

2007

Dolores Clayton, et al. v. Ford Motor Company : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

DOLORES CLAYTON, et al. Plaintiffs/Appellants, vs. FORD MOTOR COMPANY, Defendant/Appellee.	APPELLANTS' ADDENDUM VOL. 1 Appellate Case No. 20070517-CA Civil No. 000909522
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Appeal from the Judgment of the Honorable Joseph C. Fratto
Judge of the Third Judicial District Court, Salt Lake County, State of Utah

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Appellants request oral argument and a published opinion

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<p>DOLORES CLAYTON, et al.</p> <p>Plaintiffs/Appellants,</p> <p>vs.</p> <p>FORD MOTOR COMPANY,</p> <p>Defendant/Appellee.</p>	<p>APPELLANTS' ADDENDUM VOL. 1</p> <p>Appellate Case No. 20070517-CA Civil No. 000909522</p>
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Addendum 1

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**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

DOLORES CLAYTON, an individual;

FRED CLAYTON, an individual;

and as Special Administrator for the

ESTATE OF ANTHONY CLAYTON,

and **KELLIE MARIE MONTOYA**,

an individual,

Plaintiffs,

v.

UTAH AUTO COLLECTION, a Utah

Corporation and successor in interest to

WARNER SUPER FORD STORE, a

Utah Corporation; **FORD MOTOR**

COMPANY, a foreign corporation doing

business in Utah, and **JOHN DOES 1**

through X,

Defendants.

) **FIRST AMENDED COMPLAINT AND**
) **DEMAND FOR JURY TRIAL**

) **Civil No: 000909522**

) **Consolidated with Case No: 020904142**

) **Judge: Joseph C. Fratto, Jr.**

COME NOW PLAINTIFFS, Dolores and Fred Clayton, for themselves, and Fred Clayton, as Special Administrator for the Estate of Anthony Clayton, and Kellie Montoya, by and through their counsel of record, Law Offices of Thor O. Emblem and Steffensen Law Office, and complain against defendants, Utah Auto Collection, Warner Truckland/Warner Super Ford Store, Ford Motor Company and John Does I through X, and for their claims for relief, allege and aver as follows:

PARTIES

1. Plaintiffs, Dolores Clayton and Fred Clayton, are the parents and natural and legal heirs of the decedent, Anthony Clayton, an unmarried man who resided in Salt Lake County, Utah at the time of his death. Anthony Clayton died without issue. The jurisdiction over the Estate of Anthony Clayton is Salt Lake County, Utah. Plaintiff Fred Clayton is special Administrator over the Estate of Anthony Clayton. Fred Clayton is the owner of a 1997 Ford Explorer purchased new from Warner Ford.
2. Plaintiff, Kellie Montoya, was the fiancé of Anthony Clayton and the front seat passenger of the 1997 Ford Explorer driven by Anthony Clayton on November 27, 1998. At all times relevant herein, Kellie Montoya was a resident of Salt Lake City, Utah.
3. Defendant, Utah Auto Collection (hereinafter referred to as UAC) is a Utah Corporation, licensed and doing business in Salt Lake City, Utah. Plaintiff alleges, on information and belief, that UAC is successor in interest to Warner Ford Super Ford Store, having received all assets and assumed all liabilities of Warner Super Ford Store. Upon information and belief, plaintiff alleges Warner Super Ford Store also does or did business as Warner Truckland (The Warner defendants are hereinafter referred to as WARNER). Plaintiff alleges on information and belief that WARNER was the duly licensed dealer and local agent for Ford Motor Company. Plaintiff further alleges, that WARNER sold plaintiff the Ford Explorer which is the subject of this

litigation. UAC and the WARNER defendants are sued collectively as the selling and servicing agent/dealer of Ford Motor Company.

4. Defendant, Ford Motor Company, is a foreign corporation, doing business in the state of Utah. Defendant, Ford Motor Company, (hereinafter referred to as FORD) designed and manufactured the Ford Explorer which is the subject of this litigation. Plaintiff further alleges FORD advertised and sold, through its exclusive agents UAC/WARNER, the subject vehicle and other FORD vehicles within the state of Utah.

JURISDICTION AND VENUE

5. The Court has jurisdiction over the defendants pursuant to Utah Code § 78-27-24(1), (2) and (3) in that all defendants are presently conducting business within the State of Utah.
6. Venue is appropriate in this district pursuant to Utah Code Ann. Code §§ 13-5 and 13-7.

FACTS

7. On information and belief, Plaintiffs allege that on November 27, 1998, decedent Anthony Clayton was the restrained driver of his father's 1997 Ford Explorer operating said vehicle in a reasonable and prudent manner while driving eastbound on I-80 in Utah. For reasons as further alleged, the Ford Explorer went out of control, ejected and rolled over Anthony Clayton, who died at the scene, and severely injured Kellie Montoya, who remained restrained inside the vehicle as the front seat passenger.
8. As a result of the above described accident, the vehicle was deemed a total loss.

FIRST CLAIM FOR RELIEF – Strict Liability **(FORD, UAC AND WARNER,)**

9. The Plaintiffs incorporate herein all allegations made elsewhere in this Complaint.

10. The Defendants designed, manufactured, distributed and sold the Explorer which is the subject of this action. Moreover, Defendants engaged in the business of designing, manufacturing, distributing and selling the Explorer and / or its parts, which are the subject of this litigation.
11. The Explorer, and various of its component parts (as identified with more particularity hereafter) were each and all defective when sold. Specifically, the Explorer and the specifically identified component parts were each:
 - a. defective in manufacture, and / or;
 - b. defective in design, and / or;
 - c. sold without sufficient warnings regarding the propensity to rollover and other unreasonably dangerous aspects of the vehicle as are more fully described hereafter.
12. At the time the Explorer left the control of FORD, and when it was sold by UAC and/or WARNER, it was defective in design and manufacture and unreasonably dangerous when used in the manner for which it was intended. These defects include, but are not limited to, the conditions described in the following subparagraphs:
 - a. The Explorer's design for stability and handling is defective because when a reasonably prudent driver, faced with reasonably foreseeable road hazards or distractions, attempts to make reasonable corrective maneuvers, the Explorer crashes and rolls. As such the Explorer is unreasonably dangerous to the user or consumer. Furthermore, given the purpose for which the Explorer was designed and marketed, its defective lack of stability was even more unreasonable and dangerous in that;
 - i. The Explorer was defectively designed and manufactured because it does not have an effective design, system and/or sufficiently strong component parts for controlling the up and down travel of the front wheel so as not to over stress the

front end component parts; overstress of the front end component parts due to excessive and/or improperly restrained up and down travel causes them to bend, degrade and ultimately to fail and/or break; and in this case, did in fact cause the sway bar link, shock absorber and right front tie rod end to fail and/or break.

- ii. In an attempt to prevent sway or roll of the vehicle, the Explorer was equipped with an anti sway bar system. However, the stabilizer bar's sway bar link is defective in its design and/or manufacture because it is not strong enough to refrain from breaking under normal use – especially in light of the insufficiently controlled up and down travel of the front wheels; and in this particular case, the sway bar link had in fact broken, fallen out and was not present in the subject vehicle immediately after the accident and could not be found at the accident site;
- iii. The Explorer is defectively designed in that it utilizes or otherwise has to rely in part upon its shock absorbers to limit up and down travel in the front wheels relative to the steering tie rods and other components; and/or the shock absorbers with which the Explorer was equipped were faulty and/or defective because they can not and did not limit up and down travel; which causes and caused component parts of the front end suspension and handling system to overstress and fail; and in this case, one of the front shock absorbers did in fact fail and break;
- iv. The Explorer was defectively designed and manufactured with respect to the steering tie rods; the tie rods are subjected to reverse bending due to the insufficiently controlled up and down movement of the wheels, and are not sufficiently strong or designed to withstand these bending forces which occur in normal; breaking under normal use; and in this case did in fact fail and break,

- causing unreasonably dangerous loss of control of the vehicle, and an unreasonably high risk of loss of steering control while operating the vehicle;
- v. The Explorer was defectively designed with an unreasonably dangerous high center of gravity, which further contributed to the Explorer's overall propensity to roll, sway and ultimately crash and/or roll;
- b. The Explorer's design and manufacture was defective and unreasonably dangerous because it did not adequately protect its occupants from injury during crashes and/or roll overs; this includes lack of reasonable and necessary safety/occupant protection features as well as incorporating structural design defects, including but not limited to:
- i. The passenger compartment of the vehicle was not soft enough to cushion occupants in the event of foreseeable crash, including rollover.
 - ii. The outside of the vehicle was not hard or sturdy enough to withstand a rollover accident and/or to protect occupants during a roll over; the roof structure and windows were and are not strong enough to withstand and protect the occupants from reasonably foreseeable roof crushing; the roof structure and windows were and are not strong enough to keep the door from crushing causing a shortening of the distance between the exterior door handle and door latch mechanism, which results in the spontaneous operation of the door latch release and/or causes the spontaneous operation of the connecting rod between the inside door handle and the latch which opens the latch, which thus opens the door, providing an unreasonably dangerous exit route for the occupant; and in this case the door did in fact fail to remain latched, but opened and allowed Anthony Clayton to be ejected and then crushed by the rolling vehicle.

- iii. The Explorer was designed and manufactured with unreasonably dangerous, faulty and defective door latch locking mechanism, including without limitation the following:
 - A. The design of the mechanism allows, during a foreseeable rollover and impact to the roof, the inertia of the impact to disengage door locks allowing the exterior door handle connecting rod to operate and open the door latch when the door crunches and/or without door crunch due to inertia.
 - B. The interior door handle to door latch connecting rod design is defective because inertia from an impact can and does cause the rod to operate when the door crunches and/or without door crunch due to inertia or impact from occupant. The rod will also allow the door to unlatch due to a side impact crash, or force from occupant or ground onto door.
 - C. The interior and exterior door handle operating rods are insufficiently flexible and could have been replaced by an inexpensive cable device known to existing technology and used by Ford in other vehicle models.
- iv. The Explorer was and is defective and unreasonably dangerous because the seat belt systems, including all of their component parts (such as the belt webbing, retractors, anchors and anchor points), as well as the overall design and geometry of the system, were inadequate to reasonably restrain and protect occupants when exposed to foreseeable crash forces in rollover accidents. In particular, but not by way of limitation, the restraint systems routinely fail and allow occupants to become unrestrained and sometimes ejected from Explorers during roll over

accidents. In this case, the seat belt in fact failed and did not restrain Anthony Clayton, thereby allowing him to be ejected from and killed by the rolling vehicle.

Some of the problems with the seat belt system include:

- A. The seat belt systems were defectively designed and unreasonably dangerous because they failed to incorporate known excursion-mitigating devices which are known to prevent or limit excursion of occupants during rollover accidents, including but not limited to pretensioners and cinching latch plates;
 - B. The seatbelt systems and their components were not fit for the particular purposes for which they were intended, and for which they were used;
 - C. The seat belt latch was and is defective and unreasonably dangerous because it is unreasonably susceptible to inertial unlatch and to foreign matter impeding proper latching. As indicated, in this case the seat belt did unlatch permitting the ejection of Anthony Clayton through the open door.
- c. The Explorer lacked adequate and sufficient warnings and instructions about the risks, dangers and harms presented by the subject Explorer and reasonable means to reduce such risk.
13. Due to each and / or all of these defects, the Explorer, tie rods, and / or other component parts were unreasonably dangerous.
14. The subject Explorer was expected by FORD, UAC and WARNER to reach, and did reach, the user without substantial change in the condition in which it was placed on the market.

15. Anthony Clayton and Kellie Montoya were people who would reasonably be expected to use the subject Explorer. They were foreseeable “users” and/or “consumers” as those terms are used in UCA 78-15-6(1).
16. At time that the subject Explorer was sold to Fred Clayton and then used by Anthony and Kellie Montoya, the vehicle was defective for the reasons cited above, which defects and/or defective conditions made the subject Explorer unreasonably dangerous to Anthony and Kellie, as users and/or consumers.
17. The aforementioned defects in the subject Explorer were the direct, natural and proximate cause of the rollover accident, property damage, bodily injuries and death of Anthony Clayton and a proximate cause of the bodily injuries of Kellie Montoya.
18. Wherefore, Plaintiffs respectfully request that this Court enter a finding that each of the Defendants are strictly liable to Plaintiffs, jointly and severally, for all damages identified herein in amounts to be proven at trial.

SECOND CLAIM FOR RELIEF – Breach of Warranty and / or Contract

(FORD, UAC and WARNER)

19. The Plaintiffs reallege and incorporate by reference all of the above allegations of this Complaint as if fully set forth herein.
20. Defendants knew the purpose for which parties such as the Plaintiffs purchased and / or operated and/or used Explorers. In fact, Ford, UAC and WARNER directly solicited Plaintiffs and other parties to purchase Explorers for their intended use as sport utility vehicles.
21. The Plaintiffs relied upon the expertise, skill, and judgment of Ford, UAC and WARNER to produce and sell a product which was capable of safe use in its intended purpose as advertised.

22. As set forth above, there was a defect in the design and/or manufacture, or a lack of appropriate warnings, in the Explorer. Due to these defects, the Explorer as sold was unfit for its intended purpose.
23. The defects in the Explorer and the identified component parts directly, naturally, and proximately caused the accident which resulted in the death of Anthony Clayton and the serious injuries to Kellie Montoya. The Plaintiffs have suffered damages as a direct result of this accident.
24. Wherefore, Plaintiffs respectfully request that this Court enter a finding that each of the Defendants are liable to Plaintiffs for breach of implied warranty of fitness for a particular purpose and therefore jointly and severally liable to Plaintiffs for all damages identified herein in amounts to be proven at trial.

THIRD CLAIM FOR RELIEF – Negligence

(FORD, UAC and WARNER)

25. The Plaintiffs reallege and incorporate by reference all of the allegations of this Complaint as if fully set forth herein.
26. UAC/ WARNER were the local agent acting on behalf of FORD. They also had an independent duty, as indicated below, to verify and make sure that the vehicles they were selling were not in fact defective.
27. The Defendants each and all owed duties to the Plaintiffs and other foreseeable users of the Explorer. Specifically, the Defendants had at least the duty to use reasonable care in the design, testing, manufacture, and inspection of the Explorer, its tie rods and other component parts, and to warn users of potential hazards associated with the use of the Explorer. Additionally, UAC/

WARNER, as the sellers of the Explorer, had the same duty as the manufacturer of the Explorer because the Explorer was potentially dangerous by reason of its defects.

28. Each and all of the Defendants breached these duties to the Plaintiffs inasmuch as the Explorer when sold was defective and unreasonably dangerous. As set forth above, the Explorer, its Tie rods and / or other component parts each and all had defects either in design, manufacture, and / or lack of sufficient warnings regarding the Explorer's propensity to roll over and the other unreasonably dangerous aspects of the vehicle.
29. As indicated above, FORD had a duty to design and manufacture a vehicle that was free from defects and safe to operate in the manner for which it was intended. Specifically, but not by way of limitation, the vehicle should have been stable and/or capable of being adequately controlled/handled under normal driving conditions; it should have provided reasonable protection to occupants in the event of a rollover accident, including having a safe roof structure, safe door construction, defect free seatbelts, properly designed door latches, and otherwise as further alleged above.
30. FORD breached its duty to design and manufacture a vehicle which was free from defect, including those defects listed above.
31. FORD's breach of duty includes but is not limited by the following:
 - a. FORD engaged in inadequate stability and rollover crash worthiness testing of the Explorer and similar vehicles;
 - b. Even though it should have been obvious that occupants were at risk of sustaining catastrophic injuries during foreseeable rollovers, FORD failed to provide an appropriate restraint system that would restrain and protect occupants during rollovers.

- c. Even though it should have been obvious that occupants were at risk of sustaining catastrophic injuries during foreseeable rollovers, FORD failed to provide an appropriate door latching system that would prevent the opening of a door and creation of an ejection route if in fact the restraint system should fail.
 - d. Even though it should have been obvious that occupants were at risk of sustaining catastrophic injuries during foreseeable rollovers, FORD failed to provide a strong enough roof structure to maintain the integrity of the vehicle, so that occupants had a lessened chance of injury.
 - e. The factual basis for FORD's negligence is also further detailed in the First Claim for Relief.
32. Plaintiff alleges that Defendant FORD had a duty to the Plaintiffs and the motoring public generally to ensure that the Explorer manufactured, designed, and assembled by them was not defective and dangerous in the manner alleged above. FORD, by placing the defective Ford Explorer on the market, impliedly represented that it was safe for the purpose for which it was intended; and that the defendants, by placing it on the market and otherwise representing it as able to perform safely, intended that customers and unknowing public should rely on their representations.
33. Had it not been for the Defendants' negligence, no damage would have been sustained by Plaintiffs.
34. The defects in the Explorer, its tie rods and / or its other component parts directly, naturally, and proximately caused the accident which resulted in the death of Anthony Clayton and the serious injuries to Kellie Montoya, and destruction of the vehicle. The Plaintiffs have suffered damages as a direct result of this accident.

35. As a result of the Defendants' breach of duty, the Plaintiffs have suffered damages both in the past and the future, which are more fully set forth in the damage allegations.
36. Wherefore, Plaintiffs respectfully request that this Court enter a finding that each of the Defendants are liable to Plaintiffs for negligence and therefore jointly and severally liable to Plaintiffs for all damages identified herein in amounts to be proven at trial.

FOURTH CLAIM FOR RELIEF – Wrongful Death

(FORD, UAC and WARNER)

37. The Plaintiffs reallege and incorporate by reference all of the allegations of this Complaint as if fully set forth herein.
38. The defects existing in the Explorer, its tie rods and / or its other component parts directly, naturally, and proximately caused the accident which resulted in the death of Anthony Clayton. That death was premature and wrongful.
39. Pursuant to Utah Code Ann. § 78-11-6.5 and 7, the Dolores and Fred Clayton are entitled to maintain this action for damages against the parties who caused the death of Anthony.
40. These Plaintiffs are entitled to judgment for compensatory and exemplary damages in amounts to be proven at trial, jointly and severally against each and all of the Defendants for the wrongful death of Anthony Clayton.

FIFTH CLAIM FOR RELIEF – Consumer Sales Practices Act

(FORD, UAC and WARNER)

41. The Plaintiffs reallege and incorporate by reference all of the allegations of this Complaint as if fully set forth herein.
42. The Utah Consumer Sales Practices Act (UCA 13-11 et seq) is designed to protect consumers from suppliers who commit deceptive and/or unconscionable sales practices. The conduct of the

defendants complained of herein constitutes deceptive and/or unconscionable acts or practices in violation of said Act.

43. Plaintiffs are entitled as consumers who have suffered a loss as a result of the defendants' violation of this ACT, to recover their actual damages resulting therefrom, plus court costs and attorney's fees.

SIXTH CLAIM FOR RELIEF – Negligent Infliction of Emotional Distress (Montoya)

(FORD, UAC and WARNER)

44. The Plaintiffs reallege and incorporate by reference all of the allegations of this Complaint as if fully set forth herein.
45. Plaintiffs incorporate herein all allegations made elsewhere in this Complaint.
46. At the time of the accident giving rise to this Complaint and at all other relevant times, Kellie Montoya enjoyed a personal relationship with her fiancé Anthony Clayton.
47. As a result of the Defendants' acts and omissions, Kellie Montoya witnessed the rollover accident and contemporaneously observed immediate resulting harm and catastrophic and fatal injuries to Anthony Clayton.
48. Kellie Montoya suffered severe emotional shock and distress as a result of witnessing the rollover accident and observing the immediate, serious and fatal injuries to Anthony Clayton.
49. Defendants are liable to Kellie Montoya for the emotional shock and distress she suffered as a result of witnessing the rollover accident and observing the immediate, serious and fatal injuries to Anthony Clayton, in amounts to be determined at trial.

SEVENTH CLAIM FOR RELIEF – Fraud

(FORD, UAC and WARNER)

50. The Plaintiffs reallege and incorporate by reference all of the allegations of this Complaint as if fully set forth herein.
51. On an almost daily basis for years prior to the day that the accident complained of herein occurred, FORD spent hundreds of millions of dollars advertised (print, radio, television) to the buying and using public – including plaintiffs – that the Explorer was a safe and reliable vehicle. The plaintiffs did not know that this advertising was inaccurate in any way. They reasonably relied upon it in: (a) purchasing the subject Explorer, (b) allowing Anthony and Kellie to drive the subject Explorer, and in (c) driving and/or riding in the subject Explorer. They have now suffered damage as a result of this reasonable reliance due to Anthony’s death and Kellie’s injuries arising from the accident.
52. During this entire time period, FORD conducted tests of the Explorer and its component parts. FORD also received reports and/or other information from its employees, vendors, government agencies, lawyers and others, including without limitation, information about actual accidents, relating to the Explorer, its handling and its propensity to roll and cause injuries to its occupants. From this information, FORD learned about the defects complained of herein. Yet, despite this knowledge, FORD omitted to disclose to the plaintiffs and the rest of the buying public that the Explorer was defective and prone to lose control and roll over under normal driving conditions, and that these defects often resulted in serious injuries and/or death to the occupants of the vehicles involved in such incidents. FORD did not disclose that the door latching and occupant restraint systems also were not performing properly. Ford did not disclose anything about any of the defects that it was aware of that are described herein.
53. As a result of FORD’s knowledge of these defects and the danger to occupants posed thereby, all of FORD’s advertising which omitted to disclose these material facts was fraudulent and

intentionally designed to lull the plaintiffs and the rest of the buying public into a false sense of security so that FORD could continue to sell massive numbers of Explorer vehicles.

54. FORD's conduct constitutes fraud. Plaintiffs are each entitled to judgment against FORD for compensatory and exemplary damages in such amounts as are determined trial.

EIGHTH CLAIM FOR RELIEF – Punitive Damages

(FORD, WARNER and UAC)

55. The Plaintiffs reallege and incorporate by reference all of the allegations of this Complaint as if fully set forth herein.
56. In the event the trier of fact determines that one or more of the defendants' actions in designing, manufacturing, distributing, warranting and / or selling the Explorer and / or its tie rods, and / or other component parts rise to a level of willfulness and maliciousness or manifest a knowing and reckless disregard toward the rights of the Plaintiffs, punitive damages should be assessed.

CAUSATION AND DAMAGES

57. Plaintiffs incorporate herein all allegations made elsewhere in this Complaint.
58. As a direct and proximate result of the Defendants' acts and omissions set forth above, Plaintiff Fred Clayton, individually, as Special Administrator for the Estate of Anthony Clayton and Plaintiffs Dolores Clayton and Kellie Montoya have incurred and seek the following general and special damages:
- a. The Estate of Anthony Clayton seeks all damages allowed by law and equity arising from the actions and omissions of the defendants, including without limitation, the following damages which the Estate will seek at trial:
 - i. Loss of future earning capacity and other pecuniary losses, and all other relief appropriate under UCA 78-11-12 and as allowed in Kynaston v. United States,

717 F. 2d 506(1983)(the damages which may be recovered are “those the injured person might have recovered had he lived”)

- ii. Burial and funeral expenses;
 - iii. Physical and emotional pain and suffering (See Kynaston);
 - iv. The value of Anthony Clayton’s life;
 - v. For Anthony’s loss of the enjoyment of life and his association with loved ones;
 - vi. The aggravating circumstances attending the wrongful acts and negligence of Defendants
 - vii. Any appropriate exemplary damages; and
 - viii. Any other losses and damages sustained by the Estate of Anthony Clayton and to which it is legally entitled, including costs and attorneys’ fees.
- b. Plaintiffs Fred Clayton and Dolores Clayton, individually, and as surviving parents of Anthony Clayton seek all damages to which at law and in equity they are entitled, including but not by way of limitation, the following which they will seek at trial:
- i. Loss of financial security and stability;
 - ii. Loss of love, companionship, counsel and comfort from Anthony;
 - iii. Loss of the Explorer;
 - iv. Any appropriate exemplary damages; and
 - v. Any other losses and damages sustained by Fred Clayton and to which he is legally entitled, including costs and attorneys’ fees.
- c. Plaintiff Kellie Montoya seeks all damages to which at law and in equity she is entitled, including but not by way of limitation, the following which she will seek at trial:

- i. Compensation for her physical and mental injuries suffered as a result of the accident;
- ii. Loss of love, support, companionship, affection and society of Anthony Clayton.
- iii. Extreme mental anguish in the form of physical pain, emotional pain, torment and suffering;
- iv. The aggravating circumstances attending the wrongful acts and negligence of defendants;
- v. Any appropriate exemplary damages;
- vi. Any other losses and damages sustained by Kellie Montoya to which she is legally entitled, including costs and attorneys' fees.

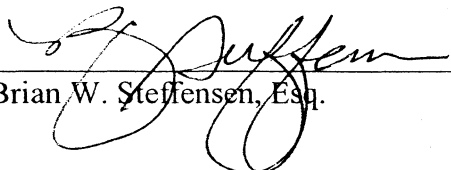
WHEREFORE, Plaintiffs pray and demand an award of damages to be fixed by the trier of fact in a reasonable amount, including punitive damages. Additionally, Plaintiffs ask for the trebling of actual damages to the extent allowed by law, costs of this action, reasonable attorneys' fees, all pre-judgment and post-judgment interest as provided by law, and for all such other relief to which they are legally entitled and as the court deems appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on all issues.

Dated this 29 day of September 2003.

THOR O. EMBLEM, ESQ.
BRIAN W. STEFFENSEN, ESQ.



Brian W. Steffensen, Esq.

I hereby certify that on the 30th day of September, 2003, a true and correct copy of the foregoing instrument, was mailed, First Class, postage prepaid, to:

David Wolf
Tim Schade
SNELL & WILMER
12 West South Temple, Suite 1200
Salt Lake City, UT 84101

STEFFENSEN LAW OFFICE

A handwritten signature in black ink, appearing to be 'R. Steffensen', written in a cursive style. The signature is positioned below the printed name of the law office.

Addendum 2

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Attorneys for Defendant

FILED DISTRICT COURT
Third Judicial District

MAR 12 2007

SALT LAKE COUNTY

Deputy Clerk

ENTERED IN REGISTRY
OF JUDGMENTS
DATE 07/03/07

**IN THE THIRD DISTRICT COURT IN AND FOR SALT LAKE COUNTY
STATE OF UTAH**

DEE CLAYTON, et al.,

Plaintiffs,

v.

FORD MOTOR COMPANY

Defendant.

JUDGMENT

Case No. 000909522

Judge Joseph C. Fratto

This action came on for trial before the court and a jury between January 2, 2007 and February 9, 2007, the Honorable Joseph C. Fratto, District Court Judge, presiding. The issues having been tried and the jury having rendered a ~~unanimous~~ verdict in favor of defendant Ford Motor Company, no cause of action,

It is **Ordered, Adjudged and Decreed** that plaintiffs take nothing, that the action be dismissed on the merits, and that defendant Ford Motor Company recover costs from plaintiffs in an amount to be taxed or ascertained and to be inserted in the blank left in this judgment for that purpose. Costs are taxed and awarded against plaintiffs and in favor of defendants Ford Motor Company in the amount of \$ 4,612.43

DATED this 8th day of March, 2007.

Judgment @J

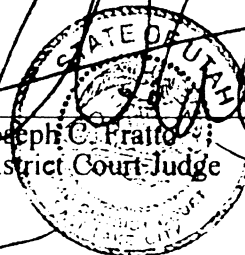


JD21513843

pages:

000909522 CLAYTON,DEE

Judge Joseph C. Fratto
Third District Court Judge



Addendum 3

000000688

ORIGINAL

THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

DEE CLAYTON, et al.,)
) Case No. 000909522
 Plaintiffs,)
)
 VS.) JUDGE:
) JOSEPH C. FRATTO, JR.
UTAH AUTO COLLECTION,)
et al.,)
)
 Defendants.)

TRIAL TESTIMONY OF DAVID INGEBRETSEN
VOLUME II

TAKEN AT: SCOTT MATHESON COURTHOUSE
 450 South State
 Salt Lake City, Utah

DATE: Wednesday, January 17, 2007

REPORTED BY: Catherine L. Kennedy, RPR, CSR
 Wendy Alcock, RPR, CSR

FILED DISTRICT COURT
Third Judicial District

OCT 24 2007

Bv. *bn* SALT LAKE COUNTY

Deputy Clerk

THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

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) Case No. 000909522
 Plaintiffs,)
)

 VS.) JUDGE:
)
) JOSEPH C. FRATTO, JR.

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18 * * *

1 Wednesday, January 17, 2007, at 9:09 a.m.

2 PROCEEDINGS

3 THE COURT: Good morning.

4 THE PARTICIPANTS: Good morning.

5 THE COURT: Back in the matter of

6 Clayton versus The Ford Motor Company and others, and

7 I hope everybody had a good weekend. I observe that

8 everyone is present who needs to be present. The

9 jury is in the box. When last we met, Mr. Emblem was

10 examining Mr. Ingebretsen.

11 MR. EMBLEM: Right.

12 THE COURT: Mr. Ingebretsen, if you'll

13 come up and have a seat in this chair, please.

14 THE WITNESS: Thank you, your Honor.

15 THE COURT: I believe it was direct

16 examination.

17 CONTINUED DIRECT EXAMINATION

18 BY MR. EMBLEM:

19 Q Good morning.

20 A Good morning.

21 Q I'll start you off with a little recap

22 on -- I have the third iteration up, with permission,

23 of 27-C to Mr. Germane's diagram.

24 A Yes.

1 INDEX

2 EXAMINATION	PAGE
3 Continued Direct by Mr. Emblem	4
4 Voir Dire by Mr. O'Neill	53
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6 Voir Dire by Mr. O'Neill	85
7 Voir Dire by Mr. Emblem	87
8 Further Voir Dire by Mr. O'Neill	90
9 Continued Direct by Mr. Emblem	138

1 Q Have you reviewed that?

2 A Yes.

3 Q I'll place eight and a half by elevens
4 of these three in front of you, 27-A -- and that
5 will -- pass that right up there. Thank you. No,
6 not that one -- 27-B and now 27-C. Right?

7 A I just have A and C.

8 Q A and C?

9 A Yeah.

10 Q That's B.

11 Okay. A little ceremony there, but
12 thank you for that.

13 Do you recognize the document you are
14 looking at? Is that correct, sir?

15 A Yes. But 27-C doesn't be the
16 reproduction of No. 3 down there.

17 Q 27-C is not this one?

18 A No. It looks like another copy of 27-B.

19 Q 27-B without the "draft" on it?

20 A Yes.

21 Q Okay.

22 THE COURT: So our record is clear, I
23 have 27-A, B, and C?

24 MR. EMBLEM: Right.

25 THE COURT: And the larger diagram is --

1 (Exhibit 35-C received.)
2 MR. EMBLEM: Okay. Perhaps we could dim
3 the lights just a little, please. Okay. I think
4 we've got it. Sorry about that little technical
5 thing there.

6 Q (BY MR. EMBLEM) What we see up on the
7 screen is what, Mr. Ingebretsen? The first segment
8 there --

9 A Yes.

10 Q -- the very first box on the left --

11 A Yes.

12 Q -- what is that we're looking at?

13 A That's a schematic representation of the
14 Ford Explorer as if you are looking from the back to
15 the front. The color blue indicates the driver side
16 and the pink or red indicates the passenger side.

17 Q So --

18 A The arrow points to the roof.

19 Q Right.

20 THE COURT: Let me interrupt at this
21 point. Gentlemen, I wonder if you could come back to
22 the -- and put this on the record.

23 (At the side bar.)

24 THE COURT: We are back at the bench
25 here because I've sort of reconsidered here. I think

1 wheels down, roof up, is at the point of where we
2 trip. So it's the zero quarter turn.

3 Q Okay. Zero quarter turns?

4 A Yeah.

5 Q Okay. I'll show you next 35-C. Is that
6 the first quarter turn?

7 A Yes.

8 Q And at the first quarter turn, what do
9 we see? We see the pink down; is that right?

10 A Yeah. The first quarter turn, driver
11 side is up, passenger side is down, the roof is
12 pointed generally in the direction that the vehicle
13 is traveling.

14 Q Okay. Now, where is the first major
15 impact with the ground? Is it at 1 or is it at 2 or
16 where is it?

17 A It's actually at the second quarter
18 turn. In this first quarter turn to -- from zero to
19 No. 2, there's no evidence of ground contact, and so
20 we can safely conclude that the vehicle is basically
21 airborne. It's -- the center of gravity has come up,
22 the ground is falling away, and we haven't come down
23 yet. It isn't until quarter turn No. 2 that we
24 actually impact the A pillar and the driver side.

25 Q Okay. So at position 2, then, what's

1 that the -- we had an objection from Mr. O'Neill in
2 terms of 35-C, the first page, that this was really
3 just a memorialization of his -- of, that is, the
4 witness's testimony. And then to the following still
5 photographs of the animation, I determined that the
6 still photographs of the animation were appropriately
7 received.

8 The first page, however, I've
9 reconsidered in terms of the language below the
10 schematic that the witness is now testifying about at
11 the top of the page, and so I've determined to
12 reconsider. I'm going to receive the exhibit, but
13 I'm going to redact the language below the schematic
14 on the first page, that is, No. 1 through 16.

15 MR. O'NEILL: Your Honor, I assume that
16 means that that language next to the numbers 1
17 through 16 will not be displayed.

18 THE COURT: Yes.

19 MR. O'NEILL: Thank you, your Honor.

20 (End of side bar conference.)

21 Q (BY MR. EMBLEM) Okay. So position
22 No. 1 -- the one to the left of position No. 1 -- let
23 me show you now the first -- oh. Is that what we're
24 looking at?

25 A Yes. The little schematic with the

1 happening to the occupants?

2 A Well, they're falling. They're under
3 the influence of gravity too. It's really rather
4 complicated. This is after the trip point, where
5 we've had that first pulse when we've built up and
6 built up that ground in front of the right front
7 tire. The occupants have moved to their right in the
8 direction that the vehicle is traveling, the
9 direction they were traveling.

10 As the vehicle lifts up and over, they
11 start interacting with the interior components. They
12 can come down and contact the roof structure. The
13 vehicle is crushing a little bit on that driver side,
14 caving in not only top to bottom but from left to
15 right, from driver side over to passenger side.

16 Q So between -- remember, I did this the
17 other day. Tony is going to his right and forward?

18 A Right. Between zero and 1, he is going
19 right and forward.

20 Q And Kellie is going against the door and
21 forward?

22 A Yes.

23 Q Is that what's happening?

24 Okay. And when the -- when it gets to
25 this position here, impact to the roof, how is Tony

1 positioned inside that vehicle?
 2 A Well, he's upside-down. The cent --
 3 excuse me -- centripetal acceleration is starting to
 4 take effect. He has been over towards the center of
 5 the vehicle. He is going to start now coming back
 6 towards the outsides.

7 We know that eventually he is thrown
 8 against the outside because he comes out of the car.
 9 At this point in time, he's up -- like I said, he's
 10 upside-down. It's at this point in time where it's
 11 my opinion that the seat belt came unlatched --

12 Q Okay.
 13 A -- and he's now more free to move about
 14 the cabin.

15 Q So he's over the console and turning
 16 upside-down --

17 A Yes.
 18 Q -- as he comes over?
 19 Tony's door. Okay.

20 So when he hits the roof, when the car
 21 hits upside-down on the roof, Tony's not standing
 22 straight up and down or sitting straight up and down?

23 A Probably not. He's probably angled
 24 still to some degree.

25 Q Towards the center?

1 A Yes.
 2 Q So the impact to him is kind of down the
 3 side of him as opposed to right on the top of the
 4 head?

5 A It's difficult to really tell. There
 6 are no real witness marks inside the cab. But we do
 7 know that his injuries are not consistent with a
 8 compression type injury on his neck. We have no
 9 fractures. There's -- no basilar skull fracture was
 10 identified or diagnosed. So we know he didn't come
 11 down like some people do in a rollover where they
 12 come straight down onto the roof and they literally
 13 break their neck. We don't have those injuries on
 14 Tony.

15 So the conclusion is he wasn't in that
 16 kind of a position, so he probably was rotated a
 17 little bit, distributing the forces more along the
 18 side of his body than straight up and down with his
 19 neck.

20 Q As a biomechanical engineer, is that
 21 some of the things that you study to obtain your
 22 Masters in biomechanical engineering?

23 A Yes.

24 Q And that is you use that to reconstruct
 25 the position of people based upon the medical

1 records?
 2 A Well, we do. We work backwards from all
 3 the evidence, and evidence of injury and the type of
 4 injuries that are being diagnosed help me to
 5 understand what kinds of forces were being applied to
 6 the individual. And so we can back up, and that's
 7 the reconstruction tool that I can use because of my
 8 education and training.

9 Q Now, in the case -- in Kellie's case,
 10 she is in the passenger seat?

11 A Yes.

12 Q Kind of against the door, I think you
 13 said; right?

14 A Yes.

15 Q Does she get hit on the top of the head?

16 A I don't think she has injuries that are
 17 consistent with that. We have injuries that are
 18 consistent with high angular accelerations and also
 19 other impacts to her head.

20 Q All right. What is a high angular
 21 acceleration?

22 A Angular acceleration is how quickly we
 23 go from not rotating to rotating, and the faster we
 24 do that, the greater forces are built up,
 25 particularly in soft, gelatinous tissues.

1 The brain can be thought of as kind of
 2 Jell-O, really, when you look at it as a structure,
 3 not as an organ, but as a mechanical structure. And
 4 if we rotate that organ, we get shearing forces.
 5 Different layers are trying to move at different
 6 rates, and so we develop a shearing action between
 7 those layers. And if we have high angular
 8 accelerations, we create damage in that tissue.

9 Q Okay. Is the head then moving and
 10 stopping? Is that what you are saying?

11 A It does. Her head is hitting hard
 12 interior structures, and it's being rotated. And so
 13 as the vehicle rotates and we have these multiple
 14 small impacts, her head is going side to side
 15 primarily. And that's actually the -- the direction
 16 that's easiest to actually cause damage. You get
 17 damage between bridging vessels and tissues between
 18 the two halves of the brain.

19 In -- for example, in boxing, if you
 20 want to knock somebody out, you come around with a
 21 hook and hit them in the side of the head to make
 22 their head go side to side. It's easier to cause
 23 damage to the brain in that plane rotating than it is
 24 front to back or like this (indicating).

25 Q Does that cause shear frontal lobe

1 damage?
 2 A Yes. Those types of injuries are
 3 consistent with high angular accelerations.
 4 Q Let's move on to the next positions
 5 here.
 6 Third quarter turn, where is Tony, where
 7 is Kellie?
 8 A On the third quarter turn, driver side
 9 down, passenger side up, and so we are in this kind
 10 of a configuration.
 11 Q Okay. So Tony is by now, what, against
 12 the door?
 13 A He is probably against the door.
 14 Q And the door is against the ground?
 15 A Door is against the ground.
 16 Q And the damage to the -- does the damage
 17 to the vehicle support that?
 18 A Yes, it does.
 19 Q Fourth quarter turn, what's happening?
 20 A The fourth quarter turn now is we're
 21 getting into the sequence where the door is coming
 22 open and where Mr. Clayton will start to be ejected
 23 from the vehicle.
 24 Q Fifth quarter turn?
 25 A Fifth quarter turn, we're coming up and

1 Tony on it; is that correct?
 2 A That's correct.
 3 Q And then we get to the next quarter roll
 4 and the door comes open and now we're -- he's being
 5 ejected?
 6 A That's correct.
 7 Q Going to the sixth quarter turn,
 8 No. 6 -- in No. 6, you don't have Tony in the vehicle
 9 anymore. So we have at 5, Kellie down, is that
 10 correct, and at 6, Kellie on her head again?
 11 A That's correct.
 12 Q Okay. And then 7, seven quarter turns?
 13 A Seven quarter turns, passenger side is
 14 up again, wheels are leading, driver side door is
 15 down.
 16 Q Okay. And then eight quarter turns, are
 17 we back on the wheels?
 18 A We are back on our wheels. We are
 19 starting to come up onto the roadway, starting to
 20 come through that fog line again, right front tire is
 21 going to catch and drag on the asphalt and cement
 22 that's there. And then we're going to start seeing
 23 that yellow paint that's in the rim.
 24 Q Let me catch up with you.
 25 We had sixth, seventh quarter turn,

1 over. The driver's door is open at this point.
 2 Centripetal acceleration and the rotation of the
 3 vehicle. Mr. Clayton will come out of the vehicle.
 4 And because again, as we're coming up and over, his
 5 actual speed with respect to the ground is -- can be
 6 as much as twice the linear speed of the vehicle with
 7 respect to the ground, he'll come ahead and be
 8 ejected ahead of the vehicle.
 9 Q In terms of -- I'll come back to that.
 10 I was going to ask how many opportunities is there to
 11 eject Tony and have him land where he lands. Is this
 12 the only time it can happen?
 13 A During this roll sequence, it has to
 14 happen somewhere in there. If we wait until the next
 15 one, then it's -- we've gone too far.
 16 Q Okay.
 17 A And I don't think he's ejected with the
 18 vehicle down because we wouldn't get the crushing
 19 injuries that he sustained.
 20 Q Thank you.
 21 Okay. So we've heard testimony that the
 22 door was unlatched in the first impact?
 23 A Yes.
 24 Q And then in the next quarter roll the
 25 door is unlatched but down against the ground with

1 Kellie's up; right?
 2 A Yes.
 3 Q Eighth quarter turn, this is where the
 4 vehicle, according to your calculations, is running
 5 over Mr. Clayton; right?
 6 A Unfortunately, yes.
 7 Q Now, he's -- since his wheel is down,
 8 sometimes you might think that you can, you know,
 9 maybe crawl under it and not run into something. But
 10 you've kind of placed him right about where the
 11 differential is; is that correct?
 12 A In -- yes. In this, he is.
 13 But we also have to remember that, as
 14 the vehicle comes down again, we will be compressing
 15 the suspension and taking up space that could be used
 16 to survive in if you are just working under your car.
 17 We're still -- we still have some
 18 rotational energy, and when that comes down again, we
 19 will compress the suspension. And so he -- the
 20 differential clearly hangs down lower than other
 21 components under the vehicle. But whether he's there
 22 or maybe a little bit more towards the center of the
 23 car, we're still having a significant amount of
 24 weight coming down on top of him.
 25 Q When we use the word "differential,"

1 what are we speaking of?

