

**Closing Argument of Brent Travelsted  
Counsel for Plaintiff  
Daley v. Bale Oil Company, 96 CI 1325  
Auto Negligence - \$1,598,000 for plaintiff  
Warren Circuit Court  
August 15, 1997**

**Case Summary**

*A truck driver, speeding on a country road, lost control and jackknifed, striking plaintiff's car. Plaintiff sustained significant Le Phort fractures to his face, causing impaired vision, feeling, and sense of taste. The jury found the truck driver solely at fault and awarded plaintiff \$1,598,000, which included 1.325 million dollars for pain and suffering.*

**Mr. Travelsted's Closing Argument**

This is the closing of the case and we are very near the end of this trial, and my work for Mr. Daley is about over, and yours is about to start. You'll have all the time you want to deliberate, but later this afternoon, this case will be over for you. And I'll go back to the office, and I'll work on other cases and you'll go back to your lives. But the one person that won't leave this case is James Daley. James Daley was minding his own business, riding home from work, and he was the subject of a devastating crash at no fault of his own. And this was a day James Daley's going to remember every single day for the rest of his life. So if I have been a little testy at times during this, I apologize, because about six months ago, Mr. Daley put his future in my hands, and I'm getting ready to give it to you to decide. And I haven't taken my job lightly and James, I hope I haven't let you down. And I don't mind telling you that this is an uncomfortable time to give away the trust he's given me, but I trust you. You've listened, you've taken notes and listened intently, and I believe you're going to do the right thing.

What is the right thing? Judge Lewis has done his part. Judge Lewis in Instruction No. 3, has found as a matter of law, this is not an instruction you have to answer as jurors, he's found as a matter of law that the defendant, as an agent of Bale Oil Company, violated his duty of ordinary care. In other words, there's no doubt about the fact that Bobby Joe Perkins caused this collision. That's the law. That is the overwhelming evidence, starting with Ms. Vincent, who followed the defendant at 70 mph down Highway 101. That young lady didn't have anything to gain or lose out of this, and she described to you how bad a crash this was. You don't need an investigator, an

engineer or a scientist to look at these photos and tell that this was a whale of a lick. You'll get to see these photos and I encourage you to look at them. This car was crushed like a can of paint.

In talking about the accident, now is the appropriate time to discuss the seat belt issue. Every record, every statement, every piece of paper in this case, medical records and otherwise, indicate that James Daley had on his seat belt. Now, if you think James Daley was worrying about lying when he was sitting out there with his face smushed off, that just does not make sense. Here's what medical research says. A motor vehicle occupant, particularly under restraint, literally becomes an active missile in the passenger compartment. If he hadn't had his seat belt on, he'd have gone somewhere out in front of that car. He'd have gone out of it. He'd have gone through that windshield, and he sure wouldn't have had a seat belt mark. Now think about it. There's people in the ER and people at the hospital, and they're trying to say James is a liar. They're worried about fractures all over his face, and blowing out his eyeball sockets. They're not worried about documenting this for a lawsuit. And for Dr. Lafferty to come in here and testify that the doctor is lying, is to me an insult.

There is no question about the collision and no

**Keypoint: Personalizes Plaintiff's Suffering**  
*Travelsted describes the dramatic personal every day effects the injury has had upon his client's life.*

real question about the seat belt. The question you've got to decide is what is the value of James Daley's life. Because it is not the same life. James wears that metal helmet, pressing on him all the time, and he remembers every time he brushes his top teeth, and every time he tries to shave, he can't sleep like he used to, he can't eat like he used to, can't taste his food, can't sleep, just three hours a night. Think about it - three hours a night. No wonder he has a change in personality as documented by multiple doctors. James is changed, cognitively, personality-wise and physically. James will never step out from behind that funhouse mirror.

What does he have to look forward to? He gets to sit in a dental chair 14 more times and have his teeth capped and hope that they last 10-15 years. This is a real injury. This is not a case where somebody comes in here with no damages and says I've got a sore neck. This is a real case and these are real problems that a real person is going to have to live with. I think that some of the most telling testimony in this case came from the psychologist, Dr. Cooley, that was hired by the defendants in the case. Here's what he said. He

said, to my question, based on upon your review of the records, you don't have any doubt that his pain complaints are legitimate do you? He answered, "I believe those are legitimate." He went on and said the X-Rays are abnormal. Obviously not everyone has metal in their face. He said the neurological exam is abnormal with grip strength, his right hand isn't as strong as his left hand. This is their witness.

Ladies and gentlemen, James is fortunate, and I'm proud for him that he didn't come in here with a arm and a leg cut off, but it probably would have presented a truer picture of who he is. He's diminished. He's not the same person. Now there are questions for you to answer in this case.

Do you believe that James had on a seat belt? That boils down Instruction No. 2. If you don't believe he had a seat belt on and you believe that caused his injury. What caused his injury was that truck, and those 202 feet of skidmarks coming at him at 70 mph and smack. That's what caused his injuries. He had on his seat belt. Let's agree with Lafferty. Even if he didn't have his seat belt on, that didn't give Perkins' truck the right to run over him. How could James Daley be wrong? I urge you under Instruction No. 2 to check no.

Now, under Instruction No. 4, you only

***Keypoint: Explaining Effect of Apportionment on the Verdict***

*Counsel advises the jury that any apportionment of fault against plaintiff will have a corresponding effect on the jury verdict.*

answer this instruction if you believe James had something to do with causing his own injuries. Otherwise, you don't have to answer No. 4. But Mr. Miller has asked you to make an apportionment, in other words, to divide the liability. If you put 10% of the fault on James Daley, and then you turn over here and award medical expenses, he only gets 90% of that money. His award is reduced by every percentage of fault you put against him in this case. And that's why the defendant in this case has asked for apportionment, a division of fault, because it reduces the money, the responsibility that Bale Oil holds in this case for the action of its driver.

The evidence from the witness chair is unrefuted, absolutely uncontradicted as to past medical expenses. There's been no testimony that James has not incurred and owes and if anything has been paid, it's darn little, and it came out of his pocket. \$86,621. Future medical expense. The dentist testified that it is \$5,130. There is not any contrary testimony. Lost

wages. No contrary testimony to the \$6,300. Future impairment of earning capacity. I have been honored in this case to be adverse in this case to very good attorneys. And if they could have found any economist in the State of Kentucky who would have testified against our economist's conclusions, he would have been here. But there isn't, and our economists projections of lost earnings are accurate and not subject to contrary testimony. \$285,000 to \$303,000 was the range, within a reasonable certainty, as required by law. And where I come from, when somebody does this to someone else, they owe them for what they've taken, and I urge you, on behalf of James Daley, to award the amount of \$303,000.

Pain and suffering is the last element you'll be

***Keypoint: Suffering Damages***

*Travelsted effectively uses the analogy from a little girl and her dog to describe the difference between pain damages and suffering damages.*

called upon to fill in this case. What is pain and what is suffering? I was at my former partner's house 7 or 8 years ago talking about this same issue, trying to get ready for a trial, and we asked his daughter, she was five at the time, "Elizabeth, what is pain and suffering to you?" She said, "Mr. Brent, pain would be like if you took away my dog." I said "What is suffering?" She said, "If you wouldn't give it back." Well pain is what happened to James Daley when his face got cracked open, and suffering is what's happening to him every day and every night. You don't look and see the same man. Has James Daley suffered? You're darn right he has. Ladies and gentlemen, thank you for taking your time from your lives for James Daley. I appreciate that and James appreciates that. James is now in your hands and we trust you to do the right thing.