERS: It's the employment application.

11 MR. CLOWARD: I have no objection.

12 THE COURT: Admitted.

13 (Defendant's Exhibit A12 admitted.)

14 BY MS. SANDERS:

15 Q And is this the application process -- or, excuse  
16 me, the application for employment that -- that Jay Farrales  
17 filled out?

18 A It appears to be, yes.

19 Q Okay. If you flip through it can you just summarize  
20 for the jury the kind of information that is included in the  
21 application itself?

22 A Sure. It asks on here if they've ever been  
23 incarcerated or convicted of any type of crime. They're  
24 driving experience, qualifications, accident review, traffic  
25 citations, their previous employment information, and then

1 it's signed off and reviewed by management. And then after  
2 that is the actual criminal background check that was  
3 conducted by the third-party company that we used. The  
4 ten-year criminal, the personal references or employment  
5 references that he had, that's all in here.

6 Q Okay. And would you take a look at Exhibit A13,  
7 it's the next one, and tell the jury if you recognize this  
8 document.

9 MR. CLOWARD: Counsel what is it? May I see it real  
10 fast?

11 BY MS. SANDERS:

12 Q Do you recognize that document?

13 A I do.

14 MR. CLOWARD: No objection.

15 THE WITNESS: I do, yes.

16 MR. CLOWARD: None.

17 THE COURT: Admitted.

18 (Defendant's Exhibit A13 admitted.)

19 MS. SANDERS: Gee, I didn't even have to ask.

20 BY MS. SANDERS:

21 Q Would you explain to the jury what is -- what kind  
22 of information generally is included in the applicant response  
23 sheet.

24 A Well, the applicant response sheet is just a general  
25 -- on this first page, it's just a general overview of what

1 the interview process involved. There are questions that  
2 needed to be asked during an interview, and there were points  
3 that were scored for that. I didn't actually conduct the  
4 interview, but this was the interview process at that time.  
5 And then based on whatever the score was determined whether  
6 the person was eligible for employment or not.

7 Q Okay.

8 A Beyond that -- I'm sorry. Did you have a question?

9 Q No, I'm sorry. I cut you off. Go ahead.

10 A That's okay. Beyond that is the release  
11 authorization form for us to perform the background check  
12 which was conditional upon hire. DOT records was the next  
13 page. And then the actual criminal record check, original  
14 criminal record check was done and that's here. Personal  
15 references, motor vehicle record checks that was done upon  
16 employment, and then after that because we were required to do  
17 motor vehicle record checks on a regular basis for ongoing  
18 employees. A copy of his DOT medical card is here.

19 Q Okay. You also talked about the fact that the  
20 applicant, or Jay in this case, had to go through a medical  
21 screening evaluation. Would you take a look at Exhibit A11 in  
22 front of you and tell me if you recognize that document.

23 A Yes, I do.

24 Q Okay. And what is that document?

25 A This is the examination form.

1 MR. CLOWARD: No objection.

2 THE WITNESS: The examination form that was done by  
3 Concentra, which is the clinic that I was talking about  
4 earlier. This form is -- it actually has Concentra's name on  
5 it, but this is essentially the same form that is outlined in  
6 the federal regulation that needs to be used for a DOT  
7 physical.

8 MS. SANDERS: Okay. Your Honor, at this time I  
9 would move for admission into evidence of Exhibit A11.

10 MR. CLOWARD: No objection.

11 THE COURT: Admitted.

12 (Defendant's Exhibit A11 admitted.)

13 BY MS. SANDERS:

14 Q And you -- you told the jury a little bit earlier  
15 about what kind of things were required as far as a medical  
16 examination, but can you just refresh and go over that again?

17 A Sure. There is -- under the federal regulation  
18 there is a requirement that people who drive a commercial  
19 motor vehicle, they're required to fit certain standards,  
20 certain medical standards, to ensure that the person is fit  
21 for duty and fit to drive. So they're checking blood  
22 pressure, they're checking vision, they're checking the  
23 person's ability to stand, stoop, bend, lift, push, pull,  
24 things of that nature, checking to make sure that there aren't  
25 any issues with movement or anything, dexterity, as far as

1 you're driving a vehicle and you have to be able to do that in  
2 a safe manner.

3 Q Okay. Once Jay was hired by Laidlaw, did he have to  
4 apply for and obtain a commercial driver's license?

5 A Yes.

6 Q Is that something that was provided, the training,  
7 was that provided by -- by Laidlaw at the time?

8 A Yes.

9 Q Is that the way that he got his -- his commercial  
10 driver's license is training through Laidlaw?

11 A Yes, he was responsible for taking the written  
12 examination at the Department of Motor Vehicles to obtain his  
13 permit, and then we as a company trained him to -- and tested  
14 him to give him his actual commercial driver's license.

15 Q Now, once he had gone through this entire process --

16 MS. SANDERS: You can -- you can take it down,  
17 Brian, please.

18 BY MS. SANDERS:

19 Q Once he had gone through this entire process, was  
20 there additional training that -- that Laidlaw provided to him  
21 in order to train him to actually be a paratransit driver?

22 A The easy answer is yes, but it's more to it than  
23 that. And part of that, it goes hand in hand. What -- what  
24 would happen is a person was hired, they go through their  
25 pre-employment physical and all the things that they would

1 need to do, and then they would make sure that they have their  
2 permit in hand. They would go through their classroom  
3 training, the 40 hours or so that I mentioned earlier that  
4 they would have to go through, and then from there they would  
5 get their behind the wheel training.

6 During the behind the wheel training portion, that's  
7 when they would be able to learn the different maneuvers that  
8 they needed to learn to pass their commercial driver's license  
9 test. But during that behind-the-wheel training they also  
10 learned their service area. They learned the different  
11 agencies and workshops that we pick up at, or hotspots, if you  
12 will, places that they would go to on a regular basis,  
13 hospitals, things like that. They would learn where those --  
14 those places were during the behind the wheel training, all  
15 the while learning, taking all of that defensive driving  
16 information, the Smith system that we talked about yesterday,  
17 taking that information that they learned from the classroom  
18 and applying it while they're out driving on the road.

19 Then after that they would take their -- their road  
20 test or their commercial driver's license test. Once they  
21 pass that, go down to the DMV, get their license, then they  
22 could go into the third or final phase of training which was  
23 the cadet training or in-service training where they go out  
24 with a certified instructor and actually take their classroom  
25 training, their behind the wheel training and put it together

1 and go pick up passengers out on the road.

2 Q Okay. I want to talk about a couple more exhibits  
3 here when you're talking about this. Would you take a look at  
4 Exhibit A7 for me.

5 A Sure.

6 Q And do you recognize that document?

7 A I do, yes.

8 Q Is that something -- is that a document that you  
9 have reviewed?

10 A Yes.

11 MS. SANDERS: Okay. Your Honor, I would move for  
12 admission into evidence of Exhibit A7 at this time.

13 MR. CLOWARD: No objection.

14 THE COURT: Admitted.

15 (Defendant's Exhibit A7 admitted.)

16 BY MS. SANDERS:

17 Q Would you explain to the jury what this document is?

18 A This is classroom training that we -- there's other  
19 columns that I had -- I had noted on here that weren't  
20 relevant, but this is actually, I think, from a proposal  
21 classroom training section.

22 Q Okay. And what about the second page?

23 A Behind the wheel training.

24 Q Okay. And does this list out the type of training  
25 that -- that First Transit would provide?

1           A     Yeah, the different topics and the amount of time  
2 that would be covered.

3           Q     Okay. And what about the last page?

4           A     This is the first transit minimum training hours  
5 that were required by -- that's the minimum standard that I  
6 was talking about earlier, different than what we were  
7 actually providing at the Las Vegas location.

8           Q     Okay. And would you take a look at Exhibit A8,  
9 please.

10          A     Yes.

11          Q     Do you recognize that document?

12          A     Yes.

13                MS. SANDERS: And, Your Honor, I would move for  
14 admission into evidence Exhibit A8.

15                THE COURT: Objections?

16                MR. CLOWARD: Oh, I'm sorry. No.

17                THE COURT: Okay. Admitted.

18                       (Defendant's Exhibit A8 admitted.)

19                MS. SANDERS: We're having our own little  
20 conversation here, Your Honor.

21 BY MS. SANDERS:

22          Q     Would you explain to the jury what -- what this  
23 document shows?

24          A     This is the First Transit minimum training hour  
25 matrix that has behind the wheel training in the left column.

1 The next column over after the minimum hours is the classroom  
2 training hours, what DVD goes with it, and how much time --

3 Q Okay.

4 A -- they would spend on it.

5 Q Is this generalized for every -- every location  
6 where First Transit operates?

7 A This is the minimum standard that we have. So, for  
8 example, if there is a contract that has no -- a transit  
9 agency has put out no minimum requirements at all for  
10 training, they just say train your drivers however you see  
11 fit, you train them, this is what we would offer for the  
12 minimum training hours.

13 Q Okay. If you look in the second column down near  
14 the bottom it says additional/optional course.

15 A Yes.

16 Q And under that it says first aid/CPR. Can you  
17 explain why that is included on this?

18 A It says specifically it's an additional optional  
19 course. So it's there for transit agencies to decide if they  
20 wish to have these additional courses added as part of the  
21 training, first aid/CPR, commercial driver's license or CDL  
22 training. In some cases there are transit agencies that don't  
23 want people -- don't want the agency to do the training. They  
24 want somebody -- either them to go through another school or  
25 either come with their -- their CDL, so they're not going to

1 offer that. There are other contracts that say I don't care  
2 how you get your -- your CDL, but we're not going to reimburse  
3 you for the training. And that's a big part of that whole  
4 contract process. The contract, we as a company, we pay for  
5 it, but RTC, they pay for -- they pay us to do the service so  
6 they're reimbursing for that. So they're going to tell them,  
7 no, we're not going to pay for CDL training.

8 Q Are there some markets that don't require a  
9 paratransit driver to have CDL training?

10 A That's absolutely correct.

11 Q Okay. You talked about --

12 MS. SANDERS: You can take it down, Brian.

13 BY MS. SANDERS:

14 Q You talked about the 40 hours of classroom and the  
15 behind the wheel training that the drivers get. What  
16 additional training do they get?

17 A Beyond their new hire training?

18 Q Yes.

19 A All operators are required to attend regular monthly  
20 in-service training, monthly safety meetings where we give  
21 additional information on either training that they've already  
22 had, or additional training, things that come up that may be  
23 new, that may be different. A lot of it is refresher.

24 Q Okay. And you have these safety meetings how often?

25 A Monthly.

1 Q Okay. Would you take a look, if you would, at  
2 Exhibit A14. And I'll -- I'll --

3 (Colloquy between counsel.)

4 BY MS. SANDERS:

5 Q Do you recognize the Exhibit A14?

6 A Yes, I do.

7 Q Okay. And can you tell the jury what that is?

8 A It's a lot of information that looks like it came  
9 right out of Jay's file for as far as refresher training.  
10 It's safety meeting signoff sheets, some quizzes from him  
11 initial new hire training, ride along evaluations that were  
12 done on a regular basis, wheelchair clinic or mobility device  
13 clinic training that we did on a regular basis.

14 MS. SANDERS: Your Honor, I would move for admission  
15 into evidence of Exhibit A14.

16 THE COURT: Any objections?

17 MR. CLOWARD: Just the objection that we discussed  
18 just to make sure the person information and stuff has been  
19 redacted, but no objection.

20 THE COURT: Okay.

21 MS. SANDERS: I will represent to the jury that  
22 there are several pages that are blank and there are  
23 redactions. We don't give personal information and any  
24 information that would have been after the time of Mr. --

25 MR. CLOWARD: Your Honor, can we -- can we approach?

1 THE COURT: Yeah.

2 (Bench conference.)

3 MR. CLOWARD: I'm just -- I'm just trying to  
4 preserve the record based on the motion in limine. The whole  
5 reason that -- I mean, initially we agreed to all exhibits.  
6 This was the exhibit that we felt like was over redacted. And  
7 so I'm just trying to preserve the record that what is  
8 actually in that should be what the parties agreed to. And so  
9 I don't know if we can --

10 THE COURT: What was -- was it just personal  
11 identifying information?

12 MR. CLOWARD: Well, no, there were some -- they  
13 filed a motion that basically said anything after the accident  
14 is not relevant. And so Ms. Hyson removed stuff that was  
15 after the -- after the accident, but there were a couple of  
16 things that were before the accident that were mistakenly  
17 redacted. I don't think she did it on purpose, it just was an  
18 accident.

19 THE COURT: Are they back in there now?

20 MS. SANDERS: I think they're --

21 MR. CLOWARD: No. No.

22 MS. HYSON: I have those pages to put them back in  
23 there so let's give it to the jury. [Inaudible].

24 MR. CLOWARD: And so that -- I'm just wanting to  
25 make sure that what the jurors get is the full version. So

1 could we just do it's stipulated subject to counsel's  
2 agreement, and then we'll work with each other to make sure  
3 that the full version is given.

4 THE COURT: The only problem is once that thing is  
5 marked, you can't change it.

6 MS. HYSON: [Inaudible] do it right now.

7 THE COURT: Can you do it real quick?

8 MS. HYSON: Yeah.

9 MS. SANDERS: Well -- or I can just ask her about it  
10 and not admit it now and then we could admit it, you know,  
11 after.

12 THE COURT: And that's fine, too.

13 MS. SANDERS: Yeah.

14 THE COURT: You just can't change it once you've  
15 admitted it.

16 MS. SANDERS: Okay. Then I'll just --

17 THE COURT: Okay.

18 MS. SANDERS: I think she's basically testified  
19 already to the things that I --

20 THE COURT: Yeah, and you just have to make sure  
21 everything is moved into evidence before you close your case.

22 MS. SANDERS: Yeah.

23 MR. CLOWARD: Yeah, we're --

24 THE COURT: Will that be more agreeable?

25 MR. CLOWARD: Yeah, we're happy to do that.

1 THE COURT: Okay.

2 MR. CLOWARD: Thank you.

3 (End of bench conference.)

4 BY MS. SANDERS:

5 Q You -- you mentioned that the Exhibit, Exhibit 14,  
6 has information in it -- A14, excuse me, has information in it  
7 about these different safety meetings, that kind of thing.  
8 Can you explain a little bit more about the kind of  
9 information that's included in that -- that file?

10 A Yes, there's information in here, like I said, about  
11 the training, the initial training, there's tests and quizzes  
12 and paperwork that has information about what they went  
13 through, what he went through when he did his initial  
14 training, signature pages about information such as DNL, you  
15 do not leave unattended passengers, ride along evaluations  
16 that Jay went through during his employment, and I think I saw  
17 mobility device training form in here, as well, when we did a  
18 wheelchair clinic. That's what it was called.

19 Q As a matter of fact, if you'll --

20 MS. SANDERS: How about this one, Ben?

21 MR. CLOWARD: Yeah, you can -- you can show the  
22 jurors whatever is in there. I just want to make sure that  
23 when they get it they have the full --

24 MS. SANDERS: I just want to use this one page.

25 MR. CLOWARD: That'll be fine.

1 BY MS. SANDERS:

2 Q Okay. If you'll take a look at page 17. Do you  
3 recognize this document?

4 A Yes.

5 MS. SANDERS: Okay. Your Honor, may we at this time  
6 move for admission of just Exhibit A14, page 17.

7 MR. CLOWARD: No objection, Your Honor.

8 THE COURT: Okay. Admitted.

9 (Defendant's Exhibit A17, page 17 admitted.)

10 BY MS. SANDERS:

11 Q This -- this is a -- this is a page that counsel  
12 questioned Mr. Farrales on a couple of days ago. Do you  
13 recall that?

14 A I do.

15 Q Okay. Can you explain to the jury what exactly this  
16 is?

17 A It's a mobility device written test. It's a test  
18 that Jay and other employees took during the classroom  
19 training portion specific to mobility devices.

20 Q Okay. And counsel asked him specifically about his  
21 answer to Question No. 5, and that's one that he got wrong.

22 A That's correct.

23 Q Okay. When the drivers are on the -- the  
24 paratransit bus, are they the only First Transit employee who  
25 has any responsibility for assisting passengers with mobility

1 devices?

2 A That's correct. I am not on the bus with them every  
3 day.

4 Q Okay. And does -- do the drivers get training  
5 specifically in how to utilize and work with passengers who  
6 have mobility devices?

7 A Yes.

8 Q Okay. Is this test limited to that type of  
9 situation where it was talking specifically about and only  
10 about mobility devices?

11 A That is correct. It's called the mobility device  
12 written test as it is specific to mobility devices.

13 Q Okay. Thank you. Did Jay also have a personnel  
14 file while he was working with First Transit?

15 A Yes.

16 Q Okay. And have you reviewed that document, as well?

17 A Yes.

18 Q Okay. Would you -- would you take a look at Exhibit  
19 A10, please.

20 A Yes.

21 Q Do you recognize that document?

22 A Yes.

23 Q Okay.

24 (Colloquy between counsel.)

25 MS. SANDERS: Your Honor, may I move for admission

1 into evidence of Exhibit A10 at this time.

2 THE COURT: Any objections?

3 MR. CLOWARD: No objections. I don't think there's  
4 anything redacted, so that's fine.

5 THE COURT: Okay. Admitted.

6 (Defendant's Exhibit A10 admitted.)

7 BY MS. SANDERS:

8 Q If you take a look at the personnel file and explain  
9 to the jury what additional kind of information is included in  
10 the personnel file.

11 A This is signature forms, information, more  
12 information from training, acknowledgement forms, things that  
13 Jay was required to sign throughout his employment, a couple  
14 other things from training that looks like it got put into his  
15 personnel file.

16 Q Okay. Take a look at page 51, if you will.

17 A Sure.

18 MS. SANDERS: If you'll bring that up.

19 BY MS. SANDERS:

20 Q Now, this is a document that counsel asked Matt  
21 Daecher about yesterday. Do you recall that testimony?

22 A Yes.

23 Q Okay. Can you explain to the jury what this is and  
24 how it's used?

25 A Sure. This is actually page 2 out of the operator

1 proficiency workbook which is the workbook that keeps track of  
2 all of the driver training information when they go through  
3 their new hire training. On page 2 it is specific to contract  
4 specific or other local training, things that would be  
5 required outside of what the First Transit minimum  
6 requirements were, which was what was on page 1.

7 Q Okay. And you signed this document?

8 A I did.

9 Q And along with -- is that Jay -- do you recognize  
10 Jay's signature on it?

11 A That's probably his signature.

12 Q Okay. The attorney yesterday asked Mr. Daecher  
13 about the CPR and first aid that's identified at the top of  
14 this page. Can you explain why that information is there?

15 A Well, these are examples of topics that could be  
16 covered. And as I mentioned on one of the other exhibits, the  
17 First Transit minimum standards, there are additional topics  
18 that are optional and those were CPR, first aid, and CDL  
19 training. So these are examples of what you would put here,  
20 how much time you would complete on there, and then there is a  
21 space for date completed. Down at the bottom where I actually  
22 handwrote, I handwrote what the contract specific topics were,  
23 the amount of time we covered on them, and the date that they  
24 were covered.

25 Q Okay. So does this -- is this intended to indicate

1 in any way that -- that Jay would be provided with CDL -- or  
2 CPR or first aid training?

3 A No.

4 Q Okay. Was it on this as an example of additional  
5 training only?

6 A Yes.

7 Q You were asked about that in your deposition, this  
8 document, as well, weren't you?

9 A Yes.

10 Q Do you recall that?

11 A Yes.

12 Q And did you give the same explanation to counsel at  
13 that time?

14 A I did.

15 Q Now, in going through the personnel file, did you  
16 identify or do you know whether or not there was ever any kind  
17 of disciplinary action taken against Jay?

18 A I don't recall seeing any in here. I'm not sure.  
19 I'd have to read every single document to know what was in  
20 here, but --

21 Q I think there may have been some issue with the  
22 lift, do you recall that?

23 A I don't know.

24 Q Okay. Do you recall whether or not there were ever  
25 any customer complaints against Jay?

1 A Not to my knowledge.

2 Q What about any complaints by RTC?

3 A No, not to my knowledge.

4 Q During the time that you were training and working  
5 with Jay, how was his -- his driving? How was he as a driver?

6 A He was a great driver. He was -- he was a safe  
7 driver. We didn't have any problems with him. As a matter of  
8 fact, he is one of the drivers -- we would give out at our  
9 monthly in-service meetings we would give out safety awards  
10 for people who had safe driving performance. And I know he is  
11 one of them that used to get those safe driving awards. I  
12 don't know how many years he got or the last time I gave him  
13 one, but I do know he was on that list.

14 Q Okay. Let's turn next to the employee handbook, the  
15 First Transit employee handbook that -- that has been talked  
16 about several times during the course of the trial here. Are  
17 you familiar with the employee handbook?

18 A I am.

19 Q Okay. To your knowledge, when did this employee  
20 handbook come out?

21 A Sometime in 2010.

22 Q You testified during prior examination by counsel  
23 that the employees are supposed to know the information in the  
24 employee handbook to the extent that it applies to them in  
25 whatever their market is. Can you explain what you meant by

1 that?

2 A Sure. This handbook is a general handbook that is  
3 -- it's branded First Transit. It's given out to every  
4 employee, all 15,000 employees across the country. Every  
5 location is different, so there's going to be some information  
6 in here that is specific to that particular location and not  
7 others. Prime example, there is information in here about  
8 fare box probing. Fare box probing is specific to fixed  
9 route. A paratransit contract employee would have absolutely  
10 no need to know or understand how to probe a fare box because  
11 it doesn't apply. They don't have those fare boxes on there.  
12 So does that mean that they don't need to read the  
13 information? They're responsible for knowing what's in the  
14 handbook. Does it apply to them? They're never going to use  
15 it. But is it information that they -- they read? Sure. Ask  
16 them to recall it? Maybe, maybe not.

17 Q So this employee handbook would be given to -- you  
18 mentioned a whole laundry list of different types of jobs that  
19 First Transit has for people, office people, mechanics,  
20 payroll, all kinds of different jobs. And would each one of  
21 those people be given the same employee handbook?

22 A Every employee receives a copy of this employee  
23 handbook regardless of their job title.

24 Q Now, to your knowledge, there's a couple of pages in  
25 the back and we have talked about those many times, the pages

1 on -- on first aid.

2 A Yes.

3 Q To your knowledge, when was that information added  
4 to the employee handbook?

5 A This 2010 book is the only book I've ever seen it  
6 in.

7 Q Okay. Is there anything in the handbook about CPR  
8 training?

9 A No.

10 Q Take a look at the -- if you will, at the table of  
11 contents on page 7. And that's the -- not the Bates number,  
12 it's the regular number.

13 MS. SANDERS: Can you highlight, Brian, down at the  
14 bottom where it says first aid tips.

15 BY MS. SANDERS:

16 Q First of all, the table of contents, is it just a  
17 regular table of contents identifying information that's  
18 included in the handbook?

19 A It is, with all of the section numbers and  
20 subsections under the table of contents.

21 Q Okay. And how are those two or three pages  
22 identified in the table of contents that pertain to first aid?

23 A It says first aid tips.

24 Q Does it -- what does it say about choking?

25 A Information.

1 Q Do you consider that to be informational?

2 A That's what it says, first aid tips and information.

3 Q Okay. Does that also apply to all employees, even  
4 office staff, mechanics, that kind of thing?

5 A The information? Sure.

6 Q Okay. Does it mean that those people, along with  
7 drivers, would be trained in first aid?

8 A No.

9 Q And you said already that any employee would be  
10 expected to review the handbook and be generally familiar with  
11 the information that's contained in that, and that would apply  
12 to all employees?

13 A Correct.

14 Q Okay. There's other sections of the handbook that  
15 provide what appear to be general information. Can you give  
16 some examples of the type of general information that is  
17 included in the handbook?

18 A Sure. On page 6 it talks about equal employment  
19 opportunity, so it talks about the EEO policy, which is  
20 general information that we comply with the law under EEO.  
21 Freedom of association policy, we comply with the law that we  
22 allow -- that's under Section 3, that we don't get involved in  
23 people with their ability to have a collective bargaining  
24 agreement. We don't -- we have no issue with that. So that's  
25 freedom of association.

1           There's attendance in here, there's benefits,  
2           benefits eligibility, hours of work, overtime, pay periods,  
3           general rules, career path, promotions, layoffs, performance  
4           evaluations, policies and procedures as it pertains to  
5           smoking, travel, dress code and appearance, photo  
6           identification that's required. And then there's a section  
7           for operators and safety sensitive employees, and then  
8           performance code, unacceptable behaviors which goes beyond the  
9           scope of safety. That's just unacceptable behaviors in  
10          general.

11          Q     Would it be fair to say that there are some -- there  
12          are some rules in the employee handbook?

13          A     Yes.

14          Q     But there's a lot of other additional information,  
15          as well?

16          A     Absolutely.

17          Q     Now, if there's -- you mentioned the -- the rate  
18          box, did you say? Something about the rate box that doesn't  
19          apply?

20          A     Fare box.

21          Q     Fare box.

22          A     Fare box.

23          Q     If there's something in the handbook that doesn't  
24          apply in a particular location, what are employees told about  
25          that?

1           A     They would be told that it doesn't apply.  You know,  
2  it's --

3           Q     Not that they shouldn't read it.

4           A     Not necessarily that they shouldn't read it, but  
5  just that it doesn't apply.  It's not -- you're not going to  
6  be trained on fare box probing, you do paratransit.

7           Q     Now, we talked about this a little bit before --

8                 MS. SANDERS:  You can take it down, Brian.

9  BY MS. SANDERS:

10          Q     -- but what exactly were paratransit drivers trained  
11  to do in the event of a medical emergency with a passenger?

12          A     Operators were trained under any emergency  
13  circumstance to contact dispatch if they have an emergency.  
14  They have an MBT or radio system in their vehicle that goes  
15  directly to dispatch.  It's not like a regular two-way radio  
16  where you have to wait until traffic is clear.  This  
17  particular system, you press a button, it goes straight to  
18  dispatch.  There is -- dispatch can answer right back and talk  
19  directly to the driver.

20          Q     We -- we heard Dr. Stein say last week that -- that  
21  the driver could have used a cell phone and called 911  
22  directly.  Does RTC have a rule pertaining to cell phone use?

23          A     No cell phones.

24                 MS. SANDERS:  Okay.  Would you pull up page 45 of  
25  the contract, please, Brian.  That's A16.

1 MR. CLARK: A15?

2 MS. SANDERS: A16.

3 MR. CLARK: And what page?

4 MS. SANDERS: 45.

5 MR. CLARK: 45 of the actual contract?

6 MS. SANDERS: Does that say cell phone use? I can't  
7 see it. Now I'm getting my numbers mixed up. Nope, that's  
8 his -- it's 45 of the actual contract.

9 MR. CLARK: There you go.

10 BY MS. SANDERS:

11 Q Okay. Under driving ability. What does it say  
12 there under the first -- the first bullet there?

13 A Where it says driving ability, each vehicle operator  
14 will be alert, careful, and competent in terms of driving  
15 ability and habits. Vehicle operators are prohibited from  
16 using personal cell phones or entertainment devices while  
17 operating in revenue service.

