

1 REPORTER'S **"ROUGH DRAFT DAILY"** RECORD
2 TRIAL COURT CAUSE NO. 2019-CI-00751
3 BARBARA ROBB) IN THE DISTRICT COURT
4)
5 V.) BEXAR COUNTY, TEXAS
6 BIG LOTS, INC. AND)
7 WILLIAM JORDAN) 131ST JUDICIAL DISTRICT

8 -----

9 UNPROOFED, UNCORRECTED, UNCERTIFIED ROUGH DRAFT
10 TRIAL ON THE MERITS
11 OCTOBER 7, 2021
12 MORNING SESSION

13 -----

14 **W A R N I N G!**

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1 **P R O C E E D I N G S**

2 **OCTOBER 7, 2021**

3 **THURSDAY**

4 **MORNING SESSION**

5 (Jury in).

6 THE COURT: With that, Plaintiffs, you may begin.

7 **PLAINTIFF'S OPENING STATEMENT**

8 MR. COWEN: Thank you, Your Honor. May it please
9 the Court?

10 THE COURT: Yes, sir.

11 MR. COWEN: Counsel.

12 Good morning.

13 THE JURY: (In unison) Good morning.

14 MR. COWEN: I'm going to stand over here some and
15 I'll move over here some and here some, depending on whether I'm
16 using the screen or not. Is that right?

17 People in stores can be hurt if products fall on
18 them. So what happens when a retail chain ignores the risk of
19 products falling down on people? Harm. People get hurt.

20 So let's talk about what retail chains should do to
21 -- what must they do to prevent heavy products from falling on
22 people? Well, first of all the way a corporation acts to get
23 employees to do things, they need to create policies and
24 procedures. They have to create policies and procedures to
25 prevent heavy products from falling on people. And that's both

1 the way you set up the store so you don't set up dangers and the
2 way you train your employees so your employees don't create
3 dangers.

4 Then you have to have train them. You have to
5 train the employees to make sure the space is clear of people
6 before they move heavy objects. So if you move a heavy object
7 from something up high, make sure that it's not going to fall
8 down on anybody if you drop it or if you knock something over.
9 And then when employees are trained, they can follow the training
10 and then they're only going to move heavy products from shelves
11 when the space is clear of people.

12 And to protect customers and even their own
13 employees, retail teams must have a system, which is policies,
14 procedures, training, making sure the training is followed to
15 keep heavy products from falling on people and to prevent injury.

16 Now I want to talk about what happened in this
17 case. There's a Big Lots store on Guilbeau Road here in
18 San Antonio. In one of the corners they had the shelves where
19 they displayed furniture on. Now most of the shelves went out
20 enough to hold two big boxes, but at one end of it the shelf
21 wasn't as deep but Big Lots chose to put four 29-pound boxes with
22 office chairs in them; one, two -- those both fit all the way on
23 the shelf -- three, four, because it was a -- the shelf wasn't
24 deep, they hung off the shelf about that much. So you have right
25 here imagine we have a shelf and we have boxes and the boxes are

1 actually, you know, hanging over the shelf.

2 In front of this area they have -- and it was a
3 roller chair. It wasn't one of these chairs, but they have a
4 couple of chairs. The chairs are there for a couple of reasons.
5 One is, well, someone might want to sit in them before they buy
6 them. So you want your customers to sit in these chairs that are
7 right below where you have the heavy boxes that are hanging off
8 the lip.

9 But moreover, if a customer wants to do a lease
10 program or financing, they have a register here, they have the
11 counter at the register and they have a laptop. Now this laptop,
12 they don't want anyone to steal it, so this laptop is secure.
13 There's a cable or a chain where you can't take the laptop away
14 from this table. So if the customer is going to fill out a form
15 -- I'm sorry, fill out an application for financing or leasing,
16 the customer has to sit here with their back to the boxes that
17 are slightly overhanging that chair.

18 Turn my computer back on.

19 So what happened ? Well, Big Lots never told its
20 employees, Hey, if someone is filling out an application, someone
21 is sitting in one of these chairs, make sure nobody messes with
22 these boxes, and please, you don't mess with the boxes when you
23 have somebody sitting right here.

24 So one day a customer is in the store, she's
25 filling out the application. At the time that Big Lots employee

1 that was helping her, he decides, I might want to buy one of
2 these chairs when I get out of work. Let me go check the price.
3 And when he checks the price on this one, he knocks the other one
4 over and it falls down onto the customer. It hit her.

5 Now, you're going to have to decide in this case:
6 Was this just an absent-minded employee? Which Big Lots finally
7 after almost three years in April of this year they finally
8 admitted, yeah, our employee was negligent. You know, we're at
9 fault for this. Or was it more? Was this the result of a
10 corporation that chose to ignore a known safety hazard?

11 Well, the evidence is going to show you that Big
12 Lots knew that it was dangerous. And one of the biggest dangers
13 is heavy products falling off shelves and hitting people. They
14 have a term for it, it's called a struck-by. A struck-by is when
15 a product falls on a person and Big Lots training materials say
16 struck-bys are one of the biggest causes of accidents both for
17 associates and Jennifer. For some reason in all their training
18 videos they call their customers "Jennifer."

19 So Big Lots knew -- even though Big Lots knew their
20 products were falling on people, that's one of the biggest causes
21 of accidents in their stores, they still had no training of
22 employees of what they had to do if they had to move or touch
23 heavy products, and what they had to do when someone is sitting
24 in one of these chairs underneath the area where it's a zone of
25 danger where if someone messes with those heavy boxes they can

1 fall down and hurt someone.

2 So what happens? What happens when they don't have
3 a system that they enforce to protect customers? Well, there's
4 no policies and procedures to protect people from this danger.
5 They do not create policies and procedures to prevent heavy
6 products like furniture from falling. As a result, they didn't
7 train their employees to make sure that the danger zone is clear,
8 that there's nobody sitting there, there's no kids walking by
9 before they mess with heavy boxes that are on shelves. So the
10 employees didn't know what the do.

11 The young man who knocked the box over, he didn't
12 want to hurt anybody. He didn't -- it didn't occur to him. It's
13 his first job after high school because he wasn't trained, he
14 didn't know better. So that's why the evidence is going to show
15 that this is danger that Big Lots knew about and they chose to
16 ignore.

17 Now Big Lots might say, But we provided lots of
18 training for our people. And they did have some training. The
19 first day at work he sat at one of the registers for about four
20 hours and they had a little video screen on the register and he
21 watched four hours of video. And you're going to see it. During
22 those four hours, there were 61 seconds that dealt with what they
23 call struck-bys; objects falling off. And they had two rules
24 that they follows. One is you have something called "top stock".
25 Anything that's over six feet tall, which usually small banks,

1 you make sure the area is clear. It's a good rule. They did a
2 good job training on that.

3 They had another rule: If you get up on a ladder,
4 make sure there's no one around you because we don't want you to
5 drop anything. Good rule. But they did not have any rule or any
6 training for what to do when you have heavy objects like
7 furniture that's on shelves and you've got people in the zone of
8 danger where if you're messing with it and it can fall and hurt
9 them. So their training did not include or address that in any
10 way. And as far as the employee knew, he wasn't breaking any
11 rules. And that's why we are going to ask you to find at the end
12 of this case that this is more than just an accident by an
13 employee, this is a company that needs to change its policies.

14 So what happens when the box hits the woman? Her
15 name is Barbara Robb. And you're going to learn more about her.
16 What did it do to her? What caused basically injuries to four
17 parts of her body? The first is a neck injury. And you think
18 about it. She's sitting here, this is just a model spine. You
19 know, the box comes and it probably hit her neck and shoulders.
20 There's some confusion about whether it hit her head or not. But
21 probably the neck and the right shoulder, mostly. It's a wide
22 box. It may have ended up hurting -- hitting both, but the real
23 pain when she first started was the neck and the right shoulder.

24 So when it hits there it puts force on these
25 vertebrae. These are the bones called vertebrae. And I don't

1 know if y'all can see. Between each of these bones there's a
2 little kind of clear -- more clear thing, that's called a disc.
3 And so the disc acts like a shock absorber between each bone.
4 The disc has two parts. Think of it like a jelly doughnut. So
5 you have an outer part, the doctors call that an annulus
6 fibrosis. That's the part that holds it together. You have an
7 inner part, that's like the jelly in the jelly doughnut called
8 the nucleus pulposus. And what happens when you put that force
9 on there, it causes the jelly to push out. That causes pain.
10 That causes irritation to other things around there. So that's
11 what happened to the neck. She eventually needed to get surgery
12 there and we'll talk about that.

13 It also injured her right shoulder. It tore the
14 muscles of the rotator cuff in the right shoulder which also led
15 to pain. It also caused a brain injury, a traumatic brain
16 injury. What happens is when, even if it hits the neck -- You
17 can see the brain is floating inside the skull. And so if you
18 push the brain or you joggle the brain, you see how the brain
19 moves inside the skull? It's going to hit the skull, it's going
20 to bounce around, and that can cause the microscopic cells we
21 have called axons. It can cause them to break or shear. You're
22 going to see the evidence that you can get a brain injury from an
23 incident like this and that Barbara has one. She's been
24 diagnosed with one. We can even show it to you on an MRI.

25 And she got a back injury because the whole spine

1 is connected. And so when you hit with this downward force, it's
2 going to put what they call compressive force all down the spine
3 and at the bottom it will put force on those discs and damage
4 those discs in the back as well. So those are the four injuries
5 that were caused. But people are more than just an injury.

6 Before I get to that, she wants -- she tried to get
7 better. Barbara has tried everything to get better. So she
8 starts with physical therapy, chiropractic care. Can you get me
9 better? Pain management, both with taking medicines and even
10 doing what's called epidural spinal injections where they take a
11 long needle and they actually stick it into the little spaces in
12 here. Because what the hope is is we can go we can put steroids
13 and anesthetics so we calm everything down and hope that the
14 body's natural healing process will have time to take over if you
15 get rid of some of that inflammation.

16 Unfortunately, that didn't work. Because she had
17 four of the discs damaged in her neck, they had to do what they
18 call a four-level fusion. They had to actually take out four of
19 the disc, replace them with bone, plate them together. So
20 instead of having seven bones in her neck now, she's got --
21 because the neck has seven bones -- she's got three. She's got a
22 top one, she's got five of them that are all used into one now
23 and a bottom one. And that is going to have not only lifelong
24 pain but effects on her movement as well because she doesn't have
25 all of the joints, all the different bones that you and I have in

1 the neck. We haven't had that massive four-level fusion.