2 A The differential is that little
3 pumpkin-shaped thing that the driver shaft comes into
4 and then it goes out to the axles, to the wheels.
5 There's that big round thing hanging underneath the
6 back of your car if you have a rear-wheel-drive car.

7 Q Ninth quarter turn?

8 A We're passenger side down again, coming
9 up onto the cement on the freeway. Right front tire
10 is contacting that, getting damaged, and going
11 through the yellow paint.

12 Q Let me show you an exhibit that is
13 marked 26, Exhibit 26. Do you recognize this
14 document?

15 A I do. These are photographs which I
16 took.

17 Q Okay. 26, for the record, is the -- of
18 all of your photographs, we selected four here for
19 your discussion at this point; is that correct?

20 A That's correct.

21 Q Okay. The first one --

22 MR. EMBLEM: Any objections?

23 MR. O'NEILL: No objection if they're
24 offered.

25 THE COURT: You are offering them?

1 see there. It's difficult to see on this print.

2 Q Let me use -- you can use the pointer.

3 A Thank you.

4 Q And point on the big screen, please.

5 A There is some yellow paint. In fact,
6 Mr. Emblem, if you'd zoom it back out again, too,
7 there's two locations. There's one that may be a
8 little bit easier to see.

9 Wrong thing.

10 Q That's the far -- there you go.

11 A In here, it's a little bit out of focus,
12 but there's -- it's easier to see some yellow
13 coloring right there, and there's also some yellow
14 paint in these gouges along here.

15 Q Okay. So --

16 A It's actually right in this area would
17 be the easiest to see on the actual exhibit. The
18 color is a little washed out up here. But right in
19 that area, there's some yellow coloring. And then
20 off again to the left, if we could go up over there
21 in this area, on the exhibit it's easier to see some
22 yellow. Looking at the tire itself, it's much easier
23 to see.

24 Q We can bring that up later. We don't
25 have it right now.

1 MR. EMBLEM: They are offered.

2 THE COURT: They are identified three
3 photographs or actually four photographs, 26-3356,
4 3358, 3372, and 3373, in that order. There being no
5 objection, they are received.

6 (Exhibits as identified received.)

7 Q (BY MR. EMBLEM) Looking first at the
8 last page, David, what are we looking at there,
9 Mr. Ingebretsen?

10 A This is what I identified and my partner
11 identified as the right front tire from Mr. Clayton's
12 vehicle.

13 Q And what we see at the ninth quarter
14 turn, you've got that right front tire laying in the,
15 what, westbound yellow fog line?

16 A Yes.

17 Q What about this photograph, 26-3373,
18 supports that, if anything?

19 A It's hard to see on this because it's
20 taken a little bit back, but there's actually some
21 yellow paint in the gouging and scratching just below
22 and to the right of the valve stem that's --

23 Q Let me take you to 3372, the next one.
24 I think that's a close-up.

25 A It is. And, again, it is difficult to

1 Okay. So then those two photographs,
2 because there's yellow paint in that rim, is that the
3 only place that you can get yellow paint in that rim
4 in this incident?

5 A That's my opinion, yes. This rim is an
6 alloy rim. It isn't rusting. That is not rust or
7 dirt. It was very clearly yellow paint, which, to my
8 eye, matched the yellow paint of the fog line.

9 Q Okay. It couldn't have picked up yellow
10 paint when it left eastbound lanes?

11 A No.

12 Q Any reason why?

13 A I don't believe that tire was debanded
14 at that time, and there were no marks on the roadway
15 that say that that rim was dragging. You can see
16 some significant damage on that rim where it was
17 dragged across the cement and broken. If we had done
18 that on the eastbound lanes, there would be some very
19 clear gouging and marks in the middle of that big
20 dark skid mark.

21 Q Which is a different kind of an impact
22 than occurred when he entered the westbound lanes?

23 A Yes.

24 Q And also the yaw marks that were left on
25 the road were not consistent with a flat tire; is

1 that correct?
 2 A No, I don't think they were. There's a
 3 different look to a flat tire skid mark.
 4 Q Position No. 9, that position, and
 5 quarter turn 10. First of all, 9 and 10, again we
 6 have -- is this correct, Kellie is down on the right
 7 side of 9 and on her head again at 10?
 8 A Yes.
 9 Q Okay. At 10, you've got the vehicle on
 10 its roof, and then at 11 quarter turn you've got the
 11 driver side rear in the yellow fog line. Am I right?
 12 A Yes.
 13 Q Okay. Referring to Exhibit 26 again,
 14 those photographs, first 3356, will you point out to
 15 the jury what we are looking at right there?
 16 A Yes. This is that D pillar. If you
 17 look at the vehicle, we are looking at this top
 18 corner. So this is the roof of the vehicle, this is
 19 the rear window, and this is the pillar. And right
 20 up here, if we zoom in, you'll see yellow paint in
 21 those scratches.
 22 A close-up view right there, this is
 23 the -- if you could rotate that 90 degrees,
 24 Mr. Emblem. Thank you. This is the same
 25 orientation. This is the top of the vehicle, rear

1 wheels; correct?
 2 A Yes.
 3 Q Thirteenth quarter turn?
 4 A Yes.
 5 Q Kellie is back down against the right
 6 door again?
 7 A Correct. And we have one of the
 8 passenger side windows coming out of its frame at
 9 that point.
 10 Q Okay. So that's another pretty good
 11 piece of evidence that you've got that vehicle
 12 positioned correctly in that westbound lane, is the
 13 window?
 14 A Yes.
 15 MR. O'NEILL: Your Honor, let me object
 16 to the continuing leading form.
 17 THE COURT: Sustained.
 18 Q (BY MR. EMBLEM) And let me take you now
 19 to the 14th quarter turn. On the roof again?
 20 A Yes.
 21 Q Kellie's upside-down?
 22 A Yes.
 23 Q On the roof again?
 24 Fifteenth quarter turn?
 25 A Yes.

1 window is over here, and you can see the yellow paint
 2 in these last set of gouges here.
 3 And one of the things we look for, too,
 4 is we look at layers, and these scratches are
 5 essentially on top of all these other scratches that
 6 are going all these different ways. You can see that
 7 because the yellow paint isn't disturbed by scratches
 8 going through it. So this tells me that this
 9 happened on one of the last rolls. This was down,
 10 and so that I can tell you that that is when it's
 11 coming up onto the westbound lanes of traffic.
 12 Q Okay. And because there's scratches,
 13 does that mean that the Explorer is also still
 14 traveling laterally sideways?
 15 A Yes.
 16 Q Even though it's on its roof?
 17 A That's right. It's not -- it's just not
 18 rolling on a spit. As we're rolling, we're coming
 19 down and we have translational motion like this, as
 20 well as rotational motion.
 21 Q So there's still a little bit of
 22 scraping going on there?
 23 A Yes.
 24 Q Okay. Eleven.
 25 Twelfth quarter turn, back on the

1 Q Tony's side down; right?
 2 A Yes.
 3 Q So Kellie's falling towards the center
 4 again?
 5 A She would be a little bit, yes.
 6 Q Sixteenth quarter turn?
 7 A Yes.
 8 Q Where we come to stop?
 9 A That's correct.
 10 Q You said something a minute ago. You
 11 said there was a series of relatively light contacts.
 12 Did you -- how did you say that?
 13 A The rollover is a series of -- well, I
 14 don't know that I used the word "light," but the
 15 impacts are just simply -- in and of themselves,
 16 they're not terrible impacts.
 17 We have a lot of energy in this vehicle
 18 but we're burning up that energy over 178 feet or so,
 19 and it's being burned up by a succession of 16 hits
 20 as we rotate, plus all of the sliding and dragging
 21 energy that's being burned up as we slide and drag
 22 through the dirt and up onto the cement onto the
 23 other side.
 24 Q The speed of the vehicle at the time
 25 that it reaches the end of the dirt, the point you've

1 here, Mr. Ingebretsen?

2 A I recognize this as the eastbound lanes
3 of I-80 in the vicinity of the rollover. This is the
4 straight portion of the roadway coming into the
5 curve.

6 Q Okay. A moment ago we saw the green
7 sign on the right. Do you recognize that?

8 A Yes, I do. That's in several of the
9 Highway Patrol scene photographs.

10 MR. EMBLEM: Okay. Stop there.

11 Q (BY MR. EMBLEM) Okay. So you've
12 confirmed that that is a -- the video of the piece of
13 highway leading up to the crash scene?

14 A Yes.

15 MR. EMBLEM: Okay. We move 21-B.
16 Correct?

17 THE WITNESS: Yes, 21-B.

18 THE COURT: Any objection to 21-B?

19 MR. O'NEILL: No objection to that
20 portion of 21-B, your Honor. There are other
21 materials, but no objection to that, just the
22 display.

23 MR. EMBLEM: Okay. That's all.

24 THE COURT: 21-B is received.

25 (Exhibit 21-B received.)

1 Q (BY MR. EMBLEM) Was there any rainfall
2 that day, November 27th, 1998?

3 A My understanding is no. The police
4 report didn't record any. There was none noted in
5 the photographs. And I believe Mr. Probert did some
6 research that's part of our file that showed there
7 was no precipitation that day.

8 Q Also, what -- do you know the
9 temperature of that day?

10 A Yes. I think it was around 55 degrees.
11 That sounds a little summery to me right now.

12 Q Right. And what was the posted speed on
13 the highway out there?

14 A Posted speed was 75 miles per hour.

15 Q The speed -- the safe speed, in other
16 words?

17 That's okay.

18 A I didn't understand. Sorry.

19 Q During the discussion about acceleration
20 and time, does it matter -- you said this is what an
21 object feels, or I guess that also means what a
22 person feels. Would that be correct?

23 A Right. I meant that applies to
24 everything, persons, inanimate and animate objects.
25 We are not exempt. We feel forces of accelerations

1 like anything else.

2 Q And does it matter whether the material
3 that is feeling the forces is soft or hard?

4 A That has an effect on the acceleration.
5 Soft objects, when -- to take the example of an egg,
6 if I drop an egg onto a piece of foam rubber, it's
7 going just as fast as if I drop it onto tile, but
8 because the foam rubber is soft, that time underneath
9 the delta-V -- the delta-V is the same, but the time
10 gets much bigger because there's more distance that
11 the egg takes to slow down. And so when you do that,
12 you make -- when you make the acceleration small, you
13 make the forces small.

14 And that's a common way to protect soft
15 objects like people. You put foam around them.
16 Football helmets and padding, shock absorbers in your
17 shoes, there's all sorts of examples that we can use.
18 Padded dashboards was -- were brought out in the
19 sixties because it saved people when you hit the
20 dash.

21 Q I guess it's I'd rather be hit in the
22 thumb with a pound of feathers than a pound of lead?

23 A Yeah.

24 Q Is that what we are talking about?

25 A Actually, you would because the pound of

1 lead isn't going to deform much and that time is
2 going to be very small. Feathers are going to
3 conform and squish, and that time gets much bigger,
4 and so the forces get small.

5 Q Concerning the injuries that were
6 suffered by Ms. Montoya in this incident, what would
7 have made a difference in terms of things that were
8 available to the technology at the time that this car
9 was built?

10 MR. O'NEILL: Your Honor, let me object,
11 and may I voir dire the witness?

12 THE COURT: Voir dire towards an
13 objection, you may.

14 VOIR DIRE EXAMINATION

15 BY MR. O'NEILL:

16 Q Mr. Ingebretsen, is it true, sir, that
17 you don't have any evidence of where Ms. Montoya may
18 have contacted the vehicle?

19 A I don't think that is strictly true.
20 There's some blood evidence that tells me the type of
21 plane in which she is rotating.

22 Q Mr. Ingebretsen, if I may just cut you
23 off, we're talking about impacts because that's what
24 you have just been talking about.

25 Where in the vehicle, sir, did

1 MR. EMBLEM: Sure.

2 THE COURT: Is there a further
3 identification?

4 MR. EMBLEM: Let me identify those for
5 the record.

6 Exhibit 304, CD 4, photograph 5-6;
7 Exhibit 304, CD 4, photograph 13-14; Exhibit 304, CD
8 5, photograph 19-20; Exhibit 304, CD 6, Exhibit
9 19-20; Exhibit 304, CD 6, photograph 22-23;
10 Exhibit 304, CD 6, photograph 23-24; and Exhibit 304,
11 CD 6, photograph 26-27.

12 THE COURT: There's no objection to
13 those and they are received.

14 (Exhibits as identified received.)

15 Q (BY MR. EMBLEM) Okay. Mr. Ingebretsen,
16 what are we looking at here in photograph 5-6?

17 A This is the driver side visor.

18 Q Okay. I'm going to show a close-up of
19 that exhibit, photograph 13-14. Is that a close-up
20 of the driver visor?

21 A Yes.

22 Q And what do we see there?

23 A Down in the corner, we see some hair
24 embedded in the corner of the visor. It's likely
25 that that occurred as Mr. Clayton was ejected,

1 little bit difficult to see on the photograph there.

2 They have the appearance of perhaps dried blood or
3 some kind of a scuffing.

4 Q And Exhibit 19 -- photograph 19-20, what
5 are we looking at there?

6 A This is a light, an interior light
7 that's on the ceiling of the Ford vehicle over the
8 driver and passenger seat. It's the one that's in
9 between the front and the rear seats.

10 And on here, in these areas -- again, a
11 little difficult to see on this, but on the
12 photograph it's more apparent -- there's some blood
13 and/or other organic material that's caught in the
14 texture of that light.

15 Q In Exhibit 304, photograph 22-23, what
16 are we looking at there?

17 A This is the passenger side visor, a
18 light assembly and sunglass case, if you will, that's
19 over the -- over the dashboard in the center of the
20 vehicle.

21 There's a -- we see some creasing in the
22 head liner material. There's a little crease here in
23 the passenger side visor.

24 Q Did you form an opinion as to cause of
25 the creasing which you have seen here in this

1 transferring some of his hair to that visor.

2 Q And the next photograph is 19-20. What
3 are we looking at in 19-20?

4 A 19-20, we are looking at the B pillar
5 that's right here, right at the back of the passenger
6 side door. We are looking at the inside of that.
7 You can see in this plane, from side to side, up on
8 the roof -- if I could point.

9 Do you have a pointer, Mr. Emblem, I
10 could use?

11 Q Yeah.

12 A We see right along here what has the
13 distinct look of dried blood and other material that
14 is, in my opinion, most likely from Ms. Montoya.

15 Q Okay. And also in this photograph, what
16 is that that we see up here on the upper corner?

17 A This is part of a handle meant to use to
18 help people enter and exit the vehicle.

19 Q And over here in this part of the
20 photograph?

21 A Again, we see the -- another handle
22 that's above and to the right of the passenger door.

23 Q And on the B pillar, is there anything
24 here in this region of interest?

25 A There are some markings here. They're a

1 photograph?

2 A In the head liner, that was from roof
3 crush. The creasing in the visor --

4 MR. O'NEILL: Your Honor, let me object,
5 and may we approach?

6 THE COURT: You may.

7 (At the side bar.)

8 MR. O'NEILL: Your Honor, again I
9 believe this line of questioning is leading up to
10 some type of testimony about interior impacts. And I
11 want to hand you this deponent's or this witness's
12 deposition taken July 10, 2003, and consistent with
13 what he just said, when I took him on voir dire on
14 page 255, he admits that, quote, There were really no
15 witness marks on the interior of the vehicle that
16 were still available or recognizable of significant
17 interior contact with either Ms. Montoya or
18 Mr. Clayton, closed quote. And that's on page 255.
19 The question starts on line 12. The answer goes
20 through line 24.

21 And we've had no disclosure since then,
22 your Honor, about any specific witness marks within
23 the vehicle. And so -- and he's already admitted he
24 can't tell exactly where she contacted.

25 So now, after a break, they're back and

1 his opinion as to why the seat belt failed. Your
2 objections are noted -- your exception is noted.

3 Now back to -- like I said, I'd like to resolve
4 this quickly if possible, and that is in terms of the
5 expert report and other approaches. How were these people
6 notified that Ms. Montoya's restraint was an issue?

7 MR. EMBLEM: Ms. Ford Corrigan was deposed,
8 their expert in biomechanics. And her testimony, which to
9 some portion was relied upon by Mr. Ingebretsen when he
10 gave the declaration and affidavit in opposition to motion
11 for summary judgment, notifying the defendants that this
12 new information, including the photographs, in large as
13 opinions go.

14 And what he says in point 6, in Corrigan it
15 talks about the blood embedded in the various parts of the
16 inside. It says, "Ms. Corrigan testified that Anthony
17 Clayton's head would have been forced into the door groove
18 juncture during the rollover event whether he was belted
19 or not. Based on that, it is evident the same is true
20 with Kellie Montoya, indisputably belted, who suffered
21 sheer frontal lobe brain injury, facial lacerations, teeth
22 knocked out, and vision knocked virtually askew, requiring
23 prisms to correct her vision for life."

24 So actually they have a couple of zones to which
25 they've received notice. One, Mr. Ingebretsen has said so

1 THE COURT: And Mr. Ingebretsen's affidavit
2 regarding his expert report -- and that may be in the
3 unknown. But other than the affidavit, anything else?

4 MR. EMBLEM: Yeah. It advises them of his
5 opinion in that regard. And they were certainly free to
6 say, "Hey, Thor, I need to take his deposition on that."
7 But they wouldn't have needed to because they had already
8 had their sworn testimony of their witnesses on that
9 point.

10 THE COURT: So I'm clear here, his report to
11 them identified the Kellie Montoya seat belt and its
12 sufficiency as an issue?

13 MR. EMBLEM: Sure.

14 THE COURT: He was going to opine on?

15 MR. EMBLEM: Yeah. But did he say that exactly
16 in those words? No. And if you ask that question exactly
17 in those words, the witness say no, because he's such a
18 precise person. He doesn't want to say the wrong thing.
19 The fact is, he says that he agrees with Ms. Corrigan that
20 the seat belt does not contain Tony Clayton; therefore, it
21 does not contain Kellie Montoya. Belted or unbelted,
22 she's going to be hitting the roof. Ms. Corrigan says so,
23 and Mr. Ingebretsen says so.

24 THE COURT: Now so I have the language, the
25 question is that it doesn't contain them or doesn't --

1 in March of 2006, but also in January and February of
2 2006, whenever I took Ms. Corrigan's deposition, they were
3 also notified of that fact.

4 Now, there's one other witness of theirs, but I
5 can't think of his name, that also told us --

6 MS. EMBLEM: Caulfield.

7 MR. EMBLEM: Mr. Caulfield, the door guy, who I
8 presume will later testify, has testified that the loading
9 would have occurred laterally, whether belted or not
10 belted.

11 THE COURT: You're speaking of Ms. Montoya?

12 MR. EMBLEM: Yeah, lateral movement within the
13 seat. Caulfield talked about Tony Clayton, but the
14 operation, the failure mode, is exactly the same. There's
15 nothing to protect Kellie Montoya from banging back and
16 forth as this thing is rolling over. And even if it's
17 hitting her face on the glass or on the pavement when the
18 glass is broken out, that's still a failure to protect the
19 occupants in a foreseeable event, and that makes it
20 uncrashworthy.

21 THE COURT: So the notification is as a result
22 of the questioning at depositions?

23 MR. EMBLEM: Of their witnesses, and then also
24 repeated with Mr. Ingebretsen's affidavit in March of
25 2006.

1 Mr. Montoya --

2 MR. EMBLEM: Ms. Montoya?

3 THE COURT: -- or Mr. Clayton, the idea is -- or
4 the theory is that the seat belt failed and he is not
5 restrained to any degree. The theory with Ms. Montoya is
6 that she's wearing her seat belt, but it's insufficient
7 restraint.

8 MR. EMBLEM: There you go. Exactly.

9 THE COURT: And so the language regarding
10 insufficient restraint was used?

11 MR. EMBLEM: Not that exact language, no, but
12 the language was --

13 THE COURT: I guess I see the difference between
14 saying that the seat belt failed and the seat belt did not
15 sufficiently restrain. Two different concepts.

16 MR. EMBLEM: Yeah. It says, "Belted or
17 unbelted, her head -- Ms. Montoya's head, even though she
18 was indisputably belted, would also be forced up in the
19 roof/door juncture, as Ms. Corrigan as testified under
20 oath."

21 THE COURT: Well, wouldn't that be a notifica-
22 tion that actually the seat belt didn't matter? Isn't
23 that what that says, that the seat belt didn't matter?
24 It's not a matter of the seat belt is insufficient, it
25 didn't do what it should do. That it didn't matter. That

1 We convert some energy. Mr. Clayton and Ms. Montoya are
2 going to move forward and to their right, because that's
3 the way they were traveling before.

4 The vehicle will lift and start to come up.
5 There will be some interaction with their buttocks and
6 pelvis area with the seats, but their torsos are still
7 trying to go the same direction they were until they get
8 acted upon by some other force.

9 So as the vehicle comes over and we hit on that
10 first impact, we haven't really developed enough time for
11 them to be thrown outward. So Ms. Montoya is still
12 against the door, Mr. Clayton is somewhere in between
13 where he was normally and where he was as he was going
14 over the console, towards the front and to the right.

15 Q So is it your opinion that if Mr. Clayton was
16 not sitting straight up at the time of the first primary
17 contact with the ground?

18 A No. And straight up -- I mean, we're upside-
19 down, so he is upside-down and still in a position where I
20 don't think he has yet moved back towards the door.

21 Q So am I correct, then, that your testimony is
22 that he was more to the right so that that contact with
23 the roof was distributed over a greater part of his body
24 than the top of his head?

25 MR. O'NEILL: Object to form.

1 quarter-and-half -- first quarter, second quarter, and
2 third quarter, because the physical evidence on the seat
3 belt is a very light witness mark. We don't have
4 significant loading of the seat belt, and so if it came
5 open, it has to come open in that area, because as soon as
6 we start to come over again, the door opens and he comes
7 out of the door.

8 Q Is this the approximate location of the buckle?

9 A Yeah. It will be close to somewhere where you
10 can easily access it with your hand. Not too low, but not
11 too high.

12 Q I'll show you some photographs that were
13 previously admitted. I think you might have seen them, so
14 I'll ask you a couple questions about that. So the time
15 you believe this buckle opened was when Tony was headed
16 for the right front; is that correct.

17 MR. O'NEILL: Leading question.

18 THE COURT: Sustained.

19 Q (BY MR. EMBLEM) What was Tony Clayton doing
20 physically, because of the physics of the dynamics of this
21 crash, when you believe the buckle came open?

22 A As I just explained, Tony is still -- his torso
23 and mass is primarily over to the right. His hip would be
24 pushing into the center console, his torso would be
25 leaning still to the right, and wouldn't start coming back

1 THE COURT: Sustained.

2 Q (BY MR. EMBLEM) Could you describe the position
3 that you believe is your testimony that Tony Clayton was
4 in on the primary contact?

5 A Yes. Based on the physics of the problem, based
6 on the injury pattern that we have on Mr. Clayton, the
7 absence of injury to his neck and to his head, he can't be
8 in the area where we're going to have direct contact. So
9 he needs to be a little bit to the right of where we have
10 the crushing going on.

11 Q So the impact of Tony Clayton's body is where?

12 A The impact of his body is going to be on his
13 left side, distributed probably around his shoulder area,
14 maybe a little bit to the side of his head. But there's
15 no real evidence of any significant contact or impact.

16 Q You have expressed an opinion that you believe
17 that the seat belt opened at a certain point during this
18 rollover.

19 MR. O'NEILL: Objection, Your Honor.

20 THE COURT: Sustained.

21 Q (BY MR. EMBLEM) Have you expressed an opinion
22 as to when the seat belt opened for Mr. Clayton?

23 A Yes.

24 Q When is that?

25 A I believe the seat belt opened during this first

1 again until after we start coming around and centrifugal
2 acceleration can bring him to the outside.

3 Q Is there anything about the shoulder strap that
4 would prevent him from moving to the right, as you just
5 described?

6 A No. In fact, when you move at an angle greater
7 than about 45 degrees to the front -- if I take the front
8 and I turn just 45 degrees, that shoulder harness provides
9 little, if any, restraint capability. You come out of the
10 shoulder harness.

11 Q Is there anything within the systems of the car
12 to prevent lateral movement of the occupants during a
13 rollover?

14 A Yes.

15 Q What is that?

16 A The doors. Seat belts don't contain, seat belts
17 restrain. And they're primarily designed for frontal
18 collisions. They don't restrain side to side well at all.

19 Q Let me talk a minute about the stability of the
20 Explorer.

21 A Okay.

22 Q I'll ask you about that. You're able to -- in
23 documents which we've received in this case, are you able
24 to talk about the center of gravity versus the track
25 width -- height versus track width of this Explorer?

1 to use. We don't have a Firestone tire case. It's not
2 about the tires, so don't let it distract you. That was a
3 test that was done on a UN105 Explorer. It was suspended
4 with four cables, they did measurements, they did specific
5 measurements with the specific size tires that are on our
6 car, P235 tires.

7 It's not a tire case, but it is a center-of-
8 gravity case. It's a track width case. It's rollover
9 case. And this is specific testing done by a reputable
10 firm which establishes some other results with center of
11 gravity related to the size of the tires. We gave it to
12 them in discovery, also.

13 THE COURT: Well, I guess specifically this was
14 provided to you as one of their exhibits?

15 MR. O'NEILL: It was. And we filed our pretrial
16 objections. And our objection said it was subject to
17 motion of limine, referring for the Firestone tire recall
18 motion in limine. This was basically put together by
19 Tandy Engineering and Carr Engineering during the
20 Firestone tire recall. That's why I moved to exclude it.
21 And our motion to exclude includes everything. That's why
22 it is not admissible.

23 MS. EMBLEM: We didn't say anything about
24 Firestone.

25 MR. O'NEILL: Your Honor, I believe the only

1 tires tested were Firestone tires in that report.

2 MR. EMBLEM: Doesn't matter, same size tire.

3 MR. O'NEILL: It's the Firestone.

4 MR. EMBLEM: Doesn't have anything to do with
5 it. Doesn't have anything to do with it.

6 THE COURT: Ladies and gentlemen of the jury, we
7 have a matter of law that requires more than a bench
8 conference to resolve. You will please be patient with us
9 while we resolve this. We'll excuse you to go back to the
10 room during this period of time without expressing any
11 opinions among yourselves or with others. You're excused.

12 (Jury excused.)

13 THE COURT: It may well be that we needed to
14 explore all the proposed exhibits to see whether they have
15 been precluded by the prior order or by a prior order and
16 in terms of their foundation so that we have -- we won't
17 have to excuse the jury so often.

18 But it's very difficult for me to resolve these
19 issues until I've had an opportunity to see what the
20 exhibit is and hear you out here in terms of whether --
21 I'm getting a conflicting message here as to whether this
22 was covered by one of the orders or not. Let's flesh it
23 out. What's your objection?

24 MR. O'NEILL: Your Honor, again, it's -- it is
25 relevance, foundation, and Rule 403. The relevance

1 objection essentially is that the entire body of testing
2 done by Carr Engineering, as reflected in this report, was
3 done as part of the Firestone Winderness AD recall. And
4 this was prepared essentially for testimony before
5 Congress. Secondly -- and that goes with the 403
6 prejudice as well. We don't have a Firestone tire case
7 here. It interjects an issue as to why it was done and
8 what was being studied. And, again, it isn't our case
9 having to do with a tie rod.

10 Furthermore, this is not testing that was done
11 by or on behalf of this witness. He was not participating
12 in the tests, he doesn't know their purpose, and he's
13 trying to get up and opine about something he wasn't
14 involved with.

15 And then further, Your Honor, on the relevance,
16 on page 3 you can see something called -- and this is
17 page 3 of Exhibit 46A as has been produced to us -- that
18 we have several different vehicles being tested, all with
19 the Firestone AT tire, which you can see on the tire and
20 wheel information heading with a number of different tire
21 sizes. And you can see here there's a 255 tire, which
22 isn't involved in our case. There is a 235, which is.
23 All of them have different centers of gravity than this
24 witness just calculated.

25 And, again, the entire package, Judge, we think

1 falls under the prior motion in limine in addition to the
2 lack of foundation that this witness has we're talking
3 about.

4 THE COURT: I think I understand that. There's
5 also apparently pictures -- photographs, I should say.

6 MR. EMBLEM: I think they just demonstrate how
7 they arrived at their calculations.

8 THE COURT: For what purpose are you offering
9 this?

10 MR. EMBLEM: To show that the particular
11 vehicle -- which is actually on page 4, which I have
12 tabbed on my copy -- which has the 235 tires, as ours do.
13 And the fact that it says "Firestone" is just a red
14 herring. It has nothing to do with Firestone. We don't
15 have Firestone tires. But we have P235 tires. And the
16 tires are important to the stability of this vehicle. As
17 counsel just pointed out, at page 3 you have the 255 tires
18 and the T/2h goes down. P235 tires, at least according to
19 Lee Carr, is 1.11 on page 4.

20 THE COURT: May I -- I don't mean to interrupt
21 you, but is the purpose for this to explore -- I apologize
22 for the use of that word -- to further give some
23 information regarding the tires?

24 MR. EMBLEM: It's regarding how the size of the
25 tires affects the stability factor.

1 THE COURT: The size of the tire affects the
 2 stability factor.
 3 MR. EMBLEM: Right, because the tires are
 4 different heights. A larger tire affects stability.
 5 THE COURT: And the purpose of this exhibit is
 6 to give the opinion of the engineering firm that put this
 7 together, apparently?
 8 MR. EMBLEM: No, this is no different really
 9 than an SAE document. This is testing that was done and
 10 was reported. As counsel said, they asked Congress to
 11 rely on it. I think the reliability is very high here.
 12 THE COURT: What I'm trying to get to is why you
 13 want the jury to see this entire document.
 14 MR. EMBLEM: Well, they don't need to see the
 15 entire document, and I would not object to redacting the
 16 document down to the pages that relate to --
 17 THE COURT: What do they need to see?
 18 MR. EMBLEM: They need to see at least page 4.
 19 We may have a couple more.
 20 THE COURT: And I guess the purpose -- and then
 21 my question is: What is the purpose in terms of page 4?
 22 MR. EMBLEM: The purpose shows -- page 4 --
 23 THE COURT: What do you offer -- why do you
 24 offer it?
 25 MR. EMBLEM: The stability factor is 1.11. It's

1 relevant to our car, I don't know. He just testified that
 2 the track width is 58.8 on our subject vehicle.
 3 MR. EMBLEM: He didn't say that.
 4 MR. O'NEILL: He just talked about the exhibit.
 5 MR. EMBLEM: It's in the exhibit. He didn't say
 6 our subject vehicle.
 7 MS. EMBLEM: It's your exhibit from your expert.
 8 MR. O'NEILL: And it's 58.7. And in this
 9 document, Exhibit 46, it's 58.8. In the exhibit he just
 10 discussed, the CG height is listed at 26.4 in this test.
 11 That exhibit for the '96 Explorer shows 26.1. And we have
 12 a document that says "CG height calculated from tests with
 13 different tires."
 14 And the problem is that, you know, he's got
 15 these third-party tests -- and this was part of our
 16 expert's file, I don't disagree with that. And it was
 17 there because at the time and before your rulings, we
 18 didn't know whether Firestone was going to be an issue and
 19 whether we would be trying a Firestone case. And the
 20 testing we did is to remove the Firestone tire theory.
 21 This witness has no business leaving the jury
 22 with some impression that, you know, these tires, in our
 23 case, mattered. They're not Firestone tires. He can't
 24 lay the foundation that these measurements relate to our
 25 vehicle.

1 our tires, P235 tires. This is measured at curb weight,
 2 so it shows you the stability factor virtually unloaded.
 3 And page 11 -- page 12 is the P235 tires. It's at curb-
 4 plus, which means curb plus the instrumentation. The
 5 other pages explain the instrumentation. The stability
 6 factor is 1.12.
 7 And then at page 20 -- I should say 21, P235
 8 tires, the stability factor is back at 1.11. And it says
 9 "GVW," which means it's totally loaded to the maximum
 10 loaded weight.
 11 So it's to show that the tires have an effect on
 12 the overall stability factor. And the overall stability
 13 factor shows a way for the jury to understand what is
 14 meant when someone says that the vehicle is not stable.
 15 THE COURT: So 4, 12 and 20 are the pages?
 16 MR. EMBLEM: Right, 4, 12 and 20.
 17 MR. O'NEILL: Your Honor, can I --
 18 THE COURT: Mr. O'Neill, of course.
 19 MR. O'NEILL: Thanks. Your Honor, on page 4,
 20 the first page they would like to offer, you can see that
 21 it says under the "Loading Conditions Tested" section,
 22 toward the bottom third of the page, it says, "CG height
 23 calculated from test with different tires." And we just
 24 heard from this witness that the static stability factor
 25 is merely math, T/2h. And how this could passibly be

1 THE COURT: Well, if I understand, Mr. Emblem,
 2 what you seem to be indicating is that to make a
 3 calculation, calculations regarding the center of gravity,
 4 one must take into account the height of the tire.
 5 MR. EMBLEM: Yes, one must. And, Your Honor,
 6 this car was released --
 7 THE COURT: But you're not claiming that the
 8 height of the tire that was actually on the vehicle was
 9 either defective or the wrong height?
 10 MR. EMBLEM: Actually, we are. The car was
 11 released for 225-size tires, but it was marketed and sold
 12 with 235-size tires. We don't believe there's sufficient
 13 evidence to prove that this car was stable with 235 size
 14 tires on it, so it is a part of the case.
 15 And all we want to do with this exhibit is show
 16 that there is a difference in the results based upon the
 17 size of the tires, that the center of gravity height
 18 changes, and therefore the T/2h, the safety stability
 19 factor, changes based on that.
 20 MR. O'NEILL: But, Your Honor, back to this
 21 exhibit. On the very face of it it says the CG height was
 22 calculated from tests with different tires than the 235.
 23 This witness doesn't have the foundation to make this
 24 relevant.
 25 MR. EMBLEM: I have another exhibit we should

1 Mr. Ingebretsen, if we could have you come back
2 up and be seated so that we're ready to proceed when the
3 jury comes.

4 (Jury enters.)

5 THE COURT: The jury has returned to the
6 courtroom. Ladies and gentlemen, it is 3:30. We normally
7 would take our break at this point. Because of what's
8 transpired here, we won't take a break in terms of our
9 afternoon break, if that's agreeable. But we are going to
10 let you go early, about 4:30, as we need to take up
11 another matter. And so we will be breaking early. So
12 that's an agreeable schedule, and then we'll proceed that
13 way.

14 Mr. Ingebretsen is being examined by Mr. Emblem.
15 It's direct examination. Mr. Emblem?

16 Q (BY MR. EMBLEM) Yes. Thank you. Good
17 afternoon again.

18 A Good afternoon.

19 Q When we looked at Exhibit 46B, can the safety
20 stability factor change if the center of gravity changes?

21 A Oh, clearly. That's exactly what it will do.

22 Q So if the center of gravity changes, can that
23 happen based upon the size of the tire?

24 A Oh, yes. The diameter of the tire -- if you get
25 a bigger diameter tire you'll raise the vehicle by half of

1 in the rim, primarily. It can be seen right here to the
2 side of the valve stand. There's a little dirt in there.
3 I loathe to try to do anything to it because I don't want
4 to remove anything that's there. There's also some yellow
5 paint right here as well. That tells me that this was
6 sliding through something yellow, and the only yellow on
7 the roadway is that fog line as you're coming up onto the
8 freeway.

9 Q (BY MR. EMBLEM) Can you explain why this piece
10 of aluminum is missing from the rim?

11 A Yes, it was broken off. As the vehicle comes up
12 on the roadway, the tires are probably still spinning a
13 little bit, and as we go from the soft soil onto the hard
14 cement, we have an impact that has caused this to break
15 off.

16 You can see -- I hope I'm not making it so
17 people can't see, but if you look at the rim back here,
18 you can see that the metal is deformed towards the center.
19 That means that it was pushing in that direction. It's
20 been pushed that way.

21 Q Can I ask you to maybe show half of the jurors
22 and turn it and show the other half?

23 A Sure. Right here in the rim you can see that
24 the metal is bent towards the center. Right here. You
25 can see that the metal has been bent toward the center.

1 the diameter, and that raises the center of gravity up by
2 that same amount.

3 Q So there's a direct relationship then between
4 the size of the tire, the center of gravity, and the
5 safety factor in terms of resistance of rollover?

6 A Yes.

7 Q We did bring up the tire from the car, and I was
8 going to ask you to show the jury where the yellow paint
9 is.

10 A Yes.

11 Q And I'd just again reiterate that no tires blew
12 out on the highway.

13 A There's absolutely no evidence of that.

14 Q This is not a tire failure case in any way?

15 A No, not at all.

16 MR. EMBLEM: We marked the tire as Exhibit 32.

17 THE COURT: 32?

18 MR. EMBLEM: I've got no objection?

19 MR. O'NEILL: No objection, Your Honor.

20 THE COURT: Received.

21 Q (BY MR. EMBLEM) Can you come down and
22 demonstrate where the paint is here?

23 THE COURT: You may. And you're welcome to
24 position yourself as you need to.

25 THE WITNESS: The paint -- the yellow paint is

1 That tells me that the direction of force is coming in
2 like that.

3 Q Okay.

4 A And this is something that we commonly see when
5 we have a rollover. You see pieces of these alloy rims
6 broken.

7 Q Thank you. I want to show you Exhibit 46. What
8 is Exhibit 46?

9 A Exhibit 46 depicts a vehicle, and what we in
10 physics and engineering like to call a coordinate frame or
11 coordinate axis. It lets us talk about directions and
12 talk about the same things. So we take and we draw lines
13 at right angles to each other, and one is pointing
14 straight down, we call that the Z.

15 Q Let me ask it this way. No. 46, is that a
16 demonstrative exhibit to demonstrate a scientific or
17 engineering principle?

18 A Yes, it is.

19 MR. EMBLEM: Move for 46.

20 MR. O'NEILL: No objection, Your Honor.

21 THE COURT: Received.

22 Q (BY MR. EMBLEM) We'll put it up and take a look
23 at it now so you can describe the directions, and maybe
24 you can use your model, too, to help us with that.

25 A Sure. When we talk about vehicle dynamics, we

1 need to be able to talk about things on a common ground,
 2 and so we need to be able to define directions. X --
 3 positive X is forward. So if I'm moving forward, I say
 4 I'm moving in an X direction. Y comes out the passenger
 5 door. So if I'm moving towards the passenger side, I'm
 6 positive Y. Negative Y would be the other way.
 7 Z we take to be pointing down. That's by
 8 convention and agreement. We could have Z pointing up and
 9 rotate things, but it's just easier to do it this way.
 10 And so Z points in the direction of gravity. And it just
 11 gives us -- and then we have an arrow talking about pitch.
 12 Pitch is when the vehicle does this (indicating.) That's
 13 called pitching. Rolling is when it does this
 14 (indicating). Just like we were talking about today in a
 15 rollover, it's like this.
 16 Yaw is when the vehicle turns like this on the
 17 roadway (indicating). It's not standing on its nose, it's
 18 just so you can see that yaw is when we steer it, we --
 19 (indicating) -- that's called yaw.
 20 Q When the rear end breaks loose and starts to
 21 pass the front end it leaves yaw marks; is that right?
 22 A That's correct. It means that the rear end is
 23 coming around and the vehicle is yawing. It's rotating
 24 about the Z axis.
 25 Q During the course of preparing for your

1 testimony in this case, did you consider the resistance to
 2 rollover of the 1997 Explorer?
 3 A Yes.
 4 Q What factors are important in arriving at your
 5 decision concerning the resistance to rollover?
 6 A There are several factors. Of prime importance,
 7 of course, is the track width and the CG height. The
 8 height of the center of gravity. That allows me to
 9 calculate the static stability factor.
 10 Beyond that there are other factors that come
 11 into play. Actually, the type of suspension comes into
 12 play. Do we have an antisway bar that is in place and
 13 functioning? Do we have -- do we have a suspension system
 14 that's designed to keep things low, if you will, roll
 15 centers. We might get into that. But we need to
 16 understand what causes these vehicle to roll. And there
 17 are other parameters besides just the track and the CG
 18 height, but those are important.
 19 Again, the type of suspension. Is there
 20 something in there that as the car goes into a corner or
 21 starts to slide, does the body roll or does it stay pretty
 22 level? If the body starts to roll, that changes things.
 23 That changes where the center of mass is. It moves the
 24 center of mass to the side, which is bad. It makes it
 25 more likely to roll. There are other effects due to the

1 suspension design that may actually tend to raise the
 2 center of mass, which is bad. That makes it more likely
 3 to roll.
 4 Tire size. How the tire -- how the vehicle is
 5 originally tested and what tires are on the vehicle make a
 6 difference because bigger tires make the center of mass
 7 higher, and that's bad. That makes it more easy to roll.
 8 It makes it unsafe.
 9 Q With this vehicle, 1997 Explorer, you mentioned
 10 that antisway device.
 11 A Yes.
 12 Q That's the safety device that keeps it from
 13 rolling too much on a curve?
 14 A Yeah, that's really the primary purpose of it.
 15 As a side effect it makes us feel a little more
 16 comfortable in the car, but its primary purpose is to keep
 17 that center of mass from migrating.
 18 Q Do you have a way of demonstrating what happens
 19 to the tires when it starts to get a lot of lateral
 20 forces? Side forces in a curve?
 21 A Yes, I can draw you a picture, if I may.
 22 Q Would you do that?
 23 THE COURT: You may step down. There's a board
 24 here that you can use.
 25 THE WITNESS: Can everybody see this?