18 Q So according to the RTC contract, it would -- would  
19 not have been allowed for a driver to have or use a personal  
20 cell phone to contact 911; is that right?

21 A That's correct.

22 Q It seems kind of obvious to me, but what's the  
23 reason for not wanting drivers to have a personal cell phone?

24 A The National Safety Council will tell you that  
25 distracted driving is one of the main causes of accidents.

1 Having a cell phone is a distraction. It's a distraction  
2 while you're walking, it's a distraction while you're driving,  
3 even if it's not in your pocket, it's still a distraction.  
4 You have it in your bag, you can hear that it's ringing. You  
5 just -- you don't -- cell phones have no place in a commercial  
6 vehicle, really.

7 Q Okay. So you had an RTC rule saying no cell phones.  
8 Was that also a First Transit rule?

9 A It was.

10 Q Okay. And by the way, the jury has heard a little  
11 bit about this, but if there is a difference in -- in rules  
12 between RTC and First Transit, how is that resolved?

13 A The contract wins always. Always.

14 Q The jury has heard about the fact that under the RTC  
15 rider rules there was a rule against eating on the bus. What  
16 is your understanding about the reason for -- for that kind of  
17 a rule?

18 A It's a comfort rule. You know, is it for safety?  
19 Maybe. You know, it's -- you talk about you shouldn't eat or  
20 you could choke anywhere, and you can, but really it's a  
21 comfort rule.

22 Q Okay. Does that have anything to do with preventing  
23 spills, cleanliness, those kind of things?

24 A Well, trips and falls, number one. Accidents when  
25 you're talking about passenger injuries, even driver injuries,

1 slips, trips, and falls. So, yeah, if you're eating or  
2 drinking on the bus you could spill something and it can  
3 become a tripping hazard. Didn't keep trashcans on the bus to  
4 have -- allow people to throw their trash out, and they're  
5 responsible for whatever items they brought on the bus  
6 themselves.

7 Q Were the drivers trained in what the RTC rider rules  
8 were?

9 A They were given a copy of the paratransit rider's  
10 guide, yes.

11 Q Okay. Were they expected to tell every passenger  
12 about the rules?

13 A No, it wasn't one of those things that, okay, you  
14 get on the bus today, remember you have to follow the rules  
15 that are on this page or this is the rule, this is the rule,  
16 this is the rule. No, absolutely not.

17 Q Were the passengers expected to know the rules and  
18 follow the rules when they were riding the bus?

19 A Yes.

20 Q So as far as the -- the driver's responsibility with  
21 regard to the rider rules, was that like we've heard about, to  
22 enforce the rule in the event that he saw somebody violating  
23 the rule?

24 A Well, yeah. I mean, if you see somebody violating  
25 the rule, you're not just going to let them violate the rule.

1 You're going to tell them. But you can't tell them if you  
2 don't know.

3 Q I want to go over this again just to make it clear.  
4 How was a driver notified of the type of disability that a  
5 particular passenger had?

6 A They were notified in a very broad, generalized way  
7 on the manifest. You saw the manifest yesterday. There's  
8 that one letter code that is on the manifest that tells you  
9 what type of disability the person has. And really more than  
10 anything that is for you to know if you're going to pick up a  
11 person who has an H code, which is a hearing impairment,  
12 you're not going to be able to get out of the vehicle and say  
13 paratransit. Because if you're looking for somebody who has a  
14 hearing impairment, they can't hear you. If you're going and  
15 you're pulling up to somebody who has a V code, which is a  
16 visual impairment, you can't just walk up and expect that  
17 somebody knows that you're there. You just can't. So you  
18 need to know some information about the person's disability.

19 Q Did the drivers ever get any kind of specific  
20 medical information about any of the passengers that they  
21 transported?

22 A No.

23 Q And why is that? What's your understanding of why?

24 A You know, we -- we did the training for forever and  
25 I just went through another certification for it, it's HIPAA,

1 which is the Health Insurance Portability and Accountability  
2 Act. There is certain information that just cannot be made  
3 public to other people. That is my understanding. That is  
4 the training that I received. That is the training that we  
5 give to operators. You cannot talk about somebody's personal  
6 protected health information, which is PHI. You are not  
7 allowed to talk about that with other people. You just can't.

8 Q So that information is confidential and not given to  
9 First Transit or the drivers?

10 A That is correct.

11 Q Okay. Do you ever have -- have you ever had  
12 situations where a passenger or a care provider wants you to  
13 know about a particular issue with the passenger so that the  
14 drivers, where you ever have people call you up and give you  
15 that kind of information?

16 A They wouldn't give it to us. They would give it to  
17 the RTC, and if the RTC felt that it was information that we  
18 needed to know, it would be on the manifest under driver  
19 notes. And in some cases there is information that they give.  
20 For example, must call when you arrive at destination. That's  
21 information that either the parent or the caregiver or  
22 whomever has decided is pertinent to what the driver does, so  
23 the driver has to call dispatch so dispatch can call and let  
24 them know that they have arrived at the destination or the  
25 location.

1 Q If a particular passenger needs some type of special  
2 care or monitoring, are there options for that?

3 A Yes, there are.

4 Q And what is that?

5 A It's medical transportation, not paratransit  
6 transportation. And in this particular town, there is Life  
7 Trans, there is Medicar, Medivan, I forget what it's called,  
8 Carevan, something or other. They provide medical  
9 transportation for those passengers who need extra additional  
10 special care outside of what paratransit service is intended  
11 for.

12 Q Is paratransit service intended for people who do  
13 have some ability to -- to move around by themselves?

14 A Paratransit service is specific for people who are  
15 unable to ride the fixed route service for whatever reason,  
16 but are still able to ride some form of public transportation.  
17 Paratransit is public transportation. It's not privatized  
18 transportation like medical transportation. That's private.  
19 This is a public transportation. And how that falls into  
20 public transportation is because it's governed under the FTA  
21 and it's -- it's part of or the reason it exists is because of  
22 the public transportation system or the fixed route system.

23 Q Okay. Now, even with the paratransit system, if  
24 there is a passenger who either him or herself feels like they  
25 need some additional help on the bus, is there an option for

1 that?

2 A That would be through the eligibility process. That  
3 would be the -- traveling with a PCA.

4 Q Okay. And the PCA is somebody that is allowed to  
5 ride on the bus for free if the passenger decides that he or  
6 she needs that?

7 A That's correct.

8 Q Okay. Is there any requirement as far as you know  
9 once somebody is approved to have a PCA that they are only  
10 allowed to use the PCA to go to special -- or special unusual  
11 types of things?

12 A No. It's my understanding that if you have PCA, you  
13 take the -- it's your call. You take the PCA whenever you  
14 feel necessary to take the PCA.

15 Q Okay. So it's the passenger choice?

16 A Yes.

17 Q Can the driver make any kind of requirements that  
18 the passenger ride with a PCA and only with a PCA?

19 A No.

20 Q Do passengers who have been determined to be  
21 eligible for paratransit have any direct contact with First  
22 Transit?

23 A When they're on the bus, yeah.

24 Q Okay. As far as making reservations and that kind  
25 of thing for a ride, is that something that's handled through

1 First Transit, or how would that be -- how would that be  
2 handled?

3 A During the time that we held the contract it was the  
4 RTC's responsibility to do all of the scheduling. They're the  
5 ones. In the rider's guide it's their telephone number that a  
6 person would call to schedule their ride. The RTC had their  
7 own scheduling department that would put riders onto rides and  
8 they would give us that information. The rider would not  
9 contract First Transit.

10 Q Okay. So when Mrs. Chernikoff testified the other  
11 day that she thought she was calling First Transit about these  
12 different things, would she actually have been calling RTC?

13 A Yes.

14 Q Okay. Are there any telephone numbers for First  
15 Transit included in the rider guide, the RTC rider guide?

16 A No, the rider's guide is RTC's information and they  
17 -- they're not contracting with First Transit right now and  
18 they haven't always contracted with First Transit. So when  
19 they make that guide, it is generic to who the provider is  
20 because they would have to change the -- the guide every time  
21 they changed providers.

22 Q Okay. Let's go a little different direction here  
23 and talk about the mirror use. To your knowledge, did mirrors  
24 on the bus at the time of this incident, 2011, conform to  
25 federal and state regulations?

1 A Yes. To my knowledge, yes.

2 Q Okay. And what about industry standards? Are there  
3 industry standards to your knowledge as far as the type of  
4 mirrors that needed to be placed on the bus?

5 A Industry standards follow, Mr. Daecher talked about  
6 it yesterday, Federal Motor Vehicle Safety Standards, FMVSS.  
7 That's what the industry follows, as well.

8 Q Okay. And are there inspections of the buses by  
9 other federal types of agencies?

10 A We follow the DOT guidelines for a pre-trip  
11 inspection and we have a pre-trip inspection book that they're  
12 required to use to fill out.

13 Q Okay. We heard a little bit from Jay about the  
14 pre-trip inspection. Can you talk a little bit more about  
15 what that is?

16 A Sure. It's an inspection of the vehicle, exterior  
17 of the vehicle, interior of the vehicle to ensure that the  
18 vehicle is safe to operate for the day. If there is something  
19 that is wrong with the vehicle, then the driver would be  
20 responsible for writing that up on what's called the daily  
21 vehicle inspection report, DVIR. And if it was something that  
22 would take the vehicle out of service, taking that vehicle to  
23 maintenance or bringing to the attention of maintenance to let  
24 them know that this is what was wrong with the vehicle and  
25 either have it repaired so that it could go out on the road,

1 or have it taken out of service and the driver would be given  
2 a different vehicle to drive that day.

3 Q Okay. How are drivers trained, how was Jay trained,  
4 as far as mirror use?

5 A That he needs to adjust his mirrors to be able to  
6 see out of them and that he needs to check his mirrors. Smith  
7 system will tell you to check your mirrors under the keep your  
8 eyes moving key every five to eight seconds.

9 Q Okay. And what's the primary purpose of moving your  
10 eyes on the mirrors every five to eight seconds?

11 A There's a couple different purposes. Number one,  
12 not to have a fixed or blank stare. When you have a fixed or  
13 blank stare, the example that we would give is how much -- how  
14 far do you travel when you have a fixed or blank stare for a  
15 couple of seconds? When you are staring at something for a  
16 couple of seconds off the roadway, how far are you traveling  
17 blindly? Imagine somebody does this while you're driving and  
18 how far you travel, what hazards could come in front of you.  
19 That's why you shouldn't have a fixed or blank stare while  
20 you're driving. You just don't see. So scanning your  
21 mirrors, you need to know what's around you. You need to know  
22 what's in front of you. But you can't -- you can't scan your  
23 mirrors in such a sense where you're looking at this mirror  
24 and then you're looking at this mirror and then you're looking  
25 at his mirror and then you look back at the road because now

1 A Not talk, she asked me a question.

2 Q She asked you what happened and you gave her  
3 information as well?

4 A She didn't really talk to me.

5 Q Who else did you talk to while you were still at the  
6 scene before you went back?

7 A Just my supervisor.

8 Q And how did you get back to the -- you didn't drive  
9 the bus, did you?

10 A I did not.

11 Q Do you feel like you would have been in a state of  
12 mind to drive the bus back to the yard? How did you get back?

13 A I can't remember now. I think I drove the  
14 supervisor's -- I can't remember really how I got back. I was  
15 crying at that time.

16 Q Pretty upsetting experience for you, wasn't it?

17 A Yes. I think I was driving to go back and I was  
18 praying and doing all that. And I was crying at the time.

19 Q Did you know at that point that Harvey was dead?

20 A Yes, I know at that point.

21 Q When you got back to the yard, did you talk to  
22 anybody?

23 A I went to the supervisor's room where all like  
24 three, four, like Terry and Jen --

25 Q By Jen you mean Jennifer McKibbins?

1           A     Jennifer McKibbins. And they asked me about what  
2 happened and have to have paperwork.

3           Q     I was just going to ask you. Did you do another  
4 incident report when you got back to the yard?

5           A     Yes, that's correct.

6           Q     This one is Exhibit A1. Does this look like the  
7 incident report that you prepared when you got back to the  
8 yard?

9           A     Yes. That's my handwriting, yeah.

10          Q     Were you still pretty rattled at that point?

11          A     Yes.

12          Q     Did you try to put into that report as much as you  
13 could remember about what happened?

14          A     That's correct.

15          Q     Jay, how long was it that you stayed at the office,  
16 I call it the yard, before you, yourself went someplace else,  
17 home or wherever it is that you went?

18          A     Maybe a couple hours.

19          Q     Describe for the jury how you were feeling during  
20 that time.

21          A     When I was in the room?

22          Q     Well, when you got back to the office just until the  
23 time you went back home.

24          A     I was talking to Jen and Terry and telling the story  
25 and I was crying too.

1 Q Had you recovered from the initial shock of having  
2 somebody die on your bus?

3 A It's hard. It's hard for me. Especially when you  
4 think of somebody's trying to tell you that, you know, it's  
5 your fault, you know. That's hard for me.

6 Q When you look back on it, is there anything you feel  
7 you should have done differently that may have made a  
8 difference as far as changing the outcome for Harvey?

9 A No.

10 Q Is there anything you think you could have done to  
11 prevent his death?

12 A No.

13 MS. SANDERS: I don't have any other questions.  
14 Thank you.

15 THE COURT: You want to take a quick break before  
16 cross? So why don't we come back about 3:10. Again, don't  
17 talk about the case or research the case or form or express an  
18 opinion. Thank you.

19 (Jury recessed at 2:57 p.m.)

20 THE COURT: We'll see you in a bit.

21 (Court recessed at 2:58 p.m. until 3:14 p.m.)

22 (In the presence of the jury.)

23 THE COURT: Mr. Farrales, make yourself comfortable.  
24 Remember, sir, you are still under oath at this time.  
25 Counsel.

1 MR. ALLEN: May it please the Court, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. ALLEN:

4 Q Mr. Farrales, I have a few questions to follow up  
5 from what the defense counsel talked to you about.

6 A Yes, sir.

7 Q Do you remember defense counsel talked to you about  
8 RTC rules. Remember that?

9 A That's correct, sir.

10 Q When was the first time you were taught by First  
11 Transit that you were to follow RTC rules?

12 A I know that they told me about it because I remember  
13 the first time it was probably during the training or  
14 something.

15 Q And Harvey died in 2011, true?

16 A That's true.

17 Q I took your deposition in 2014; is that correct?

18 A That's correct, sir.

19 MR. ALLEN: I'd like to publish his deposition.

20 THE COURT: Okay.

21 THE CLERK: I don't have the deposition.

22 MR. ALVERSON: It was published earlier, I think.

23 BY MR. ALLEN:

24 Q So the first time you were told about RTC was in a  
25 training; is that correct?

1 A I think so, sir. I'm not so sure.

2 Q I'd like to turn your attention to page 56, line  
3 eight. Page 56, line eight. Are you with me, sir?

4 A Yes, sir.

5 Q Please read along with me. "And who is RTC?"

6 "Regional Transportation Commission."

7 "And what do you understand they do?"

8 "It's an interview form so they give an interview."

9 Question, "Okay. In general, do you know what RTC  
10 does? Not just on this form, but just in a bigger picture."

11 Answer, "Was this the interview form for?"

12 Question, "It was for Mr. Chernikoff. But I don't  
13 want to ask you a question about that, I want to understand,  
14 do you know what the role of RTC has."

15 "I don't know."

16 I read that correctly. Isn't that correct, sir?

17 A That's correct, sir.

18 Q Okay. That was 2004 and you were trained in 2007,  
19 true?

20 A Okay.

21 Q You were trained in 2007?

22 A That's correct, sir.

23 Q I'm sorry, 2014 was the deposition; is that correct?

24 A That's correct, sir.

25 Q Also I want to ask you a question about the mirrors.

1 Isn't it true that there's a mirror that you have that you set  
2 it to see the back. It's set to see the back of the inside of  
3 the car, back behind you. And it is set to see the inside of  
4 the car so you can see if the passenger's safe.

5 MS. SANDERS: Can I have a page reference, counsel?

6 BY MR. ALLEN:

7 Q And that is part of it, looking at it to check on  
8 the passengers.

9 MS. SANDERS: Can I --

10 MR. ALLEN: I didn't ask -- I'm just asking a  
11 question.

12 MS. SANDERS: Okay. You're not reading from the  
13 deposition?

14 MR. ALLEN: I'm asking him a question. I'm reading  
15 from the deposition.

16 MS. SANDERS: That's why I'm --

17 MR. ALLEN: I'm asking him a question.

18 MS. SANDERS: Okay. If you're reading from the  
19 deposition I need a page reference is what I'm saying.

20 MR. ALLEN: Thirty-two, page 32, line 18. It's not  
21 for impeachment, it's just for asking him a question, Your  
22 Honor. May I do it that way?

23 MS. SANDERS: I don't think she had an objection, I  
24 think she just wanted to know where you were in the  
25 deposition.

1 MR. ALLEN: Just wanted to make sure I wasn't  
2 improper here. Okay.

3 BY MR. ALLEN:

4 Q So I'm going to ask you the question again, sir.

5 A Yes, sir.

6 Q There's a mirror over here where you set it to see  
7 the back. It's set to see the back of the inside of the car  
8 back behind you.

9 A Where was the number?

10 Q I'm going to ask you a question, sir. I have to  
11 finish my question.

12 A All right, sir.

13 Q And it's set to see the inside of the car so you can  
14 if the passenger's safe. And part of it is looking to check  
15 to see if the passengers are safe. True? That's what that  
16 mirror is, true?

17 A That's true.

18 Q You talked to the defense counsel about the two  
19 statements that you made, one was to the police and the next  
20 one was to the company. Do you remember that, sir?

21 A That's correct.

22 Q I'd like the first put up, the first one that she  
23 showed which is Plaintiff 3, page nine, the Las Vegas  
24 Metropolitan Police Department Voluntary Statement. Go up to  
25 the top, please. It was made at 7/29/11 at 8:20 in the

1 morning. Do you see that on your screen?

2 A Yes, sir.

3 Q It says, "I dropped off my other client at 1801 and  
4 on my way to drop off Harvey Chernikoff he was talking to me.  
5 Then I noticed he stopped talking to me. I tried talking to  
6 him and he wasn't responding. I looked at the mirror and I  
7 saw him drifting from his seat." Did I read your handwriting  
8 correct?

9 A That's correct, sir.

10 Q The next exhibit that was shown, Exhibit 14, A1-01,  
11 which is the operator incident report. If we can go to the  
12 top. Mr. Farrales, you've seen this before, obviously.

13 A Yes, sir.

14 Q You just went over it with your counsel. That's  
15 dated the same date, 7/29/11. Is that true, sir?

16 A That's true.

17 Q Okay. So if we go out here there's a little stamp  
18 right there and it says 11:00 on July 29th. Did I read that  
19 correct, sir?

20 A That's correct, sir.

21 Q So this is about two hours and 40 minutes after the  
22 incident, right?

23 A That's correct, sir.

24 Q Let me read this. "I dropped off," makes sure I'm  
25 reading your handwriting correctly, "somebody at," is that

1 Riges, R-i-g-e-s?

2 A Regal.

3 Q "3010 Regal Avenue at 1801. On my way to drop off  
4 Harvey Chernikoff he was talking and making conversation with  
5 me. And suddenly he stopped talking. I asked him if he was  
6 okay but no response. I looked at the mirror and I saw him."  
7 Did I read that correct?

8 A That's correct, sir.

9 Q And what I would like to do, defense counsel went  
10 over this video, I'd like to back up the video to just before  
11 Mr. Chernikoff started eating his sandwich at 7:56:40. What I  
12 would like you to do, sir, we're going to play it until the  
13 very first time you say anything. And at any time right  
14 before he starts to eat his sandwich till you say something,  
15 will you tell the jury -- will you tell this man over here  
16 stop the video and tell us whether you looked in the mirror to  
17 see if your passengers were safe.

18 (Video played)

19 MS. SANDERS: Your Honor, I kind of lost track of  
20 the question here. We've watched a long ways here and I'm not  
21 really sure what the question was, what you wanted him to do.

22 MR. ALLEN: Can it be read back here? No?

23 BY MR. ALLEN:

24 Q The question, if you remember, sir, was tell me when  
25 you look in the mirror to see if the passengers were safe.

1 Remember that question?

2 A Yes.

3 Q You're still looking for that, aren't you, sir?

4 A The question?

5 Q Yes. Still looking to see, tell this jury when you  
6 looked in the mirror to see if your passengers were safe,  
7 true?

8 A All the information that you were asking me on this  
9 one like --

10 Q One question, sir. At the start of the videotape  
11 before he started to eat, I asked to run it and for you to  
12 stop and tell this gentleman, I pointed to him and said tell  
13 him to stop when you first look in your mirror to see if your  
14 passengers were safe. With me?

15 A I wasn't understanding the question really.

16 Q You weren't?

17 A No.

18 Q Let me ask you this. Had you looked in the mirror  
19 to see if your passengers were safe up to this point?

20 A I'm sure I'm scanning the mirror, yes. The question  
21 you were asking me if I look. I look all over the place, yes,  
22 sir.

23 Q I asked if you looked in the mirror, the mirror we  
24 talked about to see if your passengers were safe, true?

25 A That's true.

1           Q     And up until 8:00 and 56 seconds, from the time I  
2 started this video at 7:56:40, had you looked in your mirror  
3 to see if your passengers were safe?

4           A     I probably did not look at all. I'm scanning, I'm  
5 driving. A recollection of it in a situation, this -- I was  
6 driving and I'm sure at one point I probably scanned it.

7           Q     To look and see if your passengers were safe?

8           A     Yes.

9           Q     Was it back --

10          A     I couldn't say, I couldn't tell exactly just by  
11 looking at it. If you have a [indiscernible] like a video of  
12 my face, but I couldn't remember. I'm sure I probably looked  
13 at the mirror, scanning it.

14          Q     When Harvey was eating were you scanning it?

15          A     I'm not sure. I am driving. My focus is to drive  
16 and get to the place at that time, yes.

17          Q     And as well to keep the passengers safe.

18          A     That's true.

19          Q     My question, sir, from the time that we've been  
20 showing the video until this point, did you ever look to see  
21 if your passenger was safe, Mr. Chernikoff?

22          A     Looked?

23          Q     Yes.

24          A     You know, I know that he is behind me and I'm  
25 driving and I know that he's not doing anything that is -- can

1 caught my attention that, you know, would probably  
2 [indiscernible] that he would be doing something crazy or  
3 anything like standing up or anything like that. I went on  
4 driving.

5 Q Is that your testimony up until this point?

6 A That's true.

7 Q At any point [indiscernible] we were talking about  
8 the mirror, you had the mirror --

9 A Yes, sir.

10 Q -- to see if the passengers were safe. At any point  
11 up until the time you saw this video, did you look in that  
12 mirror to see if Mr. Chernikoff was safe?

13 MS. SANDERS: Objection, asked and answered about a  
14 dozen times.

15 THE COURT: I don't think he's answered, actually.  
16 Please answer the question.

17 A I probably looked. Probably scanned the mirror  
18 and --

19 BY MR. ALLEN:

20 Q And what?

21 A You were asking me to see if they safe. I was  
22 driving. I know that they were behind me and there's nothing  
23 drew my attention. And I know that they must -- probably be  
24 safe or asleep, you know, doing something.

25 Q Up until this point.

1           A     But like you say -- I don't know what you mean by to  
2 check if they are safe. I'm always checking if they are, but  
3 there should be something that would draw my attention to say  
4 that he's not safe or doing something, you know.

5           Q     Are you telling the jury that up until this point  
6 nothing caught your attention to see if he was safe?

7           A     That's true.

8           Q     That's looking at that mirror set to see the  
9 passengers, true?

10          A     That's true.

11          Q     Now, I'd like to keep rolling the video and I want  
12 you to tell me the first time -- the next time, excuse me, you  
13 look in the mirror and see if Mr. Chernikoff is safe. Do you  
14 understand that question, sir?

15          A     The next time --

16          Q     Yes, sir.

17          A     -- to look in the mirror to see.

18          Q     From this point forward.

19          A     Yes.

20          Q     You stop and tell Mr. Brian down here stop and say  
21 that's when I checked in that passenger mirror to see if Mr.  
22 Chernikoff was safe. Do you understand the question?

23          A     Yes, I understand it. But I couldn't remember even  
24 if we go to --

25          Q     You couldn't remember? Is that what you're saying?

1           A     I couldn't like remember the details of it at that  
2 moment. I'm sure I look at the mirror. I scanned it, I'm  
3 sure of that. But is there something so extraordinary that I  
4 seen. So I'm in the seat driving and going through the person  
5 and I'm concentrating on that and looking or glancing.

6           Q     All right. So you're looking and glancing and now  
7 you tell me when you're looking and glancing -- looking and  
8 glancing includes looking in the passenger mirror we talked  
9 about, right?

10          A     That's true.

11          Q     So you can tell the jury when you first notice  
12 anything unordinary, your words.

13          A     Okay, sir.

14          Q     Let's roll the video and tell him to stop.

15          A     Okay.

16                                 (Video played)

17          A     This video now?

18                 MR. ALLEN: Stop the video.

19 BY MR. ALLEN:

20          Q     What's that?

21          A     This video now, sir? This is the video now that you  
22 were talking about?

23          Q     Yes, sir. Do you remember my question?

24          A     Yeah. Out of the ordinary that you can see and I  
25 tell Mr. Brian to stop.

1 Q Did you see anything yet?

2 A Not yet.

3 (Video played)

4 A Around this, before we stop --

5 MR. ALLEN: Stop.

6 A -- before we stop I glance at the mirror and it is  
7 like nothing.

8 BY MR. ALLEN:

9 Q At this point you think? Is that what you're  
10 saying?

11 A At this point I probably like looked but it doesn't  
12 -- nothing, nothing at all.

13 Q Did you see Harvey at all?

14 A No.

15 Q You didn't see him at all. Can we roll it again and  
16 tell me when you notice something was wrong?

17 A Yes.

18 (Video played)

19 A I thought that was, that time.

20 BY MR. ALLEN:

21 Q That's the first time you noticed?

22 A No. I thought that was [indiscernible] we are about  
23 to stop. I look at the mirror before we stopped like right  
24 there when we were at the stoplight. That's when I started  
25 looking.

1 Q Is that when you noticed something had to be wrong?

2 A No. We continue on with the --

3 Q When you looked in the mirror at this point in time,  
4 did you see anything?

5 A No, not this point.

6 Q The fact that you didn't see anything in the mirror,  
7 did that concern you?

8 A No. I like kind of asking questions about what was  
9 he doing and why he's not there, kind of like understanding  
10 what's going on with why I don't see him, you know. We  
11 continue on.