2 She also had surgery to repair the tear on her
3 rotator cuff and she's tried to handle the mental aspects, the
4 brain injury aspects as well. She's got what's called
5 neuropsychological testing where they've done detailed tests to
6 figure out, okay, what's going on? What parts of the brain are
7 impaired? What isn't impaired? How bad is it? She's gone to
8 counselling, she's seen a psychiatrist, she's taken whatever
9 medications. But unfortunately, once a brain injury last about a
10 year, it doesn't get any better. So the brain tries to heal
11 itself or tries to kind of, okay, this is not working, let me see
12 if I can retrain this other one to make up for it. You'll have
13 some healing the first year but after the first year you'll hear
14 evidence this gets permanent.

15 So what is she left with now? Well, chronic pain.
16 It's been three years, more than three years since this happened
17 back in 2018. She still lives in pain every day. But it's not
18 just pain. Because of the pain, she can't really sleep. I mean,
19 she sleeps but she sleeps, she wakes up, she doesn't get good
20 sleep. So you're tired, you're fatigued, you're in pain and then
21 you've got a brain injury where you have an injury to the frontal
22 part of the brain where you do a lot of processing so you can't
23 process this as well. You can't handle it as well. So this is
24 already enough to deal with, but then you add a brain injury on
25 top of it and you're going to get some real mental anguish. It's

1 just depression, anxiety, stress disorder. You're going to have
2 these things happen because the mind can only handle so much.
3 And this plus this plus this is too much.

4 Now, to understand the effects of an injury we have
5 to look to see what was taken from her. It's not just what she's
6 endured, it's what did she have before that they took from her?
7 I'm just going to talk about three things. The biggest thing in
8 Barbara's life is what her mom did, it's what she dreamed of
9 since she was a child and it was her career because she was a
10 nurse. She wasn't just any nurse, she was a charge nurse. The
11 charge nurse is the one in charge of the floor for that shift in
12 the women's oncology unit at Methodist Hospital. She was very
13 proud of that. That not only gave her an income, it gave her an
14 identity. Her biggest joy in life was the feeling she got from
15 helping patients. But then there's that camaraderie, that
16 sisterhood and brotherhood of nurses that you've had a hard
17 shift, you dealt with a really difficult patient, and then you go
18 out and have a drink afterwards commiserate about it. And that's
19 a community that you're in when you're a nurse. And that was a
20 huge part of her life and you're going to learn about that,
21 growing up, being a nurse. She's been a travel nurse before but
22 she's been at Methodist for a while and been promoted up to being
23 the charge nurse which is a big deal.

24 She was fun. Barbara was one of these larger than
25 life women. I mean, let's say she goes to a restaurant and

1 someone else is having a birthday party at the bar, within two
2 hours she's singing karaoke and taking pictures with the person
3 whose birthday it is. She was lively, she was fun, she was
4 outgoing. People loved to be around her. She was funny. That
5 was Barbara.

6 And the third thing that's really important to her
7 is she was independent. She was divorced, she lived on her own.
8 She had boyfriend but living on her own was important to her.
9 Supporting herself was important to her. Being able to do things
10 for herself, she was a proud, independent woman. That was a huge
11 part of who she was.

12 Now, she can't work as a nurse anymore. She's not
13 been able to work since this and you're going to hear expert
14 testimony from someone who does vocational rehabilitation that's
15 going to look at what the job requirements are for a nurse and
16 then for other types of jobs and why the combination of her
17 physical injuries and limitations and her mental injuries and
18 limitations from the brain are going to keep her from being able
19 to go back to work.

20 But it's not the money -- it is the money, but more
21 than the money it's the identity, it's losing the identity of
22 being a nurse, being a helper. My community, other nurses.
23 That's huge to her.

24 Second, she's not that fun anymore. When you're in
25 pain and you're tired and you forget things and you get easily

1 confused, you're not fun. You're not going out doing karaoke.
2 You're not the life of the party anymore. And it's not that she
3 doesn't try to live her life. I'm not going to come and tell
4 you, well, now she never leaves her house. No, she tries. But
5 she does not, despite her best efforts, have the life that she
6 had before because the pain and the other limitations and all the
7 effects of that keep her from having -- enjoying the joy that
8 she's earned in life from all the hard work and everything she's
9 gone through in life to get to where she is.

10 And the third thing is it's taken away her
11 independence. She's tried living on her own. She tries for
12 awhile, it doesn't work. She forgets thing. She's not in a
13 wheelchair. She's not using a walker, unless she has to walk a
14 mile or something. But she -- when she starts doing things, she
15 can start but then it will start hurting after a while. Depends
16 on what it is. You want to go to the grocery store? Well,
17 you've got a cart she can lean on, she'll be all right. You want
18 to go with your girlfriends you used to like walk a 5k -- And I'm
19 not -- Barbara's not a skinny woman. I'm not going to say she
20 was a marathon runner, but she could go with her girlfriends and
21 walk a 5k, or go on a trip and go walk around. Well, she starts
22 walking for a while it's going to start hurting.

23 She forgets to do things at home. She forgets to
24 order the groceries. Forgets to go buy groceries. She's not
25 driving. Between the fusion in her neck and not having the

1 ability to turn like a normal person on her neck and worrying
2 about the brain injury, if someone cuts out in front of her, if
3 someone runs a stop sign, is she going to be able to stop in
4 time? Is she going to be able to process that when her brain
5 doesn't work like a normal brain does?

6 You know, she can Uber, she Lyft's, but she's lost
7 that independence of driving herself. She's just lost who she
8 is. That's what they took from her. So it's not just the pain.
9 The pain is a tiny part of it. The cost of the medical treatment
10 is a tiny part of it. The loss of her identity is why we're here
11 and why the case is worth what it's worth.

12 Now, there are some things that you're going to
13 have to look at and some things we had to look at before we could
14 bring this case to you. First of all, like I said, talked about
15 it in voir dire. When Barbara first gets hit she says it's her
16 neck and her shoulder. Now, she goes and plays it over in her
17 mind, plays it over in her mind. She's now convinced it hit her
18 in the head. It may have, it may not have. I can't prove to you
19 it hit her in the head. But it doesn't need to hit her in the
20 head to cause a traumatic brain injury. And it says mild
21 traumatic brain injury. And I'll get into what that means. Mild
22 doesn't mean that it's not a big deal. It doesn't mean
23 (unintelligible) you weren't knocked out for a long period of
24 time.

25 But mild traumatic brain injury can include your

1 head being struck, your head struck an object, or the brain
2 undergoing an acceleration/deceleration movement like whiplash
3 without direct external trauma to the head. So this is from the
4 American College of Rehabilitated Medicine, the most accepted
5 definition of a mild traumatic brain injury. And the science
6 says you can get a brain injury from a blow to the neck, from a
7 blow to the shoulder as long as it makes your head shake. And
8 the laws of physics say if you take a heavy 29-pound box and
9 knock it onto somebody your head will go forward. But it's mild,
10 right? I mean, how can you have something so bad from something
11 called mild?

12 Well, They have three types of traumatic brain
13 injury. They have mild, moderate and severe. And it's based on,
14 you know, mild, you don't even have to be unconscious, you don't
15 have to be knocked out, you just have to be dazed or something.
16 Moderate, you have to be unconscious for a certain period of
17 time. Severe, you've got to be unconscious for a long time. So
18 severe you can see, you know, someone is walking in the room you
19 can tell they have brain injury.

20 Mild, though, even though it's mild, it's still a
21 mild effect on your ability to think. Mild effect on your memory
22 where you can't remember things right. It's not necessarily mild
23 in the effects, it's mild on how long you were out when it
24 started if you were even out. But more importantly they'll say
25 well most mild traumatic brain injuries get better. And they'll

1 say I've seen like 85 percent get better. And that includes
2 everyone who got a concussion in a sports game, anything like
3 that. But there's 1.2 million mild traumatic brain injuries per
4 year in the United States. So the five to 15 percent don't get
5 better. And that's what the science says. Every year between
6 60,000 and 240,000 people get a mild traumatic brain injury that
7 lasts more than a year which means it's never going to get
8 better. So even though they use the word mild, it's only mild
9 when it's someone else's brain. When it's your brain and it
10 doesn't go away, it's real.

11 You're going to hear them say, Well, they did a CAT
12 scan of her brain and it was normal. Yeah. And you're going to
13 see in the definition of mild traumatic brain injury in all the
14 literature, you can have a normal CAT scan and have a mild
15 traumatic brain injury because the CAT scan is really looking for
16 is there bleeding in the brain? It's not seeing small enough
17 things to find mild traumatic brain injury. In fact, MRIs can
18 even be normal with a mild traumatic brain injury. And you're
19 going to see that in the literature and we're going to bring you
20 doctors and psychologists and explain that to you and show you
21 the literature and show you -- back it up that this is where our
22 opinions are coming from. So the fact the CAT scan was normal
23 does not mean she didn't have one. In fact, she had an MRI later
24 and we're going to show you the MRI that there's a spot you can
25 see where the brain injury is.

1 And then we'll talk about degeneration -- they call
2 degeneration and I call normal aging. As we age -- and Barbara
3 was in her late 50s when this happened -- things happen. The
4 discs in our neck start drying up, they start poking out a little
5 bit sometimes. Our brains, they call it atrophy. Our brains
6 slowly shrink over time. It's just part of aging. But most of
7 the time we don't notice it. It doesn't hurt. You don't need
8 injections, you don't need therapy, you certainly don't need
9 surgery for just the natural aging process. And the same for the
10 brain. I definitely -- if you did a CT of me -- I'm 51 -- you're
11 going to find some atrophy. My brain won't be the same size as
12 it was when I was 21. But what does that mean? It means --
13 well, one, it doesn't mean that you've had problems before
14 because a lot of people have atrophy in the brain, just a normal
15 thing, and it doesn't cause symptoms. But what it does do if you
16 have a brain injury because you don't have as many cells as you
17 did when it were younger, you don't have as much what they call
18 residual capacity. You don't have as much extra brain to make up
19 for what got hurt. So it makes brain injuries worse. Just like
20 when you have degeneration to the spine. You have an older
21 spine, you have an aging spine, it's going to get hurt easier.
22 It's going to get hurt worse than a young spine. So yes, she was
23 50-something years old, she had a 58-year-old neck, she had a
24 58-year-old back, she had a 58-year-old brain. But that just
25 made it easier to hurt. It doesn't mean that she didn't get

1 hurt.