1 (Jury nods.)
 2 Q (BY MR. EMBLEM) What happens to the tires, and
 3 how does that affect the stability related to resistance
 4 to rollover when you're in a turn or curve?
 5 A (Drawing.)
 6 Q What is that?
 7 A I'm drawing the shape of a car body here. And
 8 when we're driving down the road, when we're driving
 9 straight, our vehicle looks like this. May I have your
 10 blue pen, Mr. Emblem? Or maybe a red pen. Something that
 11 is contrasting to black.
 12 Q Here's blue and red.
 13 A When we go into a corner -- and I'm going to
 14 draw this looking as if we were turning left. What will
 15 start to happen is the body wants to roll, the tires will
 16 start to deform. They're made of rubber. They have
 17 stiffening cords in them, but they're pliant, they're
 18 rubber, they can bend, and they flex.
 19 And so what happens is now -- and we're not
 20 rolling about a point over here like we were in our box
 21 model, we'd be rolling about this point, we're not. The
 22 body as is rolling about a point down here called the roll
 23 center. And what happens then is our center of mass
 24 migrates to the outside.
 25 Our track width is now this. Instead of having

1 our original track width, half of the track width of that.
2 So that number underneath there, that T/2, is now much
3 smaller because we've migrated the center of mass to one
4 side and the tire has flexed. And so dynamic coefficient,
5 the dynamic stability factor -- I couldn't pull the word
6 out -- the dynamic stability factor will be less than the
7 static stability factor.

8 An antisway bar is in there trying to keep the
9 body from rolling. When that sway bar isn't functioning,
10 you get a vehicle that is more unstable and more unsteady.

11 Q More likely to roll over in an accident
12 avoidance maneuver?

13 MR. O'NEILL: Objection, Your Honor.

14 THE COURT: Sustained.

15 Q (BY MR. EMBLEM) Can you explain what you were
16 saying? You get a vehicle that is more --

17 A When a vehicle is like this, it is more likely
18 to roll over when we're trying to avoid an accident and
19 put the steer input in. The static stability factor says
20 we're fine or very close to being unstable. When we
21 factor in these sorts of components, instead of being 1.1,
22 we get much, much closer to 1, and sometimes even less
23 than that, and then we roll over.

24 Q So what you've demonstrated -- maybe you can
25 label it -- is what happens in a dynamic event. Is that

1 appropriate number.

2 A Sure. 1, body roll moves CG; 2, tire flex
3 reduces track width.

4 Q So the center of gravity moves -- would that
5 be --

6 A Outward. I'll say outward.

7 Q Thank you.

8 A You're welcome.

9 Q You mentioned that there was yaw marks from the
10 right front tire leaving the road to give you some cause
11 for concern to which you followed up on. What did you
12 follow up on? What was the next part of your assignment?

13 A The next part was why am I seeing a big black
14 tire mark there with gravel spewing and I'm seeing nothing
15 from the left front. I started to investigate further and
16 I found that the right front tie rod had fractured. And I
17 investigated the cause and the reason for that tie rod
18 fracture and determined to what I will testify is a
19 reasonable degree of scientific probability that that
20 right front tie rod had fractured prior the accident.

21 Q What else -- did you discover anything else
22 concerning the vehicle?

23 A Yes, I did.

24 Q What did you discover?

25 A There were several other contributing factors.

1 what you called it?

2 A I'll call it static versus dynamic. We live in
3 a world of dynamics, not static. Things move.

4 Q Explain what dynamics is.

5 A Dynamics is the study of motion. It's how
6 things move. That's what I've spent more than 20 years
7 doing is looking at how things move and how they break.
8 And dynamics is motion. Static means -- when I'm standing
9 here, I have my weight on the ground, that's static. But
10 when I start moving, it changes. The forces change.

11 Q So before you leave, let me just ask you a
12 couple of things. The static stability factor that we
13 talked about in 42A, that's fine when everything is
14 standing still?

15 A That's correct.

16 Q But when it's in motion, that changes?

17 A That's absolutely correct.

18 Q When it changes, does it change to the worse or
19 to the better?

20 A Generally speaking, it changes to the worse.
21 The static stability factor overestimates what the real
22 stability is. When you add these effects, it will always
23 go down.

24 Q I'll ask you to list there what you just
25 described, No. 1, No. 2, No. 3, No. 4, whatever is the

1 I found that the right front antisway bar link -- the sway
2 bar was there, but the link that ties it to the other side
3 was missing. It was just gone. There was no evidence of
4 it anywhere in the vehicle. There was no evidence of it
5 anywhere at the site. I looked, defense experts looked.
6 It was nowhere.

7 I looked also at other suspension elements. The
8 left front shock absorber had pulled through the upper
9 shock absorber mount. The shock absorber plays a factor
10 into the suspension characteristics of the Ford vehicle,
11 acting not only as a dampening device, but as a stop for
12 downward suspension travel.

13 And I found other evidence on the tie rods
14 themselves that told me that we have -- even with a fully
15 functioning suspension system, we have an interference
16 problem causing bending stresses on the tie rod itself,
17 which, in my opinion, led to a fatigue fracture of that
18 tie rod.

19 Q Is that a design error?

20 A Oh, yes.

21 Q Is that a defect?

22 A Yes, it is.

23 Q You mentioned several things. Let me see if I
24 can bring them down into something that I might
25 understand.

1 MR. O'NEILL: No objection, Your Honor.
 2 THE COURT: Received.
 3 MR. EMBLEM: I wonder if we could dim the center
 4 core of lights there to help with that presentation.
 5 Thank you.
 6 Q (BY MR. EMBLEM) All right. This is a 1996 Ford
 7 Explorer 4x4. Is that the same thing as the '97 that's
 8 involved with the Clayton case?
 9 A My understanding is yes, it is.
 10 Q It's a UN105; is that correct?
 11 A That's correct.
 12 Q If you use your pointer -- I'll walk over here.
 13 Can you see that okay from there?
 14 A Yes.
 15 Q What's this part that's painted white on both
 16 sides?
 17 A That's a tie rod. This is the rack. That's a
 18 tie rod.
 19 Q This is the part called the rack and pinion,
 20 when you speak of rack and pinion steering; is that
 21 correct?
 22 A That's correct. That's the part when you're
 23 turning your steering wheel, you're turning a little shaft
 24 and gear, and you're moving the rack that in turn moves
 25 the tie rods in and out.

1 Q Does that work hydraulically or mechanically?
 2 A It's hydraulic assist.
 3 Q And so then the tie rod is what connects the
 4 wheel to the steering?
 5 A That's correct.
 6 Q So if the tie rod is broken, the steering wheel
 7 is not connected to the wheel?
 8 A That's correct.
 9 Q Okay. Do you see this as being green? Can you
 10 see that back there as being green?
 11 A I can, but I've seen it up close. That bar,
 12 that green bar across there, is the sway bar. Antisway
 13 bar. And going down on either end are the sway bar links.
 14 Sometimes they're called sta bar links. Right there.
 15 Q So there we have kind of a close-up of the tie
 16 rod, the sway bar, and the sway bar link; is that correct?
 17 A That's correct.
 18 Q What's the part yellow on the bottom?
 19 A It's called the lower control arm. This is a
 20 double wishbone or SLA, short long-arm suspension. That's
 21 the lower control arm that connects the chassis through a
 22 pivot point here to the hub assembly out here. And so
 23 that allows the wheel to travel up and down and maintains
 24 a geometry, a suspension geometry that they want to have.
 25 Q You used that word "geometry" a couple times.

1 It sounds kind of mathematical.
 2 A It is.
 3 Q Are we talking about -- what exactly, when
 4 you're speaking about geometry related to functions of the
 5 steer and suspension of the vehicle?
 6 A When I'm talking about geometry, I'm talking
 7 about really the shape of things and how they fit
 8 together. When we have a certain geometry, it refers to a
 9 certain orientation and space that we're trying to put
 10 things in. And you have to have a geometry that allows
 11 for the operation and function of the components that are
 12 in that space. But that is to say you don't want things
 13 hitting each other. You don't want interference. You
 14 don't want one part getting in the way of another part
 15 while this vehicle is working. That's bad.
 16 MR. EMBLEM: Your Honor, if I could borrow your
 17 copy back, I would like to pass that among the jury. I
 18 know how difficult it is to see up there. Can I do that
 19 with your permission?
 20 THE COURT: Well, we should publish the actual
 21 exhibit.
 22 MR. EMBLEM: Okay.
 23 THE COURT: If you wish to do that, you may.
 24 MR. EMBLEM: (Proffers exhibit to the jury.)
 25 Q (BY MR. EMBLEM) I show you what's been marked

1 as 85A1, and I'll ask you what that is we're looking at.
 2 A Oh, sorry. You're asking what -- this is a sway
 3 bar link. This is what connects one end of the sway bar
 4 down to that lower control arm. So when that lower
 5 control arm moves up, it moves this link up and pushes on
 6 it. This link pushes on one end of the antisway bar.
 7 It's another torsion bar that's shaped kind of like a U
 8 with very short ends to it.
 9 And so when that pushes up on one end, it starts
 10 to twist the bar. So the bar naturally doesn't want to
 11 twist and it tries to pull the other wheel up. And when
 12 that happens, you keep the body roll to a minimum. If one
 13 wheel drops, it tries to push the other wheel down in a
 14 like fashion.
 15 So we have whatever -- compressing on one side
 16 is tension on the other. So I'm smashing on one side and
 17 pulling on the other and the force is balanced. And the
 18 net effect of that, Mr. Emblem and members of the jury, is
 19 that we have minimized body roll. It keeps us safer when
 20 that thing is working right.
 21 Q Concerning the link that you have there, is that
 22 the part in the photograph that's been passed around
 23 that's painted green in the vertical position?
 24 A That's correct.
 25 MR. EMBLEM: I believe we have moved for these

Addendum 4

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* * *

Monday, January 29, 2007, at 10:03 a.m.

PROCEEDINGS

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3
4
5 THE COURT: Mr. Emblem, your next
6 witness?
7 MR. EMBLEM: We would call Hector Cantu.
8 THE COURT: Let me have you get
9 Mr. Cantu or get him.
10 MR. EMBLEM: Someone is getting him.
11 THE COURT: Mr. Cantu? Mr. Cantu, if
12 you'll come forward here into the well just right in
13 front of me, please, and raise your right hand and
14 the clerk will swear you in. Just right there would
15 be fine, if you'll raise your right hand.
16 (The witness was sworn.)
17 THE COURT: And if you'll come here and
18 have a seat in this chair, please, and position
19 yourself right up to the microphone, if you would.
20 Mr. Emblem?

* * *

22 ///

23 ///

24 ///

25 ///

1 HECTOR CANTU,
2 called as a witness on behalf of the plaintiffs,
3 and having been duly sworn, testified as follows:
4 DIRECT EXAMINATION
5 BY MR. EMBLEM:
6 Q Good morning, Mr. Cantu.
7 A Good morning.
8 Q Would you please say your name and spell
9 it for the record?
10 A Hector Cantu, H-E-C-T-O-R-C-A-N-T-U.
11 Q Good morning, sir.
12 What kind of business are you in,
13 Mr. Cantu?
14 A I own a sanitation company.
15 Q You drive the highways of Utah; is that
16 right?
17 A A lot of Utah, a lot of Wyoming,
18 Colorado, Idaho.
19 Q That particular day in November
20 of 1998 -- well, you know why you are here?
21 A Yes.
22 Q You saw -- witnessed an accident; is
23 that right?
24 A Yes.
25 Q A crash?

1 Now, that particular day, why was it
2 that you were on the road?
3 A We had come over to Salt Lake to pick up
4 supplies.
5 Q Were you -- what were you driving?
6 A It's hard to say. I had so many
7 pickups. It must have been a 150 -- Ford 150. I
8 believe at that time it was white.
9 Q You were driving a pickup?
10 A Yes.
11 Q With a camper shell?
12 A No.
13 Q But you had picked up supplies. Did you
14 have a load?
15 A Yes.
16 Q Okay. And at some point in driving from
17 Salt Lake, where were you going to then after getting
18 your supplies?
19 A Back to Evanston.
20 Q Is that where you live?
21 A Yes.
22 Q So on the drive then from Salt Lake City
23 to Evanston, did you come to notice a Ford Explorer
24 that was traveling the same direction as yourself?
25 A Yes. We met -- I caught up with him or

1 he caught up with me, I don't remember exactly. But
2 it was around Echo Canyon.
3 Q Uh-huh.
4 A And proceeding up the canyon, why, I
5 passed him and he passed me a couple of times or so.
6 Q So you guys were going at approximately
7 the same speed, and he had passed you maybe on the
8 uphill?
9 A Yes.
10 Q Because you were loaded and were slowing
11 down a little bit on the uphill?
12 A Yes.
13 Q And then you'd pass him on the
14 downhill?
15 A Yes.
16 Q So did you have your cruise control set
17 to a particular speed?
18 A No. When I have a load and that, I
19 usually don't use a cruise control. I just use my
20 foot.
21 Q Do you have a habit of driving some
22 number of miles below the speed limit?
23 A Well, I try to keep at the speed limit
24 or a little bit below because, if you don't, DOT
25 tends to want to give you a lunch ticket.

1 Q Right. And on that particular day, do
2 you recall how fast you were driving?
3 A Somewhere around 72 to 74 miles an hour.
4 Q And the posted speed up there is how
5 fast?
6 A 75.
7 Q So coming up then out of Echo Canyon,
8 along there somewhere this person in the Ford
9 Explorer passed you?
10 A Yes. It was on the last climb of the
11 hill.
12 Q And as you break out on top of the hill,
13 does it start to decline slightly?
14 MS. NEVILLE: Objection. Leading.
15 THE COURT: Sustained.
16 Q (BY MR. EMBLEM) As you break out over
17 the top of the hill, does the road change its grade?
18 A Very slightly, not very much.
19 Q Were you thinking that you might pass
20 Mr. Clayton again?
21 A Well, I didn't plan on it.
22 Q You didn't --
23 A It just -- you know, sometimes it
24 happens whether you do or you don't. At this
25 particular time, I was just -- if I remember

1 correctly, I was just behind him.
2 Q And then was anyone with you?
3 A My wife.
4 Q And how was she seated?
5 A Well, she was sitting in the passenger
6 side, and she was dozing off and on, just resting.
7 Q Was she leaning against the door or
8 leaning against your shoulder or kind of --
9 A No. She just reclined back on the seat.
10 Q And she was dozing; correct?
11 A Yes.
12 Q And then you saw something. What did
13 you see?
14 A Yeah. I seen the vehicle veer to the
15 right, you know, like -- like he was going to pull
16 over.
17 Q Uh-huh.
18 A And then all of a sudden, he made a
19 quick left turn. I won't say left turn, but, I mean,
20 a quick change to where the vehicle was traveling to
21 the left rapidly.
22 Q From the right to the left?
23 A Yes.
24 Q So you saw him --
25 A That's --

1 Q You saw him turn, go to the right, and
 2 then you saw him go to the left?
 3 A Yes.
 4 Q And then from the right side to the left
 5 side, what was the orientation of the Explorer?
 6 A Well, he made such a quick left hand on
 7 it that he went on two wheels.
 8 Q So he was -- had two wheels up. Which
 9 two wheels were up?
 10 A The left side, the driver's.
 11 Q And was he also going away from you? At
 12 the same time he was going from the right side to the
 13 left side, was he also going away from you?
 14 MS. NEVILLE: Objection, your Honor.
 15 Leading.
 16 THE COURT: Sustained.
 17 Q (BY MR. EMBLEM) Which way was he going,
 18 straight 90 degrees or some other angle?
 19 A Not really straight 90 degrees and he
 20 wasn't really following -- he was going, I would say,
 21 oh, about 10 degrees more. Not a full 90. Not a
 22 full 90 degrees, but...
 23 Q Okay. Did the -- did it appear to you
 24 that the rear-end was passing the front-end?
 25 A No.

1 Q Was he sliding broadside?
 2 A No.
 3 Q Was he -- did you see any smoke from the
 4 tires or anything like that?
 5 A No.
 6 Q And what did you see next?
 7 A He just started to leave the road, and
 8 that's when I said -- I said, "You're going to lose
 9 it." And my wife looked up and then it happened --
 10 you know, it happened so fast there that I just
 11 started to pull off to the road.
 12 Q Let me walk over here and get the model
 13 just a second.
 14 It looks a little bit like a Ford
 15 Explorer?
 16 So from your point of view, you are
 17 behind, back some ways?
 18 A Yes.
 19 Q Right so far?
 20 And you saw him go to the right and you
 21 saw him --
 22 MS. NEVILLE: Objection, your Honor.
 23 Leading.
 24 THE COURT: Sustained.
 25 Q (BY MR. EMBLEM) When he was going from

1 the right to the left, he was up on two wheels?
 2 A Yes.
 3 MS. NEVILLE: Objection. Leading.
 4 THE COURT: Sustained.
 5 Q (BY MR. EMBLEM) Did you see him up on
 6 two wheels?
 7 A Yes.
 8 Q And then you saw the vehicle going into
 9 the median?
 10 MS. NEVILLE: Objection. Leading.
 11 THE WITNESS: Yes.
 12 THE COURT: Sustained.
 13 Q (BY MR. EMBLEM) Did you see the vehicle
 14 go into the median?
 15 A I seen him leave the highway where we
 16 were on onto the median (sic), yes.
 17 Q And that is the dirt area between the
 18 two highways?
 19 A Yes.
 20 Q Were the wheels still in the air?
 21 A Yes.
 22 Q Did you see him come down in the median?
 23 A No. I took my eyes off at that moment
 24 so I could pull over and make sure that I was still
 25 on the right spot.

1 Q And that's what I was going to ask you
 2 back here, when you saw him go to the right and then
 3 to the left, you turned to talk to your wife; is that
 4 correct?
 5 A No.
 6 Q You just kept your eyes straight ahead
 7 and you just talked sideways to her?
 8 A Well, yeah. I don't -- I don't look to
 9 turn, because if you're driving and you look to turn
 10 to your right or that, you tend to lean the vehicle
 11 to the right. If you turn to the left and talk, you
 12 tend to lean the vehicle to the left.
 13 Q I see. So he goes down in the median,
 14 and then did you pull over to stop?
 15 A Yes.
 16 Q Did you see him roll?
 17 A I seen him leave the road. And then by
 18 the time I stopped, there was a lot of dirt and dust
 19 and stuff flying.
 20 Q Did you see the vehicle come to rest in
 21 the Exhibit 23-23?
 22 A Yes.
 23 Q Is this what it looked like that day?
 24 A Well, I didn't pay too much attention to
 25 that side of the vehicle because I was more paying

1 place?

2 A Yes. Somewhere where those vehicles
3 are, just before that.

4 Q Referring to the --

5 A Up in the area. Yes, up in that area.

6 Q And then you -- did you leave then or
7 what happened next?

8 A As soon as the sheriff came over and
9 said he would direct traffic and that, I said, "Okay,
10 see you."

11 And they said, "Okay."

12 Q Did you walk back through the median?

13 A Yes.

14 Q Did you walk near Mr. Clayton or did you
15 go a different path?

16 A No. No. I -- it was further down. If
17 I recall, Mr. Clayton was down here, the vehicle was
18 here, and I was parked over in here.

19 Q When you saw Mr. Clayton laying in the
20 dirt, was he faceup or facedown?

21 A I believe he was facedown, but I
22 couldn't say for sure.

23 Q Do you recall how his arms or legs were
24 positioned?

25 A No, not really, because I didn't pay

1 morning to buy supplies and then you were on your
2 return trip home; is that correct?

3 A Yes.

4 Q And you brought your wife with you to
5 the courtroom today. Is that who was with you on
6 this trip to Salt Lake and back to Evanston?

7 A Uh-huh. I try to keep her with me a
8 lot.

9 Q Did your wife see any of this accident?

10 A No.

11 Q Was she sleeping the entire time?

12 A Well, she was dozing off and on.

13 Q On the road trip, she was dozing off?

14 A Uh-huh.

15 Q Now, I believe you told us that you
16 first encountered the Explorer around Echo Canyon; is
17 that right?

18 A Yes.

19 Q Are there windy parts in Echo Canyon,
20 any windy parts of the road at all, or curves?

21 A Well, the whole canyon going up there is
22 not a straight shot. It meanders up and down and
23 right- and left-hand turns.

24 Q And you followed the Explorer all the
25 way from Echo Canyon to the point of the accident; is

1 that much attention to him because the gentleman was
2 already checking him out. So I didn't interfere.

3 MR. EMBLEM: Okay. Thank you.

4 MS. NEVILLE: Good morning, Mr. Cantu.

5 THE WITNESS: Good morning.

6 THE COURT: Ms. Neville,
7 cross-examination?

8 CROSS EXAMINATION

9 BY MS. NEVILLE:

10 Q I'm Kim Neville. I don't think we've
11 had an opportunity to meet before. Sir, I just want
12 to make sure we have a clear understanding of the
13 events you saw that day.

14 A Okay.

15 Q And I believe this was the day after
16 Thanksgiving, November '98; is that correct?

17 A Somewhere along in there.

18 Q Okay.

19 A I run into so many days that sometimes
20 one day is just the same as the other.

21 Q Sure. And this was quite a while ago.
22 This was almost eight years ago?

23 A I guess, somewhere along in there.

24 Q Okay. And I believe you already told
25 us, but you were actually going to Salt Lake that

1 that right?

2 A Well, we passed each other.

3 Q So you were kind of leapfrogging back
4 and forth?

5 A Yeah.

6 Q About how many miles would you be doing
7 this leapfrogging with the Explorer? What is the
8 distance there?

9 A Oh, from -- let's see. From Coalville
10 up to the top of the ridge is probably like 40
11 something miles, 38, 40, something like that.

12 Q So you were following the Explorer for
13 38 to 40 miles?

14 A Well, we traveled the same direction --

15 Q Back and forth?

16 A -- back and forth, yes.

17 Q I want you to focus on this part of the
18 trip, that 38 to 40 miles that you were following the
19 Explorer from roughly Echo until the point of the
20 accident, just that time frame. Okay?

21 A Okay.

22 Q And you are relatively close to the
23 Explorer during this time, is that correct, a few car
24 lengths away?

25 A Yeah.

1 Q Do you know if there was anything
2 unusual about how this Explorer is handling while
3 it's passing you and you are passing it?
4 A You mean the vehicle?
5 Q The vehicle, yes.
6 A No different than anybody else.
7 Q Nothing draws your attention this whole
8 38 to 40 miles?
9 A No.
10 Q No swerving of any kind?
11 A Just -- well, from the slight meandering
12 from one side to the other, I mean, everybody does
13 that. But that's a natural case.
14 Q You don't see any broken parts come off
15 this vehicle during this 38 to 40 miles, do you?
16 A No.
17 Q And you don't see any tires wobbling or
18 bobbling along in the road, do you?
19 A Not that I noticed any, no.
20 Q You don't hear any sounds or screeches
21 coming from the vehicle during this 38- to 40-mile
22 stretch, do you?
23 A No.
24 Q Okay. So it's just basically traveling
25 straight in its lane like any other vehicle would be

1 on the road?
2 A Yeah.
3 Q Okay. Sir, I'm going to take a look at
4 this photo, which is already in evidence, and this is
5 Plaintiffs 23-24. And I believe you've already told
6 us -- is this an accurate picture of where the
7 accident site would be?
8 A Yes.
9 Q Okay. And, sir, are you -- you've
10 driven this roadway several times; is that right?
11 A Well, I think sometimes I seen my tire
12 marks on the highway often.
13 Q You feel fairly comfortable telling us
14 if this roadway is what it looked like in '98? Is
15 that an accurate depiction?
16 A Yes.
17 Q And, sir, can we agree that this is a
18 fairly gradual turn?
19 A Yes. It's not a steep turn. This is
20 gradual.
21 Q And this is a fairly well-traveled road,
22 isn't it?
23 A Oh, about 100,000 cars and trucks pass
24 that particular spot, yes.
25 Q Fairly major trucking route?

1 A Yes, it is.
2 Q You see lots of cars on this road?
3 A Uh-huh.
4 Q I want to go back to now where we are
5 talking about the accident itself. And if I
6 understand your testimony correctly, basically you
7 have two movements of the vehicle; right? You first
8 see a drift towards the right?
9 A Yes.
10 Q And then you see a sharper turn towards
11 the left; is that correct?
12 A Yes.
13 Q Okay. I want to focus on this first --
14 this right drift that you see first, just that
15 movement. Now, would you characterize this as kind
16 of a slow drift towards the right?
17 A Yes.
18 Q It's almost like the driver had lost
19 attention or maybe fallen asleep?
20 A Something like that. Either that or he
21 was going to stop, but he didn't -- I didn't see no
22 stoplights come on, so...
23 Q Why do you say you thought he was going
24 to stop?
25 A Well, because of the way he just drifted

1 down through, and I thought, any time that anybody
2 drifts to the right, their intentions is to pull
3 over.
4 Q And since you are following him at this
5 time, were you able to see the tires on this vehicle
6 as it makes this drift?
7 A Sure.
8 Q And did they appear to be tracking the
9 vehicle normally?
10 A Yes.
11 Q You didn't see any broken parts or turns
12 of the vehicle at that point?
13 A No.
14 Q Did the brake lights come on at any time
15 during this drift?
16 A No.
17 Q Now, the next move we see is a turn to
18 the left; is that right?
19 A Yeah, sharp.
20 Q And this isn't a drift, this is a sharp
21 turn; right?
22 A Yes.
23 Q And, sir, would you characterize that as
24 an overcorrection?
25 A Yes.

1 A Yes.
 2 Q And I believe you told us earlier in
 3 your deposition that you actually saw the vehicle get
 4 airborne as it came off of the roadway and into the
 5 median.
 6 A Well, you'd have to get airborne if --
 7 you know, if you are getting any amount of speed, in
 8 order not to get airborne in that particular spot,
 9 you'd have to be traveling five miles an hour.
 10 Q And that's because of the steepness of
 11 the angle?
 12 A Yes.
 13 Q Sir, I want to show you another photo.
 14 This is Plaintiffs 23-17, which is already in
 15 evidence.
 16 Let me ask you first, I believe you
 17 testified that, after witnessing the rollover, you
 18 pull over and you immediately go try to help the
 19 people who are in the car; is that correct?
 20 A Yes.
 21 Q And you are also helping to try to
 22 control traffic; is that right?
 23 A Yes.
 24 Q Did you actually go up on the road and
 25 try to look and see whether there was any skid marks

1 or yaw marks or tire marks associated with this
 2 accident?
 3 A Back to where he left the road?
 4 Q Yes.
 5 A No.
 6 Q That was not something you were worried
 7 about, you were worried about helping the people; is
 8 that right?
 9 A Yes.
 10 Q Okay. I want to show you Plaintiffs
 11 23-17, which is a police photo already in evidence.
 12 Sir, do you see those tire marks on the
 13 road?
 14 A Uh-huh.
 15 Q And would you agree there's probably at
 16 least one, two, three tire marks for sure?
 17 A Well, if you actually looked at the road
 18 at that time, there must have been about 100 or 200
 19 of them --
 20 Q Okay.
 21 A -- in that particular area on both sides
 22 of the highway.
 23 Q Well, would you agree with me, sir, that
 24 this police photo would depict what the road looked
 25 like at the time of the accident, that was taken that

1 day?
 2 A As far as the skid marks, you mean?
 3 Q Yes.
 4 A I don't know, because I didn't go look
 5 at them.
 6 Q But you wouldn't -- okay. But you
 7 wouldn't have any reason to dispute the police photo,
 8 would you?
 9 A The way those skid marks go, that
 10 vehicle that we are discussing, it's not -- those are
 11 not their tracks.
 12 Q Okay. So it would be your belief that
 13 these wouldn't be the vehicle's tracks?
 14 A Right.
 15 Q Would you agree with me, sir, that if a
 16 vehicle made these marks, that we would have three
 17 marks going off into the median?
 18 MR. EMBLEM: No foundation, your
 19 Honor --
 20 THE COURT: Sustained.
 21 MR. EMBLEM: -- not an expert witness.
 22 Q (BY MS. NEVILLE) Sir, this accident
 23 happened eight years ago, and if I remember
 24 correctly, you've been contacted several times by --
 25 A Yes.

1 Q -- people to talk about what happened at
 2 the accident; is that right?
 3 A Yes.
 4 Q And you've been contacted by the police
 5 or you talked with the police at the scene; is that
 6 correct?
 7 A No. I didn't talk to the police on the
 8 scene.
 9 Q You didn't talk to them at all?
 10 A No. I just talked to the sheriff about
 11 the -- you know, controlling the traffic.
 12 Q Oh, that's what I understood.
 13 A And that was all.
 14 Q And you also had given a deposition
 15 prior on this case; is that right?
 16 A Only when I got contacted, which was --
 17 oh, I don't remember how long ago. I mean, after the
 18 accident, it was quite a spell.
 19 Q And you also had some attorneys come to
 20 your house and talk to you about this case; is that
 21 right?
 22 A Yes.
 23 Q And do you remember being asked to sign
 24 a written statement about this accident?
 25 A I didn't write one. I imagine I -- they

1 took some notes and stuff.
 2 Q Sure. And do you remember being given a
 3 written statement and being asked to review it?
 4 A That was the last time, I believe.
 5 Q Okay. And do you remember having an
 6 opportunity to look at that written statement and
 7 change things that weren't correct?
 8 A Probably did.
 9 Q Okay. Let me just refresh your
 10 recollection briefly. I'm handing you a document.
 11 MR. EMBLEM: This has gone well beyond
 12 the direct on this thing. She hasn't identified any
 13 former statements that were inconsistent with today.
 14 THE COURT: Sustained.
 15 Q (BY MS. NEVILLE) Mr. Cantu, were you
 16 asked before to sign a written statement saying that
 17 the tie rod broke on this vehicle?
 18 A Somebody mentioned about a tie rod being
 19 broke.
 20 Q And you had two men come to your house
 21 and identify themselves as attorneys, who asked you
 22 to sign a statement indicating that the tie rod
 23 broke; is that true?
 24 MR. EMBLEM: Your Honor --
 25 THE WITNESS: I don't recall if they

1 asked me to sign a statement that that was broke.
 2 Q (BY MS. NEVILLE) But you didn't sign a
 3 statement that that was broke, did you?
 4 A I don't think so.
 5 Q Why wouldn't you sign that?
 6 A Well, because if a tie rod broke, that
 7 vehicle wouldn't have stayed on two wheels.
 8 Q And you didn't see a tie rod break?
 9 A Well, you can't see the underneath of a
 10 vehicle when it's traveling down the road, even when
 11 it goes on two wheels and it only goes up like 10,
 12 15 percent.
 13 Q And, sir, you -- but you didn't see any
 14 wobbling of the tire or any other parts break on this
 15 vehicle during the entire time you were watching the
 16 accident, did you?
 17 A You -- like I said, you can't see
 18 anything under the vehicle whether it breaks or not.
 19 If it breaks completely and goes under the vehicle
 20 and comes out the back, then you can. But if it just
 21 breaks and stays in there, you can't tell the
 22 difference.
 23 Q Okay.
 24 A Only the driver does that.
 25 Q And just to make sure, though, what you

1 saw, sir, you didn't see any parts break on this
 2 vehicle at any time; is that correct?
 3 A Nothing that came off from the road, no.
 4 MS. NEVILLE: Okay. Thank you, sir.
 5 THE COURT: Let's take our morning break
 6 at this point. Mr. Cantu, you may step down. Please
 7 watch your step on the way down.
 8 Ladies and gentlemen of the jury, we'll
 9 be in recess until 10 minutes to 11 o'clock. That's
 10 10:50. And during this break, you are not to form or
 11 to express any opinions among yourselves or with
 12 others. We'll excuse you, and be in recess until
 13 10:50.
 14 THE BAILIFF: All rise.
 15 (Jury excused and recess taken.)
 16 THE BAILIFF: All rise.
 17 (Jury entered.)
 18 THE COURT: Please be seated.
 19 We are back in the matter of Clayton
 20 versus Ford Motor Company and others. Everyone is
 21 present who needs to be present. The jury is in the
 22 box.
 23 Mr. Cantu, if you'll come forward here.
 24 Mr. Cantu is testifying, and I believe Ms. Neville
 25 was --

1 MR. EMBLEM: I was on -- she had just
 2 completed, your Honor, and we are not going to have
 3 any further redirect.
 4 THE COURT: Oh.
 5 MR. EMBLEM: So then he may be excused.
 6 THE COURT: Well, then, Mr. Neville, you
 7 are excused.
 8 MR. EMBLEM: Mr. Cantu.
 9 THE COURT: Mr. Cantu, rather.
 10 MR. EMBLEM: Thank you, Mr. Cantu.
 11 (Examination of witness concluded at
 12 10:56 a.m.)
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Addendum 5

ORIGINAL

THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

DEE CLAYTON, et al.,)
) Case No. 000909522
Plaintiffs,)
)
VS.) JUDGE:
) JOSEPH C. FRATTO, JR.
UTAH AUTO COLLECTION,)
et al.,)
)
Defendants.)

HEARING REGARDING EXHIBITS AND
TESTIMONY OF DAVID INGEBRETSEN, VOLUME V

TAKEN AT: SCOTT MATHESON COURTHOUSE
450 South State
Salt Lake City, Utah

DATE: Tuesday, January 23, 2007

REPORTED BY: Catherine L. Kennedy, RPR, CSR
Wendy Alcock, RPR, CSR

FILED DISTRICT COURT
Third Judicial District

NOV - 1 2007

By for SALT LAKE COUNTY
Deputy Clerk



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THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

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 Wendy Alcock, RPR, CSR

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Tuesday, January 23, 2007, at 9:04 a.m.

PROCEEDINGS

1
2
3
4
5 THE COURT: Good morning.
6 THE PARTICIPANTS: Good morning.
7 THE COURT: Well, before we begin -- let
8 me call the matter, Clayton versus The Ford Motor
9 Company and others. The jury is not in the
10 courtroom.
11 When last we met, which was Friday, we
12 were conducting a hearing concerning the admission of
13 a group of documents and the foundation for them to
14 be received and considered by the jury as part of the
15 evidence in the matter. And we had gotten through
16 the proffer of evidence for me to consider so that
17 I'll have the facts in front of me.
18 Before the jury comes in, of course, I
19 would like to hear a brief argument concerning what I
20 think -- I guess is the issue here, which is whether
21 the foundation is sufficient for these to be
22 admitted. And then another issue we need to resolve,
23 brief argument on that, and that is whether
24 Mr. Ingebretsen can testify about these exhibits and
25 to what extent he can do so.

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23			
24			
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* * *

1 So with that, Mr. Emblem, how -- and I
2 should indicate to you, of course, I have gone
3 through these exhibits, so I'm familiar with what
4 they contain also and, of course, are considering
5 that.

6 MR. EMBLEM: Your Honor, the exhibits
7 are of the type normally relied upon and typically
8 relied upon by experts who do the kind of work that
9 Mr. Ingebretsen does. So they're foundational to his
10 opinion, and they're typical of those types of
11 exhibits.

12 The proponent of the proffered exhibit
13 need only make a prima facie showing that the exhibit
14 is what the proponent claims it to be, United States
15 versus Riley. And the Court, of course, has broad
16 discretion on whether the evidence needs further
17 authentication, and that's kind of what we've been
18 talking about.

19 In response to Request for Production of
20 Documents No. 2, we received this letter from Snell &
21 Wilmer that is signed by Timothy Schade, who says,
22 "Certain documents you requested are available on the
23 FordDocs Web site and can be viewed and printed from
24 the Web site. Documents responsive to the following
25 request are available on the Web site," and he lists

1 THE COURT: And I'm wondering how you,
2 in terms of just with that factual background, are
3 able -- if you are relying on either one --

4 MR. EMBLEM: Sure.

5 THE COURT: -- how that might -- how we
6 have the sufficient background for videotape,
7 granted, obtained from discovery, but which is
8 testimony.

9 MR. EMBLEM: Well, these are self-
10 authenticating. They contain, at the beginning of
11 the run, the information sheet about the vehicle
12 that's being run and what test is being run, whether
13 it is a Consumer Union short course or Consumer Union
14 long course.

15 But the videos were only offered at this
16 stage as demonstrative of what it takes to fail the
17 test and that's to get two wheels off the ground, and
18 which establishes kind of the foundation for Ford's
19 decision to rename the vehicle, Ford's decision to
20 market it differently.

21 THE COURT: Let me ask you this. I
22 don't -- if under 901 it is what you purport it to
23 be, what do you purport it to be?

24 MR. EMBLEM: Well, it's purported to be
25 engineering testing, admissible under both

1 that the tests were conducted and it shows an example
2 of tests that failed. We are going to hear the
3 testimony of an eyewitness that saw two wheels up on
4 this 1997 Explorer, and that's what two wheels up
5 means. It means it's failed the test, so...

6 THE COURT: But is failure of the
7 test -- the results of the test a statement under
8 801(a)? 801(a) is the definition of what a statement
9 is.

10 MR. EMBLEM: Party's own statement.

11 THE COURT: Yeah. I mean, as to what a
12 statement is. And as I look at that definition,
13 is -- are test results -- that's what you want to get
14 in, are the test results.

15 MR. EMBLEM: Well, sure.

16 THE COURT: Are those statements?
17 That's 801(a). An oral or written assertion,
18 nonverbal conduct of a person if it is intended by
19 the person as an assertion.

20 MR. EMBLEM: Right.

21 THE COURT: So I guess my question is:
22 How are test results --

23 MR. EMBLEM: An assertion?

24 THE COURT: Well, an assertion, either
25 verbally or by action.

1 801(d)(2)(d) and 801(d)(2)(a). A is the party's own
2 statement this is their records. B is the statement
3 by the party's agent or employee concerning the
4 matter within the scope of agency, so...

5 THE COURT: I guess what I'm struggling
6 with a bit here is I do some testing and this is a
7 view of the testing I am conducting, but is that --
8 how does that fit into a statement under 801? I
9 don't -- how does that fit into a statement, a
10 videotape of --

11 MR. EMBLEM: Okay.

12 THE COURT: -- my action conducting
13 tests?

14 MR. EMBLEM: Well, it's the statement is
15 referring to any kind of a communication. If a
16 person was deaf, as an example, their statement would
17 be communicated by sign language.

18 THE COURT: Well, but what's the
19 relevance that I conducted tests? Wouldn't that be
20 sort of the linchpin here? I mean, granted, if it
21 was relevant whether I conducted tests or not
22 conducted tests, this is a statement that I conducted
23 tests. But is that relevant in this trial, whether
24 or not tests were conducted?

25 MR. EMBLEM: Well, what's relevant is

1 MR. EMBLEM: Right. Well, Ford relies
2 upon their test results to certify the vehicles as
3 being safe. Ford tests their vehicles to see if --
4 to establish that statement and then make some
5 adjustments, whatever they do to make that happen.

6 And in the course of that, they have
7 defined what a failure of a test is. So if we have
8 in the record two wheels up is a failure of the test
9 and we show the jury what two wheels up means, and
10 the eyewitness says he saw two wheels up, we've
11 established that, on the road, this vehicle is not
12 stable according to Ford's own standards.

13 So is it an assertion? Yes. It's a
14 record kept by a person who's responsible to do so
15 within the scope of his employment. And even if they
16 ran 10,000 tests and only failed five of them, it's a
17 demonstration of what a failure is. It only needs to
18 be intended as an assertion to become an assertion.

19 THE COURT: All right. Then the other
20 was -- and I don't know if I had isolated all of the
21 exhibits. We have Bronco II and the U -- I want to
22 say U-195.

23 MR. EMBLEM: U105?

24 THE COURT: But U-2. U-195?

25 MR. EMBLEM: There's Bronco II, which

1 Ford identifies in 1988 as the UN46.

2 THE COURT: Or UN46.

3 MR. EMBLEM: Which is to be released in
4 1990 and a half. And then they changed the name,
5 after failing Consumer Reports' testing, to Explorer
6 and released it as the Explorer.

7 THE COURT: Now, there seem to be, as I
8 went through these, certain -- at least they referred
9 to Bronco II, and I know we have an issue here
10 regarding, I suppose, the relevance of -- whatever
11 the argument is going to be, but the relevance of
12 Bronco II documents, if I can identify it that way.
13 But I want to make certain I have all those that fall
14 into that category in front of me.

15 MR. EMBLEM: I have them on my list as
16 49 through 75-B on the list. There's three or four
17 more we'd probably like to talk about we haven't
18 mentioned yet.