12 Q Yes, sir.

13 (Video played)

14 A Was that when we stopped?

15 BY MR. ALLEN:

16 Q You stopped the bus or stopped the video?

17 A No. When we stop around this area right here I'm  
18 sure I look at the mirror. I couldn't see nothing.

19 Q Were you concerned then? Is that when you got  
20 concerned?

21 A I was still asking myself where at was he, was he  
22 sleeping?

23 Q You wondered where is he.

24 A Yeah, where is he.

25 Q Looking in the mirror and you can't see him, where

1 is he. Okay. Ready to go on, sir?

2 A Yes, sir.

3 (Video played)

4 A Before that, because I'm questioning where he at and  
5 thinking that he must be sleeping or napping. That's when I  
6 checked on the left side, like hoping, you know, to make sure  
7 whether he must be over there on my left-hand side and then  
8 look like over and I couldn't see him. My head pop out over  
9 there and I did --

10 BY MR. ALLEN:

11 Q Your head popped up?

12 A When I did that and I did this to check on him, the  
13 first time I check on him to the left was checking on him  
14 whether he's on the side because I was thinking he must be  
15 napping and was leaning over to the side or leaning like this  
16 to the side and I couldn't see sign of him. And when I turn  
17 over here again to check and there was like a shadow body or  
18 him on the floor doing that. So that's when I was concerned  
19 so I looked, double check on that mirror and I went this and  
20 then I was -- I saw him and not really sure what's going on.  
21 And I moved my head forward closer to that mirror and I see  
22 him. I saw him over by -- and then that's when after that I  
23 said Harvey, Harvey, are you okay.

24 Q We'll back up the video again to the same time,  
25 7:56:47. This question now, sir, relates to the statement you

1 gave to the police and the statement you gave to your company  
2 where you said, "He was talking and then suddenly he stopped  
3 talking." So I'd like to play the video and you tell me when  
4 he suddenly stops talking.

5 A I was talking about that time that we were in that,  
6 driving, I was driving and we were having a conversation. I'm  
7 just --

8 Q That was before he was eating.

9 A That was before he was eating. At that point, you  
10 know --

11 Q So that's what you meant when you told the police  
12 and your company suddenly he stopped talking; is that true?

13 A That's true. That was the last conversation and he  
14 was trying to make conversation with me.

15 Q I'd like to back up to the very first part of the  
16 video. I would like to show about a minute of this. This is  
17 a part of the video that your defense lawyer showed you at the  
18 beginning. Okay? I'd like you to watch it and listen to it  
19 because I want to ask you a question again.

20 A Okay, sir.

21 Q Do you understand me?

22 A I understand you, sir.

23 Q All right. Thank you.

24 (Video played)

25 MR. ALLEN: Stop right there.

1 BY MR. ALLEN:

2 Q Is that his lunch pail that he put on the bus there?

3 A Yes.

4 Q See that?

5 A Yes.

6 Q Did you notice him putting that lunchbox next to  
7 him?

8 A Yes.

9 Q You saw that.

10 A I know that he has a bag. He always carry it.

11 Q He always brings that red one.

12 A I'm not sure if that's red or blue. I know that he  
13 has something that -- a lunchbox or something like that.

14 Q Once again, I want you to listen and I'll ask you a  
15 question.

16 A Okay.

17 (Video played)

18 Q Was he talking about a bus accident that happened  
19 the week before?

20 A I couldn't understand him really.

21 Q He was a nice fellow, wasn't he, sir?

22 A He was.

23 Q You liked talking to him, didn't you?

24 A Yes.

25 Q At some point in time he asked you [indiscernible].

1 Do you remember that?

2 A I can't remember that.

3 Q All right. Sir, right before we left you were  
4 talking to your lawyer and I wrote down that you felt  
5 helpless.

6 A Yes, that's correct.

7 Q And this company trained you on page 70 of the  
8 employee manual whether that would have -- if you would have  
9 still felt helpless?

10 A Like I said before, that position, you ask me about  
11 it. And what I said was if I have training of some sort and  
12 you ask me about if I can, if I would do it with or without  
13 the company policy and I have a professional, you know, and I  
14 know exactly what going on I probably would do something like  
15 that, like to help.

16 Q You wouldn't have felt so helpless, would you, sir,  
17 if they had trained you?

18 MS. SANDERS: Objection, calls for speculation.

19 A I could have probably done something like when I  
20 have the knowledge and I know what the situation is I could  
21 probably have done something more other than hey, Harvey,  
22 Harvey, wake up or something, rubbing the back or doing all  
23 this, you know.

24 BY MR. ALLEN:

25 Q Yes, sir. I know.

1 A I probably would have -- I just --

2 Q Had no training.

3 A No training and I don't know the situation and don't  
4 know what's going on even with or without. I don't really  
5 know if I can really do something like that and if I would be  
6 able to recognize what the trouble is and do a maneuver or do  
7 whatever, hemlock or whatever or do whatever it is that a  
8 person with knowledge of hemlock or heart attack or whatever.

9 Q Yes, sir. Absolutely.

10 MR. ALLEN: No further questions, Your Honor.

11 THE COURT: Redirect.

12 REDIRECT EXAMINATION

13 BY MS. SANDERS:

14 Q Jay, when you said hemlock did you mean Heimlich?  
15 We've been hearing about Heimlich here. Is that what you  
16 meant?

17 A That's what I meant.

18 Q Okay. Jay, all these things that you see on this  
19 thing that counsel has brought up here, did you see anything  
20 like that with Harvey Chernikoff, either at the time or on the  
21 video?

22 A No.

23 Q Do you see any -- we've gone through this before,  
24 but did you see any clutching the throat, any gagging, any  
25 coughing, anything that would have given you an indication

1 that he was choking?

2 A No.

3 Q So even if you were trained in Heimlich, would you  
4 have even thought to use that maneuver in the case of Harvey  
5 Chernikoff?

6 A I don't know that he was choking. I don't know that  
7 something like that is going on. I'm not going to do anything  
8 -- I don't have any idea that he's choking or anything, why  
9 would I do it.

10 Q Mr. Allen asked you to tell this jury at what point  
11 you were seeing and scanning the mirrors and that kind of  
12 thing. Do you have perfect recall of every single time that  
13 you moved your eyes around the mirrors?

14 A No. That's why I said it could be this time or  
15 could be that time. I don't know.

16 Q During the time that you were driving on what was  
17 showing on the video, do you feel comfortable that you were  
18 scanning the mirrors as you were trained to do?

19 A Yes.

20 Q Did you see anything out of the ordinary with Harvey  
21 Chernikoff during that time?

22 A No.

23 MS. SANDERS: No further questions.

24 THE COURT: Is there anything else?

25 MR. ALLEN: No further questions, Your Honor.

1 THE COURT: Thank you, sir. If you'd like to step  
2 down next to your counsel.

3 THE WITNESS: Thank you.

4 THE COURT: Your next witness.

5 MS. SANDERS: Jennifer McKibbins.

6 JENNIFER MCKIBBINS, DEFENDANT'S WITNESS, SWORN

7 THE CLERK: Please be seated. Would you please  
8 state and spell your first and last name for the record?

9 THE WITNESS: Jennifer McKibbins. J-e-n-n-i-f-e-r,  
10 M-c-K-i-b-b-i-n-s.

11 THE COURT: Whenever you're ready.

12 MS. SANDERS: Your Honor, may I approach the witness  
13 with a stack of exhibits just to make it easier for her?

14 THE COURT: Yes.

15 DIRECT EXAMINATION

16 BY MS. SANDERS:

17 Q Hi.

18 A Hi.

19 Q Would you start by telling the jury a little bit  
20 about your educational background?

21 A Sure. I have a bachelor's degree in organizational  
22 security and management. I am certified by the World Safety  
23 Organization as a certified safety and security director. I  
24 have my transportation, safety and security program  
25 certification from the Transportation Safety Institute, which

1 is certified by the U.S. Department of Transportation. I am a  
2 certified Smith System instructor from Smith System and I am a  
3 certified instructor from the U.S. Department of  
4 Transportation.

5 Q The jury's heard a little bit about the Smith  
6 System, but can you just elaborate and give them a little bit  
7 of better idea about what that is?

8 A It's a defensive driving course that we teach all of  
9 our employees, drivers, technicians, anybody who's going to  
10 drive a vehicle. It's the -- Mr. Daecher was explaining it  
11 this morning. It's the five keys to space cushion driving.  
12 He gave that acronym. And it teaches operators how to  
13 maneuver in traffic.

14 Q Is it a defensive driving type of system?

15 A Yes, it's defensive driving, correct.

16 Q How long did it take you to get all of those  
17 certifications, degrees and that kind of thing?

18 A Years, a couple of years.

19 Q Was part of that on-the-job training or was it all  
20 classroom?

21 A Most of it was classroom training, some of it was on  
22 the job. Obviously, the more on-the-job training you have the  
23 better you get at something. To get my TSSP or  
24 transportation, safety and security program certification,  
25 that required on-the-job training as well. There were five

1 courses that I had to go through. They were week-long courses  
2 that you had to actually sit through classroom and do  
3 practical work as well. One of the classes, just as an  
4 example, is a bus collision investigation. So I had to go out  
5 and actually investigate a collision and do measurements of  
6 yaw marks and skid marks and things like that and use my  
7 wonderful math skills to figure out what the speed of a  
8 vehicle was based on yaw marks and skid marks.

9 Q Would you tell them a little bit about your work  
10 experience?

11 A Sure. I have been in transportation since I was 18,  
12 so that's quite a long time. I've done quite a few things in  
13 the transportation industry. I've worked -- I started with  
14 Laidlaw in 2002. I started as a sales manager for a company  
15 that actually was sold by Laidlaw to somebody else. So then I  
16 went to the paratransit company which was run by Laidlaw. I  
17 started there as a driver. I was in management prior to that  
18 at an airport shuttle company prior to the sales manager job  
19 and I was burned out from being a manager at the time, so I  
20 wanted to drive. I wanted to see what it was like to be a  
21 driver, so I did that.

22 From that point I was a road supervisor. I went out  
23 and investigated accidents. I was a trainer. I was a  
24 training manager and then safety security and training manager  
25 at the Las Vegas location.

1 Q That's a lot of stuff.

2 A It is.

3 Q How many years did that cover?

4 A From -- I started with Laidlaw as a driver in 2003  
5 and I was the safety security and training manager through  
6 2014.

7 Q And by that time the company was First Transit?

8 A Yes. First Transit and Laidlaw merged at the end of  
9 2007, beginning of 2008.

10 Q Now when you were training as a driver for Laidlaw,  
11 was that as a paratransit driver?

12 A Yes, that's correct.

13 Q Okay. And what kind of training did you have to do  
14 the job as a paratransit driver?

15 A I did not have my CDL, so they did the classroom  
16 training and through the classroom training they also, at that  
17 time, trained us to get our permit because we had to have a  
18 commercial driver's license. So we went through a couple of  
19 days of training to get our commercial driver's license. Went  
20 down, took the written exam to get our permit and then we went  
21 through the classroom training and learned a multitude of  
22 things through the training program, how to map to figure out  
23 how to get from point A to point B, sensitivity training,  
24 defensive driver training, MDT training, which is the computer  
25 system that's on the bus where we get our manifest from,

1 manifest training so that we would know how to fill out our  
2 paperwork. Things like that.

3 Then I went through the behind-the-wheel training  
4 portion which is where they taught us how to be a defensive  
5 driver, take the information that we learned in the classroom  
6 and put it into practical use behind the wheel. After the  
7 behind-the-wheel training I was road tested for my commercial  
8 driver's license and then we did revenue training or cadet  
9 training is what it's called. It's where you go out with  
10 another instructor, certified instructor, and you're actually  
11 going out to pick up passengers with this certified instructor  
12 so that you can take everything that you learned in the  
13 classroom, put it together with what you've learned in the  
14 behind-the-wheel training and actually apply it when you're  
15 picking up passengers.

16 Q Now, what is the difference between a commercial  
17 driver's license and a regular driver's license that most of  
18 us probably have? What additional things do you have to know  
19 or be able to do?

20 A By law, a commercial driver's license, you have to  
21 take a special written test for that. You have to take a  
22 written knowledge test. You have to take a practical exam as  
23 well. It's different now than what it was when I first got my  
24 commercial driver's license back in 2003. The requirement now  
25 is that you have to do a pretrip inspection as well. That was

1 not required in 2003 when I got my license. However, it was  
2 not required after that, that anybody who had a commercial  
3 driver's license that they had to go back and do the pretrip  
4 inspection, it just started whatever year it was that anybody  
5 going forward had to have that pretrip inspection as part of  
6 their commercial driver's license.

7 Q When you were trained as a driver with Laidlaw, did  
8 you have any kind of first aid training?

9 A I did not.

10 Q Have you had any first aid training since that time?

11 A I have not.

12 MR. CLOWARD: Your Honor, I'm going to approach  
13 again on this.

14 THE COURT: Same objection?

15 MR. CLOWARD: Yeah. I'd like to show the  
16 transcript.

17 THE COURT: Sure.

18 (Bench conference.)

19 MR. CLOWARD: I'm sorry, Judge, [inaudible] --

20 THE COURT: What's your objection?

21 MR. CLOWARD: She was specifically asked about  
22 [inaudible] in her deposition she testified she doesn't know  
23 [inaudible] --

24 THE COURT: I think the question was whether she had  
25 any training [inaudible] Laidlaw.

1 MR. CLOWARD: [inaudible]

2 MS. SANDERS: [inaudible]

3 MR. CLOWARD: [inaudible]

4 MS. SANDERS: My question [inaudible] -- I'm just  
5 asking [inaudible] --

6 MR. CLOWARD: [inaudible] specifically asked her  
7 right there [inaudible] 2007, '8, '9 [inaudible]

8 THE COURT: I don't know it has anything to do with  
9 her question.

10 MR. CLOWARD: [inaudible]

11 THE COURT: I don't know what her next series of  
12 questions are going to be. She just asked her if she  
13 personally had training.

14 MR. CLOWARD: She's trying [inaudible] now she's  
15 trying to [inaudible] --

16 THE COURT: About her own training? [inaudible]  
17 She's testifying about her own training.

18 MR. CLOWARD: [inaudible]

19 MS. SANDERS: [inaudible]

20 THE COURT: So what's your next question because I  
21 can't figure it out.

22 MS. SANDERS: [inaudible]

23 THE COURT: The only thing I honestly took this as  
24 was foundational, just as far as her skills, training,  
25 anything else.

1 MR. CLOWARD: [inaudible] attached to the contract,  
2 that's never been produced [inaudible] absolutely true  
3 [inaudible]

4 THE COURT: Okay. But we've already discussed that  
5 handbook's not coming in, the [inaudible] not coming in.

6 MR. CLOWARD: [inaudible]

7 THE COURT: What are you going to ask her next?

8 MS. SANDERS: [inaudible]

9 MR. CLOWARD: [inaudible]

10 THE COURT: I don't think she testified regarding  
11 the training that Farrales had, she just testified regarding  
12 the training she had.

13 MR. CLOWARD: [inaudible] that's unfair to us.

14 THE COURT: I don't know they're going to think that  
15 because it's not what I thought either. I thought it was just  
16 foundational.

17 MR. CLOWARD: [inaudible]

18 THE COURT: I think you're a few steps ahead of  
19 where we are. I don't think — Ms. Sanders isn't going there.

20 MR. CLOWARD: [inaudible] to the jurors so they  
21 understand it [inaudible]

22 MS. SANDERS: [inaudible]

23 MR. CLOWARD: [inaudible]

24 MS. SANDERS: [inaudible]

25 THE COURT: Okay. Again, I just took it as

1 foundational. I really had no -- I don't have any idea that  
2 she's going where you believe she's going.

3 MR. CLOWARD: [inaudible] She's not allowed to talk  
4 about [inaudible] training was [inaudible] unfair to us  
5 [inaudible] she comes in here and says Laidlaw does this,  
6 Laidlaw does that [inaudible].

7 THE COURT: Are you going to ask her to testify to  
8 anything beyond the scope of her [inaudible]

9 MS. SANDERS: [inaudible]

10 MR. CLOWARD: [inaudible]

11 THE COURT: If she's testified about it in her  
12 deposition I'll let her testify regarding what she testified  
13 in her deposition.

14 MR. CLOWARD: She testified [inaudible] --

15 MS. SANDERS: [inaudible]

16 THE COURT: How did you designate her?

17 MS. SANDERS: [inaudible]

18 MR. CLOWARD: [inaudible]

19 THE COURT: [inaudible] deposition is how was she  
20 designated by the defense?

21 MR. CLOWARD: [inaudible]

22 THE COURT: Okay. Why don't you go check? How is  
23 she designated?

24 (End of bench conference.)

25 THE COURT: Are you guys doing okay? It's toward

1 the end of the day. You're good? Okay.

2 MS. SANDERS: Your Honor, may I?

3 THE COURT: Uh-huh. Please.

4 (Bench conference.)

5 THE COURT: Is she designated a second time?

6 MS. SANDERS: [inaudible]

7 THE COURT: So where is your designation for the  
8 corporate entity, First Transit, okay. So she is designated  
9 in a personal capacity as that happens to be the  
10 [indiscernible] for First Transit.

11 MS. SANDERS: [inaudible]

12 THE COURT: It looks like she's designated in a  
13 personal capacity.

14 MS. SANDERS: [inaudible]

15 THE COURT: It just happens that she's also the  
16 [indiscernible] for First Transit.

17 MR. CLOWARD: [inaudible]

18 THE COURT: Hold on a second.

19 (End of bench conference.)

20 THE COURT: Ladies and gentlemen, why don't you just  
21 take a quick break? Come back in 10 minutes, please. Again,  
22 don't talk about the case, don't research the case, don't form  
23 or express an opinion.

24 (Jury recessed at 4:15 p.m.)

25 THE COURT: Okay. So looking at that designation,

1 it does look like that she's been designated -- she was  
2 designated in an individual capacity because it does not say  
3 Jennifer McKibbins as person most knowledgeable for First  
4 Transit. So it looks like she's done individually. And it  
5 just appears that, I don't know if it's coincidental is the  
6 right word, but it appears that she just likewise is who  
7 they've designated as the PMK for First Transit. So  
8 obviously, when you took your deposition you did it under the  
9 notion of doing a 30(b)(6) deposition. But it appears that  
10 you could have also taken it in her individual capacity as  
11 well, but did not do so for whatever reason.

12 MR. CLOWARD: As Ms. Hyson was trying to explain to  
13 the Court, Commissioner Bulla has done CLEs that when you do a  
14 -- and this is the way we did it based on the way I was taught  
15 is when give notice you designate the individual as a 30(b)(6)  
16 and individually. That way if there are any other problems  
17 then you don't have to bring that person back for a second  
18 deposition, you get it all done at the same time. I guess my  
19 concern is our belief is that it was done as a 30(b)(6) and as  
20 her individually at the same there.

21 There were a lot of objections that were made by  
22 counsel, I believe 54 objections as to speculation and scope  
23 of what she was allowed to talk about. We tried to talk  
24 about, you know, the contract between RTC and First Transit  
25 and RTC and Laidlaw and there were objections saying, you know

1 -- and she even testified she doesn't know these things.  
2 We've got it right here in the depo. So to now come in --

3 THE COURT: Hold on, though. She's the PMK for  
4 First Transit but she was not brought forth as a PMK for  
5 Laidlaw, right?

6 MR. CLOWARD: Correct. It was my understanding she  
7 never been identified as a 30(b)(6).

8 THE COURT: Then that would be different than her  
9 own experiences with Laidlaw, correct? The way I interpreted  
10 Ms. Sanders' question was basically foundational as far as her  
11 background skills, training with, you know -- I didn't really  
12 perceive her as testifying as a corporate representative of  
13 Laidlaw. It just happens to be part of her background.

14 MR. CLOWARD: I didn't mean to give the impression  
15 that she was deposed as a 30(b)(6) for Laidlaw. She was  
16 clearly designated as a 30(b)(6) for Transit, so I'm sorry if  
17 I conveyed that.

18 THE COURT: No. I'm trying to understand your  
19 position because I guess I don't.

20 MR. CLOWARD: Our position is that when she was  
21 deposed the 30(b)(6), the notice was for her as a 30(b)(6) at  
22 First Transit and also individually.

23 THE COURT: Okay.

24 MR. CLOWARD: And when we deposed her about the  
25 Laidlaw policies, you know, like if you look at the very first

1 segment of questions, the very first segment of questions  
2 started off with the 2011 choking policy. And her testimony  
3 -- can we actually have her step out?

4 THE COURT: Sure. That's fine.

5 MR. CLOWARD: Starting on page 140, Mr. Allen is  
6 asking her, you know, tell us about the choking policy, tell  
7 us about these different things.

8 THE COURT: Tell us about whose policy, First  
9 Transit?

10 MR. CLOWARD: First Transit.

11 THE COURT: Okay.

12 MR. CLOWARD: Because the handbook, Exhibit 2 that  
13 we've gone over, this page 70 is what was in place at the time  
14 of the incident. So her testimony starts off and she starts  
15 to indicate well, you know, it would be my speculation that it  
16 would then have become part of the training and that it would  
17 have been added as topics to be included in the training. But  
18 the contract was negotiated and signed in 2007. This is a  
19 2010 document. This is on page 141, line 17.

20 So Ms. McKibbins is basically saying you're asking  
21 me about a 2010 document, but the contract between RTC and  
22 Laidlaw was negotiated in 2007. So then Charles starts to ask  
23 questions about that, well, tell me about what was in place in  
24 2007. And her testimony was basically that she wasn't able to  
25 tell. That's when Charles kept drilling down. Well, do you

1 have a copy of the policy? Is there any to find out? And she  
2 says well, yeah, I think we've got it somewhere in storage, we  
3 have actually 2007, 2008, 2009 policies. And he asks do you  
4 have those, can you provide them? And she says yes. We've  
5 never received 2008. We never received 2009. Only 30 days  
6 before trial we received 2007.

7 MS. HYSON: But she does provide information about  
8 what was contained in that handbook.

9 MS. SANDERS: She very clearly says that the 2010  
10 handbook, the first aid information was new as of that  
11 version, so therefore, would not have been in any prior  
12 versions at the time that the contract was entered.

13 THE COURT: And she already testified earlier when  
14 she was called by the plaintiff as to the fact that that book  
15 has been modified over time.

16 MR. CLOWARD: The 2010 book. The 2010 First Transit  
17 book. The First Transit book has been modified. In her  
18 deposition she testified that there were 2007 books, 2008  
19 books and 2009 books, but we don't have any employee  
20 acknowledgments from Mr. Farrales receiving any other Laidlaw  
21 books. We only have employee acknowledgments of Mr. Farrales  
22 receiving the First Transit books.

23 MS. SANDERS: I don't think that's true.

24 MR. ALLEN: May I address the Court, Your Honor? I  
25 took the deposition and I clearly asked her if she was a

1 30(b)(6) witness of First Transit and my understanding of a  
2 30(b)(6) deposition is that it's incumbent on counsel to  
3 educate that witness, to bring forth a corporate spokesman  
4 that can state the knowledge of all the corporation and that  
5 includes, even if it's not this person, it's another person.  
6 They can go outside and they can hire somebody to educate that  
7 person.

8 That person's supposed to have all the knowledge and  
9 it's incumbent upon defense counsel to educate that person.  
10 And if they can't educate that person, they are subject to  
11 sanctions if sanctions or motions are brought forth. And in  
12 this deposition I counted 54 times I asked her questions to  
13 which defense counsel objected to speculation.

14 THE COURT: Why did we -- when was that deposition?  
15 It was awhile ago, wasn't it?

16 MS. SANDERS: Yeah.

17 THE COURT: Why didn't you bring it up in front of  
18 either me or the discovery commissioner? Because, I mean, you  
19 could have asked for -- if either of us agreed with your  
20 position we could have ordered that she be deposed again,  
21 probably at their expense.

22 MR. ALLEN: It was April of 2015.

23 THE COURT: So we've had almost a year.

24 MR. ALLEN: But I think when she says things are  
25 speculation, this witness is speculation, I don't think this

1 witness is allowed to talk about things that are speculation.  
2 We had that option to come in here and address defense counsel  
3 about it.

4 THE COURT: So what is it you don't -- I'm sorry, I  
5 am getting confused with this because what you guys are  
6 arguing to me seems to be unrelated to what she was asking.  
7 So maybe you're so far ahead because I don't have all the  
8 evidence like you do. What is your concern she's going to go  
9 into?

10 MR. CLOWARD: Thank you, Your Honor. Thank you for  
11 giving me the opportunity. So the defense's position is from  
12 2007 when RTC negotiated the contract with Laidlaw, it was not  
13 part of the contract to have first aid, Heimlich, CPR in the  
14 contract. And the way that we negotiated that is after the  
15 contract was signed we send over a handbook and the things  
16 that are in the handbook are the things that are done.

17 MS. SANDERS: No.

18 MR. CLOWARD: May I finish, please? So the problem  
19 is is that 2007 handbook that supposedly was supposed to be  
20 attached to the contract negotiations has never been provided.  
21 They've had the opportunity. Mr. Allen talked to Ms.  
22 McKibbins in her deposition about that, like what was RTC's  
23 expectations at the time. Could RTC have expected Laidlaw to  
24 perform these things? And the answer was I don't know what  
25 they expected, I didn't negotiate the contract. That was Ms.

1 McKibbins' testimony. I don't know, I didn't negotiate the  
2 contract.

3 Well, in order for -- so essentially, Ms. Sanders  
4 now is trying to say -- she's trying to explain away why  
5 there's a choking and Heimlich in the First Transit manual but  
6 why they don't have to do that. The position is well, they  
7 don't have to do that because it never was in the initial  
8 negotiations. The problem is is that the document that  
9 surrounds the initial negotiations has never been produced  
10 until a month ago.

11 So fast forward, they're saying well, look, yeah,  
12 it's in this First Transit policy and here it is, page 70, but  
13 we don't have to do page 70 because it was never in the  
14 initial negotiations when RTC negotiated the contract with  
15 Laidlaw.

16 THE COURT: Is that where you're going?

17 MS. SANDERS: Well, he's misstating it a little bit.  
18 They do have the contract, they have the actual contract from  
19 RTC between RTC and First Transit. It identifies the training  
20 that they expect to provide, that they are going to provide.  
21 She did testify in her deposition that first aid was not part  
22 of the training that was included in the RTC contract. The  
23 first aid that's in the -- the section on first aid that is in  
24 the First Transit handbook was new, she said, in 2010 when  
25 that handbook came out. She did testify in her deposition

1 that there were prior Laidlaw handbooks that did not include  
2 that information.

3 So the fact that she was not the person that entered  
4 into the negotiations for the contract doesn't mean she  
5 doesn't know what's in it. She also testified that part of  
6 her job is to know and comply with the things that are in the  
7 RTC contract. And that contract went from 2006 or '7,  
8 whenever it was entered, until 2014 when the contract ended.  
9 And she was a safety manager and, you know, had to be familiar  
10 with it in order to be sure that they were complying with the  
11 provisions of the contract.