2 And finally they -- you know, they -- you have a
3 lawsuit like this, they get to go into your medical records, your
4 psychological records, they get to go into everything in your
5 history. And we don't hide it. I mean, she had -- a couple of
6 years before she had some issues with anxiety and depression.
7 She had had eye surgery, it didn't go perfectly, she had a
8 reaction to some of the medication from the eye surgery. And she
9 did, she went to a Dr. Jirka, her general practitioner. Didn't
10 go to a psychiatrist, didn't go to a psychologist. Went to
11 Dr. Jirka, he puts her on medication. When she got on something
12 called Wellbutrin, guess what, it worked. She got better. She
13 was able to keep her job. She never had to stop working as a
14 charge nurse on the women's oncology unit at Methodist Hospital.
15 You're going to hear from her coworkers. You're going to hear
16 from people who knew her and loved her. She was still fun. She
17 was still independent. And more important, you're going to see
18 three months before this happened you're going to see the medical
19 records from Dr. Jirka when he's going through and interviewing
20 her and putting the history in that record it's going to say no
21 anxiety, no depression. Now, she was still on the medication but
22 it worked. So what she had -- what this did was she went from if
23 I take the meds I'm manageable. I can live my life and enjoy it.
24 To now when you add all of this brain injury, neck injury,
25 constant pain, no sleep, now I have a life I can't bear.

1 So I just want to wrap it up. Big Lots knew that
2 people in stores can be hurt if products fall on them. Big Lots
3 chose to ignore the risk by not having any rules, not having any
4 training about not messing with not moving boxes when people are
5 in the zone of danger and they can get hurt by those heavy boxes
6 and as a result Barbara Robb suffered permanent life-altering
7 injuries.

8 Now, I'm going to once again suggest to you that in
9 this case you're going to have to decide what is the value? What
10 is fair and reasonable to compensate for these injuries? And The
11 number right now will sound really high because you have not
12 heard the evidence yet. But when you hear from Barbara's
13 doctors, when see the films, when you meet the people who worked
14 with her, that knew her and loved her before and saw what Big
15 Lots has taken from her and taken from us; we as a community
16 we've lost a nurse at the time we really need one, we've lost
17 someone who brings joy to the community, and we've lost someone
18 that I believe when you meet her to grow up and become the proud
19 independent woman that she was, we've lost a role model for other
20 young women that needed to come up the hard way and do that. And
21 I'll suggest to you that the number that's going to be fair is 30
22 million dollars. It's a lot of money because it's a lot of harm
23 and it's a lot they took from her. Thank you.

24 THE COURT: Mr. Mayer?

25 **DEFENDANT'S OPENING STATEMENT**

1 MR. MAYER: May it please the Court, Counsel.
2 Ladies and gentlemen, this case is about one party taking
3 responsibility for their actions and another party trying to take
4 advantage of a mistake.

5 What you'll hear is Big Lots and Billy Jordan made
6 a mistake. An accident happened on June 19th, 2018. An accident
7 that Big Lots has accepted responsibility for. An accident that
8 you will hear from Billy Jordan apologized for. It was a
9 mistake, an accident that happened that day. Big Lots is taking
10 responsibility for Billy's actions and taking responsibility for
11 the fact that that box tipped and hit Ms. Robb's neck. But what
12 you're also going to hear is that this case is about the
13 plaintiff trying to take advantage of that mistake. And while
14 Big Lots will tell you through this entire trial and at closing
15 that you should award fair and reasonable damages to Ms. Robb,
16 what you're going to find is that what she's seeking in this case
17 is excessive. It will amount to millions of dollars of excessive
18 treatment.

19 The Judge is going to ask you at the end of this
20 trial to make a determination of what is fair and reasonable.
21 And what we believe the evidence will show in the end is that
22 there is an amount that is fair and reasonable. There's an
23 amount of medical treatment, there's an amount of pain and
24 suffering, there's an amount of mental anguish that you should
25 award Ms. Robb. But what she's seeking in this case is anything

1 but fair and reasonable.

2 Now, before I go any further I'd like to introduce
3 myself, Zack Mayer, we met yesterday during voir dire.

4 Sarah Krumholz is my partner who's going to be assisting with
5 this trial. Billy Jordan is going to be sitting through this
6 entire trial. He's no longer an employee at Big Lots but he is a
7 named party in this case. They have sued him. He will be here.
8 He will tell his story. Next to him is Raul Rodriguez. Raul is
9 the team lead at this particular store.

10 You'll have the occasion to meet and hear their
11 stories about how this happened, what was going on June of 2018
12 and training that was received prior to that evening. Now,
13 before I go into the facts of the case I want to talk about two
14 things and reiterate two things that we talked about yesterday.
15 They're legal standards and I think they're crucially important
16 in this case. The first is burden of proof. We've heard it in
17 TV shows, we've seen it in movies, but it is real. And the
18 burden is on the plaintiffs. It is by the preponderance of the
19 evidence that they must prove their case. Each and every element
20 of their case. Her Honor has actually a scale of justice sitting
21 on her bench and I think it's a very good way to judge and try to
22 figure out what that means. At the end of this case, you're
23 going to be asked to decide only one thing and that is what are
24 the reasonable damages in this case? You see, because we have
25 accepted responsibility, the first portion of the case is

1 typically liability. You have to decide: Was somebody at fault?
2 In this case, you do not. Instead what you have to do is stack
3 up all of the evidence that's presented and you have to determine
4 what amount of money is fair and reasonable based upon the
5 preponderance of the evidence? In other words, how much evidence
6 did they stack up in this case to move those scales of justice in
7 her favor to equal 30 million dollars? And what we're going to
8 suggest is that there is a complete lack of evidence to support
9 those types of numbers. That the burden of prove will not be met
10 at the end of this trial to award millions of dollars. But
11 instead what I think that you'll find is although the defendants
12 do not have the burden in this case we'll put forth evidence and
13 evidence will suggest a number that is fair and reasonable.
14 That's important to remember. That burden never shifts from this
15 table to this table. We could actually prove nothing in this
16 case and you would have to only decide your verdict on what the
17 plaintiffs prove. But we're going to bring forth evidence.
18 We're going to prove what might be an actual fair and reasonable
19 amount. We're not going to just rely upon the plaintiff's
20 doctors in this case.

21 Second issue. Sympathy. It's a tough one. You
22 know, Mr. Jordan felt sympathy towards Ms. Robb when that box
23 fell. You're going to hear how he apologized immediately and how
24 he has anguished about it ever since. His first job out of high
25 school. This was a bad bad day for him. It's difficult for

1 Big Lots to say that Ms. Robb shouldn't get what she's asking for
2 in this case because we too are sympathetic that she was injured
3 while shopping at our store. But you have to set that sympathy
4 aside. You have to look at the facts in the case to make a
5 determination. And unfortunately, it's a harsh reality. But
6 what I think you're going to find is at the end of this trial,
7 what the plaintiff is asking for is a windfall. She's asking to
8 take advantage of a system that is allowing for an admission of
9 guilt. That's basically what is happening here. Big Lots is
10 saying that Mr. Jordan, yeah, he made a mistake that night. He
11 made a mistake. But instead of awarding what is fair and
12 reasonable, we believe at the end you'll be able to set that
13 sympathy aside and you will look only to the amounts that are
14 actually proven up by a preponderance of the evidence.

15 So let's talk a little bit about the parties'
16 objectives. I mean, it's a lawsuit. Both parties have an
17 objection in this case. You just heard Ms. Robb's objective; it
18 is to recover millions of dollars from Big Lots. Big Lots,
19 although they have accepted responsibility, their objective is to
20 try to figure out what is a fair and reasonable amount that
21 should be awarded to Ms. Robb. Seems like a pretty
22 straightforward case, doesn't it? Well, unfortunately because of
23 the medical issues in this case it will be anything but
24 straightforward. It's going to be very complicated, it's going
25 to be very extensive, and the reason why is there is so much that

1 Ms. Robb blames that box for. So we are going to have to bring
2 forth experts to talk about the shoulder issue, the neck issue,
3 the back issue, the TBI, the anxiety, the depression. We will do
4 that in as efficient as possible way because I do think that this
5 is a simple case.

6 So let's also talk a little bit about facts because
7 really it's not in dispute. The facts is something that we
8 really don't have to talk about, but we're going to run through
9 them. June 19th, 2018. The Big Lots store. About 7:30 in the
10 evening. Billy is wrapping up his shift. He's going to get off
11 at 9:00. Ms. Robb comes in and she says she wants to fill out an
12 easy lease application. Basically, a way to buy furniture on
13 credit. And Billy says, all right. Ms. Robb, there's a computer
14 right here. Why don't you sit down and fill out the application.
15 If you have any questions at all, you just let me know. I'm
16 actually going to step away because part of the application does
17 include some personal information. So he didn't want to stand
18 over her shoulder while she's filling that out. Instead, he had
19 already eyed a box that he wanted to purchase for himself after
20 his shift was over. Big Lots allows their employees to buy
21 merchandise after the shift.

22 So he walks over, box is about shoulder height,
23 he's going to say. And on a shelf he simply tips it forward to
24 see if he can scan the price to see how much it is, and as he
25 does, there's another box right to it and it shifts forward.

1 He's able to grab the box he's holding but he's not able to stop
2 the box tipping forward on Ms. Robb. It falls forward on her
3 neck. Immediately picks it up. She never falls to the ground,
4 nor does the box. He says immediately, Ma'am, are you okay? Are
5 you okay? I'm so sorry. I'm so sorry. She says, It's okay.
6 It's a mistake. Mistakes happen. He says, Can I get you
7 anything at all? She asks for some ice. He was 18, 19 years old
8 at the time. Of course, very scared. He might have just injured
9 a customer so he goes and gets the manager. He walks back. He
10 brings the ice. Ms. Robb asks for a cell phone because she
11 forgot hers. He allows her to use her [sic] cell phone. She
12 makes a phone call we believe to her boyfriend. She says, I
13 think I need an ambulance. Okay, we'll call the ambulance. They
14 call the ambulance. She leaves.