19 THE COURT: 49 through 75-B.

20 MR. EMBLEM: But it's not just that
21 these are Bronco II documents. These are --
22 Bronco II is an SUV, and these are engineers'
23 statements concerning their concerns about SUV rates
24 of rollover, ejection rates, and survivability. So
25 the concerns -- as each iteration of the vehicle is

1 developed, engineers look back to see what it was we
2 were trying to engineer out, what flaws we were
3 trying to engineer out when we are designing the next
4 version.

5 So it establishes -- these documents
6 establish the engineers have been concerned about
7 these doors opening, as is in our case, about these
8 cars rolling over, these Explorers rolling over four
9 times as frequently as automobiles and twice as often
10 as pickup trucks. It makes it a category higher in
11 terms of degree of scrutiny. I guess a term that
12 we'd use in our fields. In other words, they have to
13 be more careful because there are issues that relate
14 to human safety. So just because they are
15 characterized by Ford as Bronco II documents doesn't
16 change the fact that it's engineers working on the
17 very product which is at issue.

18 Likewise, there are documents which
19 appear in the UN150, which began in 1998 and went
20 through 2001, which contain review of the UN105,
21 which is our car, and what went wrong with that and
22 what they need to do about that. There is evidence
23 there is knowledge early, I mean, talking about UN150
24 development before the UN105 was built in our case.

25 So there would be UN150 and even UN152

1 documents which will contain factual information
2 about the car that is at issue in this case. So the
3 fact that they've characterized it as being in a
4 class of documents, BR2 or, you know, the 1998 150,
5 doesn't change the fact that it's talking about
6 specifically the issues in this case.

7 THE COURT: And let me -- and I
8 understand, Mr. Emblem, I think your argument in that
9 regard.

10 No. 65, and appreciating that it may
11 deal -- this exhibit may deal with something more
12 than tires, but it seemed to me, in going over this,
13 that this seemed to be a statement more concerned
14 with the quality of the tire or the safety of the
15 tire rather than what seems to be the relevant issue
16 in terms of tires, and that is the size of the tire.

17 And my first question -- and that's 65.
18 And my first question is whether I'm reading this
19 exhibit correctly, whether there's something beyond
20 the tires in this exhibit, and whether that --
21 whether I've identified a correct distinction here,
22 that is, relevance is the size of the tire, not the
23 quality of the tire and safety of the tire and so
24 forth, only the size of the tire.

25 MR. EMBLEM: The size of the tire and

1 how it affects stability. It wasn't an issue in this
2 case that the tires had broken down on the road, and
3 when they did break down, that was not an issue
4 because they were expected to break down when they
5 did. So this was not an issue in this case.

6 But that document talks about the fact
7 that the stability factor or the rollover
8 propensities greatly increase when you change that
9 tire from 225 to a different tire.

10 If I could look at the document a
11 second, I could be more specific.

12 THE COURT: As I say, maybe I don't read
13 it correctly. It seemed that it was more concerned
14 with the safety of the tire rather than the size of
15 the tire as that might add height to the vehicle
16 affecting the center of gravity, which seemed to be
17 the relevant --

18 MR. EMBLEM: Sure.

19 THE COURT: -- issue in this case.

20 MR. EMBLEM: Right. This is an e-mail
21 thread that's gone between two senior engineers at
22 Ford, and starting at the bottom on page -- the first
23 page of Exhibit 65, Mr. Stornad is saying, "Nothing
24 new on tires or tests indicate a high confidence in
25 passing CU, Consumers Union, with 225 tires and less

1 confident on the P235s."
 2 So this is a discussion in September
 3 of 1989 they don't have any confidence of passing
 4 with the tires used in our car. Now, remember, the
 5 UN46, that's after they've widened the track to the
 6 same track that we have. So we are talking about the
 7 same center of gravities and the same track width, so
 8 that the static and dynamic stability factors are
 9 going to be essentially the same.

10 When he talks about what tires is at
 11 issue, they are talking about the size of the tire as
 12 opposed to where the tire is going to fail or break
 13 down because it might be a particular brand.

14 THE COURT: Well, I took the -- all
 15 tires meeting engineer's J-turn test as dealing with
 16 the quality of the tire.

17 MR. EMBLEM: That's not the way I read
 18 it, your Honor.

19 THE COURT: I see.

20 MR. EMBLEM: Mr. Stornad goes on in the
 21 upper paragraphs to say that he would accept testing
 22 of the 235 in the two-door model but not on the
 23 four-door model, so it's not the quality of the tire.
 24 We are talking about the size of it.

25 Are you thinking of the saturation

1 I mentioned on Friday that we would be offering also
 2 a thing called CQIS, CQIS, in this issue. MORS --
 3 now, these are documents which are -- these are
 4 recorded by a technician, a skilled person taking the
 5 reports at Ford. So the reports are made by a person
 6 employed by Ford, making the reports, with the duty
 7 to do so.

8 THE COURT: Well, that's what I needed
 9 to clarify. I didn't know whether these were
 10 customer -- these were statements by an employee. I
 11 mean, the actual document is a Ford form -- format,
 12 but it seemed to be reporting complaints by
 13 customers.

14 MR. EMBLEM: That's correct. It is
 15 doing that.

16 THE COURT: And so to the extent that
 17 it's a statement by a customer that's being reported,
 18 it's -- is it a statement under 801 of the party or
 19 the agent? It seems to me, in other words, that
 20 these were complaints by customers.

21 MR. EMBLEM: Well --

22 THE COURT: Is that how -- how would you
 23 characterize that?

24 MR. EMBLEM: Yes. It's also an
 25 indication -- two things. One, several of the

1 tendency? Is that what you are thinking of in the
 2 first paragraph?

3 THE COURT: Well, as I read the
 4 document, I need clarification here. It seemed to me
 5 that the only issue that was relevant here was the
 6 size of the tires because the size of the tires
 7 affected the center of gravity. It raised the
 8 automobile.

9 MR. EMBLEM: Right.

10 THE COURT: Maybe by a small amount, but
 11 a significant amount, if that be believed. But
 12 beyond the size of the tire as it affects the center
 13 of gravity, the quality of the tire and so forth is
 14 not an issue in the case and --

15 MR. EMBLEM: It's not, and I don't
 16 believe 65 discusses the tire quality. I think it's
 17 merely discussing the size of the quality -- I mean,
 18 the size of the tire and how the vehicle performs
 19 with those sizes on the Consumer Union testing.

20 THE COURT: All right. And then also
 21 turning to Exhibit, I believe to be, 220-A.

22 MR. EMBLEM: 220-A I believe is a video.

23 MS. EMBLEM: No.

24 THE COURT: Well, what I have --

25 MR. EMBLEM: It's MORS, M-O-R-S. And as

1 30(b)(6) deponents told me that they -- in
 2 deposition, that Ford engineers rely on these when
 3 evaluating failures in component parts. These are --
 4 although they may be lay reports, they are lay
 5 reports of real roll events. And Ford makes a record
 6 of those and the engineers rely on them.

7 So even though the customer might say,
 8 "I had a steering failure," it doesn't identify what
 9 the steering failure is.

10 THE COURT: Well, under what theory
 11 would you have a customer's complaint admissible for
 12 the jury to consider a customer's complaint about the
 13 Explorer?

14 MR. EMBLEM: Well, these are lay persons
 15 driving their vehicles that have experienced problems
 16 with how they are handling, how they are operating.

17 THE COURT: Well, I think I understand
 18 what it is, but I guess what I'm struggling with here
 19 is -- especially under 801, which deals with
 20 statements of parties -- how a customer's statement
 21 falls into that category or, beyond that, into any
 22 category.

23 MR. EMBLEM: Well, I understand the
 24 problem, and I guess the only thing I can say about
 25 that is that Ford invites the comments, they provide

1 tie rod near the ball in relatively large percentage
 2 of the low mileage tie rod failures -- fractures.
 3 While vehicle control can easily be maintained if
 4 there is a fracture, in the interest of customer
 5 satisfaction, we would like the inspection and
 6 necessary repairs being completed promptly.
 7 "On the question of review steering
 8 control, that sounds pretty dangerous. Why haven't
 9 customers been told not to drive their vehicles?
 10 "Answer: Based on extensive vehicle
 11 evaluations with the deliberately separated tie rod,
 12 we're confident that the steering control is easily
 13 maintained even if the tie rod fractures. Typically,
 14 the most a driver will encounter is a shake or shimmy
 15 at certain vehicle speeds. In extreme cases, the
 16 wheel on the side of the broken tie rod may tuck,
 17 turn in or out, and begin sliding. Even if this
 18 happens, vehicle steering can be controlled by the
 19 other front wheel."
 20 So we have taken out of the MORS and out
 21 of the CQIS Explorers that were built between -- and
 22 those documents, by the way, give the manufacturing
 23 date on them. So we've taken out of those MORS and
 24 CQIS those vehicles built between November 28th and
 25 February 15th. That would be 1994 to 1995. And the

1 MR. EMBLEM: Yes. Yes. And I could
 2 further cull them, too, because we don't actually
 3 need 108. I think we've got 35. And, you know, a
 4 sufficient number to show that there is a number and
 5 dates that shows that they knew for a long time, and
 6 I think that meets our criteria.
 7 THE COURT: Well, I think I understand.
 8 Let's go back to the Bronco II and the UN46.
 9 MR. EMBLEM: Right. Exhibit 75-B is a
 10 good example.
 11 THE COURT: Well, let me ask you this.
 12 Mr. O'Neill thinks that really is all sideshow, as
 13 the words used here, that to get into problems with
 14 the Bronco II and how they were addressed and how
 15 they were talked about and what was done or what was
 16 not done.
 17 MR. EMBLEM: Sure.
 18 THE COURT: And it boils down to two
 19 things. One is the relevance of all of that, and
 20 No. 2, even if there is some relevance, that it's
 21 outweighed by prejudice.
 22 MR. EMBLEM: Some prejudice.
 23 THE COURT: And that it's confusing.
 24 It's too confusing to let the jury speculate on that.
 25 So we are giving them something that's too confusing

1 remainder of those were built within the relevant
 2 period which contained tie rods that Ford claims are
 3 not defective.
 4 Well, the --
 5 THE COURT: Well, the argument, though,
 6 from Mr. O'Neill -- and we are talking about now
 7 220-A, which are these MORS.
 8 MR. EMBLEM: Right.
 9 THE COURT: That unless you have one
 10 that addresses the relevant complaint, if you will --
 11 MR. EMBLEM: Right.
 12 THE COURT: -- then they're irrelevant.
 13 MR. EMBLEM: Well, I believe that it
 14 would be fair to say that if it addresses broken tie
 15 rods, regardless of how they broke, that they would
 16 be relevant, and Ford can simply explain that that
 17 was not caused by reverse bending as the -- as
 18 Mr. Ingebretsen has testified. It reverse bends
 19 because the wheel travels too far in a downward
 20 direction, causing the tie rod to bottom out in its
 21 socket and bend and repeat that over and over, until
 22 it finally is ready to break and eventually breaks.
 23 THE COURT: Well, is there any of those
 24 that fit into that category that talk about the tie
 25 rod?

1 to speculate on.
 2 MR. EMBLEM: If the Bronco II contains
 3 problems -- it's an SUV -- that were not corrected,
 4 then knowledge of those problems is relevant to the
 5 fact that they knew that there was a problem with
 6 this UN46 and the subsequent UN105, that when they
 7 had an opportunity to make the corrections, they
 8 didn't do so. That's one point.
 9 An example of what Ford says about those
 10 things in 75-B is an agenda. It's a planning
 11 committee meeting. All the vice presidents are
 12 present. The minutes are recorded by the corporate
 13 secretary.
 14 THE COURT: Let me get that in front of
 15 me. 75-B?
 16 MR. EMBLEM: All right. It's
 17 November 27, 1987.
 18 THE COURT: I have it.
 19 MR. EMBLEM: Important to this document
 20 are three major factors. One, it's a report to
 21 management.
 22 On the third page, which is page 2 of
 23 the report, the discussion is regarding spending,
 24 truck spending. It talks about Ranger and UN146, but
 25 it also talks about a PN38 and the strategy for the

1 strawman to Consumer Union to pass their testing,
2 which is a smoking hot document.
3 Also in here is a strategy among Ford
4 employees about how to go to Consumers Union and talk
5 them out of focusing on the Ford Explorer, as they
6 had on the Suzuki Samurai, and, rather, report the
7 Ford Explorer as a group or as a class of documents
8 as opposed to -- vehicles as opposed to the focus on
9 the Ford Explorer itself.

10 So the fact that, you know, that it
11 fails the test, it fails the test with the UN35
12 tires -- I mean, the P235 tires; the fact that they
13 changed the name and market it in a different fashion
14 to cover the fact that they would lose sales in a
15 wholesale way if they continued with the Bronco II
16 name, even though they don't change the vehicle, just
17 the name of the vehicle.

18 THE COURT: Well, you don't see that,
19 though. Maybe this is too simplistic, but it seems
20 to me don't you have to have some sort of a tie
21 between the problems with the Bronco II as they
22 may -- if there's any relevance at all, as they may
23 carry over regardless of what the vehicle is called?

24 MR. EMBLEM: That's what we have.

25 THE COURT: It seems what you are saying

1 than a Chevy Blazer or no worse than maybe Toyota's
2 vehicle. And based upon that, then they shouldn't
3 find that the Ford Explorer is defective. So they
4 want to prevent us from talking about its
5 relationship among its own corporate cars and then,
6 at the same time, come back and talk about its
7 relationship among its peers. So it just seems a
8 little bit unfair in their argument.

9 Here's some -- Exhibit No. 40 I think is
10 a very classic exhibit to talk about the specific
11 points that I want to review. It's an automotive
12 safety research office document. It's obviously a
13 Ford document. In Friday's arguments, Mr. Larsen
14 three times on the record says, "Judge, there's no
15 discussion about the authenticity of these documents.
16 We're not arguing about them being authentic."
17 That's a stipulation. That's an admission made by
18 counsel on behalf of his client.

19 So the document is authentic. It's a
20 19 -- I can't read it this well -- 68, I think,
21 document. And Bromeier says that the documents will
22 show -- he is the corporate secretary who signs the
23 minutes on behalf of the corporation, and some of
24 these other people -- if I had the name right, but
25 that doesn't matter to what I want to say.

1 here is it doesn't matter what the vehicle is called.
2 It's we had problems, we became aware of problems
3 with the Bronco II, and then carried it over to the
4 Explorer?

5 MR. EMBLEM: Right. And we didn't do
6 enough to fix those problems, so the problems were
7 man rated. They were human safety problems. They
8 had an opportunity to correct the problems, but they
9 only made minor Band-aids instead of addressing the
10 real issue. And the real issue was that this thing
11 was turned over way too easy, the doors came open,
12 occupants were ejected. So these documents -- these
13 early Bronco II documents simply identify the fact
14 that these are human life concerns and that we should
15 be addressing them.

16 Subsequent documents will show that they
17 didn't address them. So as a foundational
18 requirement to show that they knew of them and should
19 have done something about them, that's the reason
20 they are offered. Not to show -- not that the
21 Bronco II is on trial here. As we said in our
22 opening statement and have repeated over and over,
23 only the Ford Explorer is on trial here.

24 At the same time, Ford is going to ask
25 this jury to consider the fact that it's no worse

1 On the bottom of the second page, it
2 talks about upper torso restraints. At present, they
3 are rare. Okay. It talks about -- okay. I think
4 probably the fourth page is the best page, roof
5 forces. In many rollover accidents, the vehicle
6 comes to rest on its roof. This fact provides a
7 starting point in developing a roof strength
8 standard.

9 So they've been needing a standard
10 obviously since 1968. Roof structure must support
11 the weight of the vehicle. The vehicle is suspended
12 from the roof and touches the ground and said to
13 release the load factor conservatively two or twice
14 the weight of the vehicle.

15 So this one is a development document.
16 In '68, they understood that they needed to deal with
17 roof strength. In the 1997 vehicle, they still have
18 not sufficiently dealt with roof strength.

19 In Exhibit No. 41, the rollover
20 statistics are being discussed by Ford engineers.

21 THE COURT: Mr. Emblem, I'm going to --
22 rather than go through the rest of the documents, I
23 know that -- in terms of those that are sort of
24 identified as maybe problematic here, if you have
25 further comment about those.

1 MR. EMBLEM: Sure. Just to close on 41,
2 we are talking about the fact here that Ford
3 engineers are concerned about the number of rollovers
4 of SUVs versus automobiles and the numbers of people
5 ejected from SUVs and the fact that they are -- if
6 you are ejected, you don't survive; and if you are
7 contained, you do, unless the door comes open.

8 So without any further questions, I
9 guess we submit it.

10 THE COURT: Thank you, Mr. Emblem.

11 MR. O'NEILL: Your Honor, may I address
12 new matters raised there very, very briefly?

13 THE COURT: No. I think I'm prepared to
14 rule on what we have here.

15 As I say, the exercise has been whether
16 there's evidence here or the evidence that these are
17 what they purport them to be and, specifically, that
18 they are statements of the party opponent under 801.

19 And one takes into account, in terms of
20 the evidence, both the method in which they were
21 obtained and the look of the document, the substance
22 of the document, the format of the document, and
23 similar visual dynamics. And as I carved out a
24 second, I suppose, possibility here and that is that
25 there had been a specific request that identified a

1 to be relevant in that regard, that is, the
2 document -- not the argument, but the document --
3 that it has to identify a specific -- the specific
4 area of complaint relevant in this case. And what I
5 seem to be confronted with in these documents, as I
6 look through them, that have been identified, if you
7 will, as Bronco II and UN46 documents, is a wide
8 range of statements dealing with many more things
9 than what's our complaint. And so I add to the
10 problem here that a confusion of the jury --
11 confusion by the jury regarding the document.

12 So 49 to 75-B will not -- will not be
13 received at this point. I am not convinced that
14 there's been an identification in any of those
15 documents of something so specific regarding the
16 complaints of this case that would make it relevant.

17 Said another way, if I could, and that
18 is I see the relevance of -- or I see where one would
19 examine statements regarding the Bronco II, but only
20 to the extent that they deal with problems
21 identified, concerns, if you will, identified in this
22 case. And what I have is the whole -- sort of the
23 quality of the vehicle as a whole without either that
24 or not specifically dealing with the problems at
25 issue in this case.

1 document and requested its production and it was
2 produced. And, consequently, we have, both in that
3 connection and also in terms of the format of the
4 document, a Bate number -- Bates stamp number.

5 All that considered, in terms of the
6 authenticity of the document and -- well, its
7 identification or authenticity, it seems to me that
8 all of these documents are qualified. I am convinced
9 from the evidence that they are in fact -- except for
10 a couple of exceptions, that -- well, a couple of
11 exceptions, I suppose, that I'm going to note in
12 particular -- statements of -- statements that are
13 identified under 801.

14 Dealing now with what has been
15 identified as the Bronco II and the UN46 documents,
16 and it seems to me that the approach here is not the
17 authenticity anymore or the identification of the
18 document, but its relevance and whether its probative
19 value is outweighed by its prejudicial effect. It
20 seems to me that in order -- understanding that it's
21 a question of knowledge of defect as it extends over
22 what is asserted here as a line of vehicle. Well, as
23 I say, regardless of what we call it, it's a line of
24 vehicle.

25 But it seems to me that in order for it

1 So I am not -- I am not -- if there's
2 such a document that can be identified, will
3 entertain the request to admit it into evidence. But
4 at this point, 49 to 75-B do not fit into that
5 category. So I'm not going to receive, in other
6 words, 49 to 75-B.

7 Turning to Exhibit 220-A, which has been
8 offered as an indication of knowledge of the problem,
9 and I think this suffers, if you will, from the same
10 deficiency that 49 to 75-B has. It -- these are
11 complaints reported by Ford to the company through
12 their MORS system and so forth. And I see the
13 relevance of that as it is relevant to knowledge of a
14 problem.

15 But it seems to me, in going through
16 these in some fashion -- I'm not going to say I read
17 every word of every one of these documents. But it
18 seems to me that it's hard to identify any that deal
19 with the specific problems complained of in this
20 trial. And my determination is that, unless that can
21 be -- unless you can identify a complaint about a
22 problem dealing with this -- that have been
23 identified in this trial, that they are not relevant.
24 So I'm not receiving 220-A.

25 Turning to 65, and this may be a matter

1 Clayton vehicle is 85A2.

2 THE COURT: All right, 8581 and 85A2. Your
3 question, Mr. Emblem?

4 Q (BY MR. EMBLEM) First, I'll ask you if I'm
5 right. There is stiffening present in the sway bar
6 bushings?

7 A It's hard for me to tell with my fingers. I'm
8 not real sure that I'm feeling any.

9 Q All right. And then in the next column -- we're
10 still looking at Exhibit 117. In the column after
11 "Occurrences" it says "Feel." Do you see that down there?
12 "When link fails vehicle exhibits."

13 A I missed the column you asked me to look at.

14 Q Where it says "Feel."

15 A Yes, on 117, "Feel."

16 Q What is that discussing? What is the purpose of
17 the discussion and what is it discussing?

18 A That this is essentially detection by customer.
19 This is how the customer would respond and what the
20 customer would feel if this occurred.

21 Q What is the report?

22 A "Feel. When link fails, the vehicle exhibits
23 significantly more roll."

24 Q I show you an exhibit that's been marked and
25 entered as Exhibit 118. Is that a Ford engineering

1 A Well, the study found -- after the initial
2 studies they found a couple of things. First of all, they
3 did experience a simultaneous two-wheel lift, which means
4 that they have -- the two inside wheels came up off the
5 ground.

6 Q Is this a 1995 Explorer? Is that the same as
7 the '97 Explorer?

8 A Yes, to my understanding they're the same
9 chassis, same design.

10 Q UN105, in other words?

11 A That's correct.

12 Q So the computer found that there was two-wheel
13 lift with the sway bar link removed?

14 MR. O'NEILL: Your Honor, let me object,
15 leading.

16 THE COURT: Sustained.

17 MR. O'NEILL: May I voir dire the witness?

18 THE COURT: I've already sustained the
19 objection.

20 Q (BY MR. EMBLEM) I want to show you Exhibit
21 No. 120. Is this a Ford engineering document, 120?

22 A Yes.

23 Q And what is it we're looking at here?

24 A Essentially the same as the last one, except
25 this appears to be a final copy, signed. It's a 1995

1 exhibit?

2 A Yes, it is.

3 Q What is it?

4 A It's entitled, "1995 Explorer Sway Bar CAE" --
5 which is computer-aided engineering -- "Study."

6 Q And there in the summary it uses the word
7 "ADAMS" again. Is that what we were discussing a few
8 minutes ago about computer modeling?

9 A Yes, it is.

10 Q What is the purpose of this particular study?

11 A The purpose is to use the computer to evaluate
12 the performance of the vehicle in what's called a J-turn
13 test without a sway bar link. So in the computer model
14 they remove the sway bar link and they put it through a
15 J-turn maneuver.

16 Q Is that the same maneuver that's used for
17 accident avoidance?

18 A Yes, it is. It can be. It's a hard-steering
19 maneuver. You essentially make a J.

20 Q So it's a hard-steering maneuver which you might
21 incur -- which you might experience if you're trying to
22 avoid hitting a child or something like that?

23 A Yes.

24 Q And so we can understand how to read these
25 charts, what did the study find?

1 Explorer sway bar computer-aided engineering study.

2 Q So it's about the sway bar. Is it considering
3 the link?

4 A Yes, it's considering, again, the J-turn
5 maneuver. Simulating it without the sway bar in.

6 Q I'm leafing through to page 4. There's a graph,
7 does that tell us anything?

8 A Yes, it does.

9 MR. EMBLEM: May I display, Your Honor?

10 THE COURT: You may.

11 MR. EMBLEM: Dim the lights again. I'm sorry,
12 Wendy.

13 Q (BY MR. EMBLEM) What is the graph telling us?

14 A This is just sort of a little table that lets us
15 take a quick and easy look at whether or not the vehicle
16 passed or failed this particular analysis.

17 Q Okay. What's happening here? First of all, let
18 me ask you what's being tested in terms of tires?

19 A We have two different size tires, the P235/75R15
20 is the tire that was on Mr. Clayton's vehicle.

21 Q Okay. And then concerning the P's and F's, what
22 do those mean?

23 A Well, P's are passes and F's are fails. And we
24 see with the 4x4, four-door, curb weight plus driver, the
25 vehicle failed.

1 Q Okay. And then it has some other failures on
 2 the other car, right? The 4x2?
 3 A Yes, we do.
 4 Q So it's confirmation of the conclusion that they
 5 have tip-up of two wheels; is that correct?
 6 MR. O'NEILL: Objection, Your Honor.
 7 THE COURT: Sustained.
 8 Q (BY MR. EMBLEM) What does that confirm?
 9 A It confirms that with those tires, curb plus
 10 driver, the vehicle failed. It had two-wheel tip-up,
 11 which is a failure.
 12 Q I'm going to refer you to page 8. Maybe I need
 13 to borrow yours to display because mine's all marked up.
 14 THE COURT: Mr. Emblem, I would prefer that the
 15 actual exhibit be displayed.
 16 MR. EMBLEM: That's what I'm doing.
 17 Q (BY MR. EMBLEM) I'm displaying page 8. What is
 18 this we're looking at here?
 19 A We're looking at some changes that were made.
 20 In the ADAMS model, for the most part, the initial
 21 conditions were never safe. But in this document we have
 22 a history of some of the many parameters that were used,
 23 how they modified them from an initial condition where we
 24 had failure to a revised condition where there was no
 25 failure.

1 Q Okay. I see in line B it says, "gross vehicle
 2 weight in loading pounds"?
 3 A Yes.
 4 Q What is the initial input and what is the
 5 revised input?
 6 A The initial input is 5,440 pounds. The revised
 7 input of 5,420 pounds.
 8 Q Is that a 20-pound change in the weight?
 9 A Yes.
 10 Q Turn to page 9. And here at the top it says "9
 11 of 9."
 12 A Yes.
 13 Q Do we now have a pass on the P235 tires after
 14 adjusting 20 pounds?
 15 A Yes, we have passes all the way across the
 16 board.
 17 Q From an engineering standpoint, what does the
 18 document mean to you?
 19 A To me it's saying that with very subtle changes,
 20 they're going from a fail to a pass. Changing one
 21 parameter by 20 pounds. And that tells me that there's
 22 something that is right on the very edge when it's running
 23 the gross vehicle weight, which is something that the
 24 vehicle is capable of doing. You can load that vehicle to
 25 that weight, that's what "gross vehicle weight rating"

1 means. Adding another 20 pounds means that you don't pass
 2 their safety test.
 3 MR. EMBLEM: I need to ask a clerical question
 4 about 119. I wasn't sure that was among the group set. I
 5 think it should have been, but I want to verify.
 6 THE COURT: I don't show 119 received.
 7 Q (BY MR. EMBLEM) 121, I'll show you that next.
 8 Is 121 a Ford engineering document?
 9 A Yes, it is.
 10 Q And explain what it is to the jury.
 11 A This is a test report. The subject is,
 12 "Subjective assessment of disconnected sway bar link on an
 13 Explorer." What that means by "subjective" is it's not
 14 where they're measuring things, it's just kind of a feel.
 15 It's subjective. It's going to be asking opinions of the
 16 people who are driving this vehicle.
 17 Q So this is a test on a track or road as opposed
 18 to in the computer, would that be correct?
 19 A Yes, that's correct.
 20 Q And can you give us a summary of the results?
 21 A Yes. The summary of the results with one front
 22 sway bar link disconnected, the vehicle did not meet
 23 Ford's extremely severe handling criteria.
 24 Q I'm going to show you a document that's been
 25 marked as 122B and accepted. I'd ask you what this

1 document is. First, is it a Ford engineering document?
 2 A Yes, it is.
 3 Q And would you explain from an engineering
 4 standpoint what it is we're looking at?
 5 A This is the results of the fatigue test where
 6 we're taking a component and putting it into a repetitive
 7 loading environment to see how long it lasts.
 8 Q It's called a "Discipline Problem Analysis
 9 Report"; is that correct?
 10 A Yes.
 11 Q Can you explain what that means?
 12 A They've got a problem and they're trying to
 13 analyze what they've done and trying to take some sort of
 14 corrective measure for it.
 15 Q And then do the charts -- if you could explain
 16 what the charts mean. As an example, on page 5 there's a
 17 chart that might not be easy to be understood.
 18 A Well, it's not. It's a plot. Basically what
 19 we're trying to look at here is reliability. Given the
 20 number of cycles on this part, how long that part is
 21 expected to last. How many cycles it will go through.
 22 Q Is there any way to apply that to real life
 23 driving? The number of cycles which a sway bar might
 24 experience in a lifetime?
 25 A Yeah. I mean, that's sort of the whole idea.

1 A It's entitled, "Tie Rod Summary."
 2 Q Does the document provide engineering
 3 information useful to engineers?
 4 A Yes, it does.
 5 Q What information does it provide?
 6 A It talks about a problem that was being
 7 experienced. There was reverse bending fatigue on the
 8 neck of the tie rods, and some lash in that joint in the
 9 coupling.
 10 Q And ultimately does the document discuss or give
 11 you information about what was done about it?
 12 A Yes.
 13 Q What was done about it? From an engineer's
 14 standpoint, what was done?
 15 A Well, a redesign was undertaken. A larger tie
 16 rod was explored and tried, but it was found to have some
 17 problems of its own, noise and problems. So they went
 18 back to the original design except they then went to 100
 19 percent checking of the design, a different grease in --
 20 and I'm going to pick up Exhibit 31A. There will be
 21 different grease in here, and then the crimping is
 22 different, how they crimp this down around the end of tie
 23 rod.
 24 Q It's your information that that successfully
 25 solved the problem of that breaking that was experienced

1 A Well, we're looking at some concerns that
 2 Mr. Tandy was expressing in their ADAMS model. Their
 3 ADAMS model was predicting travel greater than what they
 4 were thinking they could have. They were getting metal-
 5 to-metal contact as a result of their ADAMS modeling. And
 6 he was concerned that that was occurring.
 7 Q I'll place an exhibit in front of you that's
 8 been marked and entered as 389, Exhibit 389. Is that an
 9 engineering document?
 10 A Yes, it is.
 11 Q Does this document contain information important
 12 to engineering decisions?
 13 A Yes, it is.
 14 Q Is it part of an engineer's job to consider the
 15 feasibility of a design including the cost of it?
 16 A Of course it is. As you're designing something
 17 as an engineer, you have to be aware of costs. And there
 18 are all sorts of costs, hard cost, labor costs, warranty
 19 costs, repair costs.
 20 When a design is going out the door to somebody
 21 who's buying it, you have to be aware of what all the
 22 costs are going to be when you make a proposal. The
 23 companies I've worked for gave great incentives if you
 24 could save costs.
 25 Q This document is entitled what?

1 in the early tie rods?
 2 A To my understanding, it did.
 3 Q And it was breaking that was occurring where?
 4 A That was reverse bending fatigue right here in
 5 the neck.
 6 Q And the reverse bending fatigue experienced in
 7 the Clayton vehicle was where?
 8 A The reverse bending fatigue is here, next to the
 9 threads of the tie rod.
 10 Q I show you a document that's been marked and
 11 received as 185A. Is this an engineering document?
 12 A Yes, it is.
 13 Q And what is the type of document that we're
 14 looking at here?
 15 A They're minutes from a meeting, and this is a
 16 design meeting where some of the engineers are together
 17 discussing ideas and comments, problems, suggestions.
 18 It's just the minutes of that meeting. It was a design
 19 versus system level targets meeting.
 20 Q On the second page there's a wheel travel issue
 21 discussed by Ken Tandy. Is that important to the issues
 22 in this case?
 23 A Yes.
 24 Q And from an engineer's standpoint, what is it
 25 that we're looking at here?

1 A This is entitled, "Rods vs. Cables Study."
 2 Q Is that referring to the operation of the door
 3 latch?
 4 A Yes, it is.
 5 Q Is there any magic language in the document, or
 6 can this be understood by a layperson if they read it?
 7 A It really is pretty self-explanatory.
 8 MR. EMBLEM: Your Honor, if I could have a few
 9 minutes to discuss with counsel, I think I'm close to
 10 wrapping up with the witness. I notice it might be time
 11 for a break.
 12 THE COURT: Well, let's take our break here.
 13 Mr. Ingebretsen, you may step down.
 14 THE WITNESS: Thank you.
 15 THE COURT: Watch your step on the way down.
 16 Ladies and gentlemen, we'll have our break here.
 17 It's about ten after. Let's take fifteen minutes. About
 18 25 after 3:00. During this break you're not to express
 19 any opinions among yourselves or with others. You're
 20 excused.
 21 (Whereupon, a recess was taken.)
 22 THE COURT: We're back with Clayton vs. Ford
 23 Motor Company and others. The jury is not in the
 24 courtroom. Mr. Emblem indicated as we took our break here
 25 that we needed further discussion, and you may be at the

1 because they say "ejected." If I can't relate it to a
2 door, then I can't relate it to a window, and then I can't
3 relate it to ejection. But that's not true because it
4 talks about ejected people, so they have to be coming out
5 of somewhere.

6 MR. O'NEILL: Fair enough.

7 THE COURT: Well, it appears to me we had this
8 discussion before, as I say. We established the protocol.
9 I won't say it again, but it seems to me that where the
10 document talks about ejection, and indeed through a door,
11 damaged, partially opened, so forth, or a window or
12 windshield, or in some other fashion -- although
13 apparently there is no other fashion -- we call upon the
14 jury to speculate, even with the one page, in terms of
15 inferring that this related only to open doors.

16 And apparently on the face of it it doesn't seem
17 that way, but testimony does not narrow that down to, as I
18 say, the door, the door system and its integrity. And
19 beyond that, I suppose we would have to pick and choose a
20 bit from this document. It includes really an analysis
21 apparently of roof crush as it relates to damage in
22 various ways, including ejection.

23 So, specifically, the document that comes close
24 is not close enough. And the rest is not relevant. For
25 those reasons, 272, the objection is sustained.

1 MR. EMBLEM: Your Honor, just to be clear on
2 that, this may be the type of document relied upon by an
3 engineer, but otherwise not necessarily admissible?

4 THE COURT: Well --

5 MR. EMBLEM: Or he could testify regarding it,
6 but we wouldn't be admitting the document? I believe I
7 read that in the comments on the 801 cheat sheet that I
8 have here.

9 THE COURT: That may be. I don't know that I
10 need to resolve either that question or that objection to
11 that question.

12 MR. EMBLEM: It's only Tuesday it feels like
13 Friday afternoon.

14 REDIRECT EXAMINATION ON EXHIBIT 41
15 BY MR. EMBLEM:

16 Q Take out Exhibit 41.

17 A I didn't hear the number.

18 Q Exhibit 41. Is Exhibit 41 a Ford engineering
19 document?

20 A Yes.

21 Q Let me just clarify one thing. Counsel asked
22 you a couple times about passenger cars. Is the Explorer
23 a passenger car?

24 A It is part of that general class, yes.

25 Q What is Exhibit 41?

1 A 41 talks about ESV rollover test methods.
2 They're considering different methods for analyzing and
3 testing rollovers and rollover crashworthiness.

4 Q Okay. So is this document helpful in explaining
5 in any way the relationship between the roof deformation
6 and the failures experienced in the A and B pillars in the
7 Clayton vehicle?

8 A Well, yes. In fact, on the page handwritten 10
9 it says, "Next to the doors remaining closed, retention of
10 the vehicle's fixed and side glass is the most important
11 factor." It's specifically looking at doors remaining
12 closed in roof crush.

13 Q Page 10? What page is that?

14 A Well, it's typewritten page 3, there's
15 handwritten page 10. Bates stamp 0073786.

16 Q Okay. "Rollover Techniques," "Handling
17 Stability," and then IT goes down to "Occupant
18 Containment." That's the second one you're referring to?

19 A Well, "Occupant Containment" and "Structural
20 Integrity" is where I just read from, the last paragraph.

21 Q In "Occupant Containment," the last sentence
22 says, "Our test techniques should demonstrate, therefore,
23 that should rollover occur, an occupant would not be
24 ejected." Is that some kind of a directive, engineering
25 directive on where to go looking forward?

1 A It is. I mean, it's there. They're telling
2 people that we need to contain occupants in the vehicle.

3 Q And this is an analysis specifically to roof
4 crush testing design which absolutely and assuredly
5 contains reference to keeping the door closed; is that
6 correct?

7 A Yes.

8 Q And then in the lower section, "Next to the
9 doors remaining closed, the retention of the vehicle's
10 fixed and side glass is the next most important factor";
11 is that correct?

12 A Yes.

13 Q So it looks like keeping the door closed is one
14 of the primary objectives; is that correct?

15 A Well, it says, "Next to the door remaining
16 closed," so it actually is the highest priority. After
17 the doors remaining closed, they consider the windows.
18 The fixed glass and side glass is the next most important.

19 MR. EMBLEM: Your Honor, plaintiffs would move
20 for Exhibit 41.

21 THE COURT: Cross?

22 RE-CROSS-EXAMINATION ON EXHIBIT 41
23 BY MR. O'NEILL:

24 Q Mr. Ingebretsen, the date of this document is
25 1971, true?

Addendum 6

ORIGINAL

THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

DEE CLAYTON, et al.,)
) Case No. 000909522
 Plaintiffs,)
)
 VS.) JUDGE:
) JOSEPH C. FRATTO, JR.
 UTAH AUTO COLLECTION,)
 et al.,)
)
 Defendants.)

TRIAL TESTIMONY OF ROSS PACE

TAKEN AT: SCOTT MATHESON COURTHOUSE
 450 South State
 Salt Lake City, Utah

DATE: Tuesday, January 30, 2007

REPORTED BY: Catherine L. Kennedy, RPR, CSR

FILED DISTRICT COURT
 Third Judicial District

NOV - 1 2007

By *[Signature]* SALT LAKE COUNTY
 Deputy Clerk



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1 you find on the highway can be put into algebraic
2 equations, and they've got them all down to where
3 they can figure speed from these marks on the
4 highway.

5 Q Did you also receive training in taking
6 photographs to document the accident scene?

7 A I did.

8 Q And did you have any training in
9 interpreting use of restraints in the vehicle?

10 A Yes, I did.

11 Q Can you describe what that training is?

12 A When -- they brought in good seat belts,
13 good, solid seat belts. They showed us how a seat
14 belt worked. They showed us how a seat belt will
15 stretch when it's been worn and in a automobile
16 accident or being pulled or something to that effect.
17 They showed us the -- how the mechanical parts of a
18 seat belt worked and why they worked.

19 Q Did they give you any training on how to
20 interpret yaw marks or what a yaw mark is?

21 A They did.

22 Q And can you describe that training?

23 A A yaw mark again is a critical curve
24 mark, which is more when a vehicle is into a turn,
25 too fast of a turn to actually make a corner. That's

1 when you have a yaw mark, and it will show that the
2 vehicle is basically starting to slide and that tire
3 mark will be grabbing the road hard enough that it
4 has to make a mark on the highway.

5 Q Did you receive training on how to take
6 measurements at an accident scene?

7 A Yes, we did.

8 Q Can you describe that training?

9 A The training itself, the basic course
10 showed one different way to draw up an accident. You
11 know, you take and you'd -- three points and you'd
12 draw that into a diagram.

13 The next training they went into a
14 reference point. You find something that's a solid,
15 stable object, and then you measure from that object
16 to put the vehicles and the highway exactly as it is
17 relative to the stationary mark that's on the highway
18 or, you know, a pole or median drain, cement, or
19 something like that. And that's how you measure.
20 You measure from that that's always going to be there
21 to what you have on the highway.

22 Q And in the Clayton accident, did you
23 have any assistance in taking measurements and
24 drawing that diagram?

25 A I didn't have assistance, but I didn't

1 do it. There was two other patrol officers that took
2 the measurements.

3 Q And who were they?

4 A It was my sergeant by the name of
5 Sergeant Jeff Peterson and another Utah Highway
6 Patrolman by the name of Paul Brown.

7 Q And was their field sketch diagram
8 included as part of your official investigation
9 report?

10 A Yes, it was.

11 Q And why did they take the measurements
12 rather than you?

13 A There's a lot of things going on at a
14 serious accident. You just have to assign different
15 things out to different people in order to get it
16 done. It needs to be -- you know, you need to get
17 this taken care of. I had other things that I
18 figured was more important, and I assigned them to do
19 the measurements.

20 Q Did you receive any training in
21 evaluating the directional forces that are involved
22 in an accident?

23 A I don't understand exactly what you are
24 asking.

25 Q Well, like biomechanics, the effect of

1 forces on the vehicle, the effect of forces on tire
2 marks and on persons.

3 A We did. Again, that was in the
4 accident -- advanced accident investigation courses.
5 They tried to show exactly what physics is involved
6 and why a vehicle has to do what it does and why a
7 body has to do what it does in a rollover.

8 Q And did you have some training then in
9 biomechanics in order to evaluate how persons may
10 have been injured inside the vehicle as well?

11 A We did, yes.

12 Q And is that important to try to document
13 the evidence, at least photographically, at the scene
14 to be able to determine any cause of the injury?

15 A It is, yeah.

16 Q And did you take photos of the Clayton
17 accident?

18 A I believe I took the photos, yes.

19 Q And you have had a chance to review
20 those photos?

21 A I have.

22 Q And did you have any specific training
23 in evaluating whether or not an accident was caused
24 by an inattentive or asleep driver?

25 A Yes, we did. We had the training, and

1 also there's a -- you investigate a lot of accidents,
2 so you pretty much can determine what happened.