12 THE COURT: So basically the drivers of First  
13 Transit are not bound by the pages in that book because it  
14 wasn't mandated by RTC, rather it was just First Transit going  
15 over and beyond?

16 MS. SANDERS: It's a little different than that.  
17 The contract itself did not provide for first aid training.  
18 It's offered, but they did not do that. And that was part of  
19 the contract that was entered into in 2007 and carried  
20 forward. Now, he talked about the handbook as being the basis  
21 for what they're going to provide. That's not true. They  
22 give them the handbook -- when they're negotiating, they give  
23 them their bid for the information that they're -- their price  
24 and different things like that. We don't have that. I  
25 haven't ever seen that.

1           What we do have is the contract and that does have  
2 information in it about training. It's got a matrix of the  
3 training that they want to have provided. And that's what was  
4 signed and that's what was done. The employee handbook, what  
5 she testified to is that that was something that was given to  
6 RTC for information purposes so they would know what the First  
7 Transit information was for their employees. It was not the  
8 basis, however, for the contract.

9           THE COURT: So when the family members -- okay.  
10 When someone signs up and they get approved for First Transit  
11 and they get that book that tells them all the rules or riding  
12 the First Transit bus, that book may have stuff that First  
13 Transit's not necessarily bound by because it wasn't part of  
14 their contract with RTC? That's a little misleading.

15           MS. HYSON: That's the RTC book.

16           MS. SANDERS: That's a RTC book, but it's a rider  
17 book. It's information that's given to the rider. It's not  
18 something that's part of the contract between RTC and First  
19 Transit. That's a completely separate thing, Your Honor. The  
20 RTC, we've referred to it as a rider guide, is information --  
21 once somebody has been approved to ride the paratransit, it's  
22 information that is sent to that passenger with phone numbers,  
23 contact information. We talked primarily about the rules, but  
24 there's a lot of other information.

25           It's got information about PCAs, about having

1 companions ride with them, about having baggage and things  
2 like that that they can bring on board with them, who to call  
3 in case there's some kind of a complaint or emergency. It's  
4 got a lot of different information but it's information that  
5 is given to the passenger.

6 THE COURT: How in the deposition would plaintiff  
7 counsel been able to question Ms. McKibbins about what  
8 portions of the book First Transit was mandated to follow and  
9 which portions were just superfluous if they did not have the  
10 Laidlaw one to compare with at the time?

11 MS. HYSON: We're talking about different books.

12 MS. SANDERS: Yeah.

13 THE COURT: All right. Then I'm getting totally  
14 confused. The Laidlaw book you don't have.

15 MR. CLOWARD: Correct.

16 MS. HYSON: The Laidlaw handbook, just the handbook.

17 MR. CLOWARD: To fill one gap, counsel has indicated  
18 something. The RTC contract with Laidlaw, it actually does  
19 reference look, Laidlaw will provide a copy of the handbook to  
20 RTC. So that was the basis of the questioning by Mr. Allen of  
21 Ms. McKibbins is what were the expectations of RTC. And she's  
22 like well, I would have to assume, I would have to guess  
23 because I don't know what -- I didn't negotiate the contract.  
24 The contract between RTC and Laidlaw attached a copy of the  
25 employee handbook or the employee handbook was supposed to be

1 attached.

2 We attempted to try and find out the differences in  
3 the deposition, but Ms. McKibbins said well, to the best of my  
4 recollection, you know, I think that the last time I looked at  
5 it, but, you know. Mr. Allen said well, can you be absolute,  
6 can you be absolute. Well, I can't. I think that the last  
7 time I looked at it it wasn't in there. And then he asks her  
8 well, can you provide it to us, do you still have a copy of  
9 it. Does First Transit -- he actually asked, does First  
10 Transit still have a copy of it and the answer was yes. And  
11 he said and you, Ms. McKibbins have helped with production of  
12 documents and she says yes. And he says well, can you provide  
13 that. Yes.

14 And then, you know, a year and a half or a year or  
15 however, it hasn't been a year, or however many months go  
16 past. And then, if you remember, we almost came to trial last  
17 summer when we had some issues. I think I did. But anyway,  
18 it's not until 30 days ago that the employee handbook is  
19 turned over. So yeah, we could have -- it would have been  
20 nice to dig down and find out hey, is this even the book that  
21 was attached to the RTC contract.

22 THE COURT: I don't know how she'd even be qualified  
23 to testify to it now. I mean, if she didn't have any  
24 knowledge of it at the time of her deposition.

25 MS. SANDERS: She was an employee. She was an

1 employee of Laidlaw and she did testify about it in her  
2 deposition. She was asked and she said I don't believe that  
3 this was a handbook, meaning the First Transit one, that this  
4 was a handbook that was done at the time and submitted with  
5 the proposal. That's first. Second, in the contract there's  
6 a provision for what the training requirement is by the RTC of  
7 what they require and first aid and choking was not a required  
8 topic to be taught to our operators upon hire or ongoing  
9 training.

10 So she did testify about that. She testified about  
11 what's in the contract and she knows about what's in the  
12 contract.

13 THE COURT: Okay. So --

14 MR. CLOWARD: Your Honor, if I may?

15 THE COURT: I can't follow you guys. I'm sorry.

16 MR. CLOWARD: I know, it's really confusing. What  
17 Ms. Sanders is citing is what the policies were, not what was  
18 in the handbook. Specific questions were about the handbook.  
19 So if she testifies and just says, oh, yeah, that's what our  
20 policy, we didn't have to do this, this and this and we hone  
21 in and say okay, where in the handbook is that?

22 THE COURT: You mean you can't impeach her.

23 MR. CLOWARD: Exactly, because it's just -- she's  
24 just saying -- I mean, how are we to confirm what she's  
25 saying, you know. They say it's attached to the 2007 contract

1 that they don't provide the document that's supposedly  
2 provided.

3 THE COURT: So you never received the documentation.

4 MR. CLOWARD: Correct.

5 MS. SANDERS: They have the RTC contract, which is  
6 all we have. Whatever the proposals were that Laidlaw did or  
7 bid or anything like that, I haven't seen that myself. What  
8 he's talking about is the version of the employee handbook.  
9 It's an employee handbook. It doesn't have anything to do  
10 with anything other than that. The Laidlaw employee handbook  
11 that was prior to First Transit coming in is what we're  
12 talking about here. And I've told him and I told Your Honor,  
13 we won't try to get that into evidence. I respect your  
14 decision that it was produced late.

15 THE COURT: My concern is, and I'm sorry for cutting  
16 you off, my concern is that she's made statements. Those  
17 statements can arguably be verified or impeached by production  
18 of the book that was never produced.

19 MS. SANDERS: Well, the handbook has been produced.  
20 It's what Your Honor said we can't get into now.

21 MS. HYSON: So if he'd like to impeach her with it  
22 he has it to impeach her.

23 THE COURT: You have it now?

24 MR. CLOWARD: That's the one that was produced 30  
25 days ago. The problem is we don't know if that's what

1 attached to the RTC contract.

2 MS. HYSON: Nothing is attached to the RTC contract.  
3 He's mischaracterizing that. After the contract is entered  
4 into, then a copy of the handbook is provided to RTC. A copy  
5 of the handbook is not attached to the contract.

6 THE COURT: The book he's been now provided late is  
7 the one that was provided subsequent to the contract?

8 MS. HYSON: To the initial contract with Laidlaw,  
9 yes. So if he thinks that it would -- could be used to  
10 impeach her, he has it. It's not very long, it's in fact much  
11 shorter than the RTC -- I'm sorry, the First Transit handbook.  
12 He's had it for 30 days. It's less than 20 pages I think. So  
13 if he thinks there's something in there that he could impeach  
14 her with, he has that to impeach her and she testified to the  
15 contents of it at her deposition almost a year ago. So while  
16 we don't intend to bring the actual exhibit in, they were  
17 aware of her testimony regarding that information, so that  
18 information should be admissible.

19 MR. CLOWARD: Your Honor, if I may. Ms. Sanders  
20 just acknowledged that nobody has the actual handbook that was  
21 provided with the RTC or after the RTC contract was signed.

22 THE COURT: I thought she was saying it's the one  
23 that was ultimately given to you.

24 MR. CLOWARD: I don't know if that's correct or not.  
25 We have to take their word for it. And my thought is if you

1 give me the document 30 days before trial, where are the other  
2 documents. And also, there's a form that I've already shown  
3 to the jury that shows CPR and first aid, four hours of  
4 training. So why are you putting four hours of training on  
5 this document when you're claiming that it wasn't trained.  
6 And then you give me the only handbook when you admit that  
7 that's 2007, 2008 and 2009 handbook that have never been,  
8 still to this day, have never been provided. And we don't  
9 know.

10 We had to basically rely on the representation that  
11 this is the 2007 handbook that would have been attached to the  
12 RTC contract, which is unfair to us because we have to be able  
13 to know for certain that that's what the document is. And to  
14 this point, nobody has produced that document or a chain of  
15 command, like, hey, here's a letter from First Transit or  
16 excuse me, Laidlaw to RTC saying here's a copy of this  
17 handbook per the contract between us.

18 THE COURT: Did you set the PMK of Laidlaw?

19 MR. CLOWARD: No, because they were basically  
20 purchased by First Transit. Ms. McKibbins was --

21 THE COURT: Okay. I got your point. And other than  
22 the request in the deposition, did you do a formal discovery  
23 request?

24 MR. CLOWARD: Absolutely. Even in our deposition  
25 notice there were documents that we requested, like bring all

1 safety policies, procedures, manuals, everything. Our  
2 deposition notice is like the PMK notice, it's probably 15  
3 pages long. I mean, it's long.

4 MS. HYSON: It's like three pages long.

5 MR. CLOWARD: The 30(b)(6) notice?

6 MS. SANDERS: The document, if I may, Your Honor,  
7 the document that he showed to Mr. Daecher this morning, Ms.  
8 McKibbins was -- the page that shows the CPR on it and the  
9 first aid, she was asked about that in her deposition. I will  
10 ask her about it again. There is an explanation for that.  
11 She said at the time of her deposition this is the form. What  
12 they actually train them on was handwritten on. Mr. Cloward  
13 knows that because it was in the deposition. So she certainly  
14 has information as both percipient witness and a 30(b)(6)  
15 witness. But the handbook itself is the handbook she was able  
16 to retrieve out of storage. First Transit doesn't have the  
17 contract anymore either. The Laidlaw, I don't remember what  
18 year the Laidlaw one was. I don't know if there's a -- the  
19 one that we produced --

20 MS. HYSON: I think it's for 2007.

21 MS. SANDERS: -- would have been --

22 MR. CLOWARD: While they're looking for that, Your  
23 Honor --

24 THE COURT: Counsel, if you had been provided that  
25 sooner, what would you have done?

1 MR. CLOWARD: I would have --

2 THE COURT: What have you been prohibited from doing  
3 by not being produced sooner?

4 MR. CLOWARD: Confirm that that's the actual  
5 document that contains the negotiated duties between RTC and  
6 Laidlaw.

7 MS. HYSON: Except you asked for that stuff from  
8 RTC.

9 MR. ALLEN: That was also the time I could take the  
10 deposition. That was the only time I could depose anybody.

11 MR. CLOWARD: My notice is nine pages. I'm happy to  
12 provide a copy to the Court to see. I mean, we were very  
13 detailed in what we requested. We attempted, we did our due  
14 diligence to discover these things. Mr. Allen asked the  
15 questions in the deposition, tell us about this, tell us about  
16 this. She basically indicated that she would be speculating.  
17 I can provide this if you'd like.

18 THE COURT: Yes.

19 MR. CLOWARD: These are basically the topics that we  
20 set out.

21 THE COURT: Thank you. I mean, there's a couple  
22 references to safety manuals of First Transit, at least three  
23 references that I've found already. All right. Is there  
24 anything else?

25 MS. SANDERS: If Your Honor wants to look at the

1 Laidlaw handbook that is at issue here, I mean, I've already  
2 said repeatedly we won't try to get it in, but it is just a  
3 basic employee handbook. It's not something that the contract  
4 that made the basis for the contract -- this is the 2006  
5 handbook. It is the handbook that would have been in effect  
6 at the time that the contract was entered into.

7 THE COURT: But at the time of the deposition she  
8 didn't know --

9 MS. SANDERS: She didn't have it. She was an  
10 employee, she knew that there wasn't anything and testified to  
11 that, that there wasn't anything in it about first aid.

12 MR. CLOWARD: Your Honor, if you would like to  
13 review the questioning that starts at page 140 and goes for  
14 about six pages you can see the efforts that Mr. Allen made  
15 to try and discuss the training and that policy.

16 THE COURT: And did you get that contract?

17 MR. CLOWARD: We at least have the contract, we just  
18 don't have -- when you read the language of the contract, the  
19 contract says look, at a minimum you need to do these couple  
20 of things, and then it lists like seven things that they need  
21 to do. And then it goes on to say that, you know, it would be  
22 further defined in an employee handbook that would be given  
23 from the contractor to RTC. Your Honor, I'm happy to show you  
24 that specific reference. And it actually says RTC will not  
25 withhold approval unreasonably.

1 THE COURT: I'm sorry. You did receive, though, the  
2 handbook from 2007 and that's when the contract was entered  
3 into and it was valid until 2014. But even then, in 2010  
4 there was a new employee -- it was added to the employee  
5 handbook.

6 MR. CLOWARD: Well, we don't know if the manual  
7 that's been provided just 30 days ago is the actual one that  
8 was provided, first initially provided. We also don't have  
9 the 2008 and 2009 ones that were also referenced in Ms.  
10 McKibbins' testimony.

11 MS. SANDERS: But, Your Honor, they did get the  
12 2006, which was the manual or the employee handbook that would  
13 have been in effect at the time the contract was signed.

14 THE COURT: The contract was 2007.

15 THE MARSHAL: [inaudible]

16 THE COURT: Just tell them they can go. They've  
17 already been admonished. Please have them come back at 9:30.

18 So what are your next questions going to be, Ms.  
19 Sanders?

20 MS. SANDERS: I'm sorry, Your Honor?

21 THE COURT: What are your next questions going to  
22 be?

23 MS. SANDERS: It really was just background. I was  
24 going to go directly into what kind of training did she have  
25 to become the safety security manager at First Transit, how

1 did she get to First Transit.

2 THE COURT: Foundation.

3 MS. SANDERS: I'm sorry?

4 THE COURT: I'm saying that's foundation.

5 MS. SANDERS: Yeah. How long she's there, what her  
6 job duties were, her understanding of the requirements of the  
7 ADA, First Transit's rule. I don't want to give them my  
8 whole --

9 THE COURT: I understand. I get it. That's all  
10 foundational. I guess I'm still just confused on plaintiff's  
11 position. So you have the contract, so you did receive the  
12 contract. You received the manual that would have been around  
13 the same time as the contract, right? You received it late.

14 MR. CLOWARD: Correct, 30 days ago.

15 THE COURT: But you didn't receive all the ones in  
16 the interim?

17 MR. CLOWARD: Correct.

18 THE COURT: What would receiving the ones in the  
19 interim -- I mean, if there's testimony in 2010 there was a  
20 change where the stuff was added into it, so what -- it would  
21 seem to me that the important one to receive for purposes of  
22 impeachment would be the one that's -- that went with the  
23 contract.

24 MR. CLOWARD: Which we've never received.

25 THE COURT: That's not the 2006?

1 MR. CLOWARD: That's what they're saying. That's  
2 what they've produced, but we don't know that. We weren't  
3 given the opportunity to discover that. That's the --

4 THE COURT: Was she asked in here whether it was the  
5 -- I mean, if she's the PMK for Laidlaw was she asked -- she  
6 would be the PMK for Laidlaw because Laidlaw was now First  
7 Transit, but was she ever asked if it was the 2006 or 2007  
8 that was provided to RTC in association with the negotiation  
9 of the most recent contract?

10 MR. CLOWARD: Yes. She was asked, if I understand  
11 the question right --

12 THE COURT: Because the contract was for several  
13 years apparently.

14 MR. CLOWARD: Yeah.

15 MS. SANDERS: Yeah, and it just carried forward.

16 THE COURT: So, I mean, they had things they had to  
17 do. So there was a contract entered and obviously, there's a  
18 handbook that was produced to RTC somewhere in time close to  
19 when the contract was entered, right, and presumably is the  
20 2006.

21 MR. CLOWARD: Correct.

22 THE COURT: It would have been probably, I'm sure,  
23 the 2006 or 2007 if the contract was in 2007.

24 MS. HYSON: They're not changed every year.

25 MR. CLOWARD: And other thing is that she was asked

1 about the contract between RTC and Laidlaw and what the  
2 expectations were, like did RTC have an expectation that  
3 choking, Heimlich and CPR would be provided and her response  
4 was I don't know, I didn't negotiate the contract.

5 MS. SANDERS: Her answer was actually no, she said  
6 no.

7 MR. CLOWARD: I'll find that. Well, I guess, it's  
8 just, it's unfair. We had the deposition off, we sat down and  
9 tried to depose her on these issues during the discovery  
10 period. We sent out the notice. We did all of these things  
11 during the deposition and now she's basically advancing a  
12 theory that -- not a theory, but testimony that we never were  
13 allowed to verify. You know, it's like Ronald Reagan says  
14 trust but verify. You know, we shouldn't have to just trust  
15 what they tell us, we should be able to verify that and that's  
16 how --

17 THE COURT: How would you have verified it if she's  
18 the PMK?

19 MR. CLOWARD: We would have verified it by digging  
20 down and saying okay, let's actually take this manual out,  
21 let's lay some foundation, let's talk about is this the manual  
22 that would have been provided as a result of the RTC contract  
23 negotiations with Laidlaw, which she was asked that question  
24 -- she was asked certain questions about the contract  
25 negotiations. She said I don't know, I'm not the person that

1 negotiated the contract.

2 THE COURT: So she doesn't -- you've never been able  
3 to confirm with her prior to this trial that the 2006 was in  
4 fact the correct one.

5 MR. CLOWARD: Exactly.

6 THE COURT: Just assuming that it was.

7 MR. CLOWARD: Exactly. That's the whole -- that's  
8 why I've been such a pain in the Court's butt. I'm sorry.  
9 That's exactly the point.

10 THE COURT: I think you have a point, counsel.

11 MS. SANDERS: Well, we won't get the -- we won't try  
12 to introduce the Laidlaw handbook, but she still has basic  
13 information as an employee about what's in the contract and  
14 she was an employee there at the time and was not trained in  
15 first aid.

16 THE COURT: Well, is she going to have any more  
17 knowledge today than she did at her deposition?

18 MS. SANDERS: About?

19 THE COURT: That would be troubling if she suddenly  
20 had more knowledge today than she did at her deposition.

21 MS. SANDERS: I'm not sure I follow your point.

22 THE COURT: I'm saying, does she suddenly remember  
23 it during trial versus remembering it at the time of  
24 deposition.

25 MS. SANDERS: Whether she had first aid training?

1 THE COURT: Well, no, no. I think that's all  
2 foundational as to what she went through and everything else.  
3 But, you know, sometimes witnesses have better recollections  
4 when they're sitting in court versus what they did during the  
5 course of the deposition. I just want to make sure that's not  
6 the case.

7 MS. HYSON: About what, Your Honor?

8 THE COURT: Well, you know, she testified that she  
9 -- I mean, she basically, from what they're telling me, she  
10 testified that she wasn't sure about the manual that  
11 ultimately went back to RTC at a point in time after the  
12 contract was entered.

13 MS. HYSON: She does testify in her deposition, Your  
14 Honor, that the handbook that was provided to RTC at the time  
15 of the contract did not provide for first aid training. She  
16 does testify to that on page 140 of her deposition.

17 THE COURT: Okay. And it's not until 2010 that the  
18 handbook required first aid training.

19 MS. HYSON: Correct. And she does testify to that  
20 in her deposition. So they had opportunity to follow up on  
21 that in the deposition. If they didn't, then that was their  
22 option.

23 MS. SANDERS: We never got a discovery request after  
24 that for Laidlaw handbooks. We went back and looked at --  
25 what happened is we went back and looked at it and thought oh,

1 she mentioned this, let's see if we have it if she can find  
2 the one that would have been in effect. And that's when we  
3 got the first Laidlaw handbook and produced it.

4 MR. CLOWARD: Produced it, you know, 30 days ago.

5 MS. SANDERS: Yes.

6 MR. CLOWARD: And one other thing that I think is  
7 significant, Your Honor --

8 THE COURT: All right. So what was known was,  
9 because it came out in the deposition, was at the time the  
10 contract was entered it was not required by RTC, right? So  
11 that fact was in fact known. And at some point -- yeah.

12 MR. CLOWARD: That's per her testimony. That's how  
13 we're prejudiced. That's why we're so significantly  
14 prejudiced is that we have to rely on her. We cannot verify  
15 -- we can't verify what she said because when we attempted to  
16 that in her deposition she says I don't know, I'm not the one  
17 that negotiated the contract.

18 Now they're trying to come up here and importantly,  
19 Your Honor, when she took the stand she's the corporate  
20 spokesperson. But because Ms. Sanders realizes that she  
21 didn't address it and couldn't address it in her deposition,  
22 she's trying to backdoor it and say well, she's testifying as  
23 an individual. That's not fair to us because we tried to get  
24 the information when we deposed her and now she's coming  
25 forward and saying well, it's my individual, you know, I was

1 an employee. Well, you're taking this --

2 THE COURT: Hold on. I think she can be asked about  
3 the first aid as far as in her individual -- she's designated  
4 as an individual [indiscernible]. I think that as far as  
5 foundational questions, she can be asked about the training  
6 she underwent. I mean, I think her answers are out there as  
7 far as her capacity as a representative of First Laidlaw -- I  
8 mean Laidlaw, now First Transit as far as whether it was or  
9 was not required by RTC. I mean, she testified that it was  
10 not -- it wasn't required by RTC. She testified to that in  
11 the deposition.

12 MR. CLOWARD: Well, I don't -- my understanding in  
13 reading the deposition is that when she was asked whether or  
14 not there was an expectation by RTC of the drivers to do  
15 certain things, she testified I don't know because I didn't --

16 MS. HYSON: You're cutting off the sentence, Ben.

17 THE COURT: What page are you on?

18 MS. HYSON: On page 140 it says, "Okay. I don't  
19 believe this is the handbook that was done at the time and  
20 submitted with the proposal, that's first. Second, in the  
21 contract there's a provision for what the training requirement  
22 is by the RTC of what they required. And first aid and  
23 choking was not required topics to be taught to our operators  
24 upon hire or ongoing training. So to answer your question, I  
25 don't know that they had an expectation for us to teach first

1 aid and CPR and how to aid in choking as it was not stated in  
2 the contract."

3 MR. CLOWARD: But what Ms. Hyson is leaving out is  
4 at another point in the deposition when she was asked about  
5 the negotiations of the contract, she said I don't know, I'm  
6 not the person that negotiated the contract.

7 MS. SANDERS: Well, that's the negotiations. It's  
8 not what's in the contract itself.

9 THE COURT: Yeah, but she may not know what the  
10 negotiations were but she knows what the end result was,  
11 correct?

12 MS. SANDERS: That's what she testified to in her  
13 deposition.

14 MR. CLOWARD: Well, if you believe what she's  
15 saying. But if you have --

16 THE COURT: Well, wouldn't that be impeachment?

17 MR. CLOWARD: You have no way to -- I have no way to  
18 impeach her. That's because, you know, that's how we're  
19 prejudiced. We have no way to impeach her.

20 THE COURT: You have the contract and you have the  
21 book, right?

22 MR. CLOWARD: We have the claimed book. We have the  
23 supposed book. We don't have the book that was actually that  
24 we know that there's even foundation. There's been no  
25 foundation that this -- that what they produced, zero

1 foundation that what they produced is what RTC received after  
2 the contract was signed. There's zero foundation to that.  
3 And she can't lay the foundation because she says that she  
4 didn't negotiate it. And that's the whole -- that's the  
5 conundrum is that she's testifying to it, yet she has no  
6 foundational basis to know about it.

7 THE COURT: Wait a minute. Taking the book aside,  
8 they've said they're not going to introduce the book  
9 themselves. But that doesn't -- the fact -- that does not  
10 mean that she may not have knowledge of what resulted from  
11 that contract, which she clearly testifies she does, which is,  
12 "There was no requirement for the first aid and choking." I  
13 mean, they've said they're not going to introduce the book  
14 itself. So they're kind of limited to what she does have  
15 firsthand knowledge of.

16 MR. CLOWARD: Well --

17 THE COURT: I mean, the only way you're going to  
18 know would be to I guess depose individuals who negotiated the  
19 contract.

20 MR. CLOWARD: I mean, I guess the problem that I  
21 think that needs to be addressed is that it's not appropriate  
22 to allow her, either she's Jen McKibbins, so if Ms. Sanders  
23 wants to call her twice, that's fine so that we can prepare.  
24 That's a whole other reason is we're, you know, our  
25 understanding and expectation is that she's the corporate

1 designee. That's how she was announced. She never announced  
2 to the jurors in a potential list of witnesses hey, this is  
3 Jen McKibbins and she's going to tell you her experience as a  
4 bus driver. She said hey, this is Jen McKibbins and she's the  
5 director of corporate safety for First Transit.

6 So that's the cross-examination that I prepared over  
7 the last week or however long we've been in trial. And to  
8 allow Ms. Sanders to get this training, this Laidlaw training  
9 is as her individual capacity, that's what's unfair and that's  
10 what I'm unable to prepare for.

11 MR. ALLEN: And when I took the 30(b)(6) deposition  
12 I'm taking a corporation. So I'm not asking about her  
13 background and training, I'm asking about the corporation. So  
14 she was introduced as the corporation, she is the corporation,  
15 she's the voice of the corporation.

16 THE COURT: I get that, but she's also designated in  
17 an individual capacity. It just sounds like you only deposed  
18 her in her corporate capacity.

19 MS. SANDERS: He didn't ask any questions in the  
20 deposition about her own training and --

21 THE COURT: I mean, clearly, this information in  
22 this deposition is within her corporate capacity and I think  
23 that she would in fact have the ability to testify. She's  
24 designated as the PMK.

25 MR. CLOWARD: Your Honor, I think that a fair

1 proposal would be Ms. Sanders can lay foundation of what her  
2 personal experience is, but that the jurors need to be -- it  
3 needs to be clarified Ms. McKibbins, now you're testifying in  
4 your individual capacity right now. And then if they need to  
5 recall her or however that happens, it needs to be stated  
6 clearly Ms. McKibbins, now you're as the director of corporate  
7 safety. And I don't think that there is any reference if I go  
8 up and cross-examine her hey, you didn't -- how come you  
9 haven't provided this Laidlaw manual to us. I don't think  
10 she's able to say well, we gave it to you 30 days ago. That's  
11 unfair to us. It's not been produced. It's just as though  
12 it's not been produced and I think that's a fair limitation.

13 MS. SANDERS: I'm not going to mention the manual.  
14 It's not coming in so I'm not going to mention it. But it  
15 wouldn't be fair for him to mention it if I'm not going to  
16 bring it in.