15 Billy never heard from Ms. Robb again. It wasn't
16 some time until Big Lots heard from Ms. Robb again when she had
17 lawyers on the case. That is the case. That's the facts. I
18 don't think there could be a simple explanation to an accident.
19 Now, unfortunately although is very simple and very
20 straightforward, a self-admitted accident occurred .

21 What we're going to hear throughout the next two
22 weeks is policies and procedures about how it is a customer
23 should ask a Big Lots employee to take down merchandise, and how
24 top stock shouldn't be, you know, at a certain height. We're
25 going to hear all of these policies and procedures and safety

1 issues even though Big Lots has said, Billy made a mistake that
2 night. I don't think that's what this case is about at all.
3 Policies, procedures, safety issues, I just want you to look at
4 them and I want you to read them very closely and see who they
5 apply to.

6 What this orange strip that they're going to talk
7 about throughout this entire trial really applies to is a
8 customer asking an employee for help to take merchandise down.
9 That's not what we have here. Billy was simply moving a piece of
10 merchandise to check the price. And I think the reason why we're
11 going to go down this path is because, again, although the
12 admission has been made, they're trying to get a windfall. Take
13 the fact that Big Lots has already said that they did something
14 wrong that night. Take Billy's statement on the stand that
15 you're going to hear, Yeah, I made a mistake. And let's move
16 forward and find out what's fair and reasonable. But
17 unfortunately, that's not what's going to happen in this case.

18 We've already said liability is not an issue. Your
19 sole determination is going to be deciding what damages are fair
20 and reasonable. How do you do that? Well, I would argue that
21 you do not simply listen to Ms. Robb's version of what's fair and
22 reasonable. She, through this process, has clearly been focused
23 more on blaming Big Lots for issues that are going on in her life
24 and the medical problems that she has seen as compared to what
25 the medical records show.

1 So what is the best evidence for you to rely upon?
2 She went to the ER immediately after the incident. I would
3 suggest that you look at those records. She describes a 29,
4 30-pound box that hit her in the back of the neck. She describes
5 neck injuries. And a right shoulder that's sore. There is
6 objective tests, x-rays, MRIs that are taken that night. And
7 what they show is no acute finding. That's a report for acute
8 trauma. Basically an event that occurs. They found degenerative
9 nature arthritis. Clearly, you're not going to get arthritis
10 from a box hitting you in the back of the neck. That's what we
11 believe you should look at. But there are basically three
12 primary areas of injury. Four, if you include the lower back.
13 But we're going to talk about the three that have been treated
14 on. We're going to start in chronological order.

15 The first is the shoulder. So we have a doctor
16 that we're going to hear. We know that during the ER visit x-ray
17 of the shoulder and neck and back showed just simply arthritic
18 issues in her shoulder. We know then several months go by and
19 she hires a doctor. Dr. Fulp. Dr. Fulp will testify by video in
20 this case and we believe what he's going to say is that I did a
21 shoulder surgery on Ms. Robb. I got in there and what I found
22 was that 75 percent of the injuries were related to pre-existing
23 degenerative issues. 75 percent of the issues were related to
24 something other than acute injury. 25 percent was related to the
25 box falling on the shoulder. He's also going to say that I saw

1 quite a bit of pre-existing degenerative issues when I opened up
2 the shoulder, but he's also going to talk about his billing and
3 it's quite interesting. You see, Mr. Fulp -- Dr. Fulp has
4 actually a vested interest in this case. His surgery bill does
5 not get paid unless there's a recovery in this lawsuit.

6 So he's going to admit that 75 percent is not
7 involved and not related to the box hitting the shoulder. He's
8 also going to say, well, I don't get paid unless there's a
9 recovery. The last thing he's going to say is very important, is
10 that I believe that the charges, the total charges are inflated
11 and I actually don't expect to receive that much money. So he's
12 going to reduce his bills or he's going to reduce the overall
13 causation between the box and Ms. Robb's shoulder by 25 percent.
14 He's going to say, yeah, the amount's inflated and I don't get
15 paid unless there's a recovery.

16 See, those are pieces of evidence that Big Lots
17 thinks you should consider when you try to determine what is fair
18 and reasonable. That is exactly credible evidence that you can
19 talk about back in your jury deliberation, you can consider when
20 you're coming up with a number. What we're going to argue is
21 that number should be greatly reduced because of the pre-existing
22 issues with her shoulder.

23 So the last thing that he will say, and Dr. Fulp
24 obviously is proud of his surgery, he's going to say that
25 shoulder surgery was a success. That he did a very good job

1 performing the rotator cuff surgery and that it was a success.
2 He's also going to say that based upon the success of the surgery
3 there should have been about eight weeks of physical therapy
4 instead it was 20. He's going to say that was excessive. These
5 are all things we believe are going to stack up against the
6 amount of damages Ms. Robb is seeking in this case.

7 So let's move to the next chronological treatment
8 she received. Her focus goes from shoulder to her neck. She
9 goes to see two different doctors about her neck. One of them is
10 Dr. Fulp who just performed the shoulder surgery. Both of these
11 doctors say, you know what, you should really try a less invasive
12 procedure, try something simpler like PT, something other than a
13 fusion.

14 She goes to a third doctor, Dr. Bruggeman, who
15 you're going to hear from. And it's Dr. Bruggeman who
16 immediately says, no, we need to do a multi-level fusion. Dr.
17 Bruggeman is going to say he got in there and he also saw the
18 degenerative nature of being a nurse for, you know, a couple of
19 decades. He saw pre-existing issues in there. But most
20 importantly what Dr. Bruggeman is going to say is when asked and
21 compared to what we believe to be about a six hundred thousand
22 dollar bill for a back surgery that they're going to ask you to
23 recover for, he's going to say, Actually, I think that amount
24 should be closer to 200 thousand or 225,000. That's what I get
25 paid for this type of procedure.

1 Again, ladies and gentlemen, those are the types of
2 numbers and evidence you need to consider when trying to
3 determine fair and reasonable.

4

5

6

7 Last issue I'm going to talk about and that is
8 concussion, traumatic brain injury. There's going to be dueling
9 definitions of what that is. First thing that I would ask for
10 you to do is look at the evolution of how that diagnosis came
11 about.

12 Like I said, when Ms. Robb first went to the ER,
13 she said to the EMT and the ER doctors that it hit my neck, maybe
14 hit my shoulder, and that's where I have pain. I don't have pain
15 in my head. There's no tenderness in my head. I did not lose
16 consciousness. I did not fall to the ground. Those are all
17 words coming from Ms. Robb's mouth in describing the incident.
18 She also says it was a 29-pound box.

19 As her treatment continues, as this lawsuit
20 continues, as her lawyers are involved, the weight of the box
21 goes from 29 pounds to 40 pounds to 50 pounds. Box didn't
22 change. Her description did. Her description also changed and
23 said, well, I never lost consciousness. I actually might have
24 lost consciousness for 2 to 3 seconds, that it struck me in the
25 head, that I had pain in the head immediately. And the reason

1 why I bring this up is absolutely not to poke at Ms. Robb. That
2 is not the intent to our questioning or argument in this case.
3 It's simply to present how this timeline of treatment progressed.
4 You have to hear these things to be able to come to a
5 determination in this case. You have to weight these things to
6 figure out what's fair and reasonable.

7 Another thing that you have to consider is the fact
8 that Ms. Robb was a charge nurse at Methodist. A fine hospital
9 here in San Antonio. Great doctors in Methodist. You're going
10 to hear that in order to obtain this diagnosis of a traumatic
11 brain injury, she went 2,000 miles, 2,000 miles to find a doctor
12 in Tampa in order to get this TBI diagnosis. There are doctors
13 at Methodist that very easily could have made the diagnosis.
14 There's doctors in San Antonio that could have made this
15 diagnosis.

16 We heard yesterday that there are many fine
17 officers and individuals who served in the military who are
18 dealing with this same traumatic brain injury day in, day out,
19 and there are some of the finest doctors who are treating those
20 diagnosis here in San Antonio but instead she goes to Tampa. Not
21 going to have an explanation for it. It's just something that we
22 ask you to consider when trying to figure out what's fair and
23 reasonable.

24 Ladies and gentlemen, it unfortunately is going to
25 be a long process. We will be as streamlined as possible in

1 talking about the treatment she received, in talking about the
2 doctors and the diagnosis. We'll definitely be as streamlined as
3 possible when we come to you at closing and say I told you a week
4 and a half, two weeks ago that we were accepting responsibility
5 for Billy Jordan's actions and we will remain consistent with
6 that explanation. There will be nothing that will change about
7 that. And we will ask you at the end in closing to consider all
8 of the testimony that you heard about policies and procedures and
9 safety and ultimately ask yourself wasn't it just a simple
10 mistake? Accidents happen and that's what it was. Why did we
11 spent this much time talking about policies for customers asking
12 an employee to get merchandise off the shelf when that was not at
13 all what was going on that night.

14 I think we're also going to tell you, just like I
15 just did, is that there is a fair and reasonable amount that you
16 should award Ms. Robb. We'll set it out in closing arguments
17 after we hear the evidence. But there is absolutely a number
18 we're going to ask you to give the plaintiff in this case. And
19 we're going to give you reasons for each of those numbers. We're
20 going to tell you why we believe the shoulder surgery is worth
21 this much. The back surgery and -- excuse me, the neck surgery
22 should be considered for this much. We're going to have doctors
23 that say you know what, it really wasn't necessary. She has got
24 a ton of pre-existing and degenerative issues. She's been a
25 nurse for years. That occupation simply has a wearing effect on

1 your body and because of it the objective tests don't show this
2 box caused those injuries. I'm going to allow you to consider
3 that evidence. But I'm also going to tell you if you don't think
4 that's credible, let's talk about some number that might be
5 credible.

6 Transparency is a word that's way overused these
7 days. But I can assure you that throughout the next week and a
8 half Big Lots will be transparent. We will certainly tell you
9 that a mistake happened. A mistake that involving this stock
10 that's never happened before at this store. This is a regularly
11 stocked merchandise and they have never had issues like this
12 before. But a mistake happened. A mistake that Big Lots is
13 willing to take responsibility for and it's ultimately going to
14 be your decision to determine what is fair, what is reasonable,
15 to determine what is not excessive, not a windfall because that's
16 not what our law provides. At the end I think you're going to
17 look at the evidence and you're going to be able to easily make
18 that determination.