3 Q Can you describe what your training and
4 experience is in investigating accidents involving
5 drivers who fell asleep or were inattentive or
6 distracted?

7 A The training again is the same. You
8 put -- any accident investigation course that you go
9 through, anything that's even as basic as the POST
10 was, you go through different scenarios of what
11 vehicles do and why they do this and whether their
12 brakes are on or whether they're not on or whether
13 they're turning.

14 But, again, when it comes down to
15 investigating, I've probably investigated at least 80
16 accidents per year. You get to pretty well know what
17 a vehicle is doing, and what you can see on the
18 highway's pretty well what happened.

19 Q And in your career, did you investigate
20 a lot of accidents that involved only one vehicle or
21 a single vehicle accident?

22 A I did. In fact, on a rural interstate
23 area, most -- probably 50 percent of your accidents
24 will be one vehicle rollovers.

25 Q And in your experience, what are the

1 primary causes for those types of single vehicle
2 rollover accidents?

3 A Generally speaking, inattention or
4 asleep.

5 Q And in your training, did you learn any
6 certain markers or circumstances to look for to
7 determine whether or not a driver may have been
8 asleep or inattentive?

9 A I did.

10 Q And can you describe what those are?

11 A What you'll normally see on a person
12 that's either asleep or not paying attention is, when
13 they run off the road, they will be off the road for
14 a certain amount of time, and you can see that the
15 tire is just turning and it's free flowing.

16 And then all of a sudden, you will see
17 that the vehicle is turned back. You'll see that
18 they've now decided that, I'm off the highway, and
19 you will see them turn the steering wheel and it will
20 start -- instead of being a complete roll on the
21 rocks and stuff, you will see that the vehicle, the
22 tire turns. It will start throwing gravel up.

23 But you can see all of them marks, and
24 you can see exactly when he decided he better get
25 back on the road or he better slam on his brakes.

1 Q And did you apply that experience and
2 training in investigating the Clayton accident?

3 A I did.

4 Q I want to show you your accident report
5 and have you identify that, and I'm showing you
6 what's marked as Plaintiffs' Exhibit No. 22, and I
7 will represent that this has already been marked into
8 evidence.

9 Have you had -- can you look at that
10 document and tell me if you recognize it?

11 A I do.

12 Q And what is it?

13 A It is my -- I believe it's called an
14 SR-22 form that on any accident must be filled out
15 and sent into the State of Utah.

16 Q And so is this the standard form that's
17 used by the Department of Public Safety that all law
18 enforcement agencies must use?

19 A That is correct.

20 Q And does this have certain codes that
21 are used to fill in certain boxes and blanks on this
22 accident form that are uniform in all accidents?

23 A It does.

24 Q And so is it necessary to be able to
25 have a key to the code to be able to understand what

1 the numbers are on your accident report?

2 A You have to have a key in order to
3 decipher what's on the accident report.

4 Q I'm going to hand you what's marked as
5 Defendants' Exhibit 685 and ask if you can identify
6 that.

7 MR. EMBLEM: What is the number now?

8 MR. LARSEN: 685.

9 THE WITNESS: Yes, sir. That is the key
10 that you use to fill out the form.

11 Q (BY MR. LARSEN) And how do you use that
12 key to be able to understand what's on the report?

13 A The key -- these are copies. The key
14 here is actually cut off. It's exactly the size that
15 fits over the top of the standard form. It's got
16 arrows pointing to boxes, and it fits exactly on it.
17 And all of these boxes call for a number that's
18 written inside of this key. It will ask you things,
19 and you put a number relative to what it is from the
20 key.

21 Q So you just line them up side by side
22 and you are able to --

23 A Line them up one on top of each other.
24 The key goes on top of the form.

25 Q I'm going to hand you what are a series

1 of photographs that have been blown up and put on
2 some foam boards and ask have you had a chance to
3 review the photographs that I'm handing you, which is
4 marked as Defendants' Exhibit 684-1 through 684-26?

5 A I have.

6 Q Okay. And are those the Highway Patrol
7 photographs from the Clayton accident?

8 A Yes, they are.

9 Q And do they truly and accurately depict
10 what the physical evidence was on the roadway that
11 was documented during your accident investigation?

12 A They do.

13 MR. LARSEN: We move to admit
14 Defendants' 684-1 through 684-26.

15 THE COURT: Any objection?

16 MR. EMBLEM: The only objection, your
17 Honor, is that they are already in as Plaintiffs' 23,
18 all of the Highway Patrol photographs, so I think it
19 might certainly be confusing if they refer to
20 different numbers.

21 THE COURT: Your objection is overruled,
22 and I will receive 684-1 through and including 26.

23 MR. LARSEN: Right. Thank you.

24 Q (BY MR. LARSEN) When were you first
25 notified of the accident?

1 A If I refer back to my -- the accident
2 investigation form, I was notified at 1415 hours,
3 which is 2:15 p.m.

4 Q And where is that indicated on your
5 report?

6 A On the second page, down near the
7 bottom.

8 Q Okay. And what time did you arrive?

9 A I arrived at 1450 hours, which is
10 2:50 p.m.

11 Q So approximately 35 minutes to get
12 there?

13 A Approximately, yes, sir.

14 Q And do you know where you had to come
15 from that day?

16 A I do not remember, no, sir.

17 Q And how far is it from where you usually
18 patrol or reside to the accident scene?

19 A There is no usually patrol or usually
20 reside. However, the Summit County consists of
21 approximately 300 miles of freeway, and we was
22 assigned to two different counties at this particular
23 time. So it could have been -- well, it had to have
24 been a long ways.

25 Q So you had Summit County and Wasatch

1 County at the time?

2 A I believe at this particular time we
3 did. We always had Morgan County involved in that
4 also, but I can't remember whether in 1998 we still
5 was doing Morgan County.

6 Q Typically, how many officers were
7 patrolling those counties?

8 A Typically, about one per county. There
9 would either be two or possibly three.

10 Q And were you the first Utah Highway
11 Patrol officer to arrive at the accident scene?

12 A I was.

13 Q And had Wyoming emergency personnel
14 already arrived?

15 A The emergency personnel, yes, had been.

16 Q And why did you investigate the accident
17 scene rather than Wyoming officers?

18 A Because it was in the State of Utah. It
19 was only one mile from the Wyoming line, but it was
20 in the State of Utah.

21 Q And does your report indicate whether or
22 not there were any witnesses that were identified at
23 the accident scene?

24 A According to the report, it says there
25 was no witnesses that I could find.

1 Q And do you recall seeing Mr. Clayton or
2 Ms. Montoya at the accident scene when you arrived?

3 A I do not.

4 Q And are there certain tasks that are
5 required to be performed in investigating a fatal
6 accident as opposed to a nonfatal accident?

7 A No, there is not.

8 Q And is it required to prepare a report
9 on a fatal accident?

10 A It is.

11 Q And when there's a fatal accident, is it
12 also required that a supervisor be present?

13 A That is correct.

14 Q And was your supervisor present that
15 day?

16 A He was.

17 Q And that was who?

18 A Sergeant Jeff Peterson.

19 Q And one other officer you said arrived
20 and assisted as well; is that right?

21 A That is correct.

22 Q So there were three of you total?

23 A Yes, sir.

24 Q And I'd like you to describe for the
25 jury what you do, in chronological order, when you

1 arrive at an accident scene, like the Clayton
2 accident scene, and you begin your investigation.

3 A The very first thing that I always done
4 when I showed up on an accident is protect the scene.
5 I didn't want anything else happening. I wanted to
6 make sure that the scene was protected, that nobody
7 else was injured, that everything went smooth from
8 the time I got there till we got everything cleaned
9 up and the roadway would have been clear.

10 After that, the first thing I generally
11 done on an accident was take photographs. They are
12 the things that -- things that leave the earliest.
13 They need to be taken care of. So the very first
14 thing I generally done was take photographs of the
15 scene.

16 Q And when you photographed the scene, how
17 do you typically progress in taking your photographs?
18 What do you start with and what do you finish with?

19 A I would generally go to the very first
20 of the accident, where it very first started.
21 Whatever started the initial events of that accident,
22 I would like to start from there. And then I would
23 move in the same direction that the accident happened
24 and take photographs every so many feet so that I
25 could get everything into all photographs that

1 happened in this accident scene.

2 Q And in taking those photographs at the
3 accident scene, do you try to follow and walk through
4 the path that the vehicle traveled during the
5 accident?

6 A I try to follow the path exactly. You
7 try to stay right in the path of the accident, take
8 photographs every so many feet, just to make sure
9 that everything is photographed inside of the
10 accident scene.

11 Q And, Trooper Pace, I'd like to walk
12 through the accident scene photographs with you, and,
13 hopefully, we'll try to start at the beginning of the
14 accident and have you describe what you see and what
15 you did in documenting the accident scene. And I
16 have in front of you what are some of the photographs
17 or all of the photographs that were taken, and we'll
18 also use those on the overhead at the same time.

19 So turning to the first photograph,
20 which is D 64-11, which should be on top, does that
21 say photo 11 on the back?

22 A It does.

23 MR. LARSEN: Okay. If we could put that
24 on the overhead.

25 Thanks.

1 Q (BY MR. LARSEN) And can you tell us
2 what this photo depicts?

3 A The photograph that you are looking at
4 is actually the eastbound lane of traffic.

5 MR. LARSEN: Maybe could we have a laser
6 pointer that we can use that could maybe identify
7 that for us?

8 Thank you.

9 Q (BY MR. LARSEN) Perhaps you can use
10 this laser pointer and push the red button and
11 describe the areas that you're talking about.

12 Which is the eastbound?

13 A This is eastbound lane of traffic. All
14 this traffic would be coming right at you. As you
15 can see, over there is the westbound lane of traffic.

16 What you are looking at here is right
17 where the vehicle -- right here is where the vehicle
18 was trying to come back onto the highway.

19 Back up here is where the vehicle left
20 the highway with only one set of tires. Only the
21 left-side tires left the highway. The rest of the
22 vehicle stayed up on the highway itself.

23 Q And what lane of travel was the vehicle
24 in before it left the highway?

25 A The vehicle was in the fast lane of

1 traffic, which is that one, and you can see -- it's
2 not very good from this photograph, but right there
3 is where the vehicle left the highway.

4 Q And on that particular corner on that
5 particular stretch of road, is that a pretty flat
6 road at that point?

7 A It's a very flat road and not a very
8 sharp corner.

9 Q Okay. And before that corner, going
10 back the other direction, going back westbound, is
11 that a straight road for quite a long distance?

12 A It is. It's straight. It's a
13 straightaway.

14 Q And in your experience in driving that
15 road, when you approach that corner, is it a little
16 bit deceptive that the road is turning going to the
17 right?

18 A It's not. It's just like any other turn
19 on any freeway. It's not deceptive. It's not marked
20 to be a sharp corner. It's just a small corner on a
21 freeway.

22 Q And in your investigation, did you
23 determine where the marks were on the gravel part of
24 the road in relationship to where the -- the
25 direction the vehicle would have been traveling if it

1 just kept going straight in the fast lane?
 2 A I did.
 3 Q And what did you determine?
 4 A I determined that if you did not make
 5 any type of vehicle maneuver and kept going right
 6 straight, you would run off the road at the exact
 7 spot just about every time. The same spot you'd run
 8 off the road.
 9 Q And in your 24 years in traveling that
 10 particular stretch of road, did you see other similar
 11 runoffs at this particular location?
 12 A There has been a few, yes, sir.
 13 Q And in this photograph, can you identify
 14 where he first went off the road or you first
 15 identified the gravel marks?
 16 A You cannot see where he first ran off
 17 the road, but you can see where he decided that he
 18 was off the road. You can see where the gravel
 19 changes and starts to throw gravel. All the gravel
 20 is moved in that particular area right there. But
 21 you cannot see back there where he first went off the
 22 highway.
 23 Q And why can't you see that?
 24 A Because it's a smooth tire. It's a roll
 25 on a tire, and it's not moving any gravel. It's just

1 running over the top of the gravel.
 2 Q Okay. And on the left shoulder of the
 3 road, can you -- what are the purposes of those
 4 striations or those cut-outs on the edge of the road?
 5 A They call them a rumble strip or
 6 whatever you want to call them. They was initially
 7 made in highways to alert you that you are off the
 8 highway.
 9 Q Maybe wake up or startle an inattentive
 10 or sleeping driver?
 11 MR. EMBLEM: Leading.
 12 THE COURT: Sustained.
 13 Q (BY MR. LARSEN) We can turn to the next
 14 photograph, which is photograph No. -- is it 3?
 15 A Mine is photo 3, yes, sir.
 16 Q And can you tell us what this photo
 17 shows that's different from the last photograph?
 18 A I've moved further east. The first one
 19 I had taken right there. This one, of course, back
 20 here. It shows the tire mark as it's coming back on
 21 the road from the left side of the vehicle.
 22 Q And what would you call that kind of a
 23 tire mark?
 24 A That's actually a critical curve or a
 25 yaw mark.

1 Q And can you tell us what the
 2 significance of that is?
 3 A It means that the vehicle is going too
 4 fast to make a corner, which leaves black marks on
 5 the road. They've turned too -- too sharp, and
 6 that's when you almost start into a slide, and that's
 7 what leaves the tire marks on the highway.
 8 Q Does it appear that those marks crossed
 9 the yellow line?
 10 A They do.
 11 Q Is that called a fog line?
 12 A Yes, sir.
 13 Q Okay. And the next photograph, which is
 14 No. 18?
 15 A That's correct.
 16 Q And can you tell us why you took this
 17 photograph?
 18 A This is basically at the start of the
 19 accident, where he first ran off the road, where the
 20 left tires first ran off the road.
 21 Q So now we are looking the other
 22 direction; is that right?
 23 A You are now looking back eastbound.
 24 Q And from where you took those last
 25 photographs we just took -- we looked at, can you

1 just show us where you would have been in taking
 2 those photographs?
 3 A I would have been approximately in that
 4 area right there.
 5 Q Okay. And can you identify in this
 6 photograph the areas where you can first see the tire
 7 marks leaving the road?
 8 A You can. It's approximately right in
 9 that area right there, and you could see the tire
 10 mark going right up in there. You can see where the
 11 tire is rolling. Then you can all of a sudden see
 12 where there's some type of evasive action taken, and
 13 that's where the tire starts to -- you either turn
 14 your tire or slam on your brakes or something to that
 15 effect to take that evasive action.
 16 Q And then in the upper left part of that
 17 photograph, can you just tell me what all those
 18 vehicles are?
 19 A That is where the automobile accident
 20 ended. It ended in the westbound lane of traffic.
 21 That appears to be a wrecker.
 22 Q Is that your truck in there?
 23 A No. But my vehicle should be back there
 24 somewhere. I think that -- I don't...
 25 Q Okay. And that sign on the right, do

1 Q And based on those tire marks, in your
2 experience, would he have been in the right-hand lane
3 or the slow lane when he made that sudden left turn?

4 A He was, yes, sir.

5 Q And can you -- okay. Are you -- can you
6 identify where the tire marks are in this photograph
7 so we can --

8 A Tire marks here. See, they are coming
9 from the slow lane of traffic. They are not a whole
10 lot -- the vehicle wasn't from here. It was here,
11 trying to make this corner like that.

12 The vehicle is now spun around to where
13 it's just about facing across -- facing from this
14 lane of traffic over to this lane of traffic. The
15 mark right there is the right-side front tire, and
16 the mark over here is the right-side rear tire.

17 The vehicle has spun around. It's
18 facing this direction. However, it's sliding this
19 direction. So the front of the vehicle is facing
20 this way. The momentum, of course, as you can see,
21 is still moving in that direction.

22 Q And, Trooper Pace, did you -- when you
23 were documenting the scene, did you walk up the
24 roadway far enough to be able to satisfy yourself
25 that you took all the evidence of the tire marks on

1 It's metal to whatever the surface of the road is,
2 and it will generally make a gouge mark of some sort.

3 Q And what do the tire marks look like?

4 A I'm not -- I don't understand what you
5 are asking.

6 Q But in -- have you investigated any
7 accident where there's a broken tie rod and there are
8 tire marks that are on the road that indicate
9 basically a broken front-end suspension or steering?

10 A The tire marks are not -- there's not
11 going to be much of an indication on a tire mark.
12 It's just a metal to the road mark, because your tire
13 mark is, generally speaking, going to stay straight,
14 but -- so you don't have a lot of tire marks, but you
15 do have the gouge in the road from the metal part of
16 the vehicle gouging into the roadway.

17 Q Did you find any gouge marks or tire
18 marks that indicated that the tires on this
19 vehicle -- the front tires on this vehicle were no
20 longer connected to the steering system?

21 A I did not.

22 Q Moving on to the next photograph, which
23 I believe is photograph 24, can you tell us what we
24 are looking at in this photograph in relation to the
25 last?

1 the roadway that occurred from this accident?

2 A I did.

3 Q And did you find any other tire marks
4 other than what are in your photographs?

5 A I found no other marks indicating any
6 accident.

7 Q Did you find any marks from the accident
8 on the right side of the fog line on the right
9 shoulder of the road?

10 A I did not.

11 Q Okay. And did it appear to you that
12 this driver had drifted off to the right side of the
13 road initially?

14 A No, it did not.

15 Q And in looking at those tire marks, did
16 you see any evidence on the road of any sudden
17 mechanical failures involving the wheel?

18 A I did not.

19 Q And in your experience, have you seen
20 that before in other types of accidents where there
21 may be a broken tie rod, for instance?

22 A I have.

23 Q And in your experience, what does that
24 look like on the road?

25 A It will generally gouge into the road.

1 A Again, I've just moved further east.

2 The last one is back here. I've moved real quite
3 close to where the marks starts. Again, they're just
4 showing the marks and just before it goes off the
5 highway.

6 Q And, again, which tire mark is the right
7 front tire?

8 A It is that one.

9 Q And why would the right tire be on the
10 left side of the photograph?

11 A Because the vehicle is now facing back
12 this direction.

13 Q So it's rotated clockwise?

14 A It's rotated --

15 Q Or counter --

16 A -- counterclockwise.

17 Q About how far, in your estimation?

18 A It would be over halfway. No, it
19 wouldn't quite be halfway. It'd just be almost to
20 the halfway mark.

21 Q So almost a 90-degree left turn?

22 A Correct.

23 Q And turning to the next photograph,
24 which is photograph No. 17, can you orient us what we
25 are looking at in this photograph in relationship to

1 Q And were you able to identify any
 2 particular areas in these photographs where there
 3 were impact marks in the median?
 4 A No, not particularly good impact marks.
 5 But it shows kind of where a vehicle had hit, but
 6 they aren't really good impact marks.
 7 Q And do you recall whether or not there
 8 was an impact mark down in the bottom of the median
 9 that was significant?
 10 A I do not.
 11 Q And do you -- how long ago was that?
 12 A It was in 1998.
 13 Q I think we'll move to the next
 14 photograph, which I believe is photo exhibit No. 8.
 15 Do you have that?
 16 A This is photograph No. 20, is the one
 17 that I have.
 18 MR. LARSEN: Excuse me. Let's just go
 19 to the next one.
 20 Thanks.
 21 Q (BY MR. LARSEN) Now we are looking at
 22 photo exhibit 15? Can you tell us what we're looking
 23 at in relation to the last?
 24 A Would you like me to find it in here,
 25 because I have -- my next one was No. 20.

1 A Just mark where the tires are, and the
 2 mark going away from the vehicle is where the axle
 3 is.
 4 Q And other than the front windshield and
 5 that little side window on the right rear passenger
 6 door, was all the glass broken out of this vehicle?
 7 A I believe all of the glass was broken
 8 out but the windshield and that little piece.
 9 Q And is there a reason why on the right
 10 side of this vehicle it doesn't appear to be
 11 scratched or damaged as much as maybe the left side?
 12 A There is. And, again, that comes back
 13 to the law of physics. When a vehicle rolls, it's
 14 going to roll past that area. Because it's rolling
 15 that direction, it rolls past that area up and the
 16 force of the impact comes down on the other side of
 17 the vehicle, because that's just the way it has to
 18 happen.
 19 Q And can you identify with the marker
 20 where on this photograph the accident would have
 21 started in relationship to where we are looking at
 22 where it ended?
 23 A Almost back there where you can see the
 24 vehicle start around the little corner.
 25 Q That's quite a distance that it rolled?

1 Q If you can just look at the one on the
 2 overhead, maybe that will be easier to move along.
 3 A Again, that's just moving down the scene
 4 again a little bit further. There's the delineator
 5 post we was looking at. There's the marks coming off
 6 of the highway and the debris scattered throughout
 7 the scene.
 8 Q And then moving on to the next
 9 photograph, which I believe is No. 1, can you tell us
 10 what we are looking at in this photograph?
 11 A I can. That is the final rest of the
 12 vehicle. That's where it came to rest, and it's
 13 the -- that's where I found it when I arrived at the
 14 scene.
 15 Q And did you put this -- the orange spray
 16 paint on the road?
 17 A I did.
 18 Q And what does that indicate?
 19 A It is -- it indicates where the tires
 20 ended up. But the reason you put it there is if in
 21 case the vehicle gets moved before you get around to
 22 diagramming or photographing or something like that,
 23 you've got a true recollection of where it was.
 24 Q And do you use certain symbols on the
 25 tire marks to identify the orientation of the tire?

1 A It's quite a distance, yes, sir.
 2 Q And on the right-side rear tire, does it
 3 appear that there's damage to the wheel of the rim?
 4 A The right-side rear tire is flat, yes,
 5 sir.
 6 Q And the wheel of the rim?
 7 A It is damaged also in that area.
 8 Q Moving on to the next photograph, which
 9 is photo 13, what is the purpose of taking that
 10 photograph?
 11 A When you photograph a vehicle in an
 12 accident scene, I always try to get all four sides of
 13 the vehicle so you get a perfect view of what the
 14 vehicle actually looked like.
 15 That shows mainly right there that the
 16 windshield was still intact.
 17 Q And as you said before, is the left side
 18 more damaged than the right?
 19 A Yes, it is.
 20 Q And that's consistent with the law of
 21 physics that you explained?
 22 A It is.
 23 Q And did you ever try to investigate what
 24 had broken that -- well, why the right front wheel
 25 was turned in like that?

1 A I did not.
 2 Q Okay. Did that appear to be significant
 3 at all in investigating this accident?
 4 A It did not at the time, no, sir.
 5 Q And why not?
 6 A Because back on the road, before you
 7 could see where it was -- where it come off the
 8 highway, all four tire marks, you could see -- at
 9 least all three you could see really well. Going
 10 back to recollection, I think that I could possibly
 11 see a little bit of the fourth one also, but it
 12 didn't show up in the photographs. So there was
 13 nothing showing that there was anything broken on the
 14 vehicle before it left the highway.
 15 Q I show you an enlargement of one of
 16 these photographs, which is marked as Plaintiffs'
 17 Exhibit 23-17, and ask if you can take a look at that
 18 photograph and if you can identify a fourth mark in
 19 that photograph.
 20 A It appears to me that it's right there.
 21 I haven't seen this blown-up photograph before.
 22 Q You mean that quality of a photograph?
 23 A That quality of a photograph.
 24 Q That's the same photograph we saw
 25 before, but it's just a little bit clearer?

1 Q And how did you make that conclusion?
 2 A The seat belt appeared to be working
 3 properly, and he had been thrown out of the vehicle.
 4 Q And do you know if the occupant on the
 5 passenger side was wearing a seat belt?
 6 A To my recollection, she was still
 7 seat-belted in the vehicle when the emergency
 8 personnel arrived.
 9 Q Okay. And is whether or not the
 10 occupants are belted or not something that's
 11 indicated in your investigation report?
 12 A It is.
 13 Q And what did your investigation report
 14 indicate regarding the driver seat belt?
 15 A In my report, it shows that was not
 16 wearing a seat belt.
 17 Q And where does that -- where is that
 18 indicated on the report?
 19 A It is about in the middle of the page.
 20 It shows the driver is -- driver's license number,
 21 his date of birth. And then again it has codes --
 22 little box codes that you get off of this. It
 23 says --
 24 THE COURT: Which exhibit is that
 25 referring to?

1 A It is.
 2 Q Okay. And is the location of that tire
 3 mark consistent with coming from this accident?
 4 A That's correct.
 5 Q And moving on to Exhibit No. 14, did you
 6 inspect the driver's area of the vehicle?
 7 A Sorry.
 8 I did.
 9 Q And why did you take this photograph?
 10 A Basically, for the seat belt and the
 11 seat being intact, if I remember correctly.
 12 Q Did there appear to be any damage to the
 13 center console?
 14 A There did not, no, sir.
 15 Q Did there appear to be anything between
 16 the center console and the seat belt latch?
 17 A There did not, no, sir.
 18 Q And did you draw any conclusions as to
 19 whether or not the driver was restrained or
 20 unrestrained based on the photograph and your own
 21 investigation?
 22 A I did.
 23 Q And what was your conclusion?
 24 A My conclusion is he was not wearing his
 25 seat belt.

1 THE WITNESS: 22.
 2 THE COURT: 22?
 3 THE WITNESS: The little box says
 4 "Safety equipment." And if you go back to the key,
 5 safety equipment No. 3 says there was none worn.
 6 It's right there.
 7 MR. LARSEN: Can you blow that up?
 8 THE WITNESS: Right there.
 9 Q (BY MR. LARSEN) Okay. And it says "Safe
 10 equip"? Is that what it says for that box?
 11 A I think that's what it says.
 12 Q And is that your writing that says "no"
 13 or is that somebody else's?
 14 A It is not my writing, no, sir.
 15 Q And you just typed in the number "3"?
 16 A I did or the secretary did.
 17 Q And then down with the passenger, let's
 18 take a look and see. Is there a similar box for
 19 that?
 20 A There is.
 21 Q And is that down --
 22 A It's right --
 23 Q -- on the bottom page?
 24 A -- there.
 25 Q And what does the number "2" indicate?

1 A The number "2," according to the key,
 2 means yes.
 3 Q Meaning yes, that restrained?
 4 A That was restrained.
 5 Q Okay. On this photograph or -- excuse
 6 me -- on your report, are there certain boxes on the
 7 left-hand side of the report that indicate conditions
 8 at the scene of the accident?
 9 A I believe that's on the left-hand side,
 10 these key boxes here.
 11 Q And can you use that code key and kind
 12 of walk us through what those -- what those
 13 indicators are that you recorded in your accident
 14 report and what they mean?
 15 A I could if I could see it.
 16 Q Do you need more light?
 17 A This low light, I'm having a hard time
 18 seeing.
 19 That's better.
 20 Q That kind of fades it out for us to see
 21 it as well.
 22 THE COURT: You should refer to the
 23 exhibit, yes.
 24 Q (BY MR. LARSEN) And on the left-hand
 25 side, does that indicate what that -- the weather

1 conditions, the road conditions were at the time?
 2 A It does.
 3 Q And what does your report indicate?
 4 A It would be right in there, and it says
 5 a "1" and No. 1 is clear.
 6 Q Okay. And that's consistent with the
 7 photographs that were taken on that day?
 8 A That's correct.
 9 Q And then on the right side of this
 10 report, are there codes that indicate what the causes
 11 of the accident are in your --
 12 A Yes, there is.
 13 Q And can you identify which box indicates
 14 what the cause of the accident is?
 15 A I think No. 19, right there, is the
 16 prime contributor.
 17 Q And that little box, then, on the
 18 right-hand side has "19" up in the little right-hand
 19 corner?
 20 A Right there is the 19.
 21 Q Okay. And --
 22 A And the cause -- I have put down as the
 23 cause -- according to this key, I put down No. 12.
 24 Q And what does that indicate?
 25 A Which is asleep.

1 Q And so what does that mean when you say
 2 it's a prime contributor?
 3 A That's what was the most likely cause of
 4 the accident.
 5 Q And why did you choose "asleep"?
 6 A Because that's what my investigation and
 7 what I went through showed me, that it was either
 8 inattentive driving or asleep.
 9 Q And were there any other contributors
 10 that you listed on your accident report?
 11 A Secondary contributor would be under
 12 No. 21 right there. I put down "01."
 13 Q What does that mean?
 14 A Which is speed too fast.
 15 Q And why did you indicate "speed too
 16 fast"?
 17 A Because I felt that, when you are
 18 asleep, any type of speed is too fast.
 19 Q And, Trooper Pace, did you get any
 20 information from the occupant, Ms. Montoya, as to
 21 whether or not she was wearing her seat belt?
 22 A I don't recall actually getting any
 23 information, no, sir.
 24 Q And did you get any information from her
 25 about whether or not she was awake or asleep during

1 the accident?
 2 A As far as memory, no, sir, I don't.
 3 Q It's been too long?
 4 A It's been too long ago.
 5 Q Do you know if you talked to her?
 6 A I don't know that I talked to her, no,
 7 sir.
 8 Q And do you seem to have a recollection
 9 of going to the hospital in Evanston?
 10 A I do.
 11 Q And what did you do at the hospital?
 12 A Again, going back strictly memory, I can
 13 remember talking to the doctor and I think I remember
 14 talking to the passenger also.
 15 Q And do you know what information you got
 16 from the doctor or passenger?
 17 A Talking to the doctor, I remember him
 18 telling me it was a fatality.
 19 Talking to the passenger, I -- again,
 20 it's just sheer memory, and it could be another
 21 person, but I remember asking her if she remembers
 22 anything about the --
 23 MR. EMBLEM: No foundation, your Honor.
 24 THE COURT: Sustained.
 25 MR. LARSEN: No. It's sustained.

1 THE COURT: I sustain the objection.
 2 Your next question.
 3 Q (BY MR. LARSEN) Trooper Pace, after
 4 completing your investigation and completing your
 5 report and taking the photographs, can you please
 6 give us what your general conclusion was as to what
 7 the cause of the accident was and why this vehicle
 8 rolled over?
 9 A My general conclusion was either the
 10 driver was asleep or it was inattentive driving. He
 11 was either picking something up or something like
 12 that. Ran off the road to the left, overcorrected
 13 back to the right, overcorrected back to the left.
 14 Q And did you find any evidence or
 15 information at the scene or from any of the witnesses
 16 that would indicate that there was some kind of a
 17 sudden event that initiated this accident sequence?
 18 A No, I did not.
 19 Q Okay. Did -- and in your investigation
 20 of the physical evidence, what appeared to initiate
 21 the accident sequence?
 22 A To initiate the sequence was when he ran
 23 off the road, when he straightened out the corner.
 24 Q And can you give us an estimate as to
 25 how many accidents in your career that you have

1 does everything in this accident investigation seem
 2 consistent with an asleep driver?
 3 A It is very consistent with somebody
 4 being asleep.
 5 Q And then after the accident, did you
 6 have a meeting with Fred Clayton?
 7 A To my recollection, yes, I did, sir.
 8 Q And when you met with Mr. Clayton, was
 9 that -- can you tell me everything you remember about
 10 your meeting with Mr. Clayton?
 11 A I remember being at the scene with
 12 Mr. Clayton and going through the accident with
 13 Mr. Clayton.
 14 Q And did you explain to Mr. Clayton what
 15 your findings and conclusions were from your accident
 16 investigation?
 17 A I did.
 18 Q And how did Mr. Clayton react to that?
 19 A Mr. Clayton was very upset and for a
 20 very good reason, yeah. He was a very, very nice
 21 gentleman, and we just went through the accident
 22 scene. And I have -- I couldn't read what he was
 23 saying. He never said anything about that, but we
 24 just talked about his boy and the accident scene.
 25 Q Did Mr. Clayton appear to disagree with

1 investigated over the years that involved inattentive
 2 or sleeping drivers, at least in a percentage?
 3 A Percentage is probably -- again, on the
 4 interstate highways, it's probably around the
 5 50 percent mark out in the big rural areas and long
 6 driving. I've probably investigated 30 to 40 a year,
 7 I would presume.
 8 Q Along this same stretch of highway
 9 between Echo Junction and Evanston?
 10 A They all wouldn't be in that area, no.
 11 Just all of the interstates in the areas that I
 12 covered.
 13 Q And in these inattentive or asleep
 14 driver accidents, rollover accidents, that you have
 15 investigated, do they often occur during the day?
 16 A They do.
 17 Q And in your experience, why would that
 18 occur during the day rather than at night as well?
 19 A They do occur at night also, but they
 20 also occur during the day. It's just dozy and warm
 21 and nice and radio going, and you just kind of drift
 22 asleep. You just nod off to sleep.
 23 Q And comparing this accident to your
 24 experience of other accidents that you have
 25 investigated with sleeping or inattentive drivers,

1 your conclusions as to what the cause of the accident
 2 was?
 3 A I don't remember any disagreement, no,
 4 sir.
 5 Q Did he disagree with your conclusion
 6 that his son fell asleep?
 7 A I -- again, I don't remember any
 8 disagreement.
 9 Q And did -- do you recall Mr. Clayton
 10 saying anything about how his son couldn't have
 11 caused the accident?
 12 A I don't remember that, no, sir.
 13 Q Or that his son always wore his seat
 14 belt?
 15 A I don't remember that either.
 16 Q Did Mr. Clayton say anything to you that
 17 he had any suspicions or concerns that maybe the
 18 vehicle was defective and caused the accident?
 19 A I don't recall any conversation like
 20 that either.
 21 Q Okay. And just one more area that I
 22 wanted to cover, about how fast was he going when he
 23 drifted off the road to the left-hand side?
 24 A Our investigation showed him about the
 25 speed limit, 75 miles per hour.

1 Q What apartment number do you have for
 2 Mr. Clayton?
 3 A What is that, sir?
 4 Q What apartment number do you have for
 5 Mr. Clayton?
 6 A 76.
 7 Q And apartment number for Ms. Montoya?
 8 A It looks like No. 66.
 9 Q We didn't go through the dimensions that
 10 were taken by the other two officers on your direct
 11 examination.
 12 A Correct.
 13 Q Right?
 14 But do you know where the -- what the
 15 permanent marker was selected by them to take their
 16 measurements from?
 17 A I do not know, no, sir.
 18 Q Does the report give you any clue?
 19 A It should, yes, sir.
 20 Q Is that a requirement that they identify
 21 the permanent marker from which you are going to take
 22 your measurements?
 23 A A requirement?
 24 Q Yes.
 25 A I don't know whether you would call it a

1 requirement, but you should find something pretty
 2 stable that's going to be there for a long time.
 3 Q Is that a policy or protocol, based upon
 4 your training and experience, that such a place is
 5 correctly marked on the report so that it may be
 6 later reviewed for accuracy?
 7 A I don't believe "policy" or "protocol"
 8 is the word that you want, but that -- that's how you
 9 draw a diagram.
 10 Q Okay. Based upon the training, the
 11 officers taking the measurements would select the
 12 permanent marker?
 13 A That's correct.
 14 Q And that permanent marker would be
 15 indicated then on the detail of the scene
 16 reconstruction?
 17 A That's correct.
 18 Q Is that a reconstruction?
 19 A Yes, sir.
 20 Q Is that the correct term, the officers
 21 have reconstructed the accident scene based upon the
 22 evidence which they found?
 23 A Not reconstructed, no, sir.
 24 Q Okay. So it is not a reconstruction?
 25 A It is not a reconstruction.

1 Q It is -- would it be fair to say that it
 2 is merely a -- I'm thinking of Sergeant Joe Friday on
 3 Dragnet -- just the facts?
 4 A Just the facts.
 5 Q Okay. And concerning just the facts,
 6 just the fact that Mr. Clayton was found outside of
 7 the vehicle was the basis of your opinion that he was
 8 not belted?
 9 A Yes, sir.
 10 Q And just the fact that the seat belt
 11 appeared to operate when you checked it out later
 12 indicated to you that it was probably not connected?
 13 A That's correct.
 14 Q Now, during your training, I think you
 15 went two or three times to two weeks of training and
 16 in one of those programs you were shown how seat
 17 belts operate?
 18 A That's correct.
 19 Q And were you also shown how seat belts
 20 sometimes don't latch?
 21 A We was.
 22 Q All right. And, in fact, sometimes they
 23 don't latch; isn't that true?
 24 A That's correct.
 25 Q All right. And but you didn't factor

1 that into your analysis in Mr. Clayton's case as
 2 being a possibility?
 3 A I didn't put it down as a possibility,
 4 no, sir.
 5 Q And concerning just the facts, you don't
 6 have any facts, other than the fact that Mr. Clayton
 7 left the road, that he was asleep?
 8 A That's correct.
 9 Q And you don't have any fact that he was
 10 inattentive either?
 11 A That is also correct.
 12 Q And I think you testified that the
 13 rumble strips are placed on the highway to alert a
 14 driver when they've left the road?
 15 A Correct.
 16 Q Now, is that because leaving the road is
 17 a very common occurrence?
 18 A I'm sure it is, yes, sir.
 19 Q Something that auto manufacturers have
 20 to take into consideration?
 21 MR. LARSEN: Objection. Foundation.
 22 THE COURT: Sustained.
 23 Q (BY MR. EMBLEM) But certainly the
 24 investigating officers take that into consideration.
 25 Were you able to determine how many rumble strips had

1 been run over by Mr. Clayton?
 2 A I do not recall that, sir.
 3 Q And how far apart are the rumble strips
 4 along that stretch of highway?
 5 A I have no idea, sir.
 6 Q Is that measurement indicated anywhere
 7 in the police diagram that was drawn by the officers
 8 who took the physical measurements at the scene?
 9 A I have no idea. I haven't examined
 10 that.
 11 Q Could you take a look at it there
 12 briefly and see if that information is contained in
 13 there?
 14 A From what I'm looking at, I see it
 15 nowhere on the field diagram.
 16 Q I see you are looking at the second page
 17 of that. Let me just ask you if this is the same as
 18 that, and if it is, I'll trade you for the original.
 19 A They're both copies, but --
 20 Q Can we put this -- but this one is the
 21 official record. Let me display this one,
 22 Exhibit 22, page 2.
 23 MR. EMBLEM: May I have the lights down,
 24 please?
 25 Thank you.

1 Q (BY MR. EMBLEM) I'm looking in the upper
 2 left corner. Do you see that part of the form there?
 3 A I do.
 4 Q Now, that indicates who diagramed the
 5 scene; is that correct?
 6 A That's correct.
 7 Q And you mentioned their names earlier,
 8 Jeff Peterson and Paul Brown?
 9 A That is correct.
 10 Q The date and time that's indicated here
 11 on the form, was that the date and time that these
 12 officers took the measurements?
 13 A I have no idea, sir. I didn't do that
 14 part of the accident investigation.
 15 Q And you have not tried to plot these
 16 dimensions here to see if they were correct; is that
 17 correct? Am I right?
 18 A I did not, no, sir.
 19 Q At point D there, I see that -- where it
 20 says "letter location" -- you understand how this
 21 form is filled out? I'm pretty sure about that.
 22 A I do.
 23 Q And it has "A, B, C, D" going down that
 24 second column?
 25 A Right.

1 Q Is it appropriate or inappropriate to
 2 actually put that "A, B, C" or "D" over on the
 3 diagram part of this so a person could figure out
 4 what they meant?
 5 A Is it appropriate? Was that the
 6 question?
 7 Q Right.
 8 A It is.
 9 Q Should they have done that?
 10 A Yes, they should have.
 11 Q But they didn't?
 12 A I can't see it, no, sir.
 13 Q Well, coming down that column there
 14 that's got "A, B, C" and "D" in it, can you tell us
 15 what is being reported there in "D"? Something
 16 "leaves the" some "shoulder"?
 17 A It was probably photographed from a copy
 18 like this that has the holes put in it, by the looks
 19 of it to me, but I can't -- I don't know whether it
 20 would be "tire" or "vehicle" or what it would be.
 21 Q Do you have any other notes in your file
 22 of the investigation which you have conducted related
 23 to this crash?
 24 A I do not, no, sir.
 25 Q So you have no notes of any interviews

1 you had with anybody?
 2 A I don't.
 3 Q And you arrived at the scene at what
 4 time?
 5 A I believe it was 1415, but you have
 6 that -- I arrived at the scene at 1450, 5-0.
 7 Q 5-0, okay.
 8 That's ten minutes before 3:00 in the
 9 afternoon?
 10 A Correct.
 11 Q And what time did you get the call?
 12 A I think 1415, if I'm not mistaken.
 13 Q So Ms. Montoya was already gone when you
 14 arrived?
 15 A To my recollection, yes.
 16 Q The ambulance was already gone when you
 17 arrived?
 18 A To my recollection, yes.
 19 Q And, of course, Mr. Clayton was already
 20 gone?
 21 A To my recollection, yes, sir.
 22 MR. EMBLEM: Is it time for a break,
 23 your Honor?
 24 THE COURT: Let's go for a few more
 25 minutes.

1 MR. EMBLEM: Okay.
 2 Almost all of them.
 3 Q (BY MR. EMBLEM) I'm going to show you a
 4 few of the photos of the vehicle at rest at its final
 5 location, starting with --
 6 THE COURT: Wendy, we need the lights
 7 up, please.
 8 Q (BY MR. EMBLEM) -- Plaintiffs' 23-5.
 9 Thank you very much. Can you see that okay?
 10 A I can.
 11 Q Okay. You took this photograph?
 12 A I presume I took this photograph.
 13 Q All right. You recall the firefighters
 14 still being there?
 15 A I don't recall very much, no, sir.
 16 Q Do you recall the fire hose still
 17 running on the road?
 18 A I do not.
 19 Q Okay, 23-21. Did you inventory the
 20 contents of the vehicle?
 21 A I don't remember, sir.
 22 Q If you had, would it be on the police
 23 report that we just looked at?
 24 A It would not, no, sir.
 25 Q Did you inspect the vehicle to determine

1 whether there was an open container or some other
 2 kind of drugs or contraband?
 3 A I'm sure I did, but I don't remember
 4 doing that.
 5 Q And if you had found something, you
 6 certainly would have made a record of that?
 7 A That's correct.
 8 Q No medication? Nothing which might have
 9 been a contributor?
 10 A There is no record of anything like
 11 that.
 12 Q 23-23. Did you make any inquiry
 13 yourself as to when -- did you try to determine when
 14 the tires blew out?
 15 A I'm sure we probably did, but I don't
 16 remember.
 17 Q And if it had been important to your
 18 investigation, you would have made a note of it.
 19 Would that be fair enough?
 20 A That's correct.
 21 Q 23-1, the photograph here shows the
 22 right front tire turned completely to the left?
 23 A That's correct.
 24 Q And you don't recall making any
 25 particular note regarding that?