17 THE COURT: I thought we already discussed this.  
18 It's not coming in. And I -- unless I'm not thinking through  
19 your position correctly, I'm not sure that it would -- I don't  
20 see how it would necessarily prejudice you to maybe preface  
21 that she's in her knowledge within her personal capacity  
22 versus her knowledge as the corporate representative of First  
23 Transit.

24 MS. SANDERS: It's all within her personal  
25 knowledge, Your Honor. So to try and differentiate what

1 information she knows as Jen McKibbins versus information that  
2 is strictly as a PMK, it's all within her personal knowledge.

3 MR. ALLEN: And that's the reason why it was  
4 confusing taking her deposition. So she should be able to say  
5 let's talk about your personal knowledge, now let's talk about  
6 you as a corporate representative. Let's talk about this  
7 corporation. You are the corporation. So it's going to be  
8 confusing for the jury as to who's talking here, it's a  
9 person. I just think there should be some division. It  
10 confused me when I took her deposition.

11 THE COURT: Here's the thing, though. Listening to  
12 her testimony, it was my impression that she was testifying as  
13 far as her personal knowledge because Ms. Sanders did in the  
14 progression of laying out the background for all her  
15 questions. I mean, obviously, it was her skills, training and  
16 everything else.

17 MS. SANDERS: But she will testify about the -- she  
18 was involved in the training of Jay Farrales, she knows about  
19 the contract, she has to deal with the contract with RTC all  
20 the time to be sure there's compliance. That's all within her  
21 personal knowledge of her job and her job at the time.

22 MR. ALLEN: Just to be clear, Your Honor, with the  
23 jury. Now I would like to turn your attention to being a  
24 corporate representative versus let's talk about you as a  
25 background. That, I think that's fair so the jury doesn't get

1 sideways.

2 THE COURT: If it seems unclear to the jury we can  
3 always clarify at that point. But, I mean, I think it was  
4 clear to me at least when the questions were ongoing. I mean,  
5 she's obviously here based upon, she has information because  
6 of she's the PMK more in depth and she also has firsthand  
7 information because she's actively engaged in a job with First  
8 Transit and that's what she's testifying to as well. I think  
9 this is yours, please. Thank you. I believe -- I don't know  
10 whose is whose, but I think it's Mr. Cloward's.

11 MR. CLOWARD: Thank you, Your Honor.

12 THE COURT: There's previously been a discussion  
13 about the manual will not come in. I mean, I'm going to let  
14 her testify as to things that she's already testified to in  
15 the deposition. And again, as I previously indicated, I think  
16 that she was designated in two different capacities, but as  
17 her individual role as an employee within the corporation and  
18 the job activities she does in conjunction with that and also  
19 having information regarding the corporate entity itself,  
20 since she was obviously the one chosen to appear for the  
21 30(b)(6) deposition.

22 We'll go over these questions tomorrow.

23 MS. SANDERS: Okay.

24 THE COURT: I'll see you at 9:30. Don't lose them.

25 MS. SANDERS: When did you want to talk about jury

1 instructions?

2 THE COURT: That's a good point. Oh, shoot. We  
3 told the jury to come back at 9:30. So probably the best  
4 thing would be -- is she your last witness?

5 MS. SANDERS: Yes.

6 THE COURT: So we'll just give the jury probably a  
7 long, an early, long lunch break and then we'll do the jury  
8 instructions. We'll probably just take a short lunch break  
9 ourselves, if you guys don't mind, and that way we can get  
10 into jury instructions.

11 The way I do it, usually most of those you guys  
12 agree upon yourself and in my impression I only need to go  
13 through the ones that are contested.

14 MR. CLOWARD: Sure. Thank you, Your Honor.

15 MS. SANDERS: Thank you.

16 MR. CLOWARD: Thank you for allowing the argument.

17 THE COURT: Of course. Have a nice evening.

18 (Court recessed for the evening at 5:06 p.m.)  
19  
20  
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25

**CERTIFICATION**

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

**AFFIRMATION**

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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KIMBERLY LAWSON

KARR Reporting, Inc.

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CLERK OF THE COURT

1 JI  
2 BENJAMIN P. CLOWARD, ESQ.  
3 Nevada Bar No. 11087  
4 **CLOWARD HICKS & BRASIER, PLLC**  
5 721 South 6<sup>th</sup> Street  
6 Las Vegas, NV 89101  
7 Telephone: (702) 628-9888  
8 Facsimile: (702) 960-4118  
9 Bcloward@chblawyers.com  
10 *Attorneys for Plaintiffs*

11 CHARLES H. ALLEN, ESQ. (*Pro Hac Vice*)  
12 Georgia Bar No. 009883  
13 **ALLEN LAW FIRM**  
14 400 West Peach Tree Street, Unit 3704  
15 Atlanta, GA 30308  
16 Fax (866) 639-0287  
17 *Attorney for Plaintiffs*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

18 JACK CHERNIKOFF and ELAINE  
19 CHERNIKOFF,

20 Plaintiffs,

21 vs.

22 FIRST TRANSIT, INC. JAY  
23 FARRALES; DOES 1-10, and ROES 1-10  
24 inclusive,

25 Defendants.  
26  
27  
28

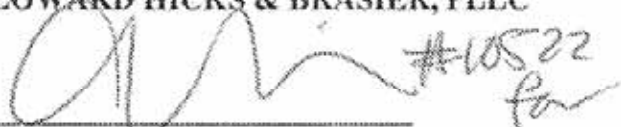
CASE NO. A-13-682726-C  
DEPT. NO. XXIII

**PLAINTIFFS' PROPOSED JURY  
INSTRUCTIONS WITH CITATIONS**

1 COME NOW, JACK CHERNIKOFF and ELAINE CHERNIKOFF, by and through their  
 2 attorneys of record, and submit the following Proposed Jury Instructions with Citations.

3  
 4 DATED this 25 day of February, 2016.

5  
 6  
 7 CLOWARD HICKS & BRASIER, PLLC

8  #10522 for  
 9 BENJAMIN P. CLOWARD, ESQ.

10 Nevada Bar No. 11087

11 721 South 6<sup>th</sup> Street

12 Las Vegas, Nevada 89101

13 Attorneys for Plaintiffs

14 **CERTIFICATE OF SERVICE**

15 Pursuant to Nevada Rule of Civil Procedure 5(b), I hereby certify that I am an employee of  
 16 CLOWARD HICKS & BRASIER, PLLC and that on the 25 day of February, 2016, I caused the  
 17 foregoing **PLAINTIFFS' PROPOSED JURY INSTRUCTIONS WITH CITATIONS** to be  
 18 served as follows:

19 ☒ 

20 Pursuant to N.E.F.C.R. 9 by serving it via electronic service

21  
 22 to the attorneys listed below:

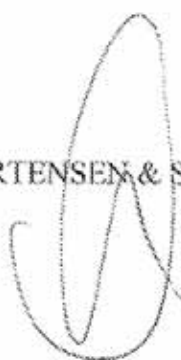
23  
 24 LEANN SANDERS, ESQ.

25 ALVERSON, TAYLOR, MORTENSEN & SANDERS

26 7401 W. Charleston Blvd.

27 Las Vegas, Nevada 89117

28 Attorneys for Defendants



An employee of CLOWARD HICKS & BRASIER, PLLC

INSTRUCTION NO. \_\_\_\_\_

## LADIES AND GENTLEMEN OF THE JURY:

It is my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the court.

Nevada Pattern Civil Jury Instructions, Civil 1.00

INSTRUCTION NO. \_\_\_\_\_

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

Nevada Pattern Civil Jury Instructions, Civil 1.01

INSTRUCTION NO. \_\_\_\_\_

The masculine form as used in these instructions, if applicable as shown by the text of the instruction and the evidence, applies to a female person.

Nevada Pattern Civil Jury Instructions, Civil 1.02

INSTRUCTION NO. \_\_\_\_\_

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate as to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

Nevada Pattern Civil Jury Instructions, Civil 1.03

INSTRUCTION NO. \_\_\_\_\_

You must decide all questions of fact in this case from the evidence received in this trial and not from any other source. You must not make any independent investigation of the facts or the law or consider or discuss facts as to which there is no evidence. This means, for example, that you must not on your own visit the scene, conduct experiments, or consult reference works for additional information.

Nevada Pattern Civil Jury Instructions, Civil 1.04

INSTRUCTION NO. \_\_\_\_\_

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

Nevada Pattern Civil Jury Instructions, Civil 1.05

INSTRUCTION NO. \_\_\_\_\_

You are not to discuss or even consider whether or not the plaintiffs were carrying insurance to cover medical bills, loss of earnings, or any other damages they claim to have sustained.

You are not to discuss or even consider whether or not the defendants were carrying insurance that would reimburse them for whatever sum of money they may be called upon to pay to the plaintiffs.

Whether or not either party was insured is immaterial, and should make no difference in any verdict you may render in this case.

Nevada Pattern Civil Jury Instructions, Civil 1.07

INSTRUCTION NO. \_\_\_\_\_

If, during this trial, I have said or done anything which has suggested to you that I am inclined to favor the claims or position of any party, you will not be influenced by any such suggestion.

I have not expressed, nor intended to express, nor have I intended to intimate, any opinion as to which witnesses are or are not worthy of belief, what facts are or are not established, or what inference should be drawn from the evidence. If any expression of mine has seemed to indicate an opinion relating to any of these matters, I instruct you to disregard it.

Nevada Pattern Civil Jury Instructions, Civil 1.08

INSTRUCTION NO. \_\_\_\_\_

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is, proof of a chain of facts from which you could find that another fact exists, even though it has not been proved directly. You are entitled to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence. It is for you to decide whether a fact has been proved by circumstantial evidence.

Nevada Pattern Civil Jury Instructions, Civil 2.00

INSTRUCTION NO. \_\_\_\_\_

In determining whether any proposition has been proved, you should consider all of the evidence bearing on the question without regard to which party produced it.

Nevada Pattern Civil Jury Instructions, Civil 2.01

INSTRUCTION NO. \_\_\_\_

Certain testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. You are to consider that testimony as if it had been given in court.

Nevada Pattern Civil Jury Instructions, Civil 2.03

INSTRUCTION NO. \_\_\_\_

During the course of the trial you have heard reference made to the word "interrogatory." An interrogatory is a written question asked by one party to another, who must answer it under oath in writing. You are to consider interrogatories and the answers thereto the same as if the questions had been asked and answered here in court.

Nevada Pattern Civil Jury Instructions, Civil 2.04

INSTRUCTION NO. \_\_\_\_

In this case, as permitted by law, the plaintiffs and defendants served upon each other written requests for the admission of the truth of certain matters of fact. You will regard as being conclusively proved all such matters of fact which were expressly admitted by the parties or that the parties failed to deny.

Nevada Pattern Civil Jury Instructions, Civil 2.05

INSTRUCTION NO. \_\_\_\_\_

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3 If counsel for the parties have stipulated to any fact, you will regard that fact as being  
4 conclusively proved as to the party or parties making the stipulation.  
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Nevada Pattern Civil Jury Instructions, Civil 2.06

INSTRUCTION NO. \_\_\_\_\_

The credibility or "believability" of a witness should be determined by his or her manner upon the stand, his or her relationship to the parties, his or her fears, motives, interests or feelings, his or her opportunity to have observed the matter to which he or she testified, the reasonableness of his or her statements and the strength or weakness of his or her recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of this testimony which is not proved by other evidence.

Nevada Pattern Civil Jury Instructions, Civil 2.07; BAJI 2.22

INSTRUCTION NO. \_\_\_\_

Discrepancies in a witnesses testimony or between his testimony and that of others, if there was any discrepancies, do not necessarily mean that the witness should be discredited. Failure of recollection is a common experience, and innocent misrecollection is not uncommon. It is a fact, also, that two persons witnessing an incident or transaction often will see or hear it differently. Whether a discrepancy pertains to a fact of importance or only to a trivial detail should be considered in weighing its significance.

Nevada Pattern Civil Jury Instructions, Civil 2.08

INSTRUCTION NO. \_\_\_\_\_

An attorney has a right to interview a witness for the purpose of learning what testimony the witness will give. The fact that the witness has talked to an attorney and told him what he would testify to does not, by itself, reflect adversely on the truth of the testimony of the witness.

Nevada Pattern Civil Jury Instructions, Civil 2.10

INSTRUCTION NO. \_\_\_\_\_

A person who has special knowledge, skill, experience, training, or education in a particular science, profession or occupation is an expert witness. An expert witness may give his or her opinion as to any matter in which he or she is skilled. You should consider such expert opinion and weight the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

Nevada Pattern Civil Jury Instructions, Civil, 2011 Ed., Inst. 3EX.1

INSTRUCTION NO. \_\_\_\_\_

An expert witness has testified about his reliance upon an article and books that have not been admitted into evidence. Reference by the expert witness to this material is allowed so that the expert may tell you what he relied upon to form his opinions. You may not consider the material as evidence in this case. Rather, you may only consider the material to determine that weight, if any, you will give to the expert's opinions.

Nevada Pattern Civil Jury Instructions, Civil, 2011 Ed., Inst. 3EX.3

INSTRUCTION NO. \_\_\_\_\_

A hypothetical question has been asked of an expert witness. In a hypothetical question, the expert witness is told to assume the truth of certain facts, and the expert witness is asked to give an opinion based upon those assumed facts. You must decide if all of the facts assumed in the hypothetical question have been established by the evidence. You can determine the effect of that admission upon the value of the opinion.

Nevada Pattern Civil Jury Instructions, Civil, 2011 Ed., Inst. 3EX.4

INSTRUCTION NO. \_\_\_\_\_

Whenever in these instructions I state that the burden, or the burden of proof, rests upon a certain party to prove a certain allegation made by him, the meaning of such an instruction is this: That unless the truth of the allegation is proved by a preponderance of the evidence, you shall find the same to be not true.

The term "preponderance of the evidence" means such evidence as, when weighed with that opposed to it, has more convincing force, and from which it appears that the greater probability of truth lies therein.

Nevada Pattern Civil Jury Instructions, Civil, 2011 Ed. Inst. 4NG.2

INSTRUCTION NO. \_\_\_\_\_

The preponderance, or weight of evidence, is not necessarily with the greater number of witnesses.

The testimony of one witness worthy of belief is sufficient for the proof of any fact and would justify a verdict in accordance with such testimony, even if a number of witnesses have testified to the contrary. If, from the whole case, considering the credibility of witnesses, and after weighing the various factors of evidence, you believe that there is a balance of probability pointing to the accuracy and honesty of the one witness, you should accept his testimony.

Nevada Pattern Civil Jury Instructions, Civil, 2011 Ed. Inst. 4NG.3

INSTRUCTION NO. \_\_\_\_

A proximate cause of injury, damage, loss, or harm is a cause which, in natural and continuous sequence, produces the injury, damage, loss, or harm, and without which the injury, damage, loss, or harm, would not have occurred.

Nevada Pattern Civil Jury Instructions, Civil 4.04

INSTRUCTION NO. \_\_\_\_\_

Plaintiffs are the heirs of the deceased, Harvey Chernikoff. In determining the amount of losses, if any, suffered by the heirs as a proximate result of the death of Harvey Chernikoff, you will decide upon a sum of money sufficient to compensate each heir for the following items:

1. The heir's loss of probable support, companionship, society, comfort, and consortium.

You may also consider:

- a) The age of the deceased and of the heir;
- b) The health of the deceased and the heir;
- c) The respective life expectancies of the deceased and of the heir;
- d) Whether the deceased was kindly, affectionate or otherwise;
- e) The disposition of the deceased to contribute financially to support the heir;
- f) The earning capacity of the deceased;
- g) His or her habits of industry and thrift; and
- h) Any other facts shown by the evidence indicating what benefits the heir might reasonably have expected to receive from the deceased had he lived.

2. Any damages for pain, suffering, or disfigurement of the decedent.
3. Any grief or sorrow suffered by their heir and any grief or sorrow reasonably certain to be experienced in the future.

Nevada Pattern Civil Jury Instructions, Civil, 2011 Ed. Inst. SPID.5 (modified); NRS 41.085; *General Elec. Co. v. Bush*, 88 Nev. 360, 498 P.2d 366 (1972); *Sierra Pac. Power Co. v. Anderson*, 77 Nev. 68, 358 P.2d 892 (1961).

INSTRUCTION NO. \_\_\_\_\_

No definite standard or method of calculation is prescribed by law by which to fix reasonable compensation for pain and suffering. Nor is the opinion of any witness required as to the amount of such reasonable compensation. In making an award for pain and suffering, you shall exercise your authority with care and reasonable judgment and the damages you fix shall be just and reasonable in light of the evidence.

Nevada Pattern Civil Jury Instructions, Civil, 2011 Ed. Inst. 5PID.2

Case No. 70164

In the Supreme Court of Nevada

FIRST TRANSIT, INC.; and JAY  
FARRALES,

Appellants,

vs.

JACK CHERNIKOFF; and ELAINE  
CHERNIKOFF,

Respondents.

Electronically Filed  
Oct 20 2017 03:01 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPEAL**

from the Eighth Judicial District Court, Clark County  
The Honorable STEFANY A. MILEY, District Judge  
District Court Case No. A-13-682726-C

**APPELLANTS' APPENDIX  
VOLUME 6  
PAGES 1251-1500**

DANIEL F. POLSENBERG  
Nevada Bar No. 2376  
JOEL D. HENRIOD  
Nevada Bar No. 8492  
LEWIS ROCA ROTHGERBER CHRISTIE LLP  
3993 Howard Hughes Pkwy, Suite 600  
Las Vegas, Nevada 89169  
(702) 949-8200  
DPolsenberg@LRRC.com  
JHenriod@LRRC.com

LEANN SANDERS  
Nevada Bar No. 390  
ALVERSON, TAYLOR,  
MORTENSEN & SANDERS  
6605 Grand Montecito Pkwy.  
Suite 200  
Las Vegas, Nevada 89149  
(702) 384-7000  
LSanders@AlversonTaylor.com

*Attorneys for Appellants*

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1 counties in wide open area where there's not a lot of  
2 population, I mean, you know, you have a very limited number  
3 of responding agencies. So, I mean, whether it's a crash, I  
4 mean, you could be waiting for 30, 40 minutes for a sheriff to  
5 get over to where you are in the county. And the same thing  
6 with a medical response.

7           So if there's agencies that are providing transit  
8 into rural areas like that, then a lot of times the states  
9 will -- there's probably not a dedicated fixed route transit  
10 system in those situations, the state will provide funding to  
11 serve these rural areas that are smaller communities that they  
12 might not qualify for those federal funds. Those are the  
13 types of agencies where you would see, typically see if you're  
14 going to see it, training on first aid or CPR, just because if  
15 something does happen, you're looking at a much longer  
16 response time for a professional to get there.

17       Q     Did you see in the policy of First Transit that the  
18 first response for a driver was to call dispatch?

19       A     Yes.

20       Q     For a city of our size, is that a common requirement  
21 first response?

22       A     Yeah. You know, again, it will vary. There's some  
23 agencies or systems that have an outside communication  
24 available to the drivers. I think in this one the  
25 communication is limited to dispatch. And if you look at the

1 rules of First Transit in their book, it's with regard to cell  
2 phones, which is probably the only phone that you could expect  
3 to be on this vehicle. Drivers were supposed to have them  
4 turned off, if they had them at all, to try and limit  
5 distracted driving and the potential for them using them and,  
6 you know, being unsafe in how they drive. So I don't think it  
7 was unusual for them to have a system really where they called  
8 dispatch.

9 And specifically in this instance, because, you  
10 know, if you're a driver and you're doing the calling and, you  
11 know, if you've ever called 9-1-1 or something like that, I  
12 mean, they want you to stay on the line with them while  
13 they're getting people to you. I mean, you know, you're  
14 trying to do that, you're trying to assess and figure out  
15 what's wrong with the passenger. So it's a lot easier if you  
16 have somebody else kind of controlling that and getting the  
17 help to you and managing that situation. And then they even  
18 might have an opportunity to provide additional information to  
19 those folks on the phone with regard to specific medical  
20 conditions of a passenger that a driver would not know about.

21 Q You did indicate there was a policy among some  
22 transits, including First Transit, that the drivers should not  
23 have a cell phone with them or should have it tucked away.  
24 Are you critical of that policy?

25 A No, it's pretty typical. I mean, if you look at the

1 regulations for commercial vehicles, they basically prevent  
2 you from actively talking and holding a cell phone as a  
3 commercial driver and texting. But a lot of companies go  
4 steps further and they don't just want it off, they want it  
5 away from you so there's no, you know, potential for you to  
6 want to grab it or if you see something come through to look  
7 at it. So to have it turned off and stored away is, you know,  
8 it's -- I'll say aggressive.

9           There's a lot of companies that don't go to that  
10 length, but certainly, it's the practice of most companies  
11 these days to not use it or not have it immediately in your  
12 vicinity because they want to try and minimize that  
13 distraction that we all can get distracted by with those  
14 phones.

15           Q     I want you to assume that Dr. Stein came in and  
16 testified to us a couple days ago and he said the first  
17 response in his opinion should have been for Jay to get up,  
18 strike Harvey on the back a number of times. If that did not  
19 work, get Harvey up, do a Heimlich maneuver on him and if that  
20 didn't work, then call dispatch or 9-1-1. Assuming those  
21 comments to be true that that's what he said, is that within  
22 the industry standard in terms of responding to an issue?

23           A     No. I mean, I think the first step is to, again,  
24 especially when you're in this case, you want to get dispatch  
25 involved and get some responding technicians and emergency

1 response folks on the way. You know, I think even that is  
2 making some assumptions maybe that you know what's going on.  
3 I mean, again, it's a driver who's trying to just figure out,  
4 first of all, if he's being responsive or can get him to be  
5 responsive.

6 Q All right. Going to change topics again. We've  
7 heard discussion about personal care attendants. Describe  
8 what we mean by personal care attendant.

9 A Personal care attendant is somebody that is  
10 authorized to ride along with somebody that's been approved to  
11 use paratransit transportation. So typically, they -- if you  
12 have an approval for a personal care attendant or PCA to ride  
13 with you, the agency has to provide transportation to that PCA  
14 for free. Paratransit's not necessarily a free service for  
15 the folks who are eligible for it. Again, if you think about  
16 it, it's an extension of the fixed route system. So if you,  
17 if the bus fare's two twenty-five for a fixed route, typically  
18 that's what they would charge a paratransit customer for  
19 transportation from, you know, their door to the door where  
20 they're going to. So if they're approved and they need the  
21 assistance or approved and would like assistance of the PCA,  
22 that PCA rides free, doesn't pay the fare that, whatever the  
23 fare that's being charged.

24 Q And what types of things would a PCA be authorized  
25 for? Why would they -- what categories would we be dealing

1 with?

2 A It's really up to the eligibility people to  
3 determine when they're going to approve or allow that, but it  
4 has a lot to do with -- probably the testing that they do with  
5 the person that's applying for the eligibility for the  
6 service. You know, there's cases where you might need a PCA  
7 to -- if you're not going to a known facility, maybe you have  
8 a doctor's appointment at a hospital that the person with the  
9 disability is not used to going to and they wouldn't recognize  
10 and once they got there they wouldn't know where to go because  
11 it's out of the ordinary, you might use a PCA to help in that  
12 instance.

13 Because, again, the driver's responsibility is, you  
14 know, is not to take passengers in and get them where they're  
15 going. It's to take them to the facility. So you might have  
16 a PCA approved for those non-routine instances of travel. And  
17 you might have one that travels all the time with a person.  
18 If somebody has a medically fragile condition or medical  
19 condition that they need someone to always watch them, or  
20 perhaps they're disruptive behaviors or they have behavioral  
21 issues where it's a concern to them, the driver or other  
22 passengers or any combination of that, there might be a PCA  
23 that rides to try and manage that and make sure that the  
24 person with that behavioral disability behaves themselves and  
25 doesn't put other people at harm.

1           Q     You talked about someone who may be fragile. We  
2 certainly can think of physically fragile, but could people  
3 also be fragile from mental retardation and that type of  
4 thing? We discussed that and in conjunction with having a  
5 personal care attendant.

6           A     Yeah. I mean, I think, again, it comes down to  
7 whether or not it's routine and the level of the cognitive  
8 disability for the person. I mean, if they're going, for  
9 instance, to the same spot every day and they know that spot  
10 and they recognize it, I mean, they probably don't need a PCA.  
11 But if they have a high level of cognitive disability, they  
12 may not even be able to recognize that, someplace they go on a  
13 daily basis. So there they might need a PCA. It really  
14 depends upon the level of the cognitive disability.

15          Q     Are you aware that in this case the woman at the  
16 RTC, after interviewing Harvey, approved a PCA without the  
17 parents even asking for it?

18          A     Yes.

19          Q     If someone is mentally fragile, can't remember  
20 things or confused and that type of thing, rather than a PCA,  
21 why don't we just make that the responsibility of the bus  
22 driver to look after people like that?

23          A     Well, remember, a bus driver, it's different  
24 drivers, different routes, different passengers. And really,  
25 their responsibility, again, their job description, we're

1 hiring them to operate a vehicle from point A to point B, to  
2 know how to operate the specialized equipment on that vehicle  
3 if necessary, the ramps, the lifts. So their job's not a  
4 caregiver, it's a driver.

5 Q Well, I want you to assume that Harvey's mother  
6 testified a few days ago, and I want you to assume she  
7 testified as follows. That the RTC gave her a pamphlet that  
8 talked about the rules to be followed that included no eating  
9 on the bus. She didn't read it. That Harvey -- she testified  
10 that Harvey could not remember rules and for him to remember  
11 anything it had to be repeated many, many times over even  
12 months.

13 Also assume that she said that Harvey would not  
14 recognize a no eating sign, the sign with the line through it,  
15 he would not recognize that even with instruction. That she  
16 never rode on the bus with him and she believed that the  
17 driver was responsible for informing Harvey of the rules and  
18 warn him of violations. What is your take on making the  
19 driver responsible for Harvey under those circumstances?

20 A I mean, that's just not part of the job description.  
21 I mean, the whole point of those rider guides and helping the  
22 folks understand whether it's them using the service or, you  
23 know, their family members or their loved ones, helping them  
24 understand what the rules and the expectations are of them  
25 while they're riding the service, again, the driver's

1 responsibility is to drive the vehicle.

2 Q The RTC did its responsibility by allowing a  
3 personal care attendant?

4 A They did allow a personal care attendant, yes.

5 Q And would that be the role of the personal care  
6 attendant taking care of someone who had those disabilities?

7 A Yeah. I mean, to the extent that they felt that it  
8 was necessary. I mean, if she felt that it was necessary to  
9 have somebody to monitor them for a specific situation or like  
10 that, you know, that would be a role that would be fulfilled  
11 by the PCA.

12 Q Okay. I'm going to change subjects on you again.  
13 Eating on the bus. Do transit companies have a rule against  
14 eating on the bus typically?