19 I said yesterday we have the greatest legal system
20 in the United States -- in the world. And I am so thankful that
21 -- said both times, you're wearing masks, we're not. I send my
22 kids off to school every day in their masks and I feel so bad for
23 them.

24 I appreciate your time and we're going to respect
25 it. We're going to try to get through this case as fast as

1 possible and ultimately I look forward to your verdict. Thank
2 you.

3 THE COURT: All right. Call your first witness.

4 MR. COWEN: Your Honor, plaintiff calls William
5 Jordan.

6 THE COURT: All right. Right up here, sir.

7 MR. COWEN: Your Honor, while he's coming up, I'd
8 like to offer some exhibits that have been exchanged with
9 opposing counsel.

10 MR. MAYER: None that are at issue?

11 MR. COWEN: Well, I was just going to offer them.
12 I don't know which ones are at issue or not.

13 MR. MAYER: Okay.

14 MR. COWEN: 1 through 178 and 209 to 239. We can
15 go through it at a later time.

16 (Plaintiff's Exhibit Number 1 through 178
17 and 209 to 239 offered).

18 MR. MAYER: If we could. I don't think there's
19 going to be an objection, I just would like to do it off the
20 record.

21 MR. COWEN: That's fine.

22 THE COURT: Well do that.

23 Make yourself comfortable there. As comfortable as
24 you can. All right, sir, raise your right hand.

25 (Witness sworn by the Court).

1 THE WITNESS: Yes.

2 THE COURT: State your name for the record.

3 THE WITNESS: William Matthew Jordan.

4 THE COURT: All right, sir. You're going to have
5 to pull your microphone towards you. It goes up and bends and
6 whatnot. And speak loudly and clearly because we all have to
7 hear you. All right?

8 THE WITNESS: Okay.

9 THE COURT: Go ahead, Counsel.

10 **WILLIAM MATTHEW JORDAN**

11 having been first duly sworn, testified as follows:

12 **DIRECT EXAMINATION**

13 **QUESTIONS BY MR. COWEN:**

14 Q. Mr. Jordan, back on June 19th of 2018, you were employee
15 of Big Lots?

16 A. Yes.

17 Q. And you were working in the furniture department?

18 A. Yes.

19 Q. And you worked at the Guilbeau Road location?

20 A. Yes.

21 Q. They were paying you 8 bucks an hour?

22 A. At the time I believe so, yes.

23 Q. One of the thing that Big Lots sold was chairs?

24 A. Yes.

25 MR. COWEN: I'm going to show him one of the boxes,

1 is that all right?

2 MR. MAYER: No objection.

3 THE COURT: Folks, if at any time you can't hear
4 raise your hand and we'll see what we can do, all right?

5 Q. (BY MR. COWEN) One of the chairs that Big Lots sold was
6 a Stratford office chair, correct?

7 A. Yes.

8 Q. And 29 pounds?

9 A. I believe so, yes.

10 MR. COWEN: I would like -- these are two
11 photographs I would like to offer, Exhibits 2 and 10, because I
12 need to show photographs.

13 MR. MAYER: Do you have them handy?

14 MR. COWEN: You can come look at them here. That's
15 2 and that's 10. Your Honor, we offer Exhibits 2 and 10.

16 THE COURT: Any objection?

17 MS. KRUMHOLZ: No objection, Your Honor.

18 THE COURT: Plaintiff's 2 and 10 are admitted.

19 Q. (BY MR. COWEN) I want to use a photograph. I want to
20 start with Exhibit 10 to kind of orient us into what this store
21 looked like.

22 MR. COWEN: Your Honor, may he get off the stand so
23 we can look at this together?

24 THE COURT: Yes, he can. I can't tell if there's
25 too much glare for the jurors. But if there is let me know and I

1 can turn the lights off. Okay?

2 You can step town sir just be careful with your
3 step.

4 MR. COWEN: Can y'all see that or is there a glare?

5 THE JUROR: There's a glare.

6 THE COURT: Is that better.

7 Q. (BY MR. COWEN) So this is a view of part of this Big
8 Lots store where you work, correct?

9 A. Yes.

10 Q. And this is a -- like a counter with a register on it?

11 A. Yes.

12 Q. And then there's some shelves back here that like a
13 column in the corner, correct?

14 A. Yes.

15 Q. And then we see two of these boxed chairs, the Stratford
16 office box chairs, correct?

17 A. I don't think those are the ones in the picture but they
18 do normally.

19 Q. Okay. But that's where they would normally go?

20 A. Yes.

21 Q. And they're stacked, you know, one, 2, 3 and 4, correct?

22 A. Yes.

23 Q. I'm just going to switch the photo on my computer.

24 Exhibit 2, that's a photograph that was taken after you knocked
25 the box onto Ms. Robb, correct?

1 A. I believe so.

2 Q. And you can see this other shelf goes up deeper but then
3 the shelf where the Stratford boxes are is shallower, correct?

4 A. Yes.

5 Q. And you can see the Stratford box actually protrudes
6 past the edge of the shelf?

7 A. Yes.

8 Q. And if you look carefully, you can see like the back
9 corner kind of lifting up a little bit?

10 A. In this picture, yes.

11 Q. And there's a couple of black chairs here, correct?

12 A. Yes.

13 Q. Now, those are chairs with rollers on them?

14 A. Yes.

15 Q. And they're there for at least two reasons. One reason
16 is they're a display. If someone wants to sit on them, do I want
17 to buy this chair, they can sit on the chair?

18 A. Yes.

19 Q. Another reason, if somebody wants to fill out a lease
20 application, they have to sit in that chair to do it, correct?

21 A. They wouldn't have to but we do offer the chair.

22 Q. They have to sit there or stand, one of the two,
23 correct?

24 A. Yes.

25 Q. Because and you can go back to the witness stand. I'm

1 just going to... I just want to make sure. So the counter will
2 end about somewhere around here? The counter would end somewhere
3 around here, just right out of the picture?

4 A. Yes.

5 Q. And there's not a ton of space between the counter and
6 let's say this is the edge of the counter and this is the shelves
7 where the office chairs are displayed. There's not a ton of
8 space there, is there?

9 A. There's probably about the same amount of space between
10 that table and the --

11 Q. About -- about this space between counsel table and what
12 would normally be the front of the jury box?

13 A. Yes.

14 Q. And there is a computer at the -- on the edge of the
15 counter that the customer has to use to fill out the application,
16 correct?

17 A. Yes.

18 Q. And that computer is actually -- is it like a cable or a
19 chain that attaches to it where you can't take it away from the
20 table?

21 A. I'm not positive about it at the time but currently
22 there's a chain attached.

23 Q. Okay. Didn't you say in your deposition there was one
24 at the time, too?

25 A. I don't recall. I may have said during my deposition

1 that it did but I may have been mistaken.

2 Q. You're not denying there was a chain or anything
3 attached to it?

4 A. I can't say for sure if there was a chain at the time or
5 not.

6 Q. But on the day of the incident, a woman who you now know
7 as Barbara Robb came in to the store, correct?

8 A. Yes.

9 Q. You were the one helping her, correct?

10 A. Yes.

11 Q. And you directed her to come here and to fill out the
12 application?

13 A. Yes.

14 Q. And you knew she was sitting in this chair?

15 A. Yes.

16 Q. And you knew the shelves were behind her?

17 A. Yes.

18 Q. And you knew that that box kind of stuck off that shelf
19 a little bit?

20 A. Yes.

21 Q. And so you were checking the price on one box and it
22 kind of knocked the other box over, I guess?

23 A. I'm not sure what exactly caused the boxes to fall but I
24 was checking the price on what would have been the right box and
25 it caused the left one to fall.

1 Q. You physically were touching the box while she was
2 sitting here, correct?

3 A. Yes.

4 Q. And you've accepted responsibility and admitted that you
5 should not have done that?

6 A. Yes.

7 Q. And Big Lots has told the jury just a few minutes ago
8 that Big Lots has accepted responsibility, correct?

9 A. Yes.

10 Q. Do you know why you and Big Lots didn't file any
11 paperwork in the court until April of this year accepting
12 responsibility?

13 MS. KRUMHOLZ: Objection.

14 THE COURT: Overruled.

15 THE WITNESS: I wouldn't know for sure. I wasn't a
16 part of the legal process.

17 Q. Right. You think it's fair that you have one hundred
18 percent responsibility and Big Lots has none?

19 A. Um, I wasn't aware that that was the case.

20 Q. Well, I want to ask you some questions. Who chose what
21 kind of shelf to use, you know, whether a shelf that was deeper
22 or shallower, was that you or Big Lots?

23 A. Big Lots.

24 Q. And who chose to instead of just putting, you know, two
25 of these boxes there so nothing overhung to put four boxes there

1 so that a box overhung; was that you or was that Big Lots?

2 A. Big Lots.

3 Q. And then who chose to have the chairs sitting down where
4 people would be sitting, you know, where if one of those boxes
5 fell it could hit somebody; you or Big Lots?

6 A. Big Lots.

7 Q. Who chose to have the station where people apply, where
8 you have the laptop in a place where people would be sitting in a
9 chair in the zone of dangers from these boxes; was that you or
10 was that Big Lots?

11 A. Big Lots.

12 Q. And Big Lots had some safety rules at the store,
13 correct?

14 A. Yes.

15 Q. And you had some training to learn those rules?

16 A. Yes.

17 Q. On the first day of work you actually watched at least 3
18 or 4 hours of video?

19 A. It was 4 or five I believe.

20 Q. Four or five hours of video and you're sitting at one of
21 the registers, right?

22 A. Yes.

23 Q. And there's a little computer monitor at the register?

24 A. The register is a monitor.

25 Q. It's a computer monitor. Okay.

1 A. Yeah.

2 Q. And you're sitting at the register for 4 or five hours
3 and you're watching the videos, correct?

4 A. Yes.

5 Q. And they're on all sorts of different topics. They're
6 not all just on safety?

7 A. Not all on safety but it's a general topic for the
8 videos.

9 Q. Now the jury will see the video. I think 61 seconds was
10 talking about something called struck-bys; does that sound about
11 right?