1 A I don't, no, sir.
 2 Q And if it was important to you, you
 3 would have; is that correct?
 4 A That's correct.
 5 Q Looking at the front view of 23-13,
 6 there we see the right front wheel turned completely
 7 to the left; correct?
 8 A Correct.
 9 Q And we see the left front wheel just
 10 maybe barely turned to the left. Would that be a
 11 fair statement?
 12 A That's correct.
 13 Q There is a huge difference or
 14 discrepancy between the angle of the two wheels?
 15 A Correct.
 16 Q But you have no independent recollection
 17 of that?
 18 A I do not, no, sir.
 19 Q And if you had found it to be important,
 20 you would have made a note of it?
 21 A That's correct.
 22 Q And there's no note in the police
 23 report?
 24 A There is not.
 25 THE COURT: I think with that,

1 Mr. Emblem, let's take our morning break.
 2 Mr. Pace, you may step down. Please
 3 watch your step on the way down.
 4 Ladies and gentlemen of the jury, we'll
 5 take our morning break and be in recess until ten
 6 minutes to 11 o'clock, which is, of course, 10:50.
 7 During this break, you are not to form or express any
 8 opinions among yourselves or with others.
 9 We'll be -- you are excused, and we will
 10 be in recess until 10:50.
 11 THE BAILIFF: All rise.
 12 (Jury excused and recess taken.)
 13 THE BAILIFF: All rise.
 14 (Jury entered.)
 15 THE COURT: We are back in the matter of
 16 Clayton versus The Ford Motor Company, and it appears
 17 to me everyone is present who needs to be present.
 18 The jury is in the box.
 19 Mr. Pace is testifying. Mr. Emblem is
 20 doing the cross-examination.
 21 Mr. Pace.
 22 Q (BY MR. EMBLEM) Mr. Pace, I started to
 23 call you "officer" earlier, and you said, "No, I'm
 24 retired."
 25 A Retired.

1 Q Do you prefer to be called Mr. Pace now
2 that you are retired?
3 A I do.
4 Q Now, when you took the photographs here,
5 can you tell me where you had parked your car related
6 to these photos, Exhibits 23-15, 13, 23-5, 23-1?
7 A I cannot recall that, but it would be --
8 looking at that, it would be somewhere around the
9 fire truck area.
10 Q Maybe behind --
11 A Again, to protect the scene for the
12 lights so that people could see coming into the
13 scene.
14 Q I see. Let me show you an overhead, an
15 aerial photograph, which has been marked as
16 Exhibit 24. Can you see that okay from there?
17 A Better from there than up there.
18 Q Is it -- does it look like the piece of
19 highway in question?
20 A It does. I don't see any real marks
21 that stand out, but it -- it does.
22 Q If I had told you the Amoco tanks were
23 down here somewhere, would that be --
24 A That is the main thing I was trying to
25 find.

1 Q Kind of an orientation?
2 Let me ask you just a couple of things
3 here about this. I think we've identified earlier
4 that these are the westbound lanes with another
5 witness and these are the eastbound lanes, and that
6 this thing here is that green sign that we've been
7 talking about. That's from earlier testimony.
8 Does that help you orient to the aerial
9 photograph?
10 A It does.
11 Q Let me ask you about -- all of these
12 marks in the median here where the -- apparently
13 vehicles have driven through there, is that common
14 out on the interstate?
15 A Common, but illegal.
16 Q Isn't that where the police and the
17 safety vehicles make a turn around when they need to
18 go the other way?
19 A Correct.
20 Q And when -- you were coming from the
21 west, coming east, responding to this call; is that
22 correct?
23 A I would presume, yes, sir.
24 Q Did you go on up to the Port of Entry to
25 turn around, or maybe you just cut across here

1 like --
2 A I'm sure I would have cut across
3 somewhere.
4 Q So a lot of the marks we see here on the
5 scene, you know, may not be related to this accident?
6 A That's correct.
7 Q Would that be a fair statement?
8 In particular, I'd like to draw your
9 attention to Exhibit 23-17, and if you recall that
10 counsel was asking you about this mark and related to
11 the fact you had testified that there was three tire
12 marks that you identified at the point the vehicle
13 left the road for the last time; correct?
14 A Correct.
15 Q And he asked you about this phantom mark
16 here, as to whether that could or could not be
17 related to this incident?
18 A Correct.
19 Q Did you arrive at any opinion concerning
20 that?
21 A I did not.
22 Q And you didn't identify it as being
23 related to the -- to this incident?
24 A I do not, no, sir.
25 Q And, indeed, the officers that took the

1 measurements likewise didn't take any measurements of
2 that mark?
3 A That I don't know. I did not go over
4 their field sketch.
5 Q But counsel asked you in particular
6 about the gravel that got thrown back up on the road
7 here.
8 A Correct.
9 Q Did you have any idea that this was a
10 four-wheel vehicle, meaning an off-road kind of a
11 vehicle?
12 A I'm sure we did, yes, sir.
13 Q It was a Ford Explorer; correct?
14 A Correct.
15 Q Did you know anything about the control
16 track system and how that four-wheel drive apparatus
17 worked?
18 A I did not look at that, no, sir.
19 Q So you didn't make any determination as
20 to whether the four-wheel drive had kicked in and
21 somehow thrown him off of the highway?
22 A I did not.
23 Q We'll look now at 23-24, which is -- can
24 you see it okay?
25 A I can.

1 re-entered the road?

2 A There is a distance, yes, sir.

3 Q Okay. In that earlier photo, we
4 identified the two tire marks as crossing the same
5 rumble strip. Do you remember that?

6 A Uh-huh, I do.

7 Q I'm going to show you 23-26. Is this a
8 tire mark?

9 A Looks like a tire mark to me.

10 Q Is that related to this crash?

11 A I have no idea.

12 Q I'm going to show you now Plaintiffs'
13 Exhibit 23-7. Counsel asked you about this photo
14 earlier --

15 A Correct.

16 Q -- and about this marker being bent
17 over.

18 Other than the fact that it is bent, did
19 you identify any other evidence that said that the --
20 this Explorer hit it?

21 A I do not recall, no, sir.

22 Q And this photo also shows a skid mark in
23 the westbound lanes. Do you see that?

24 A It doesn't look like a skid mark to me,
25 but --

1 THE BAILIFF: We're okay. It's just --
2 we're okay. It's just a test. You may proceed.

3 MR. EMBLEM: A test.

4 Q (BY MR. EMBLEM) Concerning all of the --
5 your training, procedure and protocol, I suppose, of
6 working with the highway department or Highway
7 Patrol, would it be your typical accident scene
8 investigation to inventory the debris?

9 A Not protocol, not -- a lot of times it
10 was picked up by the wrecker divers themselves,
11 generally speaking.

12 Q Okay. Is there any concern on the part
13 of the highway department -- Highway Patrol to
14 protect the personal possessions of the person that's
15 been in the crash?

16 A There is, and we will go back through
17 and make sure that it's all been picked up.

18 Q 23-6, is this your car back there with
19 the lights on?

20 A It looks like it.

21 Q Okay. That's the appearance of a Utah
22 Highway Patrol vehicle in those days?

23 A That's correct.

24 Q I'll give you that re -- do you have the
25 accident report still in front of you? Do you have

1 Q Let me show you a different photo,
2 23-15.

3 A Yeah. That looks -- that one certainly
4 looks like a skid mark, yes, sir.

5 Q All right. And that's not related to
6 this crash?

7 A It doesn't look like it to me.

8 Q Concerning all the debris which is out
9 in this median, did you inventory the debris?

10 A Again, I can't recall, sir.

11 (Alarm sounded.)

12 THE COURT: I believe that to be an
13 alarm. We'll need to follow a direction on -- what
14 is our direction?

15 THE BAILIFF: Let me find out what's
16 going on real quick, Judge.

17 THE COURT: We'll give him about a
18 moment, but then we'll need to exit and leave the
19 building.

20 (Alarm discontinued.)

21 MR. EMBLEM: Should I continue?

22 THE COURT: Well, let's give it a moment
23 here. I think the alarm having stopped, maybe we
24 can -- unless we get a direction otherwise, we'll
25 just proceed forward here, Mr. Emblem.

1 the measurement page?

2 A I do not. I have a measurement page.

3 Q Did they -- the other officers that did
4 the measurements, did they measure the length of this
5 mark in the dirt?

6 A I would presume they did, but I don't
7 know.

8 Q Is it reported in the report?
9 I'll give you Exhibit 22, if that helps.

10 A The question is: Did they measure that
11 mark?

12 Q Yes.

13 A Again, it looks to me like they probably
14 did, but I'm not sure.

15 Q You can't tell from the report the
16 length of that?

17 A (Shaking head.)

18 Q When we started out, counsel asked you
19 about the many things that you undertake in
20 investigating such an accident scene, and you
21 described your training involving the use of
22 formulas, algebraic equations. Did you say drag
23 factors or friction factors, something like that?

24 A I might have done, yes.

25 Q What was the procedure that you used to

1 calculate Mr. Clayton's initial speed as reported at
2 75 miles an hour?

3 A I do not remember, sir.

4 Q And what was your procedure in those
5 days, eight years ago?

6 A I am sure, between the three of us, we
7 got together and determined the speed.

8 Q I see. Did you calculate how much speed
9 was lost when he came down that slope?

10 A I did not.

11 Q Counsel asked you about biomechanics in
12 determining the cause of injury. You didn't attempt
13 to determine the cause of injury in this case, did
14 you?

15 A I did not.

16 Q And concerning the control track system,
17 you didn't know about that, so you didn't know
18 whether to factor that into -- I'm looking at 23-26
19 here of plaintiffs -- to factor that into how that
20 might have been that Mr. Clayton regained the
21 highway?

22 A I do not remember doing that, no, sir.

23 Q You did say, though, that when
24 Mr. Clayton had reached a certain point in the middle
25 of the road, counsel asked you, well, where was it

1 where it was impossible to recover, and you qualified
2 that answer with the term like, "Well, in this type
3 of vehicle." Do you recall that?

4 A I don't remember "this type of vehicle,"
5 no, sir.

6 Q Is this type of vehicle important to
7 your determination, based upon your education and
8 experience, and where it was where -- if everything
9 was working perfectly, where it became absolutely
10 impossible to recover from this crash?

11 A The type of vehicle considered?

12 Q Yes.

13 A No, sir.

14 Q So it would make no difference to you if
15 it was a sports car or an SUV?

16 A It would not.

17 Q The fatal accident report that is
18 required by law, where is that sent?

19 A I do not remember. It was all sent in
20 by my secretary.

21 Q Counsel asked you about a broken tie
22 rod. Do you recall that?

23 A I do.

24 Q Now, in this case, we've learned that
25 the tie rod broken in the Clayton Explorer was broken

1 kind of in the middle as opposed to one end, and when
2 it's broken, neither end can reach the ground.

3 Would that affect your opinion on
4 whether or not you could tell from the marks left on
5 the scene whether there was a broken part?

6 A It wouldn't affect my opinion, but it --

7 Q Well, you said -- I think you said
8 something about having gouged the road?

9 A Correct.

10 Q So would that affect your opinion if the
11 tie rods in this case, the way they were broken,
12 could not reach the road?

13 A Yes, it could, I guess.

14 Q When the wheel slides off the -- you
15 said that this right front tire was probably not
16 turning because it was sliding sideways?

17 A That's correct.

18 Q And that just hitting the gravel would
19 cause that gravel to be thrown up on the highway?

20 A It could do, yes.

21 Q Where is the left front tire marks?
22 Where is the gravel from the left front tire?

23 A Down past this.

24 Q Oh, it's out here somewhere?

25 A More.

1 Q Okay. Now, you didn't get a picture of
2 that?

3 You have your pictures in front of you,
4 if you want to check.

5 A I have no idea.

6 Photograph No. 8 shows a little bit on
7 where it come off the highway and shows the gravel.

8 Do you want these back in order or do
9 you care?

10 Q I don't care.

11 Defendants 684-8.

12 MR. EMBLEM: Can we have the lights down
13 a little bit, please?

14 Q (BY MR. EMBLEM) Could you use your laser
15 and point out to the jury where you see the gravel
16 from the left front tire?

17 A It looks to me that that is probably
18 where it is.

19 MR. EMBLEM: Okay. Could we have the
20 lights back up, please?

21 Q (BY MR. EMBLEM) Counsel asked you about
22 the lack of scratches on the right side of the
23 vehicle, and you said the reason for that is laws of
24 physics?

25 A Some, yes, sir.

1 Q What laws of physics?
 2 A Beats me. Just in my training, that's
 3 what they told us.
 4 Q Okay. Did you get trained by Ron
 5 Probert, by any chance?
 6 A I did not.
 7 Q That accident report is missing some
 8 kind of critical information, and you don't have your
 9 notes of any investigation that you did and you don't
 10 have any independent recollection. All we can refer
 11 to is the report and the photographs to assist you
 12 with your testimony. Am I correct?
 13 A You are correct.
 14 MR. EMBLEM: Okay. Your Honor,
 15 plaintiffs moved to strike the entire testimony of
 16 Officer Pace, particularly related to any conclusions
 17 or opinions which border on expert opinions.
 18 THE COURT: The motion is overruled.
 19 MR. EMBLEM: Nothing further.
 20 MR. LARSEN: Just one quick area,
 21 Trooper Pace.
 22 REDIRECT EXAMINATION
 23 BY MR. LARSEN:
 24 Q Did you -- these photographs were taken.
 25 Were these taken because it was understood or

1 STATE OF UTAH.)
) SS:
 2 COUNTY OF SALT LAKE)
 3 THIS IS TO CERTIFY that the foregoing trial
 4 proceedings were taken before me, CATHERINE L.
 5 KENNEDY, a Certified Shorthand Reporter and Notary
 6 Public in and for the State of Utah, residing at Salt
 7 Lake County, Utah.
 8 That said trial proceedings were reported by me
 9 in Stenotype and thereafter caused by me to be
 10 transcribed into typewriting, and that a full, true
 11 and correct transcription of said testimony so taken
 12 and transcribed is set forth in the foregoing pages.
 13 I further certify that I am not of kin or
 14 otherwise associated with any of the parties to said
 15 cause of action, and that I am not interested in the
 16 event thereof.
 17 WITNESS MY HAND and official seal at Salt Lake
 18 County, Utah, this 2nd day of February, 2007.
 19
 20 Catherine L. Kennedy, RPR, CSR
 21
 22
 23
 24
 25

1 believed that the tire marks in these photographs
 2 related to this accident?
 3 A That's correct.
 4 Q Including, I think it was, 26-6? That
 5 one -- let me see where that one went.
 6 Rather than waste any more time, all the
 7 photographs that we went through on the overhead and
 8 as we walked through the accident scene, all those
 9 photographs related to evidence that you believe
 10 related to this accident?
 11 A That's correct.
 12 MR. LARSEN: Okay. Nothing further.
 13 Thanks.
 14 THE COURT: Any further cross?
 15 MR. EMBLEM: Nothing further, your
 16 Honor.
 17 THE COURT: Mr. Pace, you may step down.
 18 Please watch your step on the way down.
 19 THE WITNESS: Am I excused?
 20 THE COURT: Is there any objection that
 21 Mr. Pace be excused?
 22 MR. EMBLEM: No objection.
 23 THE COURT: Mr. Pace, you are free to
 24 leave.
 25 (Witness concluded at 11:26 a.m.)

Addendum 7

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1 please, into the well, right in front of me, please.
2 Raise your right hand and the clerk will swear you
3 in.
4 THE WITNESS: Right here?
5 THE COURT: That's good.
6 (The witness was sworn.)
7 THE COURT: Then if you'll have a seat,
8 please, in this chair and position yourself, if you
9 would, right up to the microphone.
10 THE WITNESS: Let me get rid of this
11 coat.
12 * * *
13 JACK BINGHAM,
14 called as a witness on behalf of the plaintiffs,
15 and having been duly sworn, testified as follows:
16 DIRECT EXAMINATION
17 BY MR. EMBLEM:
18 Q Good morning, Mr. Bingham.
19 A Good morning.
20 Q Would you please say your name and spell
21 it for the record?
22 A My name is Jack Paul Bingham, J-A-C-K
23 P-A-U-L B-I-N-G-H-A-M.
24 Q Mr. Bingham, what do you do for a
25 living?

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1 A I rebuild crashed pickup trucks and
2 Explorers.
3 Q Did you, during the course of your
4 vocation, where you earn your living, did you happen
5 to come to be aware of the Clayton Explorer?
6 A Yes.
7 Q And how did you come to be aware of the
8 Clayton Explorer?
9 A I purchased it at a live auction at
10 Copart in North Salt Lake.
11 Q What is Copart?
12 A It's a salvage pool that runs every
13 week, and dealers and salvage dealers and buyers are
14 the only one that's invited.
15 Q Are you an auto dealer?
16 A Yes.
17 Q And you purchase wrecks; is that
18 correct?
19 A Correct.
20 Q At auction?
21 A Yes.
22 Q Is Copart's a regional auction?
23 A They're a nationwide.
24 Q And the Copart here in Salt Lake, where
25 do they get their wrecks from?

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1 A Most of them, just around the area here
2 in Salt Lake.
3 Q And the -- you bought the Clayton
4 vehicle; is that correct?
5 A Correct.
6 Q The first exhibits that are right there
7 in front of you on the left have been marked as 29-A
8 and 29-B. Do you see those right in front of you?
9 A Okay. That's my right.
10 Q Well, I meant on the left end of the
11 stack.
12 A Okay. Right here?
13 Q Right here.
14 A Okay.
15 Q Do you recognize 29-A and 29-B?
16 A I do.
17 Q And what is that we're looking at?
18 A That's a '97 Explorer that I bought at
19 Copart.
20 Q Is that the Clayton Explorer?
21 A Yes.
22 Q Where were those photographs taken?
23 A They was taken out at Copart in North
24 Salt Lake.
25 MR. EMBLEM: We'd move 29-A and 29-B,

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1 your Honor.
2 MR. LARSEN: No objection.
3 THE COURT: Received.
4 (Exhibits 29-A and 29-B received.)
5 Q (BY MR. EMBLEM) I'm going to trade with
6 you for a moment and use the color photographs on the
7 overhead.
8 MR. EMBLEM: Could we have the lights
9 down just a little bit, please, Wendy?
10 Q (BY MR. EMBLEM) Exhibit 29-A, now, is
11 this the -- was this photograph taken at any -- close
12 in time at all to when you purchased the vehicle at
13 auction or do you know?
14 A This was probably their -- probably
15 their place where they checked the vehicles in.
16 Q Is it their file photo from Copart?
17 A Yes.
18 Q And that was the condition of the
19 vehicle on the day that you bought it?
20 A Yes.
21 Q With the windshield as we see it here?
22 A Yes.
23 Q Now I'll show you 29-B and ask if it
24 changed any between the time that this photo was
25 taken and the time that you bought it.

1 A It's probably 99 percent the same as
 2 when I got it.
 3 Q Now, on the day you bought the car, what
 4 did you do?
 5 A We hauled it home on a little flatbed
 6 trailer that we have.
 7 Q How many wrecks did you buy that day?
 8 A I'm not sure.
 9 Q What do you typically -- in the course
 10 of your business, when you go out to auction, do you
 11 usually just buy one at a time or do you buy more?
 12 A No. It just depends on what they go
 13 for. I put a figure in my head what I want to pay
 14 for it and don't go too much higher than that.
 15 Q Okay. Now, what is the object again for
 16 purchasing the wrecks? What do you do with them?
 17 A Well, we rebuild the little Ranger
 18 pickups and a few Explorers, and they're all
 19 approximately the same, parts are interchangeable
 20 with one another, so...
 21 Q So you find one with a good engine and
 22 another with a good body, is that the scenario?
 23 A Correct. Yeah.
 24 Q I want to show you an exhibit which has
 25 been marked as No. 30, which is beside you right to

1 I can display the color photo.
 2 30-1 is displayed, Mr. Bingham. Do you
 3 see it on the overhead?
 4 A Oh, okay. Yeah.
 5 Q Is that better?
 6 A Yeah.
 7 Q Now, where is your place located, your
 8 place of business?
 9 A Well, that's where we work on them, and
 10 that address to that is 1051 West 8450 South.
 11 Q And what is the community known as?
 12 A It's West Jordan.
 13 Q Is that the location of the Explorer
 14 where you had it parked when Mr. -- did Mr. Clayton
 15 do something -- did you meet Mr. Clayton? Let me
 16 start over.
 17 A Yes. Yeah. That's where it's been
 18 parked. That's where it was parked prior to meeting
 19 Fred Clayton and quite some time after.
 20 Q Did Mr. Clayton repurchase the vehicle
 21 from you?
 22 A Yes.
 23 Q Did he make any kind of a plan with you
 24 to store the vehicle?
 25 A Yes.

1 your right. It's 30-1 through 30-5. I'll ask you if
 2 you recognize those photographs.
 3 A Yes, I recognize them.
 4 Q What are they that we are looking at?
 5 A It's a '97 Explorer, the one that
 6 belongs to Fred Clayton.
 7 Q Are those photographs taken close in
 8 time to when you brought the vehicle to your
 9 location?
 10 A Probably several months after that --
 11 after I owned it.
 12 Q Is that parked where you parked it?
 13 A Yes. Yeah. That's -- once we got done
 14 playing with it, we parked it right there for quite
 15 some time.
 16 Q So you recognize Exhibit 30-1 through
 17 30-5 as being true and correct photographs of the
 18 Clayton Explorer; is that correct?
 19 A Yes.
 20 MR. EMBLEM: We'd move 30-1 through
 21 30-5, your Honor.
 22 MR. LARSEN: No objection.
 23 THE COURT: Received.
 24 (Exhibits 30-1 through 30-5 received.)
 25 Q (BY MR. EMBLEM) I'll trade you again so

1 Q What was the plan?
 2 A He wanted me to store it until he
 3 checked it out for a long time and agreed to pay me
 4 \$100 a month to store it.
 5 Q You stored it for him, then, since about
 6 when?
 7 A Probably -- I'm thinking probably 2000,
 8 maybe, or maybe it was '99. I'm not sure. It's been
 9 a long time, anyway.
 10 Q Did you do anything to protect the
 11 vehicle during those years that you were storing it
 12 for him?
 13 A We covered it up with tarps and plastic.
 14 And then as time went on, we've give it some inside
 15 storage.
 16 Q At some point in time, did the plan
 17 change on how you would store the vehicle?
 18 A Yes.
 19 Q And what was that change in plan?
 20 A They wanted inside storage, and Ford
 21 chipped in and paid a little extra money for the
 22 inside storage.
 23 Q So then you continued to store it for
 24 both the Clayton family and for Ford; is that
 25 correct?

1 A Correct.
 2 Q And from that point on, you stored it
 3 indoors?
 4 A Yes.
 5 Q Let me show you 30-2 and ask you what
 6 that is that we're looking at there. What is that
 7 that we're looking at there?
 8 A That's the back tailgate of the '97
 9 Explorer that belongs to Fred Clayton.
 10 Q And the Warner Truck Land emblem was on
 11 that vehicle when you got it?
 12 A Yes.
 13 Q The Explorer control track; is that
 14 correct?
 15 A Yes.
 16 Q Was this the first control track vehicle
 17 that you had purchased?
 18 A Yes.
 19 Q Let me show you 30-3. Is this the --
 20 what the inside looked like pretty much since the
 21 time you bought it?
 22 A Oh, we had taken a lot of fishing tackle
 23 and stuff out of it that was kind of live bait just
 24 to kind of clean it out. We didn't detail it by any
 25 means.

1 Q Okay. I show you 30-4, and I will ask
 2 you to explain what we are looking at there.
 3 A Okay. That's the -- it looks like the
 4 left-hand side of the front suspension.
 5 Q Is this the driver side --
 6 A It's the driver side.
 7 Q -- underneath?
 8 Okay. And what is this thing here that
 9 I'm pointing at with the laser?
 10 A That is the stabilizer bar that goes
 11 from right to left.
 12 Q And this part right here?
 13 A That's a stabilizer bolt or link,
 14 whatever you want to call it.
 15 Q That part right back there?
 16 A That is the tie rod.
 17 Q Let me show you 30-5 and ask you what it
 18 is that we're looking at there.
 19 A That's the passenger side suspension.
 20 Q Okay. And this part right here that I'm
 21 pointing at with --
 22 A That is the stabilizer.
 23 Q This part right here?
 24 A That's the tie rod.
 25 Q And is there something missing here?

1 A The sway bar link bolt.
 2 Q Was that missing when you bought the
 3 car?
 4 A Yes.
 5 Q The -- this looks a little strange right
 6 there. Can you explain that?
 7 A That was broken when we -- when we got
 8 it. And then just to make it to where we could move
 9 it around, we kind of temporarily welded it up to --
 10 just so that it would steer and we could move it back
 11 and forth without turning --
 12 Q Did you -- I'm sorry. Continue.
 13 A So we could steer with the steering
 14 wheel.
 15 Q So you welded the right tie rod
 16 together, and then what did you do?
 17 A We wanted to test-drive it a little bit,
 18 so we drove it around the yard just a little bit.
 19 And then we've got a little hill that we wanted to
 20 see how the four-wheel drive worked in and out. It's
 21 kind of a automatic which wheel slips/grips type of
 22 thing. We wanted to make sure all that stuff was
 23 sound and worked, because we weren't sure what we was
 24 going to do with the vehicle yet. So that feature is
 25 not on a Ranger, so...

1 Q And did something happen while you were
 2 trying out the vehicle around the yard?
 3 A Yes. The other tie rod broke.
 4 Q When you -- let me go back to that
 5 picture.
 6 When you welded the tie rod on the
 7 passenger side, did you look to see if there was
 8 anything wrong with the tie rod on the driver side?
 9 A We didn't.
 10 Q But it wasn't broken?
 11 A It wasn't broken.
 12 Q Did it appear bent or do you recall?
 13 A It looked -- appeared to be reasonably
 14 straight, so...
 15 Q And then while you were driving around
 16 the yard, the left side broke?
 17 A Yes.
 18 Q And what did you do about that?
 19 A We wasn't done playing with it yet, so
 20 we rolled it back over by the garage where the welder
 21 machine is and tack welded it back together.
 22 Q Is that the tack weld that we see right
 23 there?
 24 A Yes.
 25 Q When you got the car, it had running

Addendum 8

THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

DEE CLAYTON, et al.,)
) Case No. 000909522
 Plaintiffs,)
)

VS.) JUDGE:
) JOSEPH C. FRATTO, JR.

UTAH AUTO COLLECTION,)
et al.,)
)
 Defendants.)

TRIAL TESTIMONY OF DAVID INGEBRETSEN

VOLUME III

TAKEN AT: SCOTT MATHESON COURTHOUSE
 450 South State
 Salt Lake City, Utah

DATE: Thursday, January 18, 2007

REPORTED BY: Catherine L. Kennedy, RPR, CSR
 Kelly L. Wilburn, RPR, CSR

R, 11527

1 arm here; correct?
 2 A Yes.
 3 Q On one end?
 4 A It is. That's correct.
 5 Q And on the upper end, it's going to
 6 connect to the antisway roll device?
 7 A That's correct.
 8 Q As part of your photos, 26 -- I probably
 9 ought to have a 26 sticker. This will be -- this is
 10 going to be 26, holes.
 11 Now, what are these photographs we are
 12 looking at here, Mr. Ingebretsen?
 13 A These are photographs which I took at an
 14 inspection that I attended with defense expert where
 15 we were looking at the vehicle and I was looking at
 16 the sway bar links.
 17 THE COURT: And in terms of the
 18 identification, this is 26?
 19 MR. EMBLEM: 26, which is
 20 Mr. Ingebretsen's and Mr. Probert's photos in gross,
 21 and this section is the eight holes photograph,
 22 H-O-L-E-S.
 23 THE COURT: But the identification
 24 number is 26?
 25 MR. EMBLEM: 26.

1 THE COURT: Thank you.
 2 Q (BY MR. EMBLEM) Do you recognize your
 3 photograph?
 4 A I do.
 5 Q Okay. Great.
 6 A I do. There were a lot of photographs,
 7 but I do recognize these.
 8 MR. EMBLEM: We'd move 26, your Honor,
 9 26, eight holes.
 10 MR. O'NEILL: No objection, your Honor.
 11 Although, there are several pages. And if you're
 12 going to talk about different pages, we'll probably
 13 need a page reference in Exhibit 26, holes.
 14 MR. EMBLEM: You're thinking ahead here.
 15 What I would do is ask Mr. Probert to come down --
 16 THE COURT: Let's resolve that, then.
 17 Is it eight pages that I count?
 18 MR. EMBLEM: Yes.
 19 THE COURT: Let's -- Mr. Emblem, let me
 20 have you do this. Let's put a letter on each one of
 21 those beside 26.
 22 MR. EMBLEM: Okay.
 23 THE COURT: Show Mr. O'Neill so he has
 24 the same numbers on his photographs.
 25 MR. O'NEILL: Your Honor, every

1 photograph has a sequential letter, 26-B --
 2 THE WITNESS: That's how I think it
 3 should be numbered, yes. So it's 26-A, B, and so
 4 forth. I think there were eight.
 5 MR. EMBLEM: Okay. Great.
 6 THE COURT: The exhibit is now numbered
 7 26-A through --
 8 MR. EMBLEM: H.
 9 THE COURT: -- through H.
 10 And they have been offered and no
 11 objection?
 12 MR. O'NEILL: No objection, your Honor.
 13 THE COURT: 26-A through H, they are
 14 received.
 15 (Exhibits 26-A through H received.)
 16 Q (BY MR. EMBLEM) Mr. Ingebretsen, I would
 17 ask you to come down and avail yourself of the Elmo
 18 for just a moment and explain each of those
 19 photographs for the jury. Let me ask you two
 20 foundational questions, and then I'll have you do
 21 that.
 22 One, the photographs depict holes, as
 23 we've mentioned. Some of them are in the control
 24 arm; is that correct?
 25 A Yes.

1 Q And some of those are in the antiroll
 2 device; correct?
 3 A Yes.
 4 Q And some are from the driver side of the
 5 vehicle?
 6 A That's correct.
 7 Q And some are from the passenger side of
 8 the vehicle?
 9 A That's correct.
 10 Q Now, is there some significance between
 11 the holes on the driver side and the holes on the
 12 passenger side?
 13 A Yes.
 14 Q And what is the significance?
 15 A Well, there are two points, really.
 16 The -- the amount of -- well, if you
 17 will, the amount and the look of the corrosion and
 18 rubbing on the one side as opposed to the other is
 19 different in my eye.
 20 Secondly, and on the passenger side,
 21 there is some damage to the holes on the up -- on the
 22 lower control arm and on the sway bar.
 23 Q Okay. Would you mind coming down and
 24 explaining to the jury what it is we're looking at?
 25 Because these are close-ups. Remember, you talked

1 about looking at thing microscopically?
 2 A Yes.
 3 Q And there maybe we are talking about
 4 looking at things in more of a global view?
 5 A That's correct.
 6 THE WITNESS: May I step down?
 7 THE COURT: You may step down.
 8 THE WITNESS: This is a photograph that
 9 I took. This is the passenger side looking down onto
 10 the lower control arm, and what we see is here
 11 there's a little dent on the hole. And, in my
 12 opinion, that's caused because the spacer has broken
 13 away and the sway bar link has been wedged and is
 14 causing some damage right there. We see a little bit
 15 of corrosion around the hole where the -- where those
 16 rubber grommets had compressed and had rubbed.
 17 On 26-B, this is looking from the bottom
 18 up at the bottom of the antisway bar. And, again, we
 19 can see here a little bit of damage coming from that
 20 stud in the hole. You can see there's just some
 21 faint wear patterns from the rubber grommet there.
 22 This is the passenger side looking down
 23 at the top of the antisway bar. This is the axle of
 24 the vehicle. And you can see there's no damage on
 25 this side of it and some rubbing.

1 MR. O'NEILL: Again, that was a
 2 reference to 26-C, Mr. Ingebretsen?
 3 THE WITNESS: Yes. Thank you. Thank
 4 you, Mr. O'Neill. 26-C, as in Charlie.
 5 26-D, as in Delta, this is on the ground
 6 looking up at the bottom of the lower control arm, on
 7 the passenger side still. We can see a little bit of
 8 corrosion around the hole.
 9 On 26-E, this is now on the driver side,
 10 and I'm looking down at the top of the antisway bar.
 11 Is there a way to change the contrast
 12 and make this not quite so bright? I wanted them to
 13 see better the corrosion around the top here.
 14 26-F --
 15 MR. EMBLEM: I'm just going to help you
 16 with that contrast for a second.
 17 THE WITNESS: I think that's as good as
 18 it's going to get.
 19 On 26-F, Frank, this is the bottom of
 20 the antisway bar on the driver side.
 21 26-G, this is the top of the lower
 22 control arm looking towards the ground, and
 23 there's -- as I was looking at it and inspecting it
 24 in person, there seemed to be a lot more corrosion, a
 25 lot more evidence of rubbing and contact around as

1 I'm looking at the driver side as compared to the
 2 passenger side.
 3 And then this is -- the final picture is
 4 looking up at the bottom of the driver side control
 5 arm, looking up through the hole where the sway bar
 6 link goes.
 7 THE COURT: Which is H?
 8 THE WITNESS: And that's H. Thank you,
 9 your Honor.
 10 And that brings us back to 26-A.
 11 Q (BY MR. EMBLEM) Mr. Ingebretsen, I'm
 12 going to have to hand you back 26 -- Exhibit 26-A to
 13 H and ask you to find the two corresponding views
 14 where you wanted to demonstrate to the jury how one
 15 side was more worn than the other. Can you do that?
 16 A Yes.
 17 Q Okay.
 18 A Yeah. I think I've got them paired up.
 19 Q Okay. I'd ask you to come down and then
 20 hold them side by side and then indicate the
 21 difference. The photos do much more justice than the
 22 overhead.
 23 A Just stand and show the jury the photos?
 24 Q Please.
 25 A Okay.

1 THE WITNESS: May I approach the jury,
 2 your Honor?
 3 THE COURT: You may step down, yes.
 4 THE WITNESS: May I address the jury as
 5 I'm explaining?
 6 MR. EMBLEM: I'll ask you questions and
 7 you can answer.
 8 THE COURT: You should proceed as a
 9 question and answer.
 10 MR. O'NEILL: Your Honor, may I --
 11 THE COURT: And you may position
 12 yourself so -- as you like.
 13 Q (BY MR. EMBLEM) Mr. Ingebretsen, you
 14 selected at first two photos, and which two have you
 15 selected?
 16 A 26-B and 26-F.
 17 Q Okay. And what do we see in 26-B and
 18 26-F?
 19 A 26-B is a photo of the passenger side,
 20 top surface of the antisway bar. No. Let me make
 21 sure I'm saying that right. Yes, this is the top
 22 surface of the antisway bar. You see the damage
 23 where my finger is pointing?
 24 And as you look around the hole,
 25 there's -- the corrosion is minimal over here. There

1 is some -- there was a sway bar in there and there is
2 some rubbing from the grommet.

3 On the driver side, on the top, the --
4 it's just a little more pronounced. The scale is a
5 little bit unfortunate, because this is smaller than
6 this one. But if you take the holes and put them the
7 same size in your mind, as I inspected this visually,
8 I saw less corrosion on the passenger side.

9 Q Let me show you the next two photos that
10 you have selected and ask you which one you selected.

11 A These are the top surfaces. Again,
12 the --

13 Q Which two photos?

14 A 26-A and 26-G.

15 Q Okay. And what are we looking at in
16 those two photos?

17 A The top surface of the lower control
18 arm. 26-A, in my right hand, is the passenger side.
19 26-G is the driver side.

20 Q Which side was missing the sway bar link
21 when you inspected the vehicle?

22 A The passenger side, the one in my right
23 hand.

24 Q Okay. The next two photos that you
25 selected are which photos?

1 Q Which side is which?

2 A 26-D is the passenger side with the
3 missing sway bar. 26-H is the driver side.

4 Q Okay. You may take your position up
5 there again.

6 Is there anything about the damage or
7 wear as exhibited in those photographs that gives you
8 any indication of how long before the crash that
9 right sway bar link or passenger side sway bar link
10 may have come out?

11 A It's subtle. And looking at those
12 photographs, some -- it isn't as distinct. In others
13 it's more distinct.

14 What it tells me -- it can't tell me if
15 it was one day or one week or one month, but it's one
16 piece of the puzzle that leads me to conclude that
17 the sway bar link was missing before the accident.
18 If --

19 THE COURT: Mr. Emblem, I wonder if you
20 could retrieve 26, please.

21 MR. EMBLEM: Yes.

22 Q (BY MR. EMBLEM) You mentioned that,
23 because there is damage in the holes on the passenger
24 side --

25 A Yes.

1 A 26-C, as in Charlie, and 26-E, as in
2 echo.

3 Q Which side of the vehicle is 26-C?

4 A 26-E is the driver side and 26-C is the
5 passenger side.

6 I think I misidentified the first two.
7 This is the sway bar, and this is looking down on the
8 sway bar. This is the top surface of the sway bar.

9 MR. O'NEILL: And, your Honor, this --

10 THE WITNESS: The right hand, 26-C, is
11 the passenger side. My left hand, 26-E, is the
12 driver side.

13 Q (BY MR. EMBLEM) Did you want to correct
14 something about the first two?

15 A I -- you know, I'm not sure. I don't
16 think I misidentified them.

17 This is looking -- 26-F and 26-B is
18 looking at the under surface of the sway bar. I
19 think I said that right when I started. I just
20 questioned myself when I saw this again, because this
21 is the top surface on 26-C and 26-E is the top
22 surface.

23 Q Okay. The final two that you paired up,
24 what are those photos?

25 A Exhibit 26-D, as in Delta, and 26-H.

1 Q -- it's clear that the link came out due
2 to it being broken out? Did I get that right?

3 A Well, the spacer broke and left that
4 stud in there for a while.

5 Q For a while?

6 A And what happens, then, is we now don't
7 have a way to keep the sway bar from compressing
8 along the length of the stud. And so, as we go into
9 jounce and rebound, the end of the sway bar is going
10 to come back and hit and hit on that stud, and we
11 have some impact loading going on. And, eventually,
12 that can fatigue and break the stud. And as the stud
13 is being compressed in that hole, it can get wedged
14 and cause the damage that we're seeing.

15 MR. EMBLEM: Can you dim the lights
16 again, please, Wendy? We're going to look at 77-A.

17 Thank you.

18 Q (BY MR. EMBLEM) Would you use your
19 pointer and indicate what you are talking about
20 there?

21 What came out first, according to your
22 evidence?

23 A This -- the plastic spacer broke --

24 Q Okay.

25 A -- shattered, and came out first.

Addendum 9

ORIGINAL

THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

DEE CLAYTON, et al.,)	
)	Case No. 000909522
Plaintiffs,)	
)	
VS.)	JUDGE:
)	JOSEPH C. FRATTO, JR.
UTAH AUTO COLLECTION,)	
et al.,)	
)	
Defendants.)	

TRIAL TESTIMONY OF DAVID INGEBRETSEN
VOLUME IV

TAKEN AT: SCOTT MATHESON COURTHOUSE
450 South State
Salt Lake City, Utah

DATE: Friday, January 19, 2007

REPORTED BY: Catherine L. Kennedy, RPR, CSR

FILED DISTRICT COURT
Third Judicial District

OCT 24 2007

By bon SALT LAKE COUNTY
Deputy Clerk

11413

THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

DEE CLAYTON, et al.,)
) Case No. 000909522

Plaintiffs,)
)

VS.) JUDGE:

) JOSEPH C. FRATTO, JR.

UTAH AUTO COLLECTION,)
et al.,)

Defendants.)