15 A Yes.

16 Q Why?

17 A Because when people eat on the bus, I mean, they're  
18 apt to drop something, spill food, leave behind trash, you  
19 know, and these are all things that then become hazards. I  
20 mean, if you have a wrapper on the floor -- think of a  
21 cartoon, a banana peel on the floor, a wrapper or you have a  
22 drink that's an open top and it spills and now you have a wet  
23 floor. I mean, you're creating a more dangerous situation on  
24 the bus for the other passengers. So they typically prohibit  
25 those types of items so that they try and minimize those risks

1 to the other passengers of slipping. I mean, it's really a  
2 slip, trip and fall issue.

3           You know, and recognizing that, I mean, again, it's  
4 when you get back to if we were to allow that and people are  
5 doing it and you have things happening like that, then, you  
6 know, who's going to be monitoring that, who's going to be  
7 cleaning it up. I mean, if that becomes then a driver's  
8 responsibility he's going to constantly monitor that at every  
9 stop and he's going to have cleaning supplies on and then  
10 [indiscernible] trips. So the reason really is to prevent any  
11 hazards from developing associated with the eating or drinking  
12 from those open containers and trying to keep the bus clean.

13           Q     Are there any federal standards or regulations  
14 prohibiting eating on the bus for fear that someone will  
15 choke?

16           A     No.

17           Q     Are there any industry standards preventing people  
18 from eating on the bus for fear that they will choke?

19           A     No. Again, it's largely a function of -- I mean, if  
20 you look at claims and things that happen typically on  
21 vehicles, I mean, it's tripping over things, slipping on wet  
22 floors. So, I mean, the reason for those rules is really a  
23 slip, trip, fall issue.

24           Q     Based upon your experience in the transportation  
25 business, is it more likely that someone will choke on food on

1 a bus than in a restaurant or in the backseat of a car?

2 A I don't think so. I mean, I don't know that  
3 anybody's ever done any studies. I don't know how you would,  
4 but in my opinion it's not.

5 Q And according to what we've learned in this case is  
6 that water bottles were allowed if they had a spill-proof top  
7 on it, but if it didn't then you couldn't bring it on. Is it  
8 more likely that someone will choke on water if it has --  
9 doesn't have a spill-proof than if it does have a spill-proof?

10 A No, I wouldn't think so.

11 Q Anything to do with choking?

12 A I don't think so. Again, it goes back to trying to  
13 keep the bus, the environment on the bus safe for other  
14 passengers and not spilling that liquid on the floor or the  
15 seat and then someone sit down in the seat and now it's on  
16 their clothes. So it's really, again, it's a function of  
17 slip, trip, fall and the cleanliness of the bus.

18 Q When Dr. Stein was in he indicated that when he  
19 looked at the video that Harvey ate his sandwich in one and a  
20 half minutes, approximately. Was that your take from the  
21 video?

22 A Yes, it was pretty fast.

23 Q And Dr. Stein referred to it as wolfing it down.  
24 Would that be your take as well?

25 A I eat pretty quick, but yeah, it was quick.

1           Q     All right. Now, with respect to all of your  
2     opinions that you've rendered here today, have all of them  
3     been within the reasonable degree of certainty in your  
4     profession?

5           A     Yes.

6           MR. ALVERSON: No further questions. Thank you,  
7     Your Honor.

8           THE COURT: Counsel, before you start on cross why  
9     don't we give the jury a break.

10          MR. CLOWARD: No problem. Thank you.

11          THE COURT: Ladies and gentlemen, come back at  
12     11:15. Again, don't talk about the case, don't research the  
13     case, don't form or express an opinion.

14          (Court recessed at 11:01 a.m. until 11:21 a.m.)

15          (Outside the presence of the jury.)

16          (Off-record colloquy.)

17          THE COURT: Okay. Let's bring them in.

18          (Jury panel reconvened at 11:23 a.m.)

19          THE COURT: All right. Please make yourselves  
20     comfortable. Sir, you were placed under oath, you're still  
21     under oath at this time. Thank you. Whenever you're ready.

22          MR. CLOWARD: May it please the Court. Thank you,  
23     Your Honor.

24                         CROSS-EXAMINATION

25     BY MR. CLOWARD:

1 Q Mr. Daecher, how are you?

2 A I'm good. How are you?

3 Q You and I have never met; is that fair?

4 A That's fair.

5 Q All right. I just want to ask you a couple  
6 questions. The first thing that I wanted to ask was you were  
7 talking about CPR, you were talking about Heimlich maneuver  
8 and what's required, when it's required and those things. Do  
9 you remember that?

10 A Yes.

11 Q Do you remember telling the jurors that there are  
12 actually expanded services for larger cities when you were  
13 comparing like, say for instance, Las Vegas versus Reno.

14 A Can be.

15 Q And you testified when Mr. Alverson was asking you  
16 questions, the defense attorney, you talked about how private  
17 operators like First Transit are regulated more than say  
18 public services, correct?

19 A Correct.

20 Q And where are you from?

21 A Pennsylvania.

22 Q Where are you staying?

23 A I'm staying at the Vdara.

24 Q Downtown on the Strip?

25 A Yes.

1 Q Do you take a taxicab here to the courthouse?

2 A No.

3 Q How did you get here to the courthouse?

4 A Rental car.

5 Q Okay. What time of day did you come on the Strip?

6 Was it busy, were there a lot of cars?

7 A I did not -- I didn't use the Strip. I came in from  
8 the back side.

9 Q Okay.

10 A I lived here 20 years ago. I know not to go on the  
11 Strip.

12 Q Why is that?

13 A Just because I don't want to deal with the  
14 congestion.

15 Q Gets sometimes congested in big cities, doesn't it?

16 A Sure. Any city at certain points, certain times,  
17 yes.

18 Q Do you know how long it took in this case for 9-1-1  
19 to arrive and perform any life saving measures for Harvey?

20 A I think approximately eight minutes.

21 Q Would congestion of a real big city be a reason that  
22 you might want to train folks on how to do CPR and Heimlich  
23 maneuver, especially in like a big city like Las Vegas?

24 A I mean, any big city can have congestion, but, I  
25 mean, the larger the city the more responders you have. I

1 mean, obviously there's laws that require motorists and  
2 vehicles to get out of the way during an emergency response.  
3 So, I mean, I think it's compensated for in the larger cities  
4 because you have a larger amounts of people responding and  
5 they're regionally set up versus coming from across town. I  
6 mean, they're going to call the closest response center and  
7 they will respond.

8 Q Certainly in this case it would have been the  
9 closest response center and it still took eight minutes.

10 A Yes.

11 Q Are you aware that the defense counsel's witness  
12 that testified yesterday, Dr. MacQuarrie testified that people  
13 start to experience brain death at just four minutes?

14 A I wasn't here for it, so no.

15 MR. CLOWARD: Your Honor, I'd like to show the  
16 witness what's been previously marked as Plaintiff's 2.

17 THE COURT: Has it been admitted?

18 MR. CLOWARD: Yes.

19 THE COURT: Okay.

20 MR. CLOWARD: May I approach?

21 THE COURT: You may. You don't have to ask in the  
22 future.

23 MR. CLOWARD: Okay. Sorry, Judge.

24 BY MR. CLOWARD:

25 Q You see what's in front of you there?

1 A Yes.

2 Q Can you just remind the jurors what that is?

3 A First Transit Employee Handbook.

4 Q Okay. Now, when you were being asked by the defense  
5 attorney questions about what the training of individuals for  
6 First Transit is, I believe you told them that they're  
7 supposed to call dispatch instead of 9-1-1.

8 A I think it's, again, and I said this, it's dependent  
9 upon the particular system and whatever communication system  
10 they have in place on their vehicles. Again, if you have a --  
11 some of them have a communication system that can dial out,  
12 but that's not typical. So if somebody was going to call  
13 9-1-1 they would have to do it, you know, on a  
14 company-supplied cell phone which is really not typical for a  
15 transit agency or a personal one. Otherwise, it's generally  
16 you have a communication system that's limited to  
17 communicating with your dispatch.

18 Q Okay. Does communicating with your dispatch and  
19 then having dispatch assess what's going on and make a  
20 determination as to whether 9-1-1 should be or shouldn't be  
21 called, does that lengthen the time of response?

22 A I don't know. You have to compare it with -- I  
23 mean, you know, getting a phone out, turning it on and getting  
24 service and so, I mean, obviously I think the dispatchers are  
25 trained when a driver calls and indicates there's a situation

1 involved and their first training is going to be to contact  
2 authorities and the responders and get them there as soon as  
3 possible.

4 Q Okay. What I'd like you to do is not -- I want you  
5 to thumb through that or I'm sure -- you've reviewed that,  
6 right?

7 A Yes.

8 Q Can you point us to where in that policy it says for  
9 drivers if there's an emergency such as choking to call  
10 dispatch?

11 A I don't know if I can look through it all. I don't  
12 know if it's in here. I know that that's what they were  
13 trained to do by the testimony from the safety manager and  
14 obviously Jay. So, you know, my understanding from the safety  
15 manager is that obviously, First Transit is a large company  
16 and they have a lot of operations. So this is a handbook  
17 that's rather generic and there are certain portions that may  
18 be more applicable to some operations than others. So, you  
19 know, again, you have different systems. You're on different  
20 vehicles. Some contracts, they might not even own the  
21 vehicles and the vehicles are supplied by the agency.

22 So whatever communication system's on the vehicle  
23 then is what you're dealing with. Other times they can  
24 specify. So it's going to change and so you're going to have  
25 location specific training at any location based upon the

1 variables involved.

2 Q Like in this case, First Transit didn't own, they  
3 didn't actually have to pay for the vehicles because those  
4 were owned by RTC, right?

5 A I don't know, quite honestly, what the scenario was.

6 Q You would agree, though, that First Transit was  
7 required, their job was to provide the individuals who would  
8 actually operate the buses, true?

9 A Drivers, yes.

10 Q This is the policy regarding if there's a stroke.  
11 Do you see where it says, "If you see or have any of the list  
12 of symptoms, immediately call 9-1-1"?

13 A Yes.

14 Q Did I read that correctly?

15 A You did.

16 Q Let's go to 70 -- that one right there. This is for  
17 a heart attack. "If you see or have any of the listed  
18 symptoms, immediately call 9-1-1." Did I read that correctly?

19 A Yes.

20 Q Let's go to page 70. This is the -- this is a  
21 reminder, this is the choking policy that First Transit claims  
22 did not apply to the employees in Las Vegas. "If the  
23 obstruction does not clear after three cycles of back blows  
24 and abdominal thrusts, call 9-1-1." Did I read that  
25 correctly?

1 A You did.

2 Q Okay. One of the things I want to do is just blow  
3 up the very bottom there, the very, very bottom. I believe  
4 yesterday Dr. MacQuarrie said that the Red Cross was falling  
5 out of favor for training. Were you aware of that? They're  
6 falling out of favor with the Heimlich maneuver.

7 A No, I don't teach first aid, so.

8 Q Okay. Have you had a chance to review the training  
9 that was provided to Mr. Farrales?

10 A Yes.

11 Q Specifically, Plaintiff's 3 is in front of you.  
12 Actually, this is the voluntary statement. Have you had a  
13 chance to review that document?

14 A I'm sure I did at some --

15 MR. ALVERSON: What are we talking about?

16 MR. CLOWARD: I'm sorry. It's Plaintiff's 3. This  
17 is the Las Vegas Metropolitan Police Department voluntary  
18 statement.

19 MS. SANDERS: It's really more than that, so.

20 MR. ALVERSON: What part do you want?

21 MS. SANDERS: Is there a particular page?

22 MR. CLOWARD: Page nine.

23 MR. ALVERSON: Let's just go with the page.

24 MR. CLOWARD: Page nine.

25 BY MR. CLOWARD:

1 Q Do you see page nine there?

2 A I do.

3 MR. CLOWARD: Your Honor, I'd like to move into  
4 evidence page nine of Exhibit 3.

5 MR. ALVERSON: No objection, Your Honor.

6 THE COURT: Admitted.

7 (Plaintiff's Exhibit 3, page 9 admitted.)

8 BY MR. CLOWARD:

9 Q I'm just going to read this and see if I read it  
10 correct. "I noticed he stopped talking. I tried talked to  
11 him but he wasn't responding. I looked at the mirror. I saw  
12 him drifting from his seat." Did I read that correctly?

13 A Yes.

14 Q Now I'd like to have you look at Joint A1, page one,  
15 the operator incident report.

16 A You'll have to help me.

17 Q Have you in fact reviewed the operator incident  
18 report in this case?

19 A I believe I have at some point. It's been some  
20 time.

21 MR. CLOWARD: Your Honor, I'd like to move A1, page  
22 one into evidence.

23 MR. ALVERSON: No objection.

24 THE COURT: Admitted.

25 (Defendant's Exhibit A1, page 1 admitted.)

1 BY MR. CLOWARD:

2 Q See where it says, "On my way to drop Harvey  
3 Chernikoff off he was trying to make a conversation with me  
4 when suddenly he stopped talking. I asked him if he's okay,  
5 but no response. I looked at the mirror and I saw him kind of  
6 leaning away from his seat." Did I read that correctly?

7 A Yes, you read it correctly.

8 Q I want to ask you about the mirrors. Whose job is  
9 it to adjust the mirrors?

10 A The driver.

11 Q Was there anything that you're aware of that  
12 prohibited Jay from moving his mirror on the day of the  
13 incident to ensure that he could see all of his passengers?

14 A I think the mirror was, I mean, optimally placed.  
15 You know, those mirrors that are up on the bulkhead, I mean,  
16 the purpose there is to get as wide a view as possible and see  
17 the most passengers you can. And in this instance, even with  
18 that mirror there, I mean, and you have the partition behind  
19 the driver, if you're familiar with those, and you have a fare  
20 box that's on that partition, the view of where Harvey was  
21 sitting was not good.

22 Q Okay. And I'm sorry, Mr. Daecher. We lawyers ask a  
23 lot of questions and jurors know we keep asking questions.  
24 Was there anything that prohibited Jay from adjusting his  
25 mirrors the day of Harvey's death?

1           A     No. I mean, with that fare box and the driver  
2 partition, you wouldn't have adjusted that to get a better  
3 view of that seat no matter what you did. And if you did  
4 adjust it you start to lose vision of other portions of the  
5 passenger compartment.

6           Q     Certainly, that was nothing that prohibited Jay from  
7 saying hey, Harvey, I can't see you in that seat, I need you  
8 to move into a different seat so that I can see you, my only  
9 sole passenger, true?

10          A     Nothing prohibiting. I don't think drivers are  
11 trained to necessarily ask people to move seats.

12          Q     I just want you to kind of walk through. You took  
13 some photographs in this case, right?

14          A     I did.

15          Q     You actually were able to adjust the mirrors  
16 yourself, true?

17          A     I did not adjust the mirrors myself.

18          Q     Okay. How do you know that the mirror was in the  
19 same place as it was —

20          A     Before my inspection I contacted our counsel and I  
21 asked them to contact First Transit and to schedule Jay on a  
22 route on an exemplar bus. And then I asked them once he came  
23 back from that route to not touch the bus and to obviously not  
24 tell him that I was going to be looking at the vehicle so that  
25 I could see how he adjusted his mirrors, side view, interior,

1 rearview mirrors so I could, not just the mirrors, but also  
2 see how his seat was adjusted in the vehicle to really get a  
3 good idea of what he could see in various -- out of various  
4 mirrors.

5 Q Okay. Do you know whether Jay moved that mirror at  
6 all during that eight-hour shift?

7 A I assume he adjusted it to whatever his normal  
8 adjustment was. That was the whole purpose of me doing it.

9 Q Do you know whether during that day Jay had any  
10 passengers who were about that tall sitting on the front row?

11 A On which day?

12 Q On the day that you looked at the mirrors to see if  
13 they were adjusted on the same day that --

14 A I don't know who his passengers were.

15 Q Okay. You agree that when you did that, you didn't  
16 let my office know that you were doing that so we could come  
17 and observe you do that, true?

18 A I went through my counsel. I don't know if they  
19 contacted you or who.

20 Q I wasn't there, was I?

21 A No.

22 Q Mr. Allen wasn't there, was he?

23 A No.

24 Q Jack or Elaine was not there, were they?

25 A I don't believe. No, I don't believe anybody was

1 there.

2 Q Do you know who Jack and Elaine are?

3 A Yes.

4 Q That's Jack, that's Elaine.

5 A Hi.

6 Q The defense attorneys were there, though, right?

7 A None of the ones sitting here.

8 Q But there was somebody from that firm?

9 A One.

10 Q You talked about filling out paperwork, how  
11 important it is to fill out paperwork. Do you recall that?

12 A It's typical that paperwork must be completed, yes.

13 Q Do you think it's more important to fill out your  
14 paperwork or check on the only passenger you have on your bus?

15 A I mean, I think it's important to do what you're  
16 trained to do. And everything I saw, you know, obviously, I'm  
17 sure there was a paperwork requirement, but just in general in  
18 viewing that entire video, I mean, I saw Jay do everything  
19 that a driver is typically trained to do. He's required to  
20 assist people on and off the vehicle, he did that at every  
21 stop. He assisted passengers even when he wasn't required to  
22 do so by helping Harvey open his water, by stopping and  
23 finding facilities when Harvey needed to use the restroom.

24 And even, you know, noticing when seatbelts were  
25 unbuckled when he was off the vehicle and he got back on and

1 buckled Harvey's. So I saw him doing everything that drivers  
2 are typically trained to do. I mean, including, as I said  
3 earlier, using three points of contact get on and off the  
4 vehicle.

5 Q Have you reviewed Mr. Farrales's entire employment  
6 file? I think I already asked you that and you said yes.

7 A I don't think you have asked me that and I'm not  
8 sure if I did or not, quite honestly.

9 Q Okay. So you're not sure whether you looked through  
10 the employment file to determine what training, testing  
11 procedures --

12 A I do remember some training paperwork and some --  
13 yeah, training paperwork and there were some quizzes on some  
14 training.

15 Q So you do recall that or you --

16 A Yeah. I just don't know if it was his entire  
17 employment file. I looked at training records for Jay.

18 Q Okay. This is Plaintiff's 9, page 51.

19 MR. ALVERSON: One moment.

20 (Pause in proceedings)

21 MR. ALVERSON: Okay, Your Honor.

22 MR. CLOWARD: Your Honor, I'd like to move into  
23 evidence Plaintiff's 9, page 51.

24 THE COURT: Admitted.

25 (Plaintiff's Exhibit 9, page 51 admitted.)

1 MR. CLOWARD: Thank you. May I publish?

2 THE COURT: You may.

3 MR. CLOWARD: Thank you.

4 BY MR. CLOWARD:

5 Q You talked about how some jurisdictions may have  
6 specific training, right?

7 A Yes.

8 Q Okay. At the top of this it says Laidlaw Transit  
9 Services, Inc., classroom training, contract specific, other  
10 local training. Did I read that correctly?

11 A Yes.

12 Q And then it says CPR, four hours; first aid, four  
13 hours; CDL training, eight hours. Did I read that correctly?

14 A Yes.

15 Q Okay. On this CPR and Heimlich and first aid, I  
16 believe you testified that the purpose of the no eating policy  
17 is for slip, trip only; is that fair?

18 A I'd say that's the basis of it in general, yes.

19 Q Okay. Do you know why First Transit would train its  
20 drivers that they should not allow eating because a  
21 foreseeable harm is choking on food which may result in death?

22 A Well, I mean, I think choking is a hazard. It goes  
23 with eating at any time. So, I mean, in addition to that, the  
24 more common hazards that we see on a bus when people are  
25 eating or drinking and the spills and the trips and falls and

1 the hazards of other passengers, I mean, obviously that goes  
2 along with eating. It's a hazard of eating at any time.

3 Q Okay. Do you -- you've dealt with other paratransit  
4 companies and training and stuff, right?

5 A Yes.

6 Q Do you know what the cost would be to have about  
7 eight hours of training?

8 A I don't know. I mean, it would depend upon probably  
9 -- either the local market in terms of what that would cost.

10 Q And you know that over the seven-year period First  
11 Transit made over \$218 million over that seven-year period?

12 A I don't know anything about that.

13 Q Okay.

14 A I mean, all I know is that they weren't required to  
15 provide it. Again, this document they have up here isn't  
16 specific to the Las Vegas operation. You know, these are  
17 training documents that they will use at various locations.  
18 So, I mean, for instance the CDL training has a lot to do with  
19 training someone to become a CDL driver and here they, you  
20 know, obviously hire some drivers that already have that. So  
21 that wouldn't be applicable to everybody. So, you know, the  
22 training that you get is specific to your location and, you  
23 know, the environment they operate it.

24 MR. CLOWARD: No further questions. Thank you.

25 THE COURT: Redirect.

1 MR. CLOWARD: I'm sorry, Your Honor. I forgot to  
2 confer with counsel? May I confer with counsel?

3 THE COURT: That's fine.

4 BY MR. CLOWARD:

5 Q I just wanted to point out. You agree that this was  
6 not completed, CPR training, first aid training, correct?

7 A CDL training, yeah. None of those three and again,  
8 it was the testimony that that was not part of their training  
9 for this location.

10 MR. CLOWARD: Thank you.

11 REDIRECT EXAMINATION

12 BY MR. ALVERSON:

13 Q Mr. Daecher, as a result of the cross-examination,  
14 have you changed any of your opinions that you gave to me and  
15 the jury during direct examination?

16 A No.

17 MR. ALVERSON: Thank you. Nothing further.

18 THE COURT: All right. Sir, thank you for your  
19 time. You're free to go. Have a wonderful day.

20 So it's about 10 till noon. When is your next  
21 witness going to be here?

22 MS. SANDERS: We will call Mr. Farrales but we can  
23 stop now and take a lunch break.

24 THE COURT: So why don't we bring the jury back at  
25 one? All right. Ladies and gentlemen, please come back at

1 1:00. Again, don't talk about the case, don't research the  
2 case, don't form or express an opinion. We'll see you then.

3 (Jury recessed at 11:49 a.m.)

4 THE COURT: All right. So we have Mr. Farrales and  
5 then you're going to call -- I'm sorry, ma'am, I forgot  
6 your --

7 MS. McKIBBINS: Jennifer McKibbins.

8 THE COURT: They're both going to be called today.  
9 Is that the last of your witnesses?

10 MS. SANDERS: Yes.

11 THE COURT: Okay. So we'll see you at one. Thank  
12 you.

13 (Court recessed at 11:50 a.m. until 1:09 p.m.)

14 (Outside the presence of the jury.)

15 THE COURT: All right. Good afternoon, everyone.  
16 Are you ready to bring the jury in?

17 MS. SANDERS: Yes.

18 THE COURT: All right.

19 (Jury panel reconvened at 1:10 p.m.)

20 THE COURT: Welcome back, ladies and gentlemen of  
21 the jury. Probably by now you guys are getting used to  
22 downtown. For those of you that haven't come down here in  
23 awhile, it's changed a lot over the last few years. There's a  
24 lot more places to go.

25 All right. The defense is going to call their next

1 witness.

2 MS. SANDERS: Jay Farrales.

3 JAY FARRALES, DEFENDANT'S WITNESS, SWORN

4 THE CLERK: Please be seated. Would you please  
5 state and spell your first and last name for the record?

6 THE WITNESS: Jay Farrales. Jay is spelled J-a-y,  
7 F-a-r-r-a-l-e-s.

8 THE COURT: All right.

9 DIRECT EXAMINATION

10 BY MS. SANDERS:

11 Q How are you doing, Jay?

12 A I'm doing good.

13 Q You seemed a little nervous the other day, so I want  
14 you to just take a nice deep breath. Okay? Jay, I'd like you  
15 to start by -- the jury's been seeing you sitting here for the  
16 last several days. I'd like you to just start by telling them  
17 a little bit about yourself. Where were you born?

18 A I was born in the Philippines.

19 Q And mind telling us what year?

20 A 1970, so I'm 45.

21 Q Forty-five. Can you give the jury a little bit of  
22 an idea about your educational background, how much schooling  
23 did you have?

24 A Grew up, elementary. In the Philippines we -- high  
25 school at the same place and college the same province that I

1 grew up.

2 Q What is that province?

3 A It's [indiscernible].

4 Q Did you finish high school?

5 A I finished high school.

6 Q Did you have any additional training past high  
7 school?

8 A College.

9 Q Did you finish college?

10 A I finished college. Third year [indiscernible]  
11 husbandry more on starting to become a veterinarian. Then I  
12 went to Manila after that. Went to study dental technology,  
13 which is like making dentures.

14 Q How long was that program?

15 A About two years.

16 Q Did you finish the program?

17 A I did, I finished it.

18 Q And did you actually work for a time making  
19 dentures?

20 A Yeah, I did.

21 Q Was that in the Philippines?

22 A Yes, in Manila for two year.

23 Q How long did you do that?

24 A For two years.

25 Q And then what happened?

1           A     Then I moved back to the province that I grew up in.  
2     My brother asked me to help him with the business.

3           Q     What kind of business did your brother have?

4           A     It's a construction, kind of selling materials.

5           Q     What kind of materials?

6           A     Construction materials.

7           Q     And how long did you do that job?

8           A     For two years before I came to the United States.

9           Q     Okay. And what was your actual position while you  
10    were there?

11          A     I'm the manager, but since it's a business by our  
12    family, so I kind of like the driver and looking after all the  
13    -- it's not a big business.

14          Q     How many employees?

15          A     Like six, seven employees.

16          Q     Okay. And you were the manager of those six or  
17    seven employees?

18          A     Yes.

19          Q     So did you wear a lot of hats? Did you have to do a  
20    lot of different jobs?

21          A     I did.

22          Q     You said you were there for a couple of years. Then  
23    what did you do next as far as a job is concerned?

24          A     Then I came to the United States.

25          Q     Okay. Explain to the jury a little bit how you made

1 the decision to come to the United States?

2 A It's a greener pasture. Growing up as a guy from  
3 the Philippines in a small town, America is a place where you  
4 could probably have a good life and be able to have a chance  
5 to have a notion of the Filipinos are, come to the United  
6 States and have a chance to have a good life and take care of  
7 the family.

8 Q What did your family consist of at the time?

9 A I was single at that time when I came to the United  
10 States.

11 Q Did you have a girlfriend?

12 A I do. I do have a girlfriend.

13 Q What was her name?

14 A Karen [indiscernible].

15 Q Is she now your wife?

16 A She's my wife.

17 Q And when did you get married?

18 A We got married 2001.

19 Q I know that was a hard question because I know  
20 you're not very good with dates.

21 A 2001. I came to the United States in 2000.

22 Q Okay. You came to the United States in 2000 and got  
23 married to Karen --

24 A 2001 when I went back home to the Philippines and we  
25 decided to get married.

1 Q When you first came to the United States, what kind  
2 of jobs did you -- or job did you have?

3 A A month after I came to the United States I was  
4 hired to work for a company named W. H. Smith at the Rio  
5 Hotel.