12 A. I'm not sure of the timing but there is a portion of the
13 training that is focused on struck-bys.

14 Q. And you didn't get to design the training, correct?

15 A. No.

16 Q. That was Big Lots that chose what training you got?

17 A. Yes.

18 Q. And you didn't set the safety rules at the store,
19 correct?

20 A. No.

21 Q. That was Big Lots that set the rules, correct?

22 A. Yes.

23 Q. Now what they trained you is if you had something called
24 top stock, that's something that's like merchandise on a high
25 shelf, six feet tall or more, that you have to make sure the area

1 is clear before you mess with it, correct?

2 A. Yes.

3 Q. And when you're using a ladder, you have to climb up on
4 a ladder for something, you have to make sure the area is clear
5 before you get something when you're up on a ladder?

6 A. Yes.

7 Q. But in the training they never told you when there's
8 people sitting or people in the zone of danger and you have these
9 heavy furniture like these chairs, they're not top stock, you
10 don't have to -- you're not supposed to mess with it? They never
11 trained you of that, did they?

12 A. There was nothing specifically about it.

13 Q. In fact, the rules you had, those did not apply to the
14 furniture department, correct?

15 A. What -- can you rephrase that?

16 Q. There's not -- they don't put furniture as top stock, do
17 they?

18 A. No.

19 Q. And you don't use ladders to get the furniture?

20 A. Not outside of the warehouse.

21 Q. Right. So, I mean, in the store the rules they taught
22 you did not apply to the area where you knocked the box on
23 Ms. Robb?

24 A. I wouldn't say the rules didn't apply. The top stock
25 would not have been applicable in that situation.

1 Q. This wasn't top stock, correct?

2 A. No, sir.

3 Q. You weren't on a ladder?

4 A. No.

5 Q. As far as you know, you did not break any Big Lots rule
6 when you knocked the box onto Ms. Robb, correct?

7 A. Yes.

8 Q. You weren't doing any -- they never taught you that when
9 there's heavy things here you make sure there's nobody in the
10 zone of danger, correct?

11 A. They didn't specify anything like that. But if you were
12 handling merchandise, you did want to make sure you were not
13 right next to a customer or anything.

14 Q. But that's not anywhere in the written policies, is it?

15 A. Not specifically.

16 Q. And it's not something someone specifically told you?

17 A. I do not believe so.

18 Q. And it's not in any of the training videos?

19 A. I don't believe so.

20 Q. And if you had been told, don't touch these boxes when
21 someone is sitting here, you would not have done it, would you
22 have?

23 A. In this case, possibly. I wasn't planning on grabbing
24 the box off the shelf or anything, I was just grabbing it to scan
25 it for a price.

1 Q. Well, if you had been told don't mess with boxes when
2 people are sitting down here, you would have followed that
3 training, wouldn't you?

4 A. Depending on the situation.

5 Q. Now, you saw -- you tried -- you caught one box but you
6 saw the other box that did fall and hit Barbara, correct?

7 A. Yes.

8 Q. And you believe it hit her neck and shoulders?

9 A. From what I saw, yes.

10 Q. You're not sure whether or not it hit her head?

11 A. I wouldn't be able to say for sure.

12 Q. She was in pain afterwards?

13 A. Yes. Visually, she was holding her neck and shoulder
14 area.

15 Q. In fact, you were nice enough to get her ice?

16 A. Yes. I offered her some -- we had some in our break
17 room from something we had been doing. We had a gallon bag of
18 ice. I offered her to go grab her some ice for the injury.

19 Q. In fact, you later had Tony Cruz, one of the leaders
20 there at Big Lots, told you you shouldn't have done that?

21 A. He said I probably shouldn't have offered it but it was
22 fine that I did.

23 Q. And she left in an ambulance?

24 A. Yes.

25 Q. And she was crying at some point?

1 A. From what I've been told, yes.

2 Q. Okay. But you definitely could tell she was in real
3 pain, that's why you got her ice?

4 A. Yes.

5 Q. And you're not disputing that she's hurt, correct?

6 A. No.

7 Q. You have no idea what her injuries are, do you?

8 A. None at all.

9 MR. COWEN: Thank you. I'll pass the witness.

10 THE COURT: Counsel?

11 MS. KRUMHOLZ: Thank you. May I approach? Get a
12 little closer?

13 THE COURT: Yes.

14 MS. KRUMHOLZ: Thank you, Your Honor.

15 **CROSS-EXAMINATION**

16 **QUESTIONS BY MS. KRUMHOLZ:**

17 Q. Good morning, Billy. How are you doing?

18 A. I'm doing okay.

19 Q. I want to back up for a minute and kind of give the jury
20 a little background about you. Can you kind of tell me where you
21 grew up and went to school?

22 A. So I lived in San Antonio my entire life. I went to
23 elementary school in Helotes. I stayed in the same area, going
24 to Garcia, then I finally went to O'Connor for high school. I
25 graduated in 2017. And one of my best friends at the time

1 actually was able to get me this job at Big Lots.

2 Q. Okay. And before I jump into that, are you still living
3 at home with your family?

4 A. Yes, I am. I live with my mom and my dad and my
5 brother. My mom -- my mom and my dad -- uh, yeah, I live with my
6 mom and my dad and my brother. Sorry about that.

7 Q. That's fine. Okay. So then your friend, was it right
8 after you graduated then? Was that when he helped you get a job
9 at Big Lots? Is that right?

10 A. Yes, a couple of months after I graduated.

11 Q. Was that your first job, then, out of high school?

12 A. Yes.

13 Q. All right. Can you kind of take me through the hiring
14 process at Big Lots and what kind of, I guess, training you
15 received when you started?

16 A. So I did my initial interview with Raul. He explained
17 to me what I would be expected to do inside the store. And like,
18 he asked me some questions generally related to how I might
19 perform in the store. The training for my first day was four to
20 five hours of video training. After that, we did some hands-on
21 training with one of the lead cashiers. I stayed with her for
22 two, three days of my first couple of shifts, and we -- she just
23 made sure I had everything down. If I had any questions, she
24 would help me. After that, working throughout the store, the
25 managers would walk with me and showed me certain things that

1 needed to keep in mind, like if there's any items on the floor or
2 if there's any messed up aisles, we want to fix those. And then
3 just other hands-on training with other managers for different
4 areas of the store like furniture and unloading the truck, I was
5 also doing that as well.

6 Q. And then is there regular refresher training or how does
7 the training continue after your first few days?

8 A. The video training every couple of months we have
9 recertifications on those so we have to rewatch the videos.
10 There's a couple of questions you have to do afterwards. If you
11 don't get the questions right, you have to rewatch the video.
12 There's also back when I was working we would do these monthly
13 booklet things that would have a certain topic that we were
14 focussing on. So like box stock or ladder issues or * bailer
15 stuff, we would do those once a month.

16 Q. And I know you mentioned sometimes there'd be a couple
17 of questions, I know sometimes they do that to make sure you're
18 watching the video the whole way through. Certainly if there's
19 not a question on it doesn't means that you didn't receive the
20 training or you didn't understand what you were watching, is
21 that --

22 MR. COWEN: Objection, leading.

23 THE COURT: Sustained.

24 Q. (BY MS. KRUMHOLZ) Let me put it this way, Billy: Did
25 you have an opportunity to ask questions if you had any regarding

1 the training that you were watching?

2 A. Yes.

3 Q. So if there's anything you were confused on or didn't
4 understand, you had an opportunity to bring that up with managers
5 or other coworkers?

6 A. Yes. They actually had binders with any commonly asked
7 questions underneath all the registers as well.

8 MS. KRUMHOLZ: Okay. Now, can we bring up the
9 close-up video of the box on the shelf?

10 Q. (BY MS. KRUMHOLZ) I don't know if you remember this
11 from walking up earlier but this is the photo Mr. Cowen was
12 speaking with you about. Shows the boxes displayed how they were
13 on the date of incident; is that right?

14 A. Yes.

15 Q. Now, I know they were discussing these boxes. I think
16 they were using the word "protruding." How far off the lip of
17 the shelf was that box?

18 A. Maybe an inch, maybe two.

19 Q. Okay. And in the time that you worked at Big Lots had
20 there been any other issues with these particular boxes --

21 A. No.

22 Q. -- falling, being moved? Anything at all?

23 A. Not that I had been told.

24 Q. And that's fair. And I also want to go in, in your time
25 with Big Lots have you ever had another incident where anyone was

1 injured? I know you mentioned maybe a couple of scrapes yourself
2 when you were moving furniture, but anyone else involved in any
3 injuries?

4 A. No.

5 Q. Okay. Okay. Now, again just to kind of get back to
6 what really happened here. This wasn't an incident where you
7 were moving boxes for a customer or for your manager or any role
8 at Big Lots, you were shopping for your personal use; is that
9 right?

10 MR. COWEN: Objection, leading.

11 THE COURT: Sustained.

12 Q. (BY MS. KRUMHOLZ) Can you clarify for us the -- excuse
13 me, the purpose of I guess touching that box on the day of the
14 incident?

15 A. I was planning on purchasing it after my shift.

16 Q. Okay. And then just to clarify, then, any training that
17 you would have had from Big Lots that would have been --

18 MR. COWEN: Objection, leading.

19 THE COURT: Sustained.

20 Q. (BY MS. KRUMHOLZ) Is there any training that would have
21 stopped you from checking the price of the box?

22 A. No.

23 MS. KRUMHOLZ: I have nothing further. Thank you,
24 Your Honor.

25 THE COURT: Any redirect?

REDIRECT EXAMINATION

1

QUESTIONS BY MR. COWEN:

2

3 Q. Just to be clear: All the training that you received,
4 none of it addressed the dangers of having these big heavy boxes
5 behind where you have people sitting here, correct?

6 A. No.

7 Q. They never talked about it at all?

8 A. I do not believe so.

9 Q. They never told you, Don't mess with those boxes if
10 there's someone sitting in the chair in front?

11 A. Of the regular stock, I do not believe so.

12 Q. They never told you if there's someone, let's say a
13 woman shopping with her kid, don't mess with the boxes if her kid
14 is standing in the zone of danger?