TRIAL TESTIMONY OF DAVID INGEBRETSEN

VOLUME IV

TAKEN AT: SCOTT MATHESON COURTHOUSE
 450 South State
 Salt Lake City, Utah

DATE: Friday, January 19, 2007

REPORTED BY: Catherine L. Kennedy, RPR, CSR

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CATHERINE L. KENNEDY, RPR, CSR Page 2
 DEPOMAXMERIT LITIGATION SERVICES - (801) 328-1188

1 Friday, January 19, 2007, at 9:12 a.m.

3 PROCEEDINGS

4
 5 THE COURT: Good morning.
 6 THE PARTICIPANTS: Good morning.
 7 THE COURT: We are gathered in the
 8 matter of Clayton versus The Ford Motor Company and
 9 others. Everyone is appears who needs to be present
 10 is present, and the jury is in the box. My hope, of
 11 course, is that your evening was all that you could
 12 have possibly hoped it would be.
 13 And when last we met, Mr. Emblem was
 14 examining Mr. Ingebretsen. Mr. Ingebretsen, if
 15 you'll come and have a seat in the chair, please.
 16 THE WITNESS: Thank you, your Honor.
 17 CONTINUED DIRECT EXAMINATION
 18 BY MR. EMBLEM:
 19 Q Good morning.
 20 A It is a good morning.
 21 Q Friday morning.
 22 We were going through your report
 23 yesterday afternoon kind of piece by piece, and we
 24 had talked about tie rods and sway bar links. And
 25 while we were in the tie rods, you recall we found

CATHERINE L. KENNEDY, RPR, CSR Page 4
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CATHERINE L. KENNEDY, RPR, CSR Page 3
 DEPOMAXMERIT LITIGATION SERVICES - (801) 328-1188

1 the Clayton right side sway bar link. Do you have
 2 that in front of you?
 3 A Yes, I do.
 4 Q What exhibit number is that?
 5 A This is Exhibit No. 85-A2.
 6 MR. EMBLEM: Now, I just can't recall
 7 that I moved it. So if I haven't, I would move it.
 8 THE COURT: 85-A2.
 9 MR. O'NEILL: It's in, but no objection.
 10 THE COURT: I think we have that
 11 already. I believe that's already been received.
 12 Q (BY MR. EMBLEM) I'm going to place two
 13 photographs in front of you that's been marked as
 14 26-6 and 26-7.
 15 THE COURT: Thank you, sir.
 16 Q (BY MR. EMBLEM) Now, that -- the two
 17 photographs I've just shown you, are those -- what
 18 are those?
 19 A These are photographs I took, I believe
 20 it was May of 2004, when we did a thorough
 21 investigation and examination of the sway bar links,
 22 both sides. Well, the one was missing. But we did
 23 a -- of where it would have been.
 24 Q Okay. And the photographs are
 25 photographs of what exactly?

1 built; is that correct?
 2 A Yes.
 3 Q Is this a recommendation?
 4 A It is. It's a study and it ends up with some
 5 recommendations and conclusions.
 6 Q And what is the abstract of this particular
 7 study or summary?
 8 A The summary is to understand the effect of
 9 polyurethane structural foam on the strength and stiffness
 10 and energy absorption of the structural components.
 11 Primarily, they're looking at the roof and door
 12 structures, the A pillar, B pillar, and roof rail.
 13 Q Did the engineers conclude that the foam filling
 14 would delay buckling of the A and B pillars?
 15 A I believe they do, yes.
 16 Q Is this related to the demonstration that you
 17 showed us with the foam-filled tubes?
 18 A Yes, it is.
 19 Q Do they make any further recommendations in this
 20 particular paper?
 21 A I don't recall if it's this one or the other one
 22 that talks about high-strength steel.
 23 Q Are you saying that there's another paper
 24 related to this one?
 25 A Yes.

1 Q Let me just display the front page of this so
 2 it's recognizable. Exhibit 293. In the upper left -- I'm
 3 going to turn it now so we can see it under the Ford logo.
 4 Do you see the AVT?
 5 A Yes.
 6 Q What does that mean, if you know?
 7 A I don't recall that acronym.
 8 Q Does that say something about safety methods?
 9 A Oh, I thought you were asking me what AVT means.
 10 No, "Safety Methods" is there.
 11 Q "Crashworthiness and Energy Management of
 12 Polyurethane Foam-Filled Structural Components"; is that
 13 correct?
 14 A That's correct.
 15 Q That's the title of the paper?
 16 A Yes.
 17 Q I'll return this to you and give you
 18 Exhibit 294, which also has been admitted. On Exhibit 293
 19 did you determine that the engineers were also
 20 recommending high-strength steel to reinforce those A and
 21 B pillars?
 22 A Yes.
 23 Q And Exhibit 294, what is this document we're
 24 looking at?
 25 A This is sort of a sister document to the other

1 one. This is, "Deployment of Polyurethane Foam in Roof
 2 Crush System for Weight Reduction Analytical/Experimental
 3 Verification."
 4 Q Is this a document that verifies the
 5 recommendation of which we saw in Exhibit 293?
 6 A Yes, it is.
 7 Q And the key words here are "roof crush"; is that
 8 correct?
 9 A Yes.
 10 Q And does that relate in any way to the
 11 discussion we've been having about the door frame
 12 strength?
 13 A Yes.
 14 Q To protect against foreshortening?
 15 A Yes, it does.
 16 Q Is Phase II completed then of the study?
 17 A Yes.
 18 Q And what is the date of completion of that?
 19 A This document is dated May 20th, 1996.
 20 Q And does the study support the thought process
 21 related to the recommendation that we saw in 293?
 22 A Yes, it does.
 23 Q And where can we see that? In the summary?
 24 A Yes.
 25 Q Is there a determination about the increase in

1 strength just due to the foam filling?
 2 A Yes, there is.
 3 Q And what is that increase in strength due to
 4 foam filling?
 5 A The increase in strength was 26 percent.
 6 Q Does the document also make a finding on the
 7 increase in strength related to the high-strength steel?
 8 A I believe it does. I'm not seeing that right
 9 off.
 10 Q Are there graphs or diagrams within the study to
 11 support the findings?
 12 A Yes, there are.
 13 Q Are there different strengths, I guess, or
 14 densities in the type of foam that can be used in a
 15 structure like this?
 16 A Yes, there are.
 17 Q Higher-strength foam, would that result in an
 18 increase in structural strength?
 19 A Yes, it would.
 20 Q Let me switch with you so I can put up the
 21 exhibit so it will be recognized. Exhibit 224 -- I'm
 22 sorry, 294. Mr. Ingebretsen?
 23 A Yes.
 24 Q The exhibit title is, "Safety Methods," is that
 25 correct?

1 one.

2 Q Let's go right there. What does that say?

3 A It says, "Strengthened door pillars. The A and

4 B door pillars are reinforced with a composite material

5 which acts like concrete and strengthens roof

6 construction."

7 Q That's a Ford statement, right?

8 A Yes.

9 Q And that's pointing to what?

10 A It's pointing to the B pillar and the A pillar.

11 And you can see the shadows of the same sort of – what we

12 saw in the color rendition where they have strengthened

13 and added this composite material.

14 Q And was there another section that you wanted to

15 point to?

16 A I think so. Right up there. I think it's that

17 one.

18 Q Okay. What does that say there? Do you need

19 magnifying glass?

20 A No, I think I can read that. It says,

21 "Strengthen roof construction. Roof crush strength

22 significantly exceeds USA requirements." "Stringent" – I

23 believe that says – "USA requirements."

24 Q These are features being – is it a fair

25 conclusion these are features being used by Ford for the

1 exact purpose before the Clayton vehicle was built?

2 MR. O'NEILL: Objection to the form, Your Honor,

3 leading.

4 THE COURT: Sustained.

5 Q (BY MR. EMBLEM) We talked about occupant

6 protection. We didn't spend a lot of time on the seat

7 belt.

8 A No.

9 Q You did have an opinion concerning Tony

10 Clayton's seat belt, and what is that opinion?

11 A That opinion was that he was originally belted

12 and that the seat belt unlatched in that first rollover

13 sequence.

14 Q How is it possible for – first let me ask you:

15 Is this the type of seat belt used, No. 312, in the

16 Clayton vehicle?

17 A Exhibit No. 312, yes, it is.

18 Q How is it possible that this seat belt system or

19 latch would fail in this case?

20 MR. O'NEILL: Let me object. It goes beyond the

21 scope of what you directed was admissible.

22 THE COURT: Overruled. You can answer the

23 question.

24 THE WITNESS: There are a couple ways seat belts

25 can come unlatched. I think that in this case the most

1 reasonable way is that there was a false latch. Something

2 was caught in between the latch plate and the buckle and

3 it didn't latch properly. Physics says that we can also

4 have inertial unlatches given the right circumstances.

5 It could also have been something – there's a

6 console adjacent to the buckle here as well, and an object

7 that is caught between the console and this could also be

8 pushed into it as Tony is moving to this right and to the

9 forward.

10 Q (BY MR. EMBLEM) Something bouncing around

11 inside the vehicle can get between the buckle and the

12 console?

13 MR. O'NEILL: Objection, leading, Your Honor.

14 THE COURT: Sustained.

15 Q (BY MR. EMBLEM) Can you explain what you just

16 said a little bit better, please?

17 A Yeah. An object that's sitting on the console

18 or in the compartment could slip off and get wedged in

19 there, and if it's small enough it could push on it. I

20 think it's more likely that something just prevented it

21 from latching completely. And that's happened to people.

22 It's happened to me.

23 Q It's happened to you?

24 A Yeah.

25 Q In this case, since the door came open, does the

1 fact that the seat belt failed really make any difference

2 to Tony's injuries?

3 A Probably not. Probably not.

4 Q And what is the reason for that?

5 A With that door open, the seat belts are not

6 meant to contain. They're a restraint. They're called a

7 safety restraint. My understanding as a biomechanical

8 engineer and looking at accidents, seat belts are

9 primarily designed to help in frontal collisions to keep

10 you back and away from the front of the car.

11 In a rollover like this, even with a seat belt

12 on, there's some significant side-to-side motion that can

13 occur. As it rolls over, that person can become partially

14 ejected. And partially ejected persons don't just come

15 out the door and land on the ground, they flip around and

16 hit every time the car goes over and can get caught

17 between the roof rail and the vehicle, or the A pillar or

18 B pillar, most likely, and the vehicle and become crushed.

19 And so people die when they're partially ejected.

20 Q So your conclusions then concerning the door

21 opening, belted or unbelted Tony Clayton is more likely to

22 live or die?

23 A With the door open, belted or unbelted, I think

24 Mr. Clayton is going to die. It's that door opening that

25 we need.

1 MR. O'NEILL: Yes, your Honor.
 2 THE COURT: What motion was it?
 3 MR. O'NEILL: The Motion in Limine order
 4 about not allowing an expert to opine on Ford's
 5 intent in his answer, which I didn't anticipate from
 6 the question was that, yes, he reviewed the documents
 7 and that allowed him to understand the thinking of
 8 Ford engineers and whether their design processes and
 9 thought processes were appropriate, and that's
 10 exactly what you ruled could not be done.
 11 And I tried to stop it, your Honor, and
 12 the answer came out. It sounded a little prepared.
 13 But, nevertheless, I think it was inappropriate.
 14 THE COURT: I agree the -- the problem
 15 with the answer is that it goes beyond what the
 16 question is, that's what you're pointing out.
 17 MR. O'NEILL: Yes, your Honor.
 18 THE COURT: And if you want to comment,
 19 Mr. Emblem, it does seem to me that area is
 20 prohibited by what we've already determined and is
 21 right at the edge. And given the witness and the
 22 propensity, you're not supposed to go beyond the
 23 question.
 24 It may be best that we proceed making
 25 certain that the question asked stops with the

1 A Yes.
 2 Q Without saying what the reasoning is,
 3 was the reasoning that was explained in the
 4 historical documents -- engineering documents from
 5 Ford important to you in arriving at your opinions in
 6 this case?
 7 A Yes.
 8 Q And the -- that engineering reasoning,
 9 is that also important to -- is it typical
 10 information to rely upon experts that are involved in
 11 your field of expertise?
 12 A Yes.
 13 Q Did the documents that you reviewed
 14 contain engineering concerns and prioritizations?
 15 A Yes.
 16 MR. O'NEILL: Your Honor, let me object
 17 again. Lack of foundation.
 18 THE COURT: Sustained.
 19 Q (BY MR. EMBLEM) Well, did you review
 20 documents which contained engineering concerns and
 21 priorities?
 22 MR. O'NEILL: Your Honor, lack of
 23 foundation.
 24 THE COURT: Sustained.
 25 Q (BY MR. EMBLEM) Do engineers engaged in

1 answer -- I mean, the question asked -- the answer
 2 elicited answers the question asked.
 3 So I'm going to agree with Mr. O'Neill
 4 here that the last answer is to be stricken as
 5 nonresponsive to the question and with an
 6 understanding here as to what the protocol is in this
 7 area established by the orders.
 8 We'll proceed forward.
 9 MR. O'NEILL: Thank you.
 10 (End of side bar conference.)
 11 THE COURT: The last answer by the
 12 witness is stricken, and the jury is instructed to
 13 disregard it.
 14 Mr. Emblem, your next question?
 15 Q (BY MR. EMBLEM) The short answer is, in
 16 arriving -- was historical -- were historical
 17 documents important to you -- historical engineering
 18 documents important to you in your analysis of the
 19 development of parts which are in question in this
 20 case?
 21 A Yes.
 22 Q And the historical engineering
 23 documents, are those of the type of documents
 24 typically relied upon by engineers that are engaged
 25 in the field of expertise that you are?

1 your field of expertise typically rely upon documents
 2 originating from the engineering source which contain
 3 engineering priorities and concerns?
 4 MR. O'NEILL: Your Honor, I object.
 5 Lack of foundation. May we approach?
 6 THE COURT: You may.
 7 (At the side bar.)
 8 MR. O'NEILL: Your Honor, my objection
 9 to this line of question is that it seems to have
 10 only one priority, and that is to get information out
 11 of Ford documents and interpret them or comment on
 12 them.
 13 And there's two problems: One, the
 14 Motion in Limine order we just discussed where this
 15 expert is not qualified to give those opinions; but
 16 secondly, you've already established a very clear
 17 protocol about how we were going to handle Ford
 18 documents, and that was to be a hearing outside the
 19 presence of the jury where documents are offered to
 20 see if proper foundation is laid, you make a judgment
 21 on that, and then we proceed forward.
 22 And this appears to be an end run around
 23 that procedure, and I see no other purpose. And I
 24 apologize for the repeated interruption, but I can't
 25 see any reason why he is going there.

1 if we start to go faster, we have to turn a little
2 bit more to keep the car going around in the same
3 arc.

4 Oversteer is an unstable condition.
5 It's like if I took a bowl and placed it down --
6 upside-down on a table and placed a marble on it, I
7 don't have to do much to make that marble roll off
8 the bowl. That's unstable.

9 Understeer is if I take the bowl the
10 other way and put the marble in it, I can push it up
11 the side. But when I let it go, it comes back down
12 to the bottom. Oversteer simply means that if I turn
13 it a little bit, the car turns a lot more than I'm
14 expecting and I can lose control very easily.

15 So we want understeer in a car, but not
16 extreme. Otherwise, we'd be turning our wheels to
17 the extremes trying to just do daily life. We want
18 it to steer, but not steer us. We want to steer the
19 car.

20 Q So even though we're going to use a term
21 here in this discussion which some people would say
22 is a desirable condition, in this case, since the tie
23 rod is disconnected, is it not a desirable condition?

24 MR. O'NEILL: Object. Leading, your
25 Honor.

1 Honor.

2 THE COURT: Overruled.

3 THE WITNESS: Yes, it did.

4 Q (BY MR. EMBLEM) We talked about the
5 broken sway bar link and the effect of what that
6 does, and, without reviewing all the testimony, is
7 the condition that's set up by the broken and missing
8 sway bar link, is that -- from an engineering
9 standpoint, is that a foreseeable event?

10 A Absolutely.

11 Q Did the fact of a defective and broken
12 sway bar link contribute to the cause of this wreck?

13 MR. O'NEILL: Object. Your Honor, lack
14 of -- or object to the form. Assumes facts not in
15 evidence.

16 THE COURT: Overruled.

17 THE WITNESS: Absolutely, it did.

18 Q (BY MR. EMBLEM) Concerning the
19 functioning of the steering components in that space,
20 with the safety antisway device in that space, that
21 geometry that you described --

22 A Yes.

23 Q -- is that metal-to-metal contact, from
24 an engineering standpoint, foreseeable with the
25 missing sway bar link?

1 THE COURT: Sustained.

2 Q (BY MR. EMBLEM) Describe the
3 desirability of the condition of the understeer in
4 the Clayton circumstance.

5 A What we want is regular steering. We
6 want to be able to -- when we turn the wheel, we want
7 the car to turn what we're accustomed to having it
8 turn. Most cars when you turn a little bit, you turn
9 a little.

10 And the desirability in the Clayton case
11 would have it to be steering normally. What happened
12 was he now has to steer much greater to get the same
13 turning response of his vehicle. We've now lost one
14 of our steering tires. We only have half as much
15 force to turn the car, so we have to steer much
16 greater. And that's unnatural, particularly in an
17 emergency situation, to try to compensate for that.

18 Q Is that condition -- what's happened
19 here in terms of being able to steer the vehicle
20 because one tie rod is broken, is that -- from an
21 engineering standpoint, is that foreseeable?

22 A Yes.

23 Q Did the fact of a defective and broken
24 tie rod contribute to the cause of this crash?

25 MR. O'NEILL: Objection. Leading, your

1 A Absolutely, it is. Absolutely.

2 Q Did the fact of that defect in design,
3 the function of geometry, contribute to the cause of
4 this wreck?

5 A Yes, it certainly did.

6 Q Did the fact of the weakened design of
7 the A and the B pillar system frame for the door --
8 is its bendability foreseeable from an engineering
9 standpoint?

10 A Yes. Of course, it is.

11 Q Is it foreseeable that if you strengthen
12 those in the manner that you have suggested, that
13 that would greatly enhance or enhance to some degree
14 that you can describe the safety of that door system?

15 A Oh, absolutely, it would.

16 Q Did the weakness in the design of the
17 door frame system contribute to the cause of the
18 injuries to Tony Clayton?

19 A Yes. By allowing the door to come open
20 and him to be ejected, yes.

21 Q Did the factor of the tire size on this
22 vehicle -- was it foreseeable, from an engineering
23 standpoint, that a higher, taller tire is going to
24 lift the center of gravity?

25 A Oh, absolutely. Absolutely, it is.

1 Q Is it foreseeable, from an engineering
2 standpoint, that lifting the center of gravity is
3 going to lower the stability of the vehicle?

4 A Yes. That's right out of the math.

5 Q Is it foreseeable, from an engineering
6 standpoint, that the lifting of the center of gravity
7 will have the deleterious effect in the dynamics of the
8 center of gravity?

9 A A what effect?

10 Q A negative effect.

11 A Yes, it clearly would.

12 Q Did the use of the larger tire than
13 recommended in the sales brochure contribute in any
14 degree to the instability of the Clayton vehicle?

15 A Yes, it did, adversely.

16 THE COURT: Mr. Emblem, we are at -- our
17 point in time I think has been reached.

18 MR. EMBLEM: Oh, okay.

19 THE COURT: And we'll have
20 Mr. Ingebretsen step down. Please watch your step on
21 the way down.

22 THE WITNESS: Thank you, your Honor.

23 (Instructions given to jury regarding
24 viewing the vehicle, the jury was excused, and court
25 adjourned for lunch at 11:36 a.m.)

1 STATE OF UTAH)
) SS:

2 COUNTY OF SALT LAKE)

3 THIS IS TO CERTIFY that the foregoing trial
4 testimony was taken before me, CATHERINE L. KENNEDY,
5 a Certified Shorthand Reporter and Notary Public in
6 and for the State of Utah, residing at Salt Lake
7 County, Utah.

8 That said trial testimony was reported by me in
9 Stenotype and thereafter caused by me to be
10 transcribed into typewriting, and that a full, true
11 and correct transcription of said testimony so taken
12 and transcribed is set forth in the foregoing pages.

13 I further certify that I am not of kin or
14 otherwise associated with any of the parties to said
15 cause of action, and that I am not interested in the
16 event thereof.

17 WITNESS MY HAND and official seal at Salt Lake
18 County, Utah, this 24th day of January, 2007.

19
20 Catherine L. Kennedy, RPR, CSR
21
22
23
24
25

Addendum 10

0000 ORIGINAL

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE CITY, STATE OF UTAH

DEE CLAYTON, et al.,)	
)	
Plaintiffs,)	Civil No. 000909522
vs.)	
)	
UTAH AUTO COLLECTION, et al.,)	
)	
Defendants.)	

TRIAL TESTIMONY OF:

FRED CLAYTON

January 9th & 10th, 2007

Wendy Alcock
Registered Professional Reporter

FILED DISTRICT COURT
Third Judicial District

OCT 24 2007

By *bn* SALT LAKE COUNTY
Deputy Clerk

11459

IN THE THIRD JUDICIAL DISTRICT COURT
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DEE CLAYTON, et al.,)
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 Defendants.)

TRIAL TESTIMONY OF:
FRED CLAYTON

January 9th & 10th, 2007

Wendy Alcock
Registered Professional Reporter

1 A Yes. I had asked Tony, I'd said, "You're living
 2 there, you know where the car dealerships are and so forth
 3 and so on, and you know what people are driving, what it
 4 looks like you might want to have, and so you narrow it
 5 down to what you think you want to have."
 6 Q And Tony suggested the Explorer then?
 7 A Yes, he told me he wanted to buy an Explorer.
 8 Q Did you concur with him on that?
 9 A I did.
 10 Q When you went to the -- to buy the vehicle, did
 11 the -- was your mind made up or were you going to just
 12 check it out and make a decision after you took a look at
 13 it?
 14 A Well, in my mind I wanted to see the car, hear
 15 what the salesman had to tell me, look at any information
 16 they had. You know, I wanted to like finally confirm in
 17 my mind what it was that he wanted to buy.
 18 Q And did the salesman talk to you then about this
 19 vehicle?
 20 A Yes.
 21 Q What was the date that you were there at Warner
 22 Truckland?
 23 A I don't really recall the date. It was sometime
 24 in early January. I think it was the 2nd.
 25 Q If I said January 2nd, 1997, would that refresh

1 MR. LARSEN: No objection.
 2 THE COURT: Received.
 3 Q (BY MR. EMBLEM) Now, Mr. Clayton --
 4 A Yes?
 5 Q I want to come back to this in just a minute. I
 6 want to show you -- excuse me just a second.
 7 MR. EMBLEM: May we approach, Your Honor?
 8 THE COURT: You may.
 9 (Sidebar conference.)
 10 Q (BY MR. EMBLEM) During the time, weeks, months
 11 or years leading up to your decision to purchase the Ford
 12 Explorer, did you see any commercials, Ford commercials on
 13 television?
 14 A Yes, that was right after football season. They
 15 were on all the time during the football game.
 16 Q But not just specifically those months, but some
 17 years leading up to it?
 18 A Yeah. I watch television. You see them on
 19 quite a bit, yeah.
 20 Q Did you see Ford commercials which specifically
 21 discussed or advertised Ford Explorers?
 22 A Yes.
 23 Q I have a couple of exhibits, one is an ad which
 24 contains a moose, and I have another which contains Green
 25 Acres. Do you recall seeing those commercials?

1 your recollection?
 2 A Yes. I just said I think it was the 2nd.
 3 Q I want to show you an exhibit that's been marked
 4 as Exhibit 3. I'll ask you if you've seen this particular
 5 exhibit before?
 6 A Yes, it looks like the one that I was reading
 7 while I was waiting for the salesman at the dealership.
 8 Q Did the salesman give you a brochure to look at
 9 while you were waiting for him to show you around?
 10 A Well, they were laying on the table. He said,
 11 "If you want to look at something, there they are." Yeah.
 12 Q What is that exhibit? What does it identify?
 13 A It's a 1997 Explorer.
 14 MR. EMBLEM: Don't display it until we get
 15 permission.
 16 Q (BY MR. EMBLEM) 1997 Explorer?
 17 A Yeah.
 18 Q This was the same year model that you were
 19 looking, correct?
 20 A That's correct.
 21 Q This was a brochure, then, that you saw when you
 22 went to Warner Truckland; is that correct?
 23 A Yes.
 24 MR. EMBLEM: We'd move to admit Exhibit No. 3,
 25 Your Honor.

1 A I can't recall specifically seeing those, but I
 2 saw a lot of Ford commercials, so more than likely I did.
 3 Q So if they ran, you probably saw them because
 4 you are a television watcher, would that be fair enough to
 5 say?
 6 A My wife and I enjoy television, yes.
 7 Q And you did during those months leading up to
 8 your decision to purchase this Explorer; is that correct?
 9 A Yes.
 10 Q So if Ford ran them, it would be fair to say you
 11 saw them?
 12 A If they ran them --
 13 MR. LARSEN: Objection, speculation.
 14 THE COURT: Objection sustained.
 15 Q (BY MR. EMBLEM) Is there anything you recall in
 16 particular about Ford's advertising about the Ford
 17 products?
 18 A Yeah, the thing that always sticks in my mind is
 19 the hearing, "Built Ford tough." I'm hitting this because
 20 they make a strong sound when they say that.
 21 Q Like a big steel stamp or something?
 22 A Something liking a loud noise, "Built Ford
 23 tough."
 24 MR. EMBLEM: Your Honor, I have only a general
 25 foundation to show these videos. I would ask permission

1 to show the two commercials, one entitled "Moose," one
 2 entitled "Green Acres."
 3 THE COURT: The exhibit numbers?
 4 MR. EMBLEM: Exhibit 2A and Exhibit 2B.
 5 THE COURT: 2A and 2B. Any objection?
 6 MR. LARSEN: Yes, foundation and relevance.
 7 THE COURT: On foundation I sustain the
 8 objection.
 9 Q (BY MR. EMBLEM) Next I'll show you,
 10 Mr. Clayton -- let's go back to Exhibit No. 3, which is
 11 still in front of you, is that correct? That's the
 12 brochure.
 13 A Yes.
 14 Q Tell me a little bit -- while you have that in
 15 front of you, tell me a little more about what the
 16 salesman said and did during the purchase just before you
 17 decided to purchase the vehicle finally. In other words,
 18 did he show you the vehicle?
 19 A Yes. We had a ride to a lot where it was, and
 20 we rode with the salesman.
 21 Q Okay. And what did the salesman do or say when
 22 he demonstrated to you the features of the Explorer?
 23 A He asked us if we wanted to take a ride in it,
 24 and we did.
 25 Q Did he give you a walk-around?

1 "Tires," do you see that?
 2 A I do.
 3 MR. EMBLEM: I wonder if we can dim the lights a
 4 little bit more, would that be okay?
 5 Q (BY MR. EMBLEM) So the XLT, down here it says
 6 "Tires." It says "XL Sport" and "XLT" right there in the
 7 bottom section. Do you see that?
 8 A I see it.
 9 Q Did the salesman say to you that the XLT was
 10 supposed to have P225 tires on it?
 11 A No.
 12 Q Did you discover what size tires were actually
 13 on the vehicle when you got the vehicle?
 14 A Eventually, yes.
 15 Q What did you eventually discover?
 16 A P235 tires.
 17 Q I'm going to show you the warranty guide of
 18 Exhibit No. 7. Do you recognize the exhibit I've just
 19 shown you?
 20 A Yes, it's a photocopy of the warranty guide.
 21 Q It's a warranty guide that came with your new
 22 Explorer?
 23 A Yes.
 24 Q Did you read the warranty guide?
 25 A Yes.

1 A Yes.
 2 Q Did he show you how the hatch worked in the
 3 back?
 4 A Yeah. He took us around the vehicle and showed
 5 us all the features of the vehicle, the doors, the
 6 headlights, the rear hatch, and the way there was a thing
 7 you could pull down and cover up the suitcases and stuff
 8 so people looking in wouldn't see them, you know, some
 9 kind of a plastic thing you pulled out.
 10 Q Did the salesman explain to you anything about
 11 the four-wheel drive features?
 12 A Yes.
 13 Q And what did he say about that?
 14 A Well, I didn't drive the car that much, so I had
 15 to read the manual, too, but it had the four-wheel drive.
 16 I think it was called "all wheel drive" or something of
 17 that nature where if you kept the switch in that
 18 particular position, when you needed more power to the
 19 front wheels from the back wheels it would automatically
 20 kick in.
 21 Q Would you turn to page 20 of the exhibit? Did
 22 you buy an Explorer XLT?
 23 A Yes.
 24 Q On page 20, called the specs page -- do you see
 25 that? Specs? Down here in the lower right where it says

1 Q Did you read what is covered?
 2 A Yes. I did at the time. I don't remember
 3 everything now.
 4 THE COURT: May I display, Your Honor?
 5 MR. LARSEN: Did you move to admit it?
 6 MR. EMBLEM: Yes, I move to admit it.
 7 MR. LARSEN: No objection.
 8 THE COURT: Received.
 9 Q (BY MR. EMBLEM) Turn to page 7, please. It
 10 says what is not covered. Do you see that section there,
 11 Mr. Clayton?
 12 A Yes.
 13 Q What's not covered is alteration, misuse, or
 14 damage caused by accident. Do you see that?
 15 A I do.
 16 Q Did the salesman point out to you that it would
 17 be misuse of the vehicle to driver over curbs?
 18 A No.
 19 Q Now, I'm going to show you Exhibit No. 8, which
 20 is the owner's guide.
 21 THE COURT: Which number is this?
 22 MR. EMBLEM: 8, Your Honor.
 23 THE COURT: 8?
 24 Q (BY MR. EMBLEM) Do you know what that document
 25 is that you're looking at there, Mr. Clayton?

1 Q (BY MR. EMBLEM) Right about the middle of the
 2 ticket it says, "Warranty repair." I'm going to draw your
 3 attention to the middle of the document where it says,
 4 "Warranty repair for driver's side seat belt buckle.
 5 Won't release. Make sure all of the other ones work."
 6 Now, do you have any information or knowledge
 7 why Tony would have the car in for a seat belt buckle
 8 problem?
 9 A I have none,
 10 Q It's your experience that Tony wore his seat
 11 belt?
 12 A Yes.
 13 Q Was Tony concerned about everyone wearing a seat
 14 belt?
 15 A Yes.
 16 Q Would this be consistent with Tony's behavior to
 17 be certain that all these safety features are working?
 18 MR. LARSEN: Objection, speculation.
 19 THE COURT: Sustained.
 20 Q (BY MR. EMBLEM) Do you have information about
 21 Tony's behavior concerning keeping the vehicle in top
 22 shape or not?
 23 A Yes.
 24 Q What is that information?
 25 A Well, when he was living at home there in San

1 Q March 11, 1998?
 2 A It went in March 10, it was ready March 11th.
 3 Q Okay. So on this date in March 1998, let's see,
 4 third month, about eight months before the crash?
 5 A That's correct.
 6 Q This is your vehicle? This is a service ticket
 7 on your vehicle?
 8 A Yes.
 9 MR. EMBLEM: I move to admit Exhibit No. 11.
 10 MR. LARSEN: No objection.
 11 THE COURT: Received.
 12 Q (BY MR. EMBLEM) On the front page, the first
 13 page of Exhibit No. 11, the top line, "Repair shudder,
 14 binding sensation in tight turns while vehicle is in 4x4
 15 mode." Do you see that, sir?
 16 A I see it, yes.
 17 Q Did Tony talk to you about any problems with a
 18 binding sensation with the steering in the 4x4 mode?
 19 A No. He handled all the things on the car.
 20 Q In the middle of the document it says, "Enter
 21 GEM mode." Do you know anything about that, GEM mode?
 22 Does that mean anything to you?
 23 A Doesn't mean anything to me.
 24 Q During opening statement I mentioned to the jury
 25 about your desire to find the real cause. I'd like to ask

1 Diego, he and I always made sure that my car and his car
 2 had the proper maintenance and so forth.
 3 Q Did you have any -- I'm sorry.
 4 A He carried those things over from my airline
 5 training. That's what we do.
 6 Q From airline training, before you fly, you check
 7 out the vehicle? The airplane?
 8 A We maintained the airplane. If we see that the
 9 mechanics maintain it, we check it out, yes.
 10 Q Did you teach Tony to do that with his cars?
 11 A I taught him to do that with all his cars.
 12 Q Let me show you another exhibit which has been
 13 marked as No. 11. It's a two-page document. Do you know
 14 what that is that we're looking at there, Mr. Clayton?
 15 A It's another repair order.
 16 Q Also for your 1997 Explorer?
 17 A Yes, same five digits.
 18 Q And this has a mileage in at 15,506 miles; is
 19 that correct?
 20 A That's correct.
 21 Q And I'm looking for the service date. Do you
 22 see it?
 23 A Service date, let's see here.
 24 Q It's on the next page. Do you see it?
 25 A March 11, '98.

1 you some questions about that.
 2 You went out to the crash site with Officer
 3 Pace; is that correct?
 4 A I did, yes.
 5 Q Can you tell the jury when that was?
 6 A That was -- we got the news the day after the
 7 accident. I was out of town and they didn't know how to
 8 contact me. Finally I called for my phone messages on --
 9 the accident happened on Friday, the day after
 10 Thanksgiving. Saturday morning we were staying at our
 11 friend's house in Phoenix.
 12 We -- I called in for my phone messages and I
 13 had a message to call American Express. And I called
 14 them, and they had traced me through -- the police had
 15 traced me through a credit card, a mutual credit card that
 16 Tony and I had, an American Express card. And they told
 17 me to call the hospital in Evanston.
 18 I called the hospital in Evanston and I spoke
 19 with the doctor who took care of Tony when he came in, and
 20 he told me he passed away. So I immediately got to the
 21 airport with my wife, and we went back to my daughter's,
 22 to Los Angeles. And somebody picked me up -- I can't
 23 remember who picked us up -- and we went to my daughter's
 24 house where I met my nephew, Phil, and my uncle. And we
 25 made arrangements to go to Salt Lake. We got a plane out

1 January 10, 2007, 9:25 a.m.
 2 PROCEEDINGS
 3 DIRECT EXAMINATION (Continued.)
 4 BY MR. EMBLEM:
 5 Q Morning, Mr. Clayton.
 6 A Good morning.
 7 Q We talked a little bit about where Tony grew up
 8 now yesterday. Now, Tony didn't own a ranch, did he?
 9 A No.
 10 Q Tony didn't hunt elk?
 11 A No.
 12 Q Was Tony otherwise a four-wheel drive
 13 enthusiast?
 14 A Not specifically, no.
 15 Q Now, you spoke with Tony on a pretty regular
 16 basis?
 17 A Yes.
 18 Q How often would you say that you spoke with
 19 Tony?
 20 A Almost every day.
 21 Q When was -- before he died, when was the last
 22 time you spoke with him?
 23 A It was Thanksgiving night.
 24 Q After he returned to Salt Lake City?
 25 A Yes, he had been to Price to see his future

1 and after seeing Tony I spoke to the funeral director
 2 about the arrangements, and then I asked him if he knew
 3 the officer who had seen the accident or had some
 4 knowledge of the accident, and he had his phone number.
 5 And I called up the officer and told him I wanted to talk
 6 to him.
 7 Q You spoke with him on the phone, then? You
 8 spoke with the officer on the phone?
 9 A Yes.
 10 Q Do you recall his name?
 11 A Pace.
 12 Q And did you make arrangements to meet him then?
 13 A Yes.
 14 Q Did you meet him?
 15 A Yes.
 16 Q Where was that?
 17 A At the accident scene.
 18 Q Who went with you?
 19 A My nephew, Phil, and my uncle, George.
 20 Q So the three of you drove up to near the Wyoming
 21 line to where the crash took place?
 22 A Yes.
 23 Q And so what time of day was it when you arrived
 24 up there?
 25 A I think it was pretty early, but I don't

1 in-laws.
 2 Q Did you ever drive with Tony in the Explorer?
 3 A Yes.
 4 Q Did Tony always wear his seat belt?
 5 A Yes.
 6 Q When you went to the dealer to purchase the
 7 Explorer with the idea that you might purchase the
 8 Explorer with Tony, did the salesman explain to you that
 9 the Explorer had been built with the engineering
 10 deviations?
 11 A No.
 12 Q Did the salesman explain to you that SUVs are
 13 four times more likely than automobiles to roll over?
 14 A No.
 15 MR. LARSEN: Objection, facts not in evidence,
 16 leading.
 17 THE COURT: Sustained.
 18 Q (BY MR. EMBLEM) Did the salesman say anything
 19 to you, when seeing Tony by the Explorer, to suggest that
 20 Tony might be too heavy to be driving that Explorer?
 21 A No.
 22 Q When you went out then on Sunday, out to the
 23 crash site with Officer Pace, tell us how that occurred.
 24 Explain to the jury.
 25 A Well, we got to the funeral home that morning,

1 remember the exact time.
 2 Q And tell us then what happened with the meeting
 3 with Officer Pace.
 4 A Well, that time was later in the day. We got to
 5 the funeral home early, and then meeting with Officer Pace
 6 was later in the day. I think around noon time. What was
 7 the rest of the question?
 8 Q Explain to the jury then what happened with the
 9 meeting with Officer Pace.
 10 A Well, we walked to the point where the car had
 11 flown down the bank, and Officer Pace pointed out some
 12 pieces of the car that were strewn down in the swaling
 13 area.
 14 Q Let me stop you right there a second there,
 15 maybe I can post a photograph. I'm going to show you
 16 Exhibit 23-17, previously admitted. Is this the point
 17 where you say the vehicle -- can you see that?
 18 A Yes.
 19 Q You stated it flew down into the median?
 20 A Yes, that's where he went off the road.
 21 Q And from there you could look into the grassy
 22 area and see parts of the car?
 23 A Yes.
 24 Q Did Officer Pace offer any explanation for the
 25 marks in the highway?

1 Q And he said that he wanted a four-wheel drive
 2 for Utah winter driving conditions; is that correct?
 3 A Yes.
 4 Q And also so that he could go fishing and go off-
 5 roading?
 6 A He wasn't much for off-roading, but he thought
 7 he would go into the back country maybe and fish.
 8 Q And so you came to Salt Lake and went to the
 9 dealership with Tony together; is that right?
 10 A Yes, we were here for the holidays.
 11 Q And you testified that when you were at the
 12 dealership you looked at the brochure; is that right?
 13 A Yes.
 14 Q And Mr. Emblem handed you Plaintiff's Exhibit
 15 No. 3, which looked like a Ford Explorer brochure. I
 16 think it's on your left-hand side. You're not sure today
 17 whether that's the brochure that you saw when you were at
 18 the dealership; is that right?
 19 A It may not be the exact one.
 20 Q You just remember generally a brochure is all?
 21 A I read a brochure.
 22 Q Do you remember anything specifically that you
 23 read?
 24 A Not specifically. In general I read about the
 25 safety of the vehicle and about what the -- you know,

1 extras and things available on the vehicle and so forth.
 2 Q The options?
 3 A Yes.
 4 Q And you took the vehicle for a test drive with
 5 your son; is that right?
 6 A Yes.
 7 Q Did you drive it?
 8 A No, my son drove it.
 9 Q And other than the brochure that you saw at the
 10 dealership, would it be fair to say that you can't
 11 identify any other materials or advertisements that you
 12 reviewed prior to the purchase of the vehicle?
 13 A You're going to have to ask me that again, I
 14 don't understand it.
 15 Q Let me try to simplify it. I apologize. Would
 16 it be fair to say, Mr. Clayton, that other than this
 17 brochure, you don't remember looking at anything else that
 18 was a brochure or advertisement for the vehicle?
 19 A I remember looking at a brochure. No.
 20 Q Other than the brochure, nothing else?
 21 A I had seen some newspaper advertisements.
 22 Q You don't recall anything specifically about
 23 those?
 24 A No.
 25 Q And that's it? That's all you remember?