6 Q The books and gifts, that kind of thing?

7 A Yes.

8 Q And how long did you have that job?

9 A For I believe two years.

10 Q When you first came to the United States, did you  
11 come directly to Las Vegas or did you work --

12 A Las Vegas.

13 Q Okay. Did you have family here or why was it that  
14 you chose Las Vegas?

15 A My parents and sisters are living over here at the  
16 time.

17 Q So you came someplace where you already had family?

18 A Yes.

19 Q Jay, before you --

20 A And I went to live with them.

21 Q You lived with them?

22 A Yeah.

23 Q Before you came to the United States, did you have  
24 any kind of medical training?

25 A No.

1 Q Did you have any kind of first aid training?

2 A No.

3 Q Okay. So you worked at the W. H. Smith. When was  
4 it that -- you said you went back to the Philippines and you  
5 and Karen were married then. Was she able to come back with  
6 you after you were married?

7 A No.

8 Q Why not?

9 A It's a process with immigration. You've got to  
10 wait, file an application and then they approved. Then they  
11 can come later but they have to go through a lot of interviews  
12 and all that.

13 Q How much later was it when Karen was able to finally  
14 join you in the United States?

15 A I believe it was 2008 with my daughters.

16 Q So you did manage to get together at least a couple  
17 of times, correct?

18 A Yeah. I always had the chance, I would go home and  
19 visit and that's when we had our kids.

20 Q Okay.

21 A In the Philippines.

22 Q When you would go back to the Philippines, how long  
23 would you stay?

24 A At least a month.

25 Q And you said that you've got daughters. Tell the

1 jury, if you will, about your children.

2 A I've got three girls.

3 Q And their names are?

4 A Their names are [indiscernible] Farrales and  
5 [indiscernible] Farrales and [indiscernible] Farrales.

6 Q And I understand the oldest two are teenagers now.

7 A They're twins.

8 Q Did you tell me 13?

9 A No, it's actually 12.

10 Q They're 12.

11 A They're 12.

12 Q Preteen. And how old is the youngest one?

13 A Nine years old.

14 Q Nine years old. So you've got a lot of female  
15 hormones running around in your house, don't you?

16 A Yes.

17 Q Do you sometimes feel outnumbered?

18 A Outnumbered, yes.

19 Q So, okay. You said that you worked at W. H. Smith.  
20 What's the next job that you had after that?

21 A I drove a cab.

22 Q Did you -- when you drove a cab did you need to have  
23 a commercial driver's license to do that?

24 A No, just a regular driver's license.

25 Q Did you have any kind of first aid training once you

1 got on the job and were driving a cab?

2 A No.

3 Q How long did you have that job?

4 A Four years.

5 Q During the time that you drove a cab, did you ever  
6 have people eating in the cab?

7 A Yes.

8 Q Did you ever have people that drank in the cab?

9 A Yes. They think they own you or something.

10 Q They what?

11 A They think like they own you because you're driving  
12 them and they can just do whatever they want. That's in the  
13 taxi business, though.

14 Q So, okay. So you drove a cab for about four years.  
15 And then what did you do?

16 A I met somebody and I went back to the Philippines.  
17 At that time we were having difficulties with the way the  
18 companies go and the taxi business. I went back home and I  
19 met this guy named [indiscernible] who helped me to apply for  
20 the job named [indiscernible].

21 Q When you say apply for the job, what job?

22 A To drive for the company that he works for.

23 Q And what company was that?

24 A It was Laidlaw then.

25 Q Laidlaw?

1 A Laidlaw, yes.

2 Q Okay. Can you, just kind -- what year are we up to  
3 now? When was it that you applied at Laidlaw?

4 A 2006, about May, June, July, that time.

5 Q Where was your family at that time? Were they still  
6 in the Philippines?

7 A They were still in the Philippines.

8 Q When was it that your wife and your three daughters  
9 were able to come to the United States to live permanently?

10 A About two years after.

11 Q So 2008?

12 A About 2008, yeah.

13 Q Have you all been continuously living together here  
14 in Las Vegas since that time?

15 A Yes.

16 Q Were you and your wife eventually able to move into  
17 a house?

18 A We did. We bought a house like nine, ten months  
19 ago.

20 Q Before we start talking more in detail about your  
21 jobs, can you give the jury a little bit of an idea about you  
22 as a family. What kind of things do you enjoy doing as a  
23 family? You told me you liked to cook.

24 A I love to cook. And we would call our brothers and  
25 our family, our friends to come over because I'm a good cook.

1 So they would always come over. I don't know if they're lying  
2 or not. And we had a meal. It's a Filipino thing. It's  
3 something that we grew up with, like call your family and you  
4 cook and everybody would come over and have those food that  
5 they would cook and we would serve it at the table and we'd  
6 just have fun.

7 Q When you're talking about the family, how much  
8 family do you have here in the Las Vegas area?

9 A Well, a lot of family including our friends. They  
10 are considered as our family.

11 Q Of course. So how big of a --

12 A There are a lot of them, probably 30, 40.

13 Q Okay. So that's quite a gathering.

14 A Yeah, it is quite a gathering.

15 Q Okay. Let's get back to your job here a little bit.  
16 You were able to arrange an interview with Laidlaw you said  
17 and that was sometime in 2006?

18 A That's correct.

19 Q What do you remember about that interviewing  
20 process, the application process?

21 A You have to go there and apply there, there's a  
22 front desk, and they would tell you to get an examination to  
23 get a license and then we would get to the DMV.

24 Q When you applied for a job with Laidlaw, was it  
25 specifically to drive paratransit?

1 A Yes.

2 Q Did you know anything at all about paratransit  
3 service at the time that you first applied?

4 A No.

5 Q What did you learn about paratransit service during  
6 the time that you were initially interviewing with Laidlaw?

7 A That they were to be used by people with  
8 disabilities.

9 Q So you did go through the application process with  
10 Laidlaw. Did you have to have a commercial driver's license  
11 in order to drive paratransit for Laidlaw?

12 A Yes, that's what we took an examination for to get a  
13 CDL.

14 Q Okay. So you went through the training for  
15 obtaining your commercial driver's license; is that right?

16 A I did.

17 Q Okay. And did you obtain that license?

18 A I did obtain it.

19 Q When you first started working with Laidlaw, did you  
20 have any kind of first aid training with Laidlaw?

21 A No, I didn't.

22 Q And the jury knows that you didn't have any first  
23 aid training with First Transit. Where are you working now?

24 A I'm still working for a company that does the same  
25 thing.

1 Q What's the name of that company?

2 A Transdev.

3 Q And does Transdev now have the contract with RTC to  
4 provide paratransit service?

5 A Yes.

6 Q Okay. Did you have to have or do you have any kind  
7 of first aid training with Transdev?

8 A No.

9 Q Jay, this is a question we just have to ask. Have  
10 you ever been convicted of a crime?

11 A No.

12 Q Have you ever, other than this lawsuit, had any kind  
13 of legal problems?

14 A No, other than collection from garnishment.

15 Q What was that about?

16 A It's a company -- it was at that time when my family  
17 was still like in the Philippines and I'm the one providing  
18 for all of them. And I'm sending my wife to school to become  
19 a nurse and my niece, I was the one paying for education too.  
20 So I couldn't afford anymore to pay for. So I stopped paying  
21 for it.

22 Q And they did garnish your wages for a time in order  
23 to get that debt paid off?

24 A They did, yes.

25 Q Other than that, anything else that you've ever had

1 in the way of any kind of legal issues?

2 A No.

3 Q During the time that you were working for either  
4 Laidlaw or First Transit, did you ever have any kind of  
5 disciplinary action taken against you by your employers?

6 A No.

7 Q What about with Transdev?

8 A No.

9 Q You said that you got your commercial driver's  
10 license when you applied and were hired with Laidlaw. Did you  
11 know at the time that you were first hired that you would be  
12 working under the contract with the Regional Transportation  
13 Commission?

14 A Yes.

15 Q What was your understanding of the relationship  
16 between Laidlaw and RTC?

17 A Laidlaw owned the business, the buses, and they're  
18 the boss of the Laidlaw.

19 Q Were you -- did you have any understanding that RTC  
20 rules would take precedence over any Laidlaw rules if there  
21 was any kind of conflict?

22 A RTC rules were to be followed.

23 Q And was that also true once First Transit came in  
24 and replaced Laidlaw?

25 A Yes.

1           Q     Now, what kind of training did you get when you were  
2 first hired by Laidlaw? We know that you got your commercial  
3 driver's license, but what additional training do you recall  
4 getting when you first started?

5           A     We did a lot of classroom training [indiscernible]  
6 behind the wheel training. Somebody would be behind you and  
7 assessing the things that you do. Monthly safety meetings and  
8 sometimes they would have somebody when we do training for  
9 like putting the wheelchairs and all those kind of things.

10          Q     Putting the what?

11          A     The wheelchairs, setting up and like sensitivity  
12 training and all those kind of things.

13          Q     The jury heard a little bit about the sensitivity  
14 training this morning when Mr. Daecher was on, but what do you  
15 recall being trained on as far as the sensitivity training?

16          A     Like being courteous and try to make sure that you  
17 don't do anything that is going to offend anybody that would  
18 make them feel like you're discriminating or doing something  
19 that would be disrespectful to anybody.

20          Q     You knew that you as a paratransit driver would be  
21 transporting people who had disabilities?

22          A     I know that.

23          Q     The buses that you drove, did you drive the same bus  
24 every day?

25          A     No.

1 Q Did you have the same --

2 A Different ones.

3 Q Different buses?

4 A Different buses.

5 Q Did you have the same route every day?

6 A We have route -- not the same routes very day. We,  
7 when we, I mean, bid on it, they would be routes that you  
8 follow, either bid on something that has different routes on  
9 it, like four different routes in the whole week.

10 Q So did you have a different route --

11 A Different routes and then you pick up different  
12 people, yes.

13 Q Okay. That was going to be my next question. So  
14 from one day to the next you didn't have the same route or the  
15 same passengers; is that right?

16 A The same -- not the same routes very day, but  
17 different passengers, yes.

18 Q Different bus and different passengers?

19 A Yes.

20 Q Now as part of the training that you got, were you  
21 provided with training about the rules that apply to  
22 passengers of the RTC paratransit service?

23 A Pardon me?

24 Q The rider rules that we've been making reference to  
25 for RTC, were you trained in what those rider rules were?

1 A Yes.

2 Q And was it that you were trained to know what those  
3 rules were?

4 A Yes.

5 Q And was it expected that the passengers would  
6 already know those rules?

7 A It is expected.

8 Q Would it be expected that the passengers would  
9 follow those rules when they are a passenger on the  
10 paratransit bus?

11 A Yes.

12 Q With regard to any kind of particular emergency,  
13 medical emergency that a passenger might experience on --  
14 while a passenger on the bus, what were you trained to do?

15 A We will call the dispatch. Then if it's an  
16 emergency we call, we ask them to call 9-1-1.

17 Q Okay. So you were trained to call dispatch in the  
18 event of an emergency and ask them to call 9-1-1?

19 A Yes.

20 Q You told us before that you were trained as far as  
21 sensitivity training for transporting disabled passengers.  
22 Did you get any specific information, though, about individual  
23 passengers and what their disability actually was?

24 A No.

25 Q Did you have any, as drivers for First Transit, did

1 you have any involvement in determining eligibility for  
2 passengers to ride the bus?

3 A I don't have, no.

4 Q Is that something as you understand that was handled  
5 by RTC?

6 A Yes.

7 Q So when you're a driver and you're getting  
8 information to go and pick up certain passengers on a  
9 particular day, what kind of information is it that you get  
10 about those passengers?

11 A There's a letter on the manifest, we have a manifest  
12 that we follow. You would get those routes and it says all  
13 the information and where you pick them up and where you drop  
14 them off. The information over there is like a letter, like a  
15 paper, or [indiscernible] or receipt for [indiscernible].

16 MS. SANDERS: Your Honor, may I approach the  
17 witness?

18 THE COURT: Yes.

19 BY MS. SANDERS:

20 Q You talked about a manifest. I don't think this is  
21 in evidence yet, but is that what you're talking about?

22 A Yes.

23 MS. SANDERS: This is Exhibit A15, Your Honor. May  
24 we ask that it be admitted into evidence?

25 MR. ALLEN: No objection.

1 THE COURT: Admitted.

2 (Defendant's Exhibit A15 admitted.)

3 BY MS. SANDERS:

4 Q You can probably look at it on the screen. Would  
5 you just kind of go through this? Is this the information  
6 that you would get when you were starting your route for a  
7 day?

8 A That's correct.

9 Q Okay. Explain to the jury, if you would, what this  
10 actually is. You said this was a manifest, but what kind of  
11 information is there?

12 A This paper works for the whole day. They give them  
13 to you [indiscernible] and you check on it and then try to do  
14 some mapping and check on wherever they go or you pick them  
15 up. You get all the information, the people that you are  
16 going to pick up and tells you about the time that you're  
17 supposed to be picking them up and the places. And some  
18 information on this side to the right, the fare, if they need  
19 to use a lift, assist [indiscernible] and the client, which  
20 would be the client on the, it says passenger on the top. And  
21 you see a C over here. It means they have some physical  
22 disability.

23 Q Let's turn to the page that -- this is the manifest  
24 from July 29, 2011, the day that Harvey Chernikoff rode. And  
25 let's turn to the page three, please, with regard to

1 specifically Mr. Chernikoff. And it's the second one down.  
2 Are you all able to see that? It's pretty small. It's got  
3 redactions on it because there is other passenger information  
4 that's confidential and that's why that information is  
5 redacted. Can you just explain, though, Jay, to the jury what  
6 we're seeing here with regard to Harvey Chernikoff?

7 A It got his name on it and it got the information  
8 where -- the times that you pick him up, drop him off. You  
9 don't really know when -- you got estimated times and the C,  
10 that's the disability, like that tells you he's cognitive.  
11 And then you write down --

12 Q Let's back up just a little bit. Is the writing  
13 that's on this page, is that your writing?

14 A That's my writing.

15 Q Because you were the driver of that bus on that day;  
16 is that right?

17 A That's correct.

18 Q Now you were talking about a C and I'm not sure if  
19 the jury can see this. This little mark right here is the C.  
20 Can you explain what that C means?

21 A Cognitive abilities, like has he got some disability  
22 where he's mentally challenged, like abilities to understand  
23 things and all that kind.

24 Q Okay. Is this the only information that you as the  
25 driver would get about that particular passenger on that day?

1 A Yes.

2 Q Did you ever get any more specific information about  
3 Harvey Chernikoff or anybody, any other passenger's specific  
4 disability?

5 A No.

6 Q You have to speak up. I'm sorry. So other than  
7 knowing that code, that C for some type of a cognitive issue,  
8 you didn't have any other information about Harvey Chernikoff,  
9 what he could or could not understand; is that right?

10 A I don't have any.

11 Q Now we've talked about the fact that Harvey  
12 Chernikoff was approved by the RTC to ride with a personal  
13 care attendant, a PCA. If he had decided to ride that day  
14 with a personal care attendant, would that show up somewhere  
15 on the manifest?

16 A Yes.

17 Q And where would that show up?

18 A Right under the time you pick him up, it should be  
19 at the line --

20 Q I don't think it shows on this.

21 A It's not showing there. When you pick him up --

22 Q We need to go further to the side.

23 A The information would be like this. The client,  
24 that means you're picking up a client, and like this one is  
25 not paying any money at all, and he's ambulatory. And he uses

1 a monthly pass, that's why it's zero. He paid for it -- a  
2 monthly pass, that means you got to buy a pass for the whole  
3 month. And a PCA would be under the second space at the  
4 bottom it says client over here, the bottom would be PCA.

5 Q Okay. If you could move down the page, I think  
6 there's one just below that that was riding. Okay. So you  
7 see where I'm pointing here? Is there where it would show up  
8 if he was riding with a PCA?

9 A That's correct.

10 Q So that would be clearly marked on the manifest if  
11 the passenger had scheduled to ride with a PCA that day; is  
12 that right?

13 A That's correct.

14 Q Okay. You told us that you don't have the same  
15 route every day and you didn't have the same passengers every  
16 day. Was this, though, the extent of the information you got  
17 on any passengers is just that code, that C or whatever it  
18 might be?

19 A That's correct.

20 Q To depict whatever kind of disability they might  
21 have?

22 A That's correct.

23 Q Okay. Jay, I'm not going to go through all of the  
24 training and that kind of thing that you had with Laidlaw and  
25 First Transit. We're going to have Jennifer do that. But did

1 you get ongoing training once you had your initial training  
2 with Laidlaw and then First Transit?

3 A Yes.

4 Q And can you just briefly tell the jury what kind of  
5 ongoing training you received?

6 A Monthly training, every month we do a monthly  
7 training about anything they believe that we need to be  
8 trained on. We would -- they would have [indiscernible] and  
9 all the different stuff going on. They would tell you what  
10 need to be corrected or something like that.

11 Q Did you have defensive driving courses?

12 A Yes, we did.

13 Q Did you have -- we've heard about the Smith driving  
14 course. Is that something that you went through?

15 A Yes.

16 Q And these monthly safety meetings, did they address  
17 different kinds of topics that were important for you as  
18 drivers?

19 A Yes.

20 Q Jay, were you ever -- like I said, I don't want to  
21 go into all of the training with you, but do you feel that you  
22 had good training from First Transit during the time that you  
23 were a driver for them?

24 A Yes.

25 Q Were you ever disciplined by First Transit for

1 violating any kind of company policy on safety?

2 A No.

3 Q When -- we've heard a lot of talk about the employee  
4 handbook for First Transit. But when you first started, you  
5 were working for Laidlaw; is that right?

6 A That's correct.

7 Q Were you provided with an employee handbook by  
8 Laidlaw?

9 A That's correct.

10 Q Is that something that you reviewed?

11 A Yes.

12 Q Did you commit it to memory?

13 A No.

14 Q Did you consider that there was useful information  
15 in the handbook that you should be aware of?

16 A Yes, useful information.

17 Q With the handbook that you got from Laidlaw, was  
18 there anything in there about first aid training?

19 A No.

20 Q Now, we talked a little bit about the PCA and --

21 MR. CLOWARD: Your Honor, may we approach just real  
22 quickly?

23 (Bench conference.)

24 MR. CLOWARD: [inaudible]

25 THE COURT: Is this the one that was, the late

1 disclosed one?

2 MR. CLOWARD: [inaudible]

3 MS. SANDERS: [inaudible]

4 THE COURT: It's over.

5 MS. SANDERS: [inaudible]

6 THE COURT: Asked about it in his deposition.

7 MR. ALVERSON: [inaudible]

8 MR. CLOWARD: [inaudible]

9 MS. SANDERS: [inaudible]

10 THE COURT: So what do you want me to do?

11 MR. CLOWARD: [inaudible]

12 THE COURT: And it wasn't mentioned during his  
13 deposition?

14 MR. CLOWARD: [inaudible]

15 MS. SANDERS: [inaudible]

16 THE COURT: It should have been turned over what  
17 you're going to discuss in trial. No more testifying about  
18 the Laidlaw.

19 MS. SANDERS: [inaudible]

20 (End of bench conference.)

21 BY MS. SANDERS:

22 Q Jay, before we were called up we were talking about  
23 the personal care attendant. Could you, as a driver, require  
24 somebody to ride only with a personal care attendant?

25 A No.

1 Q Was that something that was the decision of the  
2 passenger or whoever was responsible for the passenger?

3 A That's correct.

4 Q So even if the person was approved to ride with a  
5 PCA, that was still their choice or their decision whether or  
6 not they were going to actually do that?

7 A That's correct.

8 Q Now, had you ever driven Harvey Chernikoff before  
9 July 29, 2011?

10 A I did.

11 Q Can you tell the jury about how many times that you  
12 had driven him?

13 A I believe twice before the incident.

14 Q Did he ever have a personal care attendant with him  
15 when you drove him before?

16 A Not that I remember.

17 Q Did you ever see him eat on the bus when you had  
18 driven him before?

19 A No.

20 Q Did you ever observe him moving around, anything  
21 like that on any of the other trips that you had taken him on?

22 A He talks a lot, that's what I observe about him.

23 Q Okay.

24 A He always ask me questions.

25 Q Did you like him?

1 A I like him.

2 Q Let's talk about the First Transit handbook, it's  
3 Exhibit 2. Now, you've seen that handbook.

4 A Yes.

5 Q And that particular handbook I think we've  
6 established came out in 2010. Do you recall when it was after  
7 that that you first saw the First Transit handbook? Sometime  
8 after it came out?

9 A Yeah. I couldn't remember exactly when.

10 Q Did you review that handbook?

11 A I reviewed it.

12 Q Again, did you commit it to memory?

13 A No.

14 Q Do you recall specifically looking at the couple of  
15 pages in the back that have to do with first aid?

16 A Yes.

17 Q You testified earlier this week that the handbook  
18 contains a set of safety rules. Do you recall that testimony?

19 A I do.

20 Q Does it also include other information besides  
21 safety rules?

22 A Yes, it does.

23 Q What other kind of information is in that handbook?

24 A Attendance, you know, like infractions and all those  
25 kind of things. And some information about like — there are

1 a lot in that handbook, it talks about different things, not  
2 just safety. And there are some over there that talks about  
3 sensitivity training and I believe there's like part of it  
4 with RTC or something like ADA or something like OSHA or some  
5 kind of whatever it is that we needed to know. It's not just  
6 about safety. All different kind of things.

7 Q There are some safety rules in the handbook, though,  
8 correct?

9 A There are safety rules in the handbook.

10 Q Is everything that you ever learned about safety as  
11 a First Transit driver included in that handbook or are there  
12 other sources of information that you got as far as safety or  
13 other kinds of training?

14 A There are other kinds of training that we go  
15 through. Like I said, we have some training, you know, like  
16 people coming over and all this different monthly trainings  
17 that we have, not just reading the book.

18 Q Would you consider the handbook to be informational?

19 A It's very informational.

20 Q And did you get specific training on some of the  
21 topics that were covered in the handbook?

22 A Yes, we did.

23 Q But not all of the topics that were covered in the  
24 handbook; is that right?

25 A Not all of them.

1 Q Now, counsel had asked you earlier about whether or  
2 not you were aware of any kind of written changes to the  
3 handbook and I think you answered no. As far as you know, did  
4 First Transit or the president of First Transit ever, while  
5 you were working there, make any changes in writing to the  
6 information that was in the handbook?

7 A No.

8 Q Were you ever told don't read pages 69, 70 on first  
9 aid?

10 A No.

11 Q Now, whether or not you got information from a  
12 handbook or from training or from safety meetings or from  
13 speakers, anything else that you got in the way of training  
14 and information, do you feel like you tried to follow the  
15 rules and policies of First Transit while you were a driver  
16 for them?

17 A I always do.

18 Q Now, I think you mentioned this before. But to the  
19 extent that the rules of First Transit differ in any way from  
20 the rules for RTC, what were you told as far as which rules  
21 you were to follow?

22 A The RTC rules.

23 Q Okay. And why is that?

24 A They're the boss.

25 Q I'm sorry?

1 A They are the boss. They are the one who owns the --

2 Q Okay. Now, the jury's heard a little bit about the  
3 rules on the bus for passengers drinking on the bus. We know  
4 that the First Transit rule is no drinking on the bus at all;  
5 is that right?

6 A Yes, that's correct.

7 Q And the RTC rule is a little more lenient because  
8 they allow people to drink on the bus from a bottle like  
9 you're talking about, something that's got a cover; is that  
10 right?

11 A That's correct.

12 Q So the rule for First Transit is actually stricter  
13 than the rule for RTC.

14 A That's correct.

15 Q But you were to follow the RTC rule if there was  
16 anything that was different; is that right?

17 A That's correct.

18 Q Now, with regard to eating on the bus, RTC and First  
19 Transit had the same rule, didn't they?

20 A They do.

21 Q No eating on the bus at all.

22 A No eating on the bus.

23 Q Now, counsel asked you earlier whether or not eating  
24 on the bus could lead to choking and that could lead to death.  
25 And you agreed with that.

1           A     I agreed with that.

2           Q     Is that true that choking can lead to -- or that  
3 eating can lead to choking that can lead to death regardless  
4 of where you are?

5           A     Regardless, yes.

6           Q     Could it happen in your own home?

7           A     It could happen.

8           Q     Could it happen when you're in your own private car?

9           A     It could happen.

10          Q     Could it happen in a restaurant or a movie theatre  
11 or anywhere that you put something in your mouth?

12          A     Anywhere.

13          Q     Now, as a driver, did you have occasion to enforce  
14 the rule against no eating?

15          A     I did.

16          Q     And if you knew that somebody was eating on the bus,  
17 would you ever just let it go or would you remind them and  
18 tell them --

19          A     Remind them, say not eat.

20          Q     Had you ever allowed Harvey Chernikoff to eat on the  
21 bus?

22          A     I never allowed him to eat, like go ahead and eat,  
23 never allowed him.

24          Q     Okay. Did you ever see him eat on the bus?

25          A     No.

1 Q Was there ever a reason for you to enforce the no  
2 eating rule with Harvey Chernikoff?

3 A No. I don't have to enforce it. I never seen it.

4 Q Okay. And that was true on July 29, 2011, as well  
5 as any of the other trips that you had taken him on?

6 A That's correct.

7 Q Now, if you had seen Harvey Chernikoff eating on the  
8 bus on that day, what were you trained to do?

9 A I have to say something.

10 Q And would you have followed that training if you had  
11 seen him eating on the bus that day?

12 A Yes.

13 Q Now, in addition to the riders getting rules for  
14 what they can and can't do or should or shouldn't do on the  
15 bus, were there also signs in the bus to give them some idea  
16 about what the rules were?

17 A Yes.

18 Q And we've seen the sign that was in the bus. Let's  
19 put it up again. Is this the sign that was in the bus at the  
20 time that you transported Harvey on July 29, 2012?

21 A Yes.

22 Q What does that sign say to you in the -- it's not a  
23 very good copy -- in the circles up above?

24 A No smoking, no eating, drinking out of open cup.  
25 And this one here no playing music.

1 Q And that sign was in the bus on the day that you  
2 transported Harvey?

3 A That's correct.

4 Q Did anybody ever tell you that Harvey Chernikoff was  
5 unable to read?

6 A Nobody told me that.

7 Q Did anybody ever tell you that he was unable to look  
8 at signs and understand signs?

9 A Nobody told me that.

10 Q Now, these buses that you drove, were they owned by  
11 RTC or by First Transit?

12 A They owned by RTC.

13 Q And the signs that were in the bus, were those  
14 placed there by RTC as well?

15 A RTC.

16 Q The jury has heard that at one point during the  
17 earlier part of the trip with Harvey you -- he asked you to  
18 help him with a water bottle similar to what you've got there  
19 and you helped him to untwist that. Do you recall that?

20 A That's correct.

21 Q Okay. In your mind, was that a violation of the RTC  
22 rule against no drinking except from something that's got a  
23 covered container?