15 A. Nothing specifically.

16 MR. COWEN: I'll pass the witness.

17 THE COURT: Anything further?

18

RECROSS-EXAMINATION**QUESTIONS BY MS. KRUMHOLZ:**

19

20 Q. If there had been training regarding customers sitting
21 at that table, would that have stopped you from checking the
22 price on the box behind it?

23 A. No, it would not have.

24 MS. KRUMHOLZ: Okay. Nothing, Your Honor. Pass
25 the witness:

REDIRECT EXAMINATION

1

2 **QUESTIONS BY MR. COWEN:**

3 Q. So you're saying if Big Lots had told you, Don't mess
4 with these boxes because to check the price you had to turn one
5 of these boxes that was already overhanging to look at something,
6 if they told you that was dangerous and that could hurt somebody,
7 you would have done it anyway?

8 A. If they specifically worded it in a way that was like,
9 do not touch these boxes remotely at all, I may not have. But in
10 that case, just checking the price, I probably would have still
11 checked.

12 Q. You're saying even if they told you, Don't do this
13 because you could hurt somebody, you would have done it anyway?

14 A. In this case, yes.

15 Q. So you don't care if you hurt people or not?

16 A. I do.

17 Q. Then why would you have done it if they told you not to
18 do it because it could hurt someone?

19 A. It wasn't something I was intending to make the item
20 fall. It was a complete accident. I didn't plan for any of that
21 to happen.

22 Q. Absolutely. But if they had taught you when you have
23 stuff sitting here, especially when it's overhanging and you mess
24 with it, it can fall real easily. It's not going to be
25 well-balanced. They never taught you that, did they?

1 MS. KRUMHOLZ: Objection, asked and answered.

2 THE COURT: Overruled.

3 THE WITNESS: They didn't teach anything
4 specifically about that, no.

5 Q. (BY MR. COWEN) And it was actually higher than this but
6 -- Don't you agree, if you knew, if they had taught you that what
7 you were doing was dangerous and could hurt somebody, you
8 wouldn't have done it, would you?

9 A. If they had taught me that what I was doing in that
10 specific instance was going to cause injury, I would not have
11 done it.

12 Q. Okay. Thank you.

13 THE COURT: All right. Anything else for this
14 witness?

15 MS. KRUMHOLZ: Nothing further.

16 THE COURT: All right. Sir, you can go ahead and
17 step down. Watch your step.

18 Let's take our mid-morning break, come back and
19 ready to go at 11:00. There's other jurors also folks maybe on
20 the other side of the floor, so I encourage you to stay on this
21 side. There's also other floors. If the bathrooms are crowded
22 you can go up and down, okay. Thank you. See you in about 15
23 minutes.

24 (Jury exits).

25 (Recess).

1 (Jury enters).

2 THE BAILIFF: Thank you. Please be seated.

3 THE COURT: All right. Call your next witness.

4 MR. COWEN: Your Honor, Plaintiff calls Raul
5 Rodriguez.

6 THE COURT: Mr. Rodriguez, come on up.

7 (Witness takes the stand).

8 THE COURT: Right over here, sir.

9 THE WITNESS: Okay.

10 THE COURT: You can move that microphone up. Get
11 it as close to you as you possibly can and it flexes, also.

12 (Witness sworn by the Court).

13 THE WITNESS: Yes.

14 THE COURT: You have to speak louder, sir.

15 THE WITNESS: Yes.

16 THE COURT: State your name for the record.

17 THE WITNESS: Raul Rodriguez.

18 THE COURT: All right. You can pull it a little
19 bit closer to you and then you can also bend it if you need to,
20 all right.

21 You may proceed.

22 **RAUL RODRIGUEZ,**

23 having been first duly sworn, testified as follows:

24 **DIRECT EXAMINATION**

25 **QUESTIONS BY MR. COWEN:**

1 Q. Your name is Raul Rodriguez?

2 A. Yes, sir.

3 Q. And your title at the time that a Big Lots employee
4 knocked the heavy box onto Barbara Robb was store team leader?

5 A. Yes.

6 Q. And that's the Big Lots term for store manager?

7 A. Yes.

8 Q. You were the person managing that location?

9 A. Yes.

10 Q. You could hire people?

11 A. Yes.

12 Q. You could fire people?

13 A. Yes.

14 Q. You could discipline people?

15 A. Yes, sir.

16 Q. You were responsible for everything that went on in that
17 store?

18 A. Yes, sir.

19 Q. Other decisions were made further up at the corporate
20 level, weren't they?

21 A. Yes.

22 Q. Like the decision of what training -- what training to
23 give employees that was as far as the video training that was a
24 corporate level?

25 A. Yes.

1 Q. Position? And what safety rules to have in the store,
2 that was a corporate level decision?

3 A. Yes.

4 Q. But you did have -- Big Lots did delegate to you the
5 management of the store on Guilbeau Road, correct?

6 A. Yes.

7 Q. So I want to go and put Exhibit 2 back up. And do you
8 know who took that picture?

9 A. I can't see it.

10 THE COURT: He can't see it.

11 THE WITNESS: There's a lot of glare. Can I get
12 up, I guess, like the other guy?

13 THE COURT: Yes, sir. Watch that step.

14 THE WITNESS: No, I don't know who took it.

15 Q. (BY MR. COWEN) That's the one you all gave us in this
16 case, were you aware of that?

17 A. No, I wasn't aware.

18 Q. I want to zoom in a little bit. You can see that this
19 shelf here where the Stratford office boxes are, it doesn't go
20 out as far as the other shelf, correct?

21 A. Correct.

22 Q. Who made the decision to use that smaller shelf there?

23 A. We did have the same shelf. In other words, that's a
24 three-foot section. There's normally four-foot sections. We're
25 out of fixtures. I myself contacted the managers in the

1 district, nobody had that shelf. So we put that shelf but never
2 (inaudible).

3 COURT REPORTER: I couldn't hear you at the end
4 there.

5 THE WITNESS: Other store managers from the
6 district to see if anybody had the extra deeper shelf and we
7 didn't have it available, so I made the decision to put that
8 stock on it.

9 Q. (BY MR. COWEN) So Big Lots gave you something called a
10 planogram of how the store was supposed to be laid out?

11 A. Yes.

12 Q. And it actually called for a 4-foot shelf there that
13 went out at far as this one, correct?

14 A. Correct.

15 Q. But you guys had a column there so you only had three
16 feet to work with?

17 A. Yes.

18 Q. Did you ever call anyone for Big Lots and say, Hey, this
19 shelf doesn't go up far enough, it doesn't meet the specs, I need
20 to get a 3-foot shelf that meets that spec?

21 A. No, I didn't.

22 Q. Did you ever consider well because of the shorter shelf
23 these boxes are overhanging, maybe I'll just put two boxes
24 instead of four so nothing overhangs?

25 A. (No response).

1 Q. But you, the manager, are the one who chose to use that
2 shorter shelf, correct?

3 A. The shelf, the stocking on that, like I say, that has
4 never been an issue before. Yeah, it sticks out a little bit but
5 the product had never been an issue.

6 Q. And do you wait until someone gets hurt for something to
7 be an issue?

8 A. No, sir.

9 (Witness returns to the stand).

10 THE COURT: Next time what we can do, we might be
11 doing this a little more often, we can put that microphone there
12 on the bar if y'all are working from that television, okay.

13 MR. MAYER: Sure.

14 THE COURT: All right. Thank y'all.

15 Q. (BY MR. COWEN) You knew that struck-bys -- Well, a
16 struck-by, that's when merchandise falls down and hits someone,
17 right?

18 A. A struck-by can be that or it can also be from the
19 ground up. It can be anything that hits the customer, whether
20 it's from the air or someone trips over something or a shopping
21 cart hits them. It's a general term. You get truck by
22 something.

23 Q. And the most common incident you knew that you had to
24 watch out for at a store like Big Lots was a struck-by?

25 A. Yes.

1 Q. And you knew that from the Big Lots training videos,
2 correct?

3 A. Correct.

4 Q. And struck-bys could cause injuries to customers?

5 A. Yes.

6 Q. And struck-bys could cause injuries to Big Lots
7 employees?

8 A. Correct.

9 Q. And you knew that when you were training Mr. Jordan,
10 correct?

11 A. Correct.

12 Q. And you knew that when you set up those shelves,
13 correct?

14 A. Correct.

15 Q. And Big Lots never had a rule that applied to whether or
16 not an employee could move or fiddle with those boxes when there
17 was someone in the zone of danger and the box could fall on them?

18 A. Not for that specific instance that you're talking
19 about, no.

20 Q. The rules they had, they had one rule for what they
21 called top stock?

22 A. Yes.

23 Q. And that's for things that are more than six feet high?

24 A. Correct.

25 Q. That doesn't include stuff like furniture, correct?

1 A. It doesn't specifically ask for that.

2 Q. Because you don't keep furniture up that high?

3 A. Right.

4 Q. And they had rules from when you worked on ladders?

5 A. Correct.

6 Q. But as far as the training that Big Lots provided to
7 Mr. Jordan, there was never any warning to Mr. Jordan, don't mess
8 with these boxes when there's someone in the zone of danger that
9 they could fall down and hit, correct?

10 A. I'm sorry. So you're saying in a training video?

11 Q. Or any kind of training. You never exactly told him
12 that?

13 A. Yeah. Correct.

14 Q. You never told him that, correct?

15 A. Well, I told him on different -- I apply the rules of
16 the top stock to something like that.

17 Q. Okay. But you never told him specifically -- Okay. You
18 say you applied those rules. Are you saying you told Mr. Jordan
19 not to mess with that stuff?

20 A. No. No. What I'm saying is when we do our training, we
21 apply the top stock issue with any customers being in the area to
22 ensure the safety of the customer to not use it. So you would
23 kind of use that in that scenario as a general term.

24 Q. So what you're doing is you're hoping that by telling
25 the employee not to mess with top stock when there's someone in

1 the area that from that they're going to somehow figure out they
2 shouldn't have done what Mr. Jordan did?

3 A. Safety is what we're always practicing, no matter where
4 it's at. Whether it's a struck-by coming out of the parking lot.
5 Safety is very very crucial to our organization, not only for
6 Jennifer, the customer, but also for our associates. So that's
7 the subject that encompasses many things.

8 Q. Right. And what I'm saying is your -- Let's start with
9 your training videos. Your training -- Let me -- let me --
10 there's an orange strip on that shelf, correct?