1 A Yes.
 2 Q And I'm going to hand you what's in front of
 3 you. I think it's Exhibit 5. Do you see that?
 4 A Yes.
 5 Q And this, I think, was offered by Mr. Emblem and
 6 you identified this. It looks like kind of a dealer
 7 invoice. Is that what your understanding is?
 8 A Yes.
 9 Q And you don't remember seeing this exact dealer
 10 invoice at the time you purchased the vehicle, do you?
 11 A There was one just like it.
 12 Q Okay. And at the bottom it says that the
 13 vehicle was sold to Utah Auto Collection. You had never
 14 heard of Utah Auto Collection before this lawsuit; is that
 15 correct?
 16 A That is correct.
 17 Q I'm going to hand you what's marked as
 18 Defendant's Exhibit 710, and it's actually two pages, and
 19 ask if you can review that and compare it to Exhibit 5.
 20 Have you had a chance to compare the first page of
 21 Exhibit 710 with Exhibit 5, Mr. Clayton?
 22 A Not in complete detail. It will take me a
 23 minute here.
 24 Q Mr. Clayton, maybe I can move things along by
 25 asking a question. Would it be fair to say these two

1 documents are similar?
 2 A That would be fair to say. There's a difference
 3 of \$4 on one of the prices here that I see, and there may
 4 be other differences. I haven't completely finished
 5 auditing the document.
 6 Q And this is basically a list of the options and
 7 features and the prices on the vehicle; is that right?
 8 A Say that again.
 9 Q This is basically a listing of options,
 10 features, and prices for the vehicle; is that right?
 11 A That's correct, yeah.
 12 Q But one difference between the two is that one
 13 has "Utah Auto Collection" on it, and the other one says
 14 "Rick Warner" -- or, excuse me, "Warner Truckland"; is
 15 that correct?
 16 A That's correct.
 17 MR. LARSEN: Your Honor, we move to admit
 18 Defendant's Exhibit 710.
 19 THE WITNESS: Wait a minute. Yes, the VIN is
 20 correct. That's the last thing at the bottom and I hadn't
 21 checked that.
 22 THE COURT: Any objection to 710?
 23 MR. EMBLEM: No objection.
 24 THE COURT: Received. I think that's a two-page
 25 exhibit, and here's a clip so we can hold those pages

1 in the back country when he bought the car.
 2 Q Did he do that, do you know?
 3 A I don't know. He had his fishing equipment in
 4 the car, but...
 5 Q And Tony never indicated to you that he had any
 6 problems with the vehicle; is that correct?
 7 A No, he took care of his things.
 8 Q Would it be also accurate to say that you don't
 9 have any personal knowledge of maintenance or repair that
 10 was ever performed on the vehicle?
 11 A I do now. Since the case got investigated I saw
 12 where he took it in for the chattering in the right front,
 13 or the noise, the squeaking noise. And he took it in for
 14 a seat belt problem.
 15 Q But at the time you didn't have any personal
 16 knowledge of that?
 17 A I didn't, no.
 18 Q And you mentioned some of the maintenance
 19 records that Mr. Emblem showed you, and some of those have
 20 been entered into evidence. Exhibits 10 and 11, I
 21 believe. You had never seen those before this lawsuit; is
 22 that right?
 23 A That's right.
 24 Q And so you don't have any personal knowledge
 25 about any of the problems that were being reported in

1 those?
 2 A No, I don't.
 3 Q I would like to show you Exhibit 10, which is a
 4 repair record. I think you took a look at this yesterday.
 5 Do you have Exhibit 10 in front of you, Mr. Clayton?
 6 A I think so. Hold on a sec. 10, yes.
 7 Q This is kind of a bad copy. It's hard to see.
 8 I'm going to try and see if I can read along. I'll see if
 9 I can read this correctly as we go along. Under the
 10 highlighted version that I'm pointing to on the screen,
 11 does it appear to say, "3 HRS, customer pay, remove
 12 quarter from seat belt IR" or "LR"?
 13 A Yeah.
 14 Q And that was apparently what repair or
 15 performance was performed after there was a complaint that
 16 the left rear seat belt would not unbuckle?
 17 A Yes.
 18 Q There was a quarter in it. Was that your
 19 understanding of it from reading Exhibit 4?
 20 A Yeah, there was a quarter in it. And that led
 21 me to understand how the seat belt can unlatch by itself
 22 in a rollover accident.
 23 Q It didn't say the belt was unlatching, it says
 24 the belt was not --
 25 A No, it did not, but I did some of my own

1 research.
 2 Q I'm not asking about your own research. That's
 3 nonresponsive.
 4 A You opened the door.
 5 MR. LARSEN: Objection, nonresponsive, move to
 6 strike.
 7 THE COURT: Sustained. I'm going to strike the
 8 last comment of the witness, and you're instructed to
 9 disregard that last comment.
 10 Q (BY MR. LARSEN) And does it also say on this
 11 invoice, "Make sure all of the other ones work"?
 12 A Yes, it does.
 13 Q I want to talk about the accident. I'm done
 14 with Exhibit 10. Now, was it your understanding that on
 15 the day of the accident Tony was driving to Evanston to go
 16 watch a horse race?
 17 A On the day of the crash; that is correct.
 18 Q And whose horse was it?
 19 A My horse.
 20 Q Where was your horse racing?
 21 A In Phoenix, Arizona.
 22 Q How was Tony going to watch your horse race in
 23 Arizona?
 24 A Because in Wyoming they have a place where you
 25 can watch all sorts of sports and horse racing.

1 Q And he was about a mile short of the Wyoming
 2 border when the accident happened; is that fair?
 3 A Yes.
 4 Q And I think you testified that you met with
 5 Trooper Pace at the accident site, and this was on
 6 Thanksgiving weekend; is that right?
 7 A On Thanksgiving weekend.
 8 Q On Sunday?
 9 A Sunday.
 10 Q About noon?
 11 A I think about noon, yeah.
 12 Q And Trooper Pace, he came out to the meet you
 13 that day in his patrol car?
 14 A Yeah, I think it was a patrol car. I can't
 15 recall for sure. I was in a real fog. I was a wreck.
 16 Q And Trooper Pace was very professional and kind
 17 to you that day, wasn't he?
 18 A Yes.
 19 Q And he wanted to be able to explain to you what
 20 he knew about the accident?
 21 A Yes.
 22 Q And he was the officer that had investigated the
 23 accident; is that right?
 24 A I don't know if he investigated the accident. I
 25 saw on some of the reports some other officers' names or

Addendum 11

00000000 ORIGINAL

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE CITY, STATE OF UTAH

DEE CLAYTON, et al.,)	
)	
Plaintiffs,)	Civil No. 000909522
vs.)	
)	
UTAH AUTO COLLECTION, et al.,)	
)	
Defendants.)	

TESTIMONY OF DAVID INGEBRETSSEN
VOLUME VI

January 24, 2007
9:00 a.m.

FILED DISTRICT COURT
Third Judicial District

NOV - 1 2007

By bn SALT LAKE COUNTY
Deputy Clerk

Wendy Alcock
Registered Professional Reporter

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IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE CITY, STATE OF UTAH

DEE CLAYTON, et al.,)
)
 Plaintiffs,) Civil No. 000909522
vs.)
)
UTAH AUTO COLLECTION, et al.,)
)
 Defendants.)

TESTIMONY OF DAVID INGEBRETSEN

VOLUME VI

January 24, 2007
9:00 a.m.

Wendy Alcock
Registered Professional Reporter

1 one.

2 Q Let's go right there. What does that say?

3 A It says, "Strengthened door pillars. The A and

4 B door pillars are reinforced with a composite material

5 which acts like concrete and strengthens roof

6 construction."

7 Q That's a Ford statement, right?

8 A Yes.

9 Q And that's pointing to what?

10 A It's pointing to the B pillar and the A pillar.

11 And you can see the shadows of the same sort of -- what we

12 saw in the color rendition where they have strengthened

13 and added this composite material.

14 Q And was there another section that you wanted to

15 point to?

16 A I think so. Right up there. I think it's that

17 one.

18 Q Okay. What does that say there? Do you need

19 magnifying glass?

20 A No, I think I can read that. It says,

21 "Strengthen roof construction. Roof crush strength

22 significantly exceeds USA requirements." "Stringent" -- I

23 believe that says -- "USA requirements."

24 Q These are features being -- is it a fair

25 conclusion these are features being used by Ford for the

1 exact purpose before the Clayton vehicle was built?

2 MR. O'NEILL: Objection to the form, Your Honor,

3 leading.

4 THE COURT: Sustained.

5 Q (BY MR. EMBLEM) We talked about occupant

6 protection. We didn't spend a lot of time on the seat

7 belt.

8 A No.

9 Q You did have an opinion concerning Tony

10 Clayton's seat belt, and what is that opinion?

11 A That opinion was that he was originally belted

12 and that the seat belt unlatched in that first rollover

13 sequence.

14 Q How is it possible for -- first let me ask you:

15 Is this the type of seat belt used, No. 312, in the

16 Clayton vehicle?

17 A Exhibit No. 312, yes, it is.

18 Q How is it possible that this seat belt system or

19 latch would fail in this case?

20 MR. O'NEILL: Let me object. It goes beyond the

21 scope of what you directed was admissible.

22 THE COURT: Overruled. You can answer the

23 question.

24 THE WITNESS: There are a couple ways seat belts

25 can come unlatched. I think that in this case the most

1 reasonable way is that there was a false latch. Something

2 was caught in between the latch plate and the buckle and

3 it didn't latch properly. Physics says that we can also

4 have inertial unlatches given the right circumstances.

5 It could also have been something -- there's a

6 console adjacent to the buckle here as well, and an object

7 that is caught between the console and this could also be

8 pushed into it as Tony is moving to this right and to the

9 forward.

10 Q (BY MR. EMBLEM) Something bouncing around

11 inside the vehicle can get between the buckle and the

12 console?

13 MR. O'NEILL: Objection, leading, Your Honor.

14 THE COURT: Sustained.

15 Q (BY MR. EMBLEM) Can you explain what you just

16 said a little bit better, please?

17 A Yeah. An object that's sitting on the console

18 or in the compartment could slip off and get wedged in

19 there, and if it's small enough it could push on it. I

20 think it's more likely that something just prevented it

21 from latching completely. And that's happened to people.

22 It's happened to me.

23 Q It's happened to you?

24 A Yeah.

25 Q In this case, since the door came open, does the

1 fact that the seat belt failed really make any difference

2 to Tony's injuries?

3 A Probably not. Probably not.

4 Q And what is the reason for that?

5 A With that door open, the seat belts are not

6 meant to contain. They're a restraint. They're called a

7 safety restraint. My understanding as a biomechanical

8 engineer and looking at accidents, seat belts are

9 primarily designed to help in frontal collisions to keep

10 you back and away from the front of the car.

11 In a rollover like this, even with a seat belt

12 on, there's some significant side-to-side motion that can

13 occur. As it rolls over, that person can become partially

14 ejected. And partially ejected persons don't just come

15 out the door and land on the ground, they flip around and

16 hit every time the car goes over and can get caught

17 between the roof rail and the vehicle, or the A pillar or

18 B pillar, most likely, and the vehicle and become crushed.

19 And so people die when they're partially ejected.

20 Q So your conclusions then concerning the door

21 opening, belted or unbelted Tony Clayton is more likely to

22 live or die?

23 A With the door open, belted or unbelted, I think

24 Mr. Clayton is going to die. It's that door opening that

25 we need.

Addendum 12

ORIGINAL

IN THE THIRD DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

DEE CLAYTON, et al.,

Plaintiffs,

vs.

UTAH AUTO COLLECTION,
et al.,

Defendants.

Case No. 000909522

Judge Joseph C. Fratto

REPORTER'S TRANSCRIPT OF PREVIOUSLY-RECORDED
PROCEEDINGS

DATE RECORDED: February 9, 2007 - PM SESSION

DATE TRANSCRIBED: February 21, 2007

TRANSCRIBED BY: Kelly L. Wilburn, CSR, RPR

FILED DISTRICT COURT
Third Judicial District

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By *bn* SALT LAKE COUNTY

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SALT LAKE COUNTY, STATE OF UTAH

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et al.,)
)
Defendants.)

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PROCEEDINGS

DATE RECORDED: February 9, 2007 - PM SESSION

DATE TRANSCRIBED: February 21, 2007

TRANSCRIBED BY: Kelly L. Wilburn, CSR, RPR

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1 and there are some corporations that are scared to
 2 death of what civil juries can do, because they can be
 3 accused of profits over safety. They can be accused
 4 of injustice. And they can be accused of contributing
 5 to death.
 6 In a very technical case, with technical
 7 issues, with a jury, a lot of companies do things to
 8 avoid that. Do anything they can, other than submit
 9 it to a jury.
 10 Well, Ford Motor Company is not afraid of
 11 that. Ford Motor Company believes in the jury system.
 12 Ford Motor Company believes that a jury of citizens
 13 and peers can look at these claims for what they are,
 14 and see the truth behind these allegations of profits
 15 for safety and disregard of people's rights. Because
 16 they believe it's wrong, it's unfair, it's untrue, and
 17 it's why we're here.
 18 And that's your job now. You've had a lot of
 19 evidence. We've been here for five weeks. And we are
 20 pleased to be able to submit this for your decision
 21 making. And you know in the end, folks, it is a very
 22 simple case.
 23 A driver was inattentive and asleep, and left
 24 the roadway. He then became alerted, as always
 25 happens, and there was an overcorrection to the right.

1 PROCEEDINGS
 2 THE COURT: Back in the matter of Ford
 3 versus -- or Clayton versus the Ford Motor Company.
 4 Everyone is present who needs to be present. The jury
 5 is in the box.
 6 Ladies and gentlemen of the jury, lest I be
 7 accused of cruelty, appreciate we've gone past what is
 8 the normal lunch hour. And would anticipate, if we
 9 continue on of course, of quite frankly missing lunch.
 10 I don't want to do that if that presents a
 11 problem for any of you. We would take an hour and
 12 have a lunch break here. So I ask you whether anyone
 13 wants to take that hour break, or if you would prefer
 14 to just go forward?
 15 Anyone want to take the hour break? That's
 16 no? Continue on?
 17 All right, that's what we'll do.
 18 Mr. O'Neill, closing argument?
 19 MR. O'NEILL: Thank you, your Honor.
 20 Good afternoon ladies and gentlemen. We have
 21 a very unique system in the United States regarding
 22 civil jury trials. And there are about 173 countries
 23 around the world, and there are about three or four
 24 that allow civil juries to resolve disputes like this.
 25 And you know what? There are some companies

1 Driver error. That overcorrection led to a yaw. And
 2 you are gonna see the evidence in a moment. We'll
 3 talk about it.
 4 He was just about to go off the other side of
 5 the highway and he made another overcorrection.
 6 Another driver error. And in doing that, in the
 7 second overcorrection, he put the vehicle sideways.
 8 He put the vehicle sideways going down the highway
 9 above 65 miles an hour.
 10 And he put that vehicle sideways and it slid
 11 on all four tires. Very significant. We'll talk
 12 about that. And it was on all four tires, everybody
 13 agrees, until the very edge of the asphalt. Hadn't
 14 tipped up. Hadn't done anything. Was sliding.
 15 And then it went off the edge and down a
 16 slope. Down a slope of 38 feet in the dirt, furrowed
 17 into the ground, and was tripped and rolled over. And
 18 it rolled over four full times. And all of that,
 19 ladies and gentlemen, took about 8 to 11 seconds,
 20 depending upon which reconstructionist you want to
 21 talk about.
 22 That's what happened. And the story begins
 23 and ends in those 8 or 11 seconds. Because it started
 24 with the driver drifting off the road, and it ended
 25 with a fatality and some injuries. Because of driver

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1 error, because of failure to wear a seat belt, because
2 of the massive forces that happened in this accident.
3 Those are the basic truths that we've seen in
4 these five weeks. And you have all been very
5 courteous. You've been very patient with the lawyers
6 and the witnesses. And you've taken notes. And so I
7 am not going to go back and review every photograph,
8 and every document, and every issue.
9 Instead what I want to do is spend some time
10 just looking at the highlights and touching on the
11 issues. And one of the things that I do want to do is
12 share with you the testimony that you've heard, so you
13 don't have to believe it's just Mr. O'Neill up there
14 telling you what he remembers. I want you to be able
15 to see the actual testimony from the certified court
16 reporter, so that you can see again what some of those
17 truths were.
18 So let's begin a little bit. And the first
19 thing I want to talk about, at the beginning I told
20 you that we're gonna prove some things. And we'll go
21 through these very quickly. The first theme was the
22 fact that this was caused by driver error.
23 That Mr. Clayton drifted off the curve, he
24 overcorrected, and he caused it to go off the road and
25 trip in the median. Circumstances that would cause

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1 many vehicles to rollover. We'll go and look at the
2 evidence that we've proved there.
3 We'll talk about the injuries to Kellie
4 Montoya and Mr. Clayton being caused by the severity
5 of this very high energy, high speed crash. We're
6 gonna talk about the design of the occupant protection
7 systems in this vehicle.
8 And why it is these injuries occurred. And
9 why this vehicle is not defective in the way in which
10 it protects passengers. And then finally, in summary,
11 talk about some of the things to think about as you
12 consider the jury verdict form.
13 So let me start with evidence point No. 1.
14 Again, this regards the cause of the accident, and so
15 let me get to a summary of what the facts have shown.
16 The facts have shown that the Explorer didn't cause
17 Tony Clayton to lose control. He lost control because
18 he was asleep, inattentive, and he went off the
19 highway exactly where the road curves.
20 That is not a coincidence, folks. And you're
21 gonna see some evidence about that that we've heard at
22 trial. And we know what happened. Two severe
23 steering maneuvers. We're gonna talk about that. The
24 timing between those maneuvers and how the vehicle was
25 responding.

Page 8

1 And then we're gonna talk about, again, the
2 forces that were generated on the side of this vehicle
3 and why it tipped over. And why no vehicle will be
4 immune to tipping over when it's subjected to those
5 kind of circumstances.
6 So let's go through some of this. And again,
7 I just want to start with Plaintiff's Exhibit 23-22.
8 It's in evidence. It's a big board. You will see it.
9 This is the curve in the roadway.
10 And Wendy, may we have some lights?
11 (Inaudible) just dim those slightly? Thank you.
12 This is the curve in the roadway. And the
13 vehicle, by this time, is already off road. And we
14 know that it goes off road for 116 feet. And you're
15 gonna hear some evidence in a moment that that is
16 about a second -- a little more than a second that
17 it's off the road on that gravel.
18 So let's go through and talk about
19 Dr. Germane's reconstruction diagram for a moment.
20 And we'll just put that up, and get that out of the
21 way so that you can see the screen.
22 One of the first things I thought I'd mention
23 to you folks is it was very important, to understand
24 the accident, to be very precise about where things
25 were found and where the marks were so you can begin

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1 to understand exactly what happened.
2 And I just want to start with this one
3 thought. Where is Mr. Ingebretsen's reconstruction
4 diagram? He didn't have one. He made this video for
5 you. But, you know, when you really want to do a
6 scientific job -- and I'm not picking on him just
7 because he didn't do it.
8 When you really want to do a scientific job,
9 and understand which marks go with which tires, and
10 exactly the angle of the vehicle, and what might have
11 happened, how a vehicle is responding, you need to do
12 this. And that's what he did.
13 And he, he presented this for you, and for
14 the plaintiff's experts. So that they could come in
15 and say, Oop, you're wrong here. This measurement is
16 off. No, the vehicle couldn't have hit there.
17 We didn't want to leave it to guess. We
18 wanted precision, so that you could understand what
19 happened. You could understand exactly when movements
20 were made. And so it's more than just a -- you know,
21 I think we were criticized for having little cars and
22 little hat pins.
23 It's there so that you can truly understand
24 exactly the distances that occurred in this accident.
25 And so let's go through some of these again. The

1 first harmful event, up in the upper left-hand corner,
2 is drift off the edge of the highway.

3 It's a shallow angle of departure. That
4 means there wasn't any big steering input before it
5 happened, or big maneuver. It was a drift right off
6 the curve, or just as the highway curved. There was
7 no evidence of any swerve of any kind. And all of it
8 is consistent with the driver being asleep. There's
9 the diagram.

10 I'm gonna take this down so that some of
11 those -- of you in that front row can see some of
12 these things. (Inaudible) the reconstruction.

13 Again, the vehicle covers 105 feet in about a
14 second. A little less than a second. Followed by
15 this violent steering maneuver. And what happened,
16 folks, is the Explorer responded exactly as it was
17 designed.

18 And you are gonna see in the evidence that
19 that first maneuver was a yaw maneuver. And it can
20 only happen if the tie rod is connected. You can't
21 get the vehicle to respond that way. And then there
22 was the second maneuver. And the vehicle responded
23 exactly as it was designed. And it can't do that if
24 the tie rod is disconnected.

25 And you are gonna see that the loss of

1 first told us, again, that at about the time the
2 vehicle left the roadway it was going 75 miles an
3 hour. Left, left-hand side.

4 Then he goes to another photo. He's going
5 further east. And he's showing a mark. And let's get
6 to that mark for a moment. And this is in evidence as
7 Plaintiff's Exhibit 23-22. Let's blow it up for a
8 second.

9 And again, you are seeing the two marks here
10 as the vehicle reenters the roadway. Here's what
11 Officer Pace was asked about that. He said -- he was
12 asked:

13 "And what would you call that kind
14 of a tire mark?"

15 "That's actually a critical curve or
16 yaw mark."

17 Okay? Who is this individual? He's been on
18 the force for more than 20 years. Investigated
19 thousands and thousands of accidents. And he is
20 disinterested. He's not here as an advocate for
21 anybody.

22 It was his job to figure out what happened in
23 this accident. And he recognizes this is a critical
24 curve or yaw mark. And then he was asked again:

25 "What's the significance of that?"

1 control was caused by those driver inputs, not because
2 of some problem with the vehicle. And the other thing
3 that you are gonna see is in this entire accident, if
4 there was this tie rod, and this noise, and this
5 rattling, there is not a single bit of evidence about
6 breaking in the entire sequence. And it doesn't make
7 sense. And you are gonna have to consider those
8 things. You are gonna have to weigh those things.

9 Another thing that doesn't make sense is this
10 idea that the tie rod goes away and he's fighting for
11 his life. It's wrong. You've seen the evidence.
12 When that tie rod breaks, the vehicle is less
13 responsive.

14 And so if there was a sudden steering to the
15 right, instead of going where it normally does it's
16 gonna go more directly down the highway. And if it
17 goes more directly down the highway, there isn't gonna
18 be the need for the second turn.

19 It doesn't add up. The only thing that makes
20 sense in this evidence is that the vehicle was acting
21 as -- exactly as it was designed. And there were two
22 major overcorrections that caused this.

23 Let's now go into some of this testimony.
24 Because I want you to see what happened, not just my
25 recollection. And you remember Officer Pace. He

1 "Well, it's -- means the vehicle is
2 going to make a fast corner. Leaves a
3 black mark on the road. You've turned
4 too sharp, and you are starting into a
5 slide. And that's what leaves the tire
6 marks on the highway."

7 Okay? That's Officer Pace, folks. And you
8 know what he's saying? He's saying it's getting into
9 a yaw. And you know from the evidence you cannot get
10 a yaw with a broken right front tie rod. That isn't
11 Mr. Germane.

12 And we'll talk about all the criticism that's
13 been afforded all the witnesses that we brought. This
14 is an individual whose job it is to figure out what
15 occurred. It's a yaw mark, okay? And then he was
16 asked himself:

17 "What are those two tire marks
18 coming back on? Which tires are they?"

19 "The first mark right there would be
20 the left front, and then the other one
21 would be the left rear."

22 Folks, you know, I -- there are gonna be some
23 things we're gonna talk about here. And, and, and why
24 we've invested time in them, I'm not sure. But this
25 is D-363-I-1. Do you remember where Mr. Pascarella

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1 did his test? And then he compares it to the crash
2 test? And which tire was which? And you remember all
3 that discussion?
4 This is Officer Pace telling you the same
5 thing. That this is, again, the first mark is the
6 left front tire coming on. And the further one down
7 is the left rear tire, because it started a yaw. You
8 can't get a yaw if you have a broken tie rod. All
9 right? And again he was asked:
10 "How do you know the left front tire
11 was first?
12 "Because the vehicle started into
13 kind of a slide."
14 Again, Officer Pace. This isn't a paid
15 expert. This is the guy whose job it was to
16 understand what happened. Okay?
17 And then we were also questioning
18 Mr. Probert, the plaintiff's own expert about this:
19 "Is that radical steering to the
20 right something you think is unusual?"
21 He says:
22 "No, that's certainly a possibility.
23 "And that could explain, would it
24 not, how the vehicle mark -- started
25 into a yaw?"

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1 Mr. Probert agrees, we're starting into a yaw
2 as he's going back on the roadway.
3 "And the steering input is such that
4 you would agree it's an overcorrection?"
5 He agrees that it's an overcorrection, one --
6 from one side to the other.
7 And so now we're back to Officer Pace. And
8 we're back on the highway. And here's what he says.
9 He says:
10 "He is headed off road that
11 direction, now going off to the right
12 side of the road. He's headed kind of
13 toward that side."
14 Let me get back to this picture, 23-22. He's
15 back on the roadway, right here, headed toward that
16 sign. He knows he's gonna be off road in a matter of
17 seconds. Okay? So then there's another steering
18 input.
19 And then we get to the edge of the roadway.
20 And by this time the vehicle is now in a full yaw at
21 75 degrees. The vehicle goes off the edge of the
22 roadway on a 20-degree slope. Fairly steep slope.
23 And this is the testimony from the plaintiff's expert,
24 folks.
25 And then we talked with Officer Pace about

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1 the furrow mark in the upper right-hand corner of the
2 picture we're looking at. And it goes down into that
3 median, and it's tripped. And just so that there's no
4 argument or confusion in your own mind, the vehicle
5 trips when it's down in the median. And that's,
6 again, will become significant in a minute as we talk
7 through that.
8 And again, here we are approaching -- you are
9 looking at Defendant's D-684-24. We're approaching
10 that last set of yaw marks. Here is
11 Defendant's 23-18-A, with the last four set of tire
12 marks. Left front tire there. And again, coming
13 toward us.
14 We're looking at this, this is
15 Plaintiff's 23-17. Again, that set of tire marks.
16 Looking at a photograph, 23-25, as it comes down the
17 median. And finally to the furrow, and the trip point
18 right there in the median. Okay? That's the evidence
19 of what happened, folks.
20 Let's now go through some issues that you've
21 heard about, about whether the driver was asleep. And
22 about whether or not somehow the tie rod had some
23 effect on this. All right? And I think you heard
24 that, Oh, well, the officer just checked the box
25 because that's what he ordinarily does.

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1 That isn't the evidence that you've heard.
2 Let's go through the evidence that you've heard.
3 First of all with Officer Pace. He did an
4 investigation:
5 "What did you determine about the
6 marks on the gravel as part of the
7 roadway?
8 "I determined if you do not make any
9 type of vehicle maneuver and keep going
10 right straight, you would run off the
11 road at exactly the spot just about
12 every time. The same spot on that
13 road."
14 That's why that curve's significant. It
15 isn't just happenstance. It's inattention, and no
16 change to the condition in front of you, and so you go
17 right off the roadway. He's studied it. He's
18 investigated it.
19 "Trooper Pace, after completing your
20 investigation and completing your
21 report, can you tell us your general
22 conclusion?"
23 He says:
24 "My general conclusion is the driver
25 was asleep or inattentive. He was

1 either picking something up, ran off the
2 road to the left, overcorrected back to
3 the right, overcorrected back to the
4 left."
5 Okay? This isn't a paid expert. This is the
6 man on the scene that day. Trying to understand what
7 happened. Looking at the roadway. Looking at the
8 vehicle movements. Inattentive. Off the road.
9 Asleep. He was asked:
10 "Is there anything out there that
11 would indicate something that
12 precipitated this accident sequence?"
13 And here's what he told you. And this is
14 right to the heart of the matter:
15 "He straightened out the corner."
16 Just went right through the corner. All
17 right? That isn't guess work. That isn't checking
18 the box on the form. It's looking at the road exactly
19 where the tire marks left. Understanding what the
20 vehicle was doing. Straightened out a corner.
21 Officer Pace again:
22 "You have training about
23 inattentiveness or asleep?"
24 This isn't guess. He says:
25 "Yes. We're given training. We're

1 were in the No. 1 lane?"
2 "Yes."
3 Mr. Probert agrees. He said in answer to a
4 question:
5 "You've investigated a lot of these.
6 Are these just like the result we see of
7 inattention, where someone misses a
8 curve?"
9 He agrees. There isn't much dispute about
10 this. That's what the physical evidence adds up to,
11 as we start this accident and why it left the roadway.
12 Okay?
13 Mr. Ingebretsen. As you can see, the
14 questions were longer and the answers were longer.
15 And this is one where I had to read him what he had
16 already testified to under oath. We had to kind of
17 remind him a little bit of what he had already said
18 under oath. And so I asked him, I was reading his
19 deposition:
20 "Up to this point in time, is that
21 evidence on the roadway also consistent
22 with Mr. Clayton just basically not
23 paying attention to the road starting to
24 gently turn. Direction of travel would
25 be consistent with basically going

1 taught to understand when you can
2 perceive that that happened and when
3 not."
4 It's part of his training. And then he was
5 asked:
6 "Comparing this accident to other
7 accidents, is this consistent with
8 sleeping and inattentiveness?"
9 And he says:
10 "Yes, very consistent."
11 Again, Officer Pace's testimony. And then we
12 talked about -- a little bit about his accident
13 report, where he determines that it was a prime
14 contributor that he was asleep or inattentive, okay?
15 And then we also asked Mr. Probert. Okay?
16 So now we've covered Officer Pace. Not a paid expert.
17 Now we're going to a paid expert, but it's the
18 plaintiff's paid expert. Mr. Pace -- excuse me,
19 Mr. Probert. We asked Mr. Probert:
20 "I want you to notice something about
21 the photograph. If you assume the
22 driver was simply driving off that
23 stretch, would his tire marks get right
24 on top of the marks you see in this
25 photo" -- the 116-foot photo -- "if they

1 straight down the freeway, and not
2 noticing the freeway was turning right?"
3 And back then, before trial, before he might
4 have realized what he was getting himself into, he
5 gives an honest answer:
6 "Could be. He'd been in on the
7 curve for some time. Not a long time,
8 but the curve had already started. I
9 don't know. It's not inconsistent with
10 that scenario. He certainly could have
11 not been paying attention, and gone off
12 the roadway to the left, and then tried
13 to come back on."
14 All right? Again, this isn't the paid
15 experts by Ford. It's the officer. It's Mr. Probert.
16 And Mr. Ingebretsen, before he realized that it wasn't
17 consistent with his other theories, all right? And
18 again, another Mr. Ingebretsen:
19 "He certainly could not have been
20 paying attention as he went off the
21 roadway?"
22 That was his sworn testimony. He answered
23 that one again affirmatively.
24 And again, we'll finish off this section
25 about the reconstruction with Mr. Probert. One of the

1 sway bar hadn't broke long before, how come he didn't
 2 find it. Okay?
 3 On, on the surface, you know, that may sound
 4 okay. Well, let's examine that for a minute though,
 5 all right? First of all, there's the vehicle. And I
 6 want to have you notice something. And I'm gonna move
 7 over to a different photograph here.
 8 This is 23-13. Plaintiff's 23-13. What's
 9 that? Did anybody grab that and bring it back with,
 10 and inventory it, and try and study it and see what
 11 that was? No. Okay. We know what happened with this
 12 vehicle. It was put on the back of a wrecker and it
 13 was sent to an auction house. And it sat in an
 14 auction house. And parts might have jingled around
 15 and fell off the truck.
 16 And then it was bought by Jack Bingham. And
 17 then it sat in his yard for a few years. And so this
 18 idea that somehow they didn't find the missing sway
 19 bar link, and that's why it had to have been gone
 20 earlier. That photograph right there tells you, we
 21 lost all sorts of things.
 22 Back to the tire for a moment. Okay? In
 23 evidence, 32. Big, gaping gash, you know, missing,
 24 missing off that aluminum rim. Where's that? So
 25 don't believe it. You know, examine it with a, a very

1 second point, again, has to do with the severity of
 2 this accident. And you've seen these charts. This is
 3 Defendant's Exhibit 436. And what does it mean?
 4 Okay?
 5 It means that in this Clayton accident we're
 6 at 16 quarter turns. And therefore it is worse, as
 7 measured by quarter turns, than 99.9 percent of the
 8 accidents. And again, I think I've heard some
 9 criticism, Oh, statistics don't tell you what
 10 happened.
 11 You can look at that chart and see exactly
 12 what happened. They were in one of the worst
 13 accidents in rollovers that are studied in the
 14 country. Ninety-nine point nine percent are less
 15 severe. Okay?
 16 Now, the idea that, you know, by one there's
 17 a lot of them. Well, that's all interesting. We had
 18 four. And it puts it way out there on the edge. This
 19 is an injury slide. You've seen this.
 20 Defendant's 459. Doesn't that look just like the last
 21 one?
 22 And what this shows is that as there are more
 23 quarter rolls, there is greater injury. And you know
 24 what's in this version? Light vehicles. And
 25 Mr. Ingebretsen testified that includes passenger

1 careful eye. You know what happened.
 2 It wasn't there, because it was destroyed
 3 with a lot of other parts. And the vehicle wasn't --
 4 no one was inventorying any of the material. And I'm
 5 gonna show you some testimony now from Dr. Pace:
 6 "Did anybody inventory the debris?
 7 "No, I don't think we did that.
 8 "Concerning all of your training
 9 and, and, and so forth, is it typical at
 10 the accident scene to inventory the
 11 debris? "No, not really. The wrecker
 12 drivers kind of do it, generally
 13 speaking."
 14 Okay? And so let's just kind of conclude now
 15 on this tie rod. The evidence on that 23-17, and all
 16 of the other photographs from the police, show no
 17 two-wheel lift. And that means the tie rod had to be
 18 connected, and that there couldn't have been any
 19 right-hand steer in that vehicle.
 20 The caster effect doesn't let it happen. You
 21 can't generate the lateral force to develop those kind
 22 of tire marks. And again, concluding, Dr. Fowler told
 23 you -- and you can see it yourself -- it was caused by
 24 an overload one-time fracture. All right?
 25 So let's move to point No. 2. And, and the

1 cars. It includes that mini bug. It includes the
 2 Explorers.
 3 People aren't injured because there's some
 4 problem with the Explorer. People are injured because
 5 of the severity of the rollover. No matter what car
 6 they're in. All right?
 7 Again, the risk of ejection, even with a door
 8 opening, if you're not wearing your belt, 86 percent.
 9 And you see that small 2 percent? Okay? That means
 10 restrained down there, and the 86 is unrestrained.
 11 Ms. Montoya is with us and was belted. Two percent.
 12 Mr. Clayton was not belted. Eighty-six percent.
 13 Those accident statistics mean something. As
 14 in a high-speed, high-energy rollover, you don't give
 15 yourself a chance if you don't take time to use the
 16 occupant protection system designed to help you. I
 17 asked Mr. Ingebretsen about it as well:
 18 "Have you done an analysis to
 19 determine the relative severity, sir?
 20 "Yes, I have. I've seen those
 21 numbers."
 22 He agrees, this is a very severe accident.
 23 All right?
 24 "Based upon that analysis that the
 25 severity of this accident was out there

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1 on the edge?"
2 That was his quote. He says:
3 "Yes. I think you're quoting me.
4 Forty per -- all deaths and more severe
5 rollers -- more, more than a quarter
6 turn, the more severe it is, the more
7 likely one will be ejected and killed."
8 All right?
9 "And this one is out there on the
10 edge, Mr. Ingebretsen, statistically
11 speaking, 2 percent of rollovers, worst?
12 "Yes.
13 "And again, most rollover accidents
14 are not this severe, in your opinion?
15 "That's correct. Fatalities occur
16 in the most serious ones."
17 This is Mr. Ingebretsen.
18 "You would agree with me, sir, that
19 according to a national automotive
20 sampling statistics, this is really one
21 of the very worst accidents?"
22 Okay?
23 "That were studied in this
24 five-or-six-year period?"
25 And he says:

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1 "That's right. This chart shows
2 that just 1 or 2 percent of the total
3 rollovers were 16 or more quarter
4 turns."
5 Okay? And then I asked him about fatalities:
6 "And does this graph show, then,
7 that the more rolls that occur, the more
8 fatalities?"
9 And he said:
10 "I wouldn't expect anything else."
11 This is their own expert. Okay? This isn't
12 specific to something with the Explorer. It's life.
13 It's tragic, but it's true, that when you put a
14 vehicle sideways at 48 to 50 miles an hour and trip it
15 in a median, fatalities occur. No matter what vehicle
16 you happen to be in.
17 And again, we'll kind of skip through these.
18 Sixty-five, seventy miles-an-hour trip. It's a
19 life-threatening type of accident circumstance.
20 So now let's move on to evidence point No. 3.
21 And again, there's a claim here, folks, that somehow
22 this door unlatched during this rollover sequence
23 because of rod foreshortening and just swung right
24 open.
25 And there's been maybe some suggestion here

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1 that, Oh, there could be something wrong with the seat
2 belt. I want to kind of get right down to it. The
3 judge gave you an instruction. There is no claim left
4 in this case that there's any problem with the seat
5 belt at all.
6 There is no defect you're asked to consider.
7 It's gone. Why, then, are we seeing the parlor trick.
8 Okay? Slap-across-your-knee trick. Diversion? Cloud
9 the issue? Maybe make you confused about what might
10 have happened or what didn't happen?
11 You know, Mr. Clayton didn't slap the belt
12 across his knee as the vehicle was rolling. He had
13 it, you know, allegedly on. And you can't get forces
14 like that. It didn't happen, folks. It's stored. It
15 was stowed away. It was not used. And that's why he
16 loaded the door.
17 And because he loaded the door, that's how he
18 was ejected. So I want to kind of go through some of
19 this. Seat belts are the most important part of this
20 system. So as you're considering the design, think
21 about that.
22 Think about the number one occupant
23 protection system that's available. And the physical
24 evidence we saw shows he was not wearing it. And
25 because of that, he increased the inertial forces up

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1 against that door to overwhelm that latch. That's
2 what happened. And let's go through some of those.
3 First of all let's look at -- and I'm gonna
4 leave that up, the drivers latch, so you can take a
5 look at that. Let's look at Ms. Montoya's sliding
6 latch plate. This is in evidence, although I don't
7 have a mark. It's 419.
8 And you remember Mr. James explaining this.
9 That because of the force on the belt it leaves these
10 ridges, these marks. Okay? Telltale signs it was on
11 when force was applied. Okay? And then we look
12 across and we see Mr. Clayton's driver's latch. It's
13 pristine, okay?
14 And then you heard about the web grabber
15 mark. Remember? That when an accident occurs, when
16 this unit tips, that bar clamps down on it. And he
17 did find a clamp. And it was at a position on the
18 belt that can only happen if it's stored nicely up
19 against the B-pillar.
20 And the web grabber mark is right here. Not
21 further down on the belt if it's out and extended.
22 All right? No physical evidence of use of the belt at
23 all. Didn't happen. And you know what the warnings
24 say within this vehicle. Every vehicle.
25 And it's common sense. Everybody knows it.

1 proof. All right? And again, I asked him again:
2 "There's no horizontal force from
3 the outside?
4 "I don't think there was."
5 And then I asked him:
6 "That kind of summarizes where we're
7 at. You said vertical, and Mr. Gilberg
8 said can't happen. He says horizontal,
9 and you say that didn't happen."
10 That's kind of right where we're at. And you
11 remember that chart. I drew those two doors. And
12 that's where we're at. The reason why the door opened
13 was the force of -- the inertial forces of
14 Mr. Clayton.
15 And we understand that from the damage that
16 you've seen. And I want to now kind of talk briefly
17 about Dr. Caulfield's testimony.
18 "Can you explain or list the
19 opinions?"
20 I'll go through this quickly.
21 "Yes. The door opened, left side
22 diver's door, due to overload. The
23 latch was actually overloaded and
24 breaking -- broken."
25 Means it no longer works. You remember

1 Dr. Caulfield. He does this. He consults with
2 manufacturers, helps design things. And again, his
3 opinion No. 1: It was overload from collision forces.
4 And secondly: The forces were the occupant,
5 Mr. Clayton, loading the door to overload the latch.
6 And remember, he's unrestrained, which caused
7 the latch to release. And the third opinion is that
8 the door did not open due to some rod foreshortening.
9 And again, he talked about the 214 bar, this sturdy
10 member, somehow cut out of Mr. Gilberg's model, that
11 prevents foreshortening.
12 He talked about the test he did. About
13 ramming this 4 inches, trying to compress the A and
14 B-pillar, still wouldn't open. Okay? All because of
15 the structure of the door. It didn't happen.
16 Let me review some of his materials with you
17 very quickly.
18 (Pause.)
19 MR. O'NEILL: He explained about the striker.
20 Should be pointing directly toward the front of the
21 vehicle. It's rotated out at 25 degrees. Okay? In
22 the foreshortening theory it opens the latch. There's
23 nothing left hanging onto the striker. The force was
24 so great that it rotated it away from the vehicle to
25 that 25-degree angle.

1 In the, in the rod foreshortening theory,
2 that's Exhibit 478-138. In the rod foreshortening
3 theory, bing, the latch is open. It's not holding on
4 to anything. Not this latch. Not the Clayton latch.
5 The four pawls were bent partially open, and the, and
6 the entire latch mechanism was bent.
7 Here it is again. And here's 956-B. These
8 are in evidence. The latch itself is in evidence.
9 Look at the bowing there. Very much like the
10 transverse test that Dr. Caulfield did. And the
11 exemplar is straight up and down.
12 You don't get that, folks, from this latch
13 theory. The physical evidence shows it didn't happen
14 that way. It was the force coming from inside out the
15 door that overwhelmed that latch. Okay? Again he's
16 talking about his test here where he smashes it
17 4 inches front to back. Door recovered at 2 1/2. And
18 there are 8,700 pounds of pressure used to do that.
19 There was no rod foreshortening. And you
20 know, again, I want to talk a little bit about
21 Mr. Gilberg's theory. Do you recall what he did? He
22 just sort of put a rod all the way out here and he
23 said, Well look, you know, if you just move that you
24 can kind of move that rod, you know. That's all you
25 need to do. Well, you know, what does that show you?

1 The question is, is there crush back here?
2 And, you know, it doesn't matter that you put a switch
3 out here. Dr. Caulfield did the test, and he shows
4 you. You can crush it 4 inches, and it doesn't move.
5 In fact, it moves the opposite direction.
6 All right? And again, he talks about
7 misalignment of the pawls. He talks about breaking
8 the latch. There's that rubber boot. Back to their,
9 ping, open theory. The pawls don't rip the boot if it
10 just pings open. Okay?
11 All the physical evidence adds up. It was
12 not some type of foreshortening. And then he was
13 asked about the "g" force:
14 "Fourteen to 20 'g's, in that range,
15 loading the door, is that gonna have
16 enough force to overwhelmed the latch?"
17 He said:
18 "Absolutely. Twenty 'g's, he's 240,
19 he's gonna pile on 4,800 pounds of
20 load."
21 Okay? And what -- then he was asked:
22 "What did you find that it could
23 withstand?"
24 And did he that test. A transverse force
25 test. And he explains that:

1 "Three times 40 is 7,200 pounds on
2 the door system in that 'g' level.
3 "And would that be sufficient to
4 overwhelm the latch?"
5 His testimony is:
6 "Yes, it would."
7 Okay? But now another diversion, okay? In
8 Australia they're supposedly putting foam in the
9 A-pillar, and that's supposed to help something about
10 fore to aft, you know. You were left with this
11 impression that somehow the door and the foam might
12 have made a difference. Okay? Let's look at the
13 truth:