24 A No.

25 Q Were either you or Harvey Chernikoff violating the

1 RTC rule against drinking from an open container when you  
2 helped him with the lid?

3 A No.

4 Q I'd like to go through now, Jay, a little bit about  
5 the earlier part of that trip you took. The jury has seen  
6 just a limited segment of the video and I'm sorry, I'm going  
7 to be showing part of the video again. I'm not going to go  
8 through the entirety, but I am going to show you and have Jay  
9 explain to you what you're seeing at various different times  
10 here. Now 6:50:26 is right about the time that Harvey was  
11 getting on the bus for the first time. So when you see him  
12 can you kind of just explain to the jury what they're seeing?

13 (Video played)

14 A I'm there behind him.

15 Q Is there audio?

16 A Yes. I was looking at him.

17 Q And is he putting on his seatbelt right there?

18 A Yes. He said okay when I told him to put the  
19 seatbelt on.

20 Q I'm not sure that the jury heard it. What was he  
21 saying to you right there?

22 A I couldn't understand.

23 Q Was he saying that he needed you to adjust the air,  
24 that it's warm? Several times he mentioned the temperature?

25 A Yes.

1 Q We won't talk this time, we'll stop it afterwards.

2 (Video played)

3 Q You see the man that's clear in the back there, Jay?

4 A Yes.

5 Q What is he doing?

6 A Stretching his leg.

7 Q Was it unusual for people to stretch on the bus?

8 A No.

9 (Video played)

10 Q So you said that this time -- what did you hear him  
11 saying, Jay?

12 A About the temperature, he's saying cold or warm,  
13 something like that.

14 Q And I think you mentioned that --

15 A I said are you warm or cold.

16 Q And it's the end of July, so the air conditioner was  
17 running at the time?

18 A Yes.

19 Q Did you adjust the air conditioning after Harvey  
20 told you that he felt cold?

21 A Yes.

22 Q Let's go on to 7:05:38.

23 (Video played)

24 Q You did assist him by helping him untwist the bottle  
25 at that point, correct?

1 A That's correct.

2 Q Did you stop the bus first to do it?

3 A I did.

4 Q Was there anything about you assisting him by  
5 untwisting that bottle that was a violation of the RTC rule  
6 about drinking on the bus?

7 A No.

8 Q Let's go on to 7:13:46.

9 (Video played)

10 Q When you heard the coughing, were you concerned?

11 A Yes.

12 Q Was that something that was unusual as far as  
13 something that was going on with the passenger?

14 A That's like, you know, when you hear sounds like  
15 that, coughing, you get concerned and you say are you okay or  
16 something.

17 Q Check on it.

18 A Check on it.

19 Q Let's go on to 7:25:50.

20 (Video played)

21 Q What did that scene depict?

22 A I help him with the seatbelt, he couldn't put it on.

23 Q He was having trouble and so he asked you for help?

24 A Yes.

25 Q Let's go on 7:45:23.

1 (Video played)

2 Q Was this just an example of how talkative Harvey was  
3 and you had conversations with him?

4 A That's correct.

5 Q Was it fairly common on this trip as well as other  
6 trips that he would engage you in conversation?

7 A Yes.

8 Q Was he always talking or did he have periods where  
9 he was quiet as well?

10 A Yes.

11 Q Yes, he had periods where he was quiet?

12 A Yes.

13 Q Let's go to 7:48:15, please. Now this one's a  
14 little longer.

15 (Video played)

16 Q This is a little bit longer segment, but can you  
17 just explain to the jury what's happening here?

18 A He feels going to the bathroom.

19 Q Okay. And did you --

20 A And ask -- I ask him about it and I ask him if he  
21 can hold it and we went on to find a place. I said we will  
22 find a place.

23 Q Did you find a place to --

24 A We did. We moved to a place and I let him go to the  
25 restroom.

1 Q Okay. Then, let's go on to 7:53:12.

2 (Video played)

3 Q Now is this after you let him off to go to the  
4 bathroom and he's getting back on?

5 A Yes.

6 Q And you helped him with his seatbelt?

7 A I did.

8 Q Was he somebody who would ask you for help if he  
9 needed help?

10 A Yes.

11 Q Okay. And at this point before you start going  
12 again he's secured in the seatbelt?

13 A Yes.

14 Q Let's go on to 7:56:30.

15 (Video played)

16 Q Was this just one of many times or at least a few  
17 times on the bus where he mentioned to you that he was cold  
18 and asked you to adjust the air?

19 A Yes.

20 Q And did you do that when he asked?

21 A I did, yes.

22 Q Okay. Before we go on, I would like to -- before we  
23 go on to another part of the video, I'd like to talk a little  
24 bit about the mirror you used. There's been a lot of question  
25 and testimony about the mirrors in the bus. Can you just --

1 and you did testify a little bit about this a couple of days  
2 ago. But can you explain to the jury what you were trained to  
3 do as far as scanning -- first of all, adjusting the mirrors.

4 A I have to in the morning, the pretrip inspection,  
5 during the pretrip inspection you got to check everything  
6 around the bus. You do the lift, check anything that's not,  
7 like the tires and all the possibly wrong with it. Then you  
8 go in and check the dashboard and whatever it is that you need  
9 to do check and you set the mirrors and the mirror over here  
10 and you set the mirror over here and the side and the left  
11 side. There's like a knob that we would just set it on there  
12 some way that you set it on to see the back and the -- to the  
13 right and to the left and the back of the bus and the interior  
14 also.

15 Q You make all those adjustments before you start the  
16 trip?

17 A Yes.

18 Q Okay. Is there a way to, with the mirrors -- we saw  
19 this morning the kind of mirrors that were in the bus. Is it  
20 possible with those mirrors to see every single part of the  
21 interior of the bus?

22 A No.

23 Q Can you try to adjust it to see as much as you can?

24 A Yes.

25 Q But are you able to see, for example, into people's

1 laps or behind seats or on the floor or anything like that?

2 A No.

3 Q It gives you kind of a general overview of the  
4 interior of the bus?

5 A Yes.

6 Q But you can't see the nooks and crannies and the  
7 specifics.

8 A No.

9 Q Now, what is the primary concern that you as a  
10 driver are taught in adjusting and in scanning your mirrors?

11 A I look for [indiscernible] and make sure that when  
12 you're driving you're checking all the mirrors, scanning it  
13 for potential hazard that would cause an accident.

14 Q When we're talking about scanning the mirrors and we  
15 heard about scanning the mirrors every five to eight seconds,  
16 is that specifically the interior or are you scanning the  
17 exterior mirrors for what's going on outside you?

18 A It's most of the time the exterior and it kind of  
19 [indiscernible] around all the necessary areas. Depends on  
20 what the situation takes you. Like if you see some car, you  
21 know, next to you, you're not necessarily like looking over  
22 there on the other side. You have to continuously scan it.  
23 So whatever moves they would do you can recognize it and be  
24 able to maneuver on the way that it would be safe.

25 Q Is the primary thing you're taught with regard to

1 use of the mirrors to be paying attention to traffic and cars  
2 and traffic hazards, what's ahead of you, what's to the side  
3 of you as far as your driving is concerned?

4 A That's correct.

5 Q You are supposed to kind of monitor what's going on  
6 inside the bus by use of the mirrors as well, though, correct?

7 A That's correct.

8 Q What are you looking for as far as scanning the  
9 interior of the bus?

10 A If there's something like out of the ordinary that  
11 you would see it would catch your attention.

12 Q Okay. And if you see something out of the ordinary  
13 in the interior, then you'd respond to it or what?

14 A You respond to it.

15 Q But your primary job is to drive; is that right?

16 A That's correct.

17 Q And drive as safely as you can?

18 A Yes.

19 Q So is the primary purpose of the mirrors to check  
20 the outside?

21 A That's true and around the bus, whatever it is.

22 Q Now, you saw this morning that when Mr. Daecher was  
23 testifying, he indicated -- he had a couple of photographs  
24 that were put up. A19, if you'll put those up. Now, this  
25 morning Mr. Daecher explained to the jury that when he had

1 examined an exemplar bus he did it after you had already  
2 driven the bus the night before and left everything the same  
3 way that you had adjusted it. Is this kind of generally -- I  
4 know you can't remember specifically, but is this kind of  
5 generally the view that you would have had looking into the  
6 interior mirror?

7 A Correct.

8 Q Yes?

9 A Yes.

10 Q And the view that you get there is a general  
11 overview, correct?

12 A Correct.

13 Q If somebody was standing up would you be able to see  
14 that in that mirror?

15 A That's correct.

16 Q Would you be able to see somebody that is doing  
17 something down in their lap or are leaning over, anything like  
18 that?

19 A No.

20 Q That mirror depicts what? What does that show you?

21 A The back of the bus, the inside of it.

22 Q What is that mirror primarily to help you with?

23 A To check on if there's something out of the  
24 ordinary, you react to it. This is just the one over here on  
25 like the bottom before the camera. And you look at the --

1 this is how it looks like and you can just, if there's an  
2 extra out of the ordinary, like that you could see.

3 Q Okay. So the two photos that we've just seen, would  
4 that be a better representation of what you as the driver  
5 would be able to see rather than the video that we've been  
6 being shown during the rest of the trial?

7 A That's correct.

8 Q Are passengers allowed to take packages onto the bus  
9 with them, purses, bags, that kind of thing?

10 A Yes.

11 Q There's no prohibition against that?

12 A No. They are allowed to bring two bags and carry --  
13 even the PCA can have two bags with them.

14 Q Are you as a driver required to look through that  
15 bag or any bags they bring on to see if they've got any food  
16 or anything like that that they shouldn't have?

17 A No.

18 Q While passengers are on the bus, is it unusual for  
19 them to move around in their seat?

20 A They always like moving.

21 Q People don't get on the bus and just sit rigidly  
22 during the whole time, do they?

23 A No.

24 Q Are there times when passengers are talking and  
25 other times when they're quiet?

1 A Yes.

2 Q Do some of the passengers nap periodically?

3 A That's correct.

4 Q And if they're napping do sometimes they lay down in  
5 the seat or lean over in the seat?

6 A That's correct.

7 Q And is that something that is of concern?

8 A No.

9 Q Does that mean that at times they are not always in  
10 your line of vision when you're looking in the mirrors?

11 A You see some of them, like, you know, when they're  
12 moving around you can see them, like shadows of them.

13 Q If you can't see every passenger at every moment is  
14 that a cause of concern?

15 A No.

16 Q Now you told us that what you were trained to do as  
17 far as monitoring the passengers, is just kind of make a  
18 general check and if there's anything out of the ordinary,  
19 anything unusual then you would take another step and check on  
20 it more. Is that what you were trained to do?

21 A That's correct.

22 Q And is that what you did?

23 A Yes.

24 Q Let's look at the still photos that were shown this  
25 morning. This morning when Mr. Daecher was here Mr. Alverson

1 put up these photos. And these are stills that were taken  
2 from the video at about the time that -- when you were off the  
3 bus helping Ms. Kinkaid and then were just coming back on.

4 A Yes.

5 Q Now, you testified that when you came back on the  
6 bus you didn't look at Harvey. But you've also said that you  
7 were aware that he was there, that you saw him kind of in  
8 your --

9 A Peripheral vision.

10 Q -- peripheral vision. Now that you see these  
11 photographs, Jay, of course you have more information now like  
12 all of us do about what was -- what happened and what was  
13 going on. But when you look at these photographs of Harvey at  
14 the time that you were getting back on the bus, had you looked  
15 directly at him would you have noticed anything particularly  
16 unusual about him?

17 A Maybe not bending over.

18 Q I'm sorry?

19 A Maybe he's not bending over, picking up something or  
20 anything.

21 Q Does it look like he's in distress of any sort at  
22 this point?

23 A No.

24 Q Does it look like he's -- does it look like he's  
25 choking?

1 A No.

2 Q Is he making any kind of panicky gestures, anything  
3 like that --

4 A No.

5 Q -- that would have told you that he's choking at  
6 this point?

7 A No.

8 Q When you look at this picture now it looks like you  
9 said maybe he's napping or trying to pick something up?

10 A That's correct.

11 Q Would that have given you any concern at the time?

12 A No.

13 Q Now in follow up to that, counsel asked you earlier  
14 if you had been trained in what to look for with choking would  
15 you have tried to do something and I think you said yes, and  
16 probably most of us would. Was there anything, though, that  
17 you saw on the video, now you've looked at it, at any point  
18 that would have given you a clue that Harvey Chernikoff was  
19 choking?

20 A No.

21 Q Did he make any, at any time, any kind -- whether he  
22 or at any time any kind of panicky movements?

23 A No.

24 Q Did you ever hear any kind of coughing or gagging or  
25 any of the type of sounds that we've heard about that can be

1 associated with choking?

2 A No.

3 Q Did you ever see him touching his throat or doing  
4 anything like that?

5 A No.

6 Q Either at the time or in looking at the video?

7 A No.

8 Q So after looking at the video now, is there anything  
9 you think you could have or should have recognized as choking  
10 if you had seen this same kind of thing with Harvey Chernikoff  
11 at the time?

12 A No.

13 Q So in that case, would just knowing the symptoms of  
14 choking have helped you at all in assessing what was going on  
15 with him?

16 A No.

17 Q Now, you've told us many times that you did not see  
18 Harvey eating the sandwich on that day. If you would have  
19 seen him, would you have told him to stop?

20 A Yes.

21 Q Was your primary concentration on driving at the  
22 time?

23 A That's correct.

24 Q The jury hasn't really heard where you were in town  
25 as far as this, when all this is going on. Can you explain

1 what the traffic conditions were and kind of, you know, where  
2 you were in town and where you were headed to? Let's start  
3 with like right before -- during the time that maybe Harvey  
4 was eating the sandwich. Do you remember one way or the other  
5 about what your general route was?

6 A My route from, actually from where I pick him up  
7 again after the restroom.

8 Q And where were you then?

9 A We're on Desert Inn.

10 Q Okay.

11 A And we went down Desert Inn and went past two  
12 lights, then we went to the Valley View and Desert Inn going  
13 through the [indiscernible] and that area is traffic. The  
14 time normally would be very traffic and we got to go to some  
15 [indiscernible]. To go to the place where I'm dropping him  
16 off you got to do some maneuvers to it. Like if you miss it  
17 you'll end up with [indiscernible] and go all the way to the  
18 other side of it. So you got to go -- make sure that you  
19 position your bus after that Valley View light to be on the  
20 right side to make the, like an opening to get to the place,  
21 to where I'm dropping him off.

22 Q Like to get to an exit?

23 A Yeah, to an exit to make to the place. You go into  
24 that opening and then you make another left and you continue  
25 on after making a left, there's another stop sign like

1 probably 100 meters away there's another stop sign. And then  
2 after that stop sign you go down 100 meters away and then you  
3 maneuver up to check oncoming traffic and make a left turn to  
4 -- make a left turn to parking lot. And then once you go into  
5 the parking lot you got to -- before I stop I have to make  
6 another right by the door.

7 Q Okay. So this was just a little before 8:00 in the  
8 morning. Is it generally pretty heavy traffic at that time of  
9 day?

10 A That's correct.

11 Q Were you needing to really extra concentrate on your  
12 driving to be sure that there weren't any kind of extra  
13 hazards out there?

14 A That's correct.

15 Q From the video, around the same time that you were  
16 off the bus with Ms. Kinkaid is when Harvey starts to have  
17 something going on. And you heard Dr. Stein testify about  
18 this rubbing his head and this little hand movement. Do you  
19 remember him talking about that?

20 A Yes.

21 Q Now, he interpreted that as signs of distress. Were  
22 you even on the bus to see that?

23 A I'm outside.

24 Q You were helping Ms. Kinkaid. So did you see  
25 anything at all out of the ordinary with Harvey?

1 A No.

2 Q And when you came back on the bus, you said he  
3 appeared to be in the same place, correct?

4 A That's correct.

5 Q Okay. And did you notice anything at all out of the  
6 ordinary with him when you came back on the bus?

7 A No.

8 Q Now, you were off the bus for 25, 30 seconds with  
9 Ms. Kinkaid. Can you just kind of explain to the jury your  
10 perception when you came back on? You said you were aware of  
11 him, you saw him out of your peripheral. Explain what you  
12 mean by that.

13 A When I got into the bus I could tell that he still  
14 there, the certain place. And I'm aware that he's there and  
15 there's nothing out of the ordinary that I have to be  
16 concerned about.

17 Q And you had just --

18 A And then I went on --

19 Q I'm sorry?

20 A And then I went to my --

21 Q You had just helped him with his seatbelt a couple  
22 of minutes earlier when he got back on the bus after going to  
23 the bathroom?

24 A I did.

25 Q And I think you told us that if Harvey needed

1 something or wanted something he generally would tell you.

2 A Yes.

3 Q And you didn't hear anything from him indicating he  
4 had any kind of problem?

5 A That's correct.

6 Q We know that you got in the seat and you drove on  
7 and a few minutes later is when you stopped. Do you feel like  
8 you can watch the video and kind of walk the jury through what  
9 -- I know it's hard for you -- what you were doing at that  
10 particular time?

11 A Sure.

12 Q Would you pull up 8:03:09? Before you do that, can  
13 you just tell the jury after you dropped off Ms. Kinkaid,  
14 where were you going next and what was the traffic like?

15 A The front, when we start moving, I have to make  
16 another left out of the parking space, then make another left  
17 to go to the road and then another, like a few, probably 50  
18 meters away, make another right to go to the [indiscernible]  
19 Road and then I went on all the way straight. It's not that  
20 traffic area once you go in there, but you just have to do  
21 some maneuvers.

22 Q To get out there.

23 A To get out there.

24 Q Okay. What I'm going to be asking you, Jay, is as  
25 we're going through the video what is it that kind of first --

1 as you recall it, what is it that first kind of caught your  
2 attention that there was maybe something you needed to check  
3 on with Harvey?

4 A He wasn't --

5 Q Let's wait until the video gets up so you can show  
6 the jury.

7 (Video played)

8 Q Are you stopped at a stoplight or a stop sign at  
9 this point?

10 A That's correct.

11 (Video played)

12 Q Before you called out to Harvey for the first time,  
13 explain to the jury what you remember about what made you  
14 check on him to begin with? What happened?

15 A He was quiet, wasn't saying anything. When we got  
16 to the stoplight I look and check the mirror. I couldn't see  
17 him. So I was thinking that he must be napping and he must be  
18 on, leaning towards the seat.

19 Q The side wall of the bus you mean?

20 A Yeah, the side wall of the bus. So I, what I did  
21 was I look to the left to see whether there's a sign of him  
22 and I did this and I couldn't see any sign of him. And then I  
23 move to the side, to the other side and looked this way and I  
24 could like, a shadow of him. And then I, after that, I move  
25 forward and then check on the -- and it was going on through

1 my mind like what is he doing when I move up like this.

2 Q Are you looking in the mirror at that point or what  
3 are you looking up for?

4 A Yeah, I was looking at the mirror. And then I  
5 wasn't really sure. I double check it again, kind of like do  
6 that and I saw him like slumped on the floor and then I did  
7 this and I start calling.

8 Q Were you first kind of aware like a shadow or  
9 something, is that what you said when you looked?

10 A Yes, when I did this. Like there's somebody that  
11 you can [indiscernible] even though we cannot figure out what  
12 it was. So that triggers me to check it and then do that to  
13 make sure I see him and I saw him.

14 Q From the time that you got back on the bus and  
15 started driving after dropping off Ms. Kinkaid until you  
16 stopped and started looking, did you ever see Harvey before  
17 that in that time frame? I didn't ask a very good question.  
18 I'm sorry. You got back on the bus and started driving again  
19 after you dropped off Ms. Kinkaid. And until this point when  
20 you stopped and were checking on him, did you ever see Harvey  
21 in between that time?

22 A No.

23 Q Let's go on just a little bit further here.

24 (Video played)

25 Q Is that you touching him there?

1 A Yes. I went to do this.

2 (Video played)

3 Q At this point you're moving over to the side,  
4 correct?

5 A That's correct.

6 Q What was going through your head at this point?

7 A Confused.

8 Q Okay.

9 A I am really confused.

10 Q Did you have any idea what was going on with him?

11 A No, I don't have any idea.

12 Q During the time that you were driving after dropping  
13 off Ms. Kinkaid until you noticed Harvey, were you  
14 concentrating on your driving?

15 A That's correct.

16 Q Were you checking your mirrors periodically as you  
17 were trained to do?

18 A Yes.

19 Q But you didn't see Harvey and I think you told us  
20 you thought he was maybe napping?

21 A Yes.

22 Q Now why is it that you pulled the bus over to the  
23 side of the road?

24 A We're in the middle of the road and I just reacted  
25 to the situation. I just reacted to the situation and I know

1 there are cars behind. It's safety too. I went on to go to  
2 the corner.

3 Q You want to go ahead and start again, please?

4 (Video played)

5 Q We heard a little beep there. Maybe back it up so  
6 they can hear the beep. But what was that beep that we heard?

7 A That's when you call the dispatch.

8 Q Okay. So as soon as you stopped the bus you pushed  
9 the button to call dispatch?

10 A That's correct.

11 Q Did you already know you had some kind of an  
12 emergency that you needed help with?

13 A Yes. Know something's wrong.

14 Q Something's wrong.

15 A Going on, but I'm not sure.

16 Q Did everybody on the jury hear it or should we back  
17 it up so you can hear it again? Let's back it up a little  
18 bit.

19 (Video played)

20 Q At this point, do you have any idea what's going on  
21 with Harvey Chernikoff?

22 A I have no idea.

23 Q Did it even cross your mind that maybe he had  
24 choked?

25 A No.

1 Q Did you -- Dr. Stein testified last week that you  
2 probably should have been able to smell peanut butter. Did  
3 you smell anything at all when you went to check on Harvey?

4 A No.

5 Q Did you even see the lunchbox that was supposedly  
6 open and with wrappers coming out of it?

7 A I wasn't paying attention to that.

8 Q Were you paying attention to Harvey directly at that  
9 point?

10 A Yes.

11 Q Did you ever see any food coming out of his mouth at  
12 any of the time when you were still on the bus?

13 A No.

14 (Video played)

15 Q What is that noise, Jay, that we're hearing?

16 A Calling me back.

17 Q That's dispatch calling you back?

18 A Yes.

19 (Video played)

20 Q Did you not want to let loose of him again?

21 A Yeah.

22 (Video played)

23 Q Jay, when you called dispatch to report an emergency  
24 and asked for 9-1-1 assistance, were you following the  
25 training that you had received with First Transit?

1 A That's correct.

2 Q Had you ever experienced anything like this before?

3 A You mean the call in?

4 Q I'm sorry. I didn't ask a very good question. Had  
5 you ever experienced a situation similar to this where you had  
6 a passenger just go down like that and you needed to get  
7 emergency services there?

8 A No.

9 Q Have you ever had anything like this happen to you  
10 since that time?

11 A Yes.

12 Q You have?

13 A Right after this I have some instance, some incident  
14 that happened to me.

15 Q Okay. What happened there?

16 A There was somebody having a seizure. The lady that  
17 work with her, we were stopped to drop off somebody and said  
18 my friend is having a seizure.

19 Q Did you call dispatch at that point?

20 A Called dispatch, yes.

21 Q And did they call 9-1-1?

22 A That's correct. And then they send the 9-1-1.

23 Q Okay. So the paramedics did respond?

24 A Yes.

25 Q Were they able to help that lady?

1 A Yes.

2 Q Did you want to help Harvey at this point by doing  
3 what you could for him?

4 A Yes.

5 Q Did you feel like getting emergency medical  
6 assistance was the best possible thing that you could do for  
7 him?

8 A Correct.

9 Q Did you have any clue at all what was going on with  
10 him at any time before the paramedics got there?

11 A No, I had no clue. It crossed my mind he must be  
12 having a heart attack or something.

13 Q Can you describe --

14 A I don't know.

15 Q I'm sorry. I keep interrupting you. Go ahead.

16 A I said it crossed my mind that there's something  
17 going on, must be a heart attack or something like that, but  
18 I'm not sure, I don't know.

19 Q Once you called dispatch to report that you needed  
20 an emergency, can you describe for the jury how hard it was  
21 for you to wait for the ambulance to arrive?

22 A It's the longest hour of my life.

23 Q I'm sorry. Do you need a Kleenex? I know it's hard  
24 for you. It's another hard question, Jay, but can you express  
25 or describe to the jury how you were feeling during that time?

1 A What was the question?

2 Q I'm sorry. You want to take a breath?

3 A Yes.

4 Q Tell me when you're okay to go.

5 A I'm sorry.

6 Q You okay?

7 A Yes.

8 Q Hard question. Can you describe for the jury how  
9 you were feeling, what you were experiencing during that time  
10 that you didn't know what was going on with Harvey but you  
11 were waiting for the ambulance to get there?

12 A I'm helpless. I'm so helpless. I wish I could do  
13 something like --

14 Q Were you worried about him?

15 A I'm so worried about him.

16 Q Didn't know what was going on?

17 A No.

18 Q Let's move past that, Jay. Once the ambulance got  
19 there, did you -- you went off the bus when the ambulance  
20 paramedics arrived.

21 A Yes, I did.

22 Q Did you ever go back on the bus again after the  
23 paramedics got there?

24 A I did.

25 Q I'm sorry?

1 A I did.

2 Q You did not?

3 A I did not. When they were there any took over and  
4 that's it.

5 Q Did you talk to the paramedics on the scene?

6 A They asked me about how long and I said maybe five  
7 minutes or ten minutes, I wasn't sure, I don't know.

8 Q Fair to say you were pretty rattled, pretty shaken  
9 when this was going on?

10 A Yes.

11 Q Did the police arrive at some point?

12 A They did.

13 Q And we've seen that you gave a statement to the  
14 police and that was talked about this morning in the  
15 testimony. I think it's Exhibit 9. You did talk to the  
16 police and you gave a statement?

17 A Yes, I did.

18 Q Were you still pretty rattled at that time?

19 A Yes.

20 Q Did you try to recall as best you could what  
21 happened with Harvey and --

22 A Yes, I did.

23 Q -- what you remembered about it? You indicate in  
24 the statement that he was talking to you and then all of a  
25 sudden he wasn't talking. What did you mean by that in the

1 statement?

2 A It was that time I was -- that he was in the bus and  
3 he was trying to have conversation with me, asking me about  
4 something that I couldn't understand. Then after that went  
5 silent and he never talked again.

6 Q Was that before you dropped off Ms. Kinkaid?

7 A Correct.

8 Q Did you ever hear him speak again after Ms. Kinkaid  
9 got off the bus?

10 A I never heard him again.

11 Q How long did you stay at the scene before you went  
12 back to the office?

13 A We waited about probably two or three hours.  
14 Traffic route, everything happened and we were just sitting  
15 there with my supervisor.

16 Q Okay. Your supervisor came?

17 A Yes.

18 Q Did you speak to him when he came and tell him what  
19 happened?

20 A Yes.

21 Q At some point the coroner came. Were you still  
22 there when the coroner or the coroner investigator, I'm sorry,  
23 came to the scene or had you already left at that time?

24 A I believe I was still there.

25 Q Okay. Did you also talk with her?