11 A. Right.

12 Q. It what that orange strip says, it tells the customer
13 product may be heavy please ask associate for assistance,
14 correct?

15 A. Correct.

16 Q. Because you don't want a customer either getting hurt or
17 having it fall down on them when they're taking it off the shelf?

18 A. Correct.

19 Q. So you know where the heavy things are because they have
20 the orange strip on there, correct?

21 A. Right.

22 Q. There's never a safety rule at Big Lots, Don't move
23 things that are elevated on shelves that have an orange strip if
24 there's someone in the zone of danger, they could fall on?

25 A. In that particular instance, that strip is for the

1 customer.

2 Q. Right.

3 A. That's why it's asking the customer to ask for
4 assistance in case they need help because the item may be heavy.

5 Q. Right. Big Lots chose not to make that strip also for
6 the employee to say, This is heavy. Don't mess with it if
7 there's anyone in the zone of danger it can hit, correct?

8 A. Correct.

9 Q. And you never specifically told Mr. Jordan, Don't mess
10 with heavy objects like theses Stratford chairs when there's
11 somebody that they could fall down and hit?

12 A. Correct.

13 Q. You had just assumed or hoped that maybe he would figure
14 that out based on the training on top stock and ladders?

15 A. Yes. On the topic of safety, again, that encompasses
16 everything in the store, not any specific one thing like a
17 vacuum. It's a general term that should be applied to everything
18 in the store no matter where it's at.

19 MR. COWEN: I pass the witness, Your Honor.

20 **CROSS-EXAMINATION**

21 **QUESTIONS BY MR. MAYER:**

22 Q. Mr. Rodriguez, how long have you been in retail?

23 A. 30 years.

24 Q. How long have you worked for Big Lots?

25 A. 12.

1 Q. During those 30 years in retail, how many safety
2 training videos, classes, policies, procedures have you reviewed?

3 A. You know what, I can't say. You know, it's hundreds,
4 thousands, whatever. So it's part of the everyday thing. Not
5 only do the associates get the training but I also have to watch
6 those videos.

7 Q. During the 12 years you've been at this particular store
8 or with Big Lots, how many of those years have you been involved
9 or responsible for training?

10 A. 12 years.

11 Q. How many associates do you think you've trained?

12 A. I don't know. In 12 years, I hire maybe 10, 15 a year.
13 And I actually do all the hiring and I do the on-boarding when
14 they come on.

15 Q. When you train these different employees, what's your
16 number one rule?

17 A. Safety.

18 Q. Do you take that as a very important part of your job?

19 A. Crucial to the organization's, uh, not only to the
20 safety of everybody but the profitability of the organization.

21 Q. You mentioned that the shelf, it's never been an issue.
22 Why is that?

23 A. Because nothing's ever fallen and nothing's ever
24 happened in that corner.

25 Q. There was a statement before that Big Lots was aware of

1 this dangerous condition. Were you ever aware that this shelf,
2 the -- excuse me. The shelf and box, the way it was situated
3 could have been dangerous?

4 A. No, sir.

5 Q. In all of your training, policies and procedures, what
6 is your number one focus?

7 A. Again, safety.

8 Q. Of employees or customers?

9 A. Of the customer.

10 Q. This orange strip, tell us a little bit more about that.

11 A. An orange strip is, again, like it states: Please ask
12 for assistance with items that may be heavy. That's for the
13 customer so the customer reads that. Again, not everybody is the
14 same. Some guys are bigger or some guys are smaller. I may
15 carry something bigger than my wife. Something heavy for me --
16 for her is not heavy for me. So that's kind of like you go with
17 self help. You go and there's bookcases there, also. So you go,
18 you grab it, you put it in your cart. But sometimes the customer
19 may need the help, so then that's when they ask for assistance.
20 So our employees or management goes, loads their cart. Or if we
21 have to take it up to the front, we'll do that. And even then,
22 once they check out, if they're doing more shopping we ask them
23 to have them page us up there and we'll load it to their car.

24 Q. Why do you do that?

25 A. Again, safety.

1 Q. In your years with Big Lots have you ever had a
2 situation where one of your employees has knocked something off
3 the shelf onto another customer?

4 A. No. This instance that we're talking about today.

5 Q. Is there any safety in your 30 years of retail
6 experience, 12 years at Big Lots, is there any safety training
7 that you're aware of that would prohibit a team member and
8 associate from checking the price of merchandise around another
9 customer?

10 A. No, sir.

11 Q. In your 12 years at Big Lots, have you seen some kind of
12 fluke accidents happen?

13 A. Yes.

14 Q. How would you classify this one?

15 A. It's an accident.

16 Q. One of your employees was involved in it?

17 A. Yes, sir.

18 Q. Do you believe Big Lots is responsible for Billy
19 Jordan's actions?

20 A. I believe Billy Jordan is responsible and he's admitted
21 that, so...

22 Q. Was he working at the time?

23 A. Yes, sir.

24 MR. MAYER: Sir, thank you for your time. I have
25 no further questions.

1 THE COURT: Any redirect?

2 MR. COWEN: Yes.

3 **REDIRECT EXAMINATION**

4 **QUESTIONS BY MR. COWEN:**

5 Q. But Big Lots takes no responsibility for its own actions
6 in setting up the store the way it did and in the way it trained
7 Mr. Jordan, correct?

8 A. I'm sorry?

9 Q. Big Lots will blame Mr. Jordan for causing this but Big
10 Lots will not accept any responsibility for its own actions?

11 A. I can't speak for Big Lots, I can only speak for my
12 store.

13 Q. Okay. Well, your store accepts no responsibility?

14 A. No. My store accepts responsibility because he's an
15 associate of ours.

16 Q. But for setting --

17 A. Setting up the planogram, no.

18 Q. For setting up a box on the shelf where it would
19 overhang, that's going to make it tip over easier, isn't it?

20 A. No, not unless, like Billy did, he went and grabbed it
21 and tipped it over himself.

22 Q. Right. But it's going to be easier to tip over a box
23 that overhangs than a box that's all the way secure on there?

24 A. Yes.

25 Q. And Big Lots, your store doesn't accept any

1 responsibility for choosing to put these heavy boxes on a shelf
2 with an overhang, correct?

3 A. I'm saying -- I'm just saying an accident happened and
4 that's all that I know. I don't know who bears responsibility
5 for that.

6 Q. And Big Lots doesn't accept any responsibility for never
7 telling Mr. Jordan: You have these big heavy boxes that
8 overhang, so they'll fall easier. We're sitting customers here
9 where they have to fill out their applications. Don't mess with
10 these boxes because you don't want to knock them over on anyone.
11 You don't accept any responsibility for that, do you?

12 A. That was an accident that Billy admitted to doing.

13 Q. But don't you want to prevent accidents --

14 A. Yes.

15 Q. -- by having rules and safety training?

16 A. We're always training and we're always, you know,
17 training associates. But sometimes an associate may go a little
18 bit absent minded. You know, that happens to all of us. That's
19 why when you go around there's car accidents, there's everything
20 -- you know, there's always accidents that can happen,
21 unfortunately. This was not a good thing but it happened.

22 Q. And that -- that computer where the customer would have
23 to fill out the application, that was actually tethered to the
24 register?

25 A. I believe so. It's been a lot of years but that should

1 have been, from what I can recall, yeah, it was.

2 Q. And so you think it's okay to make people sit here to
3 fill out an application and boxes up overhanging and not tell
4 your employees, Hey, you're not allowed to mess with those boxes
5 while there's someone sitting there?

6 A. The way it was set up, it's kind of like this. The cash
7 register's on the high part, then there's the mail, that's the
8 lower part, so that's where the laptop had to be set up. That
9 laptop communicates to the register, so it has to be connected
10 with each other and that's the space that's required for them to
11 fill out the application. So that's the space for it.

12 Q. I understand that. But do you think it was a good idea
13 to have these heavy chairs overhanging the shelf right behind
14 where people were sitting down to fill out the applications?

15 A. I don't know how to answer that. It's a planogram that
16 was set and that's it. We implemented and we set it up.

17 Q. And you -- Big Lots never told their employees, Not only
18 do you not mess with it, make sure no one else, other customers,
19 aren't going to be touching these boxes when there's someone
20 sitting there because we --

21 A. No, not specifically for that instance.

22 Q. And Big Lots chose what training to give Mr. Jordan,
23 correct?

24 A. They send down training, yes. Training.

25 Q. And Big Lots chose what training to give you?

1 A. Correct.

2 Q. And in the training that you received from Big Lots,
3 they never told you not to put these heavy chairs on a shelf
4 where they would overhang by an inch or two?

5 A. Correct.

6 Q. And they never told you, if you're going to have people
7 sitting under an area where you have heavy objects, make sure
8 that your associates protect the person sitting by making sure
9 that nobody messes with the heavy objects while someone is
10 sitting there?

11 A. Correct.

12 MR. COWEN: I'll pass the witness.

13 THE COURT: Anything further?

14 MR. MAYER: Very brief, Your Honor.

15 **RE-CROSS-EXAMINATION**

16 **QUESTIONS BY MR. MAYER:**

17 Q. Have you ever had a situation in 12 years you've been at
18 Big Lots where one of these boxes has fallen off a shelf?

19 A. Never.

20 Q. Have you ever had a situation in your 12 years at this
21 store where a customer was injured in a situation similar to
22 this?

23 A. Not that I can recall.

24 Q. What's the number one rule or what number one issue you
25 always stressed to Billy Jordan?

1 A. Safety.

2 MR. MAYER: Nothing further, Your Honor.

3 THE COURT: Anything further?

4 **REDIRECT EXAMINATION**

5 **QUESTIONS BY MR. COWEN:**

6 Q. With all your training, he didn't think he was doing
7 anything wrong when he moved a box to check the price and knocked
8 another box over onto Ms --

9 A. I don't know what Billy was thinking when he did that.
10 I can't answer for him on that.

11 MR. COWEN: I'll pass the witness.

12 MR. MAYER: Nothing further, Your Honor.

13 THE COURT: All right, sir. You may step down.
14 Watch your step to the left.

15 All right, counsel. Call your next witness.

16 (Video deposition of Tony Cruz).

17 (Video deposition of Todd Kenned).

18 (End of morning session).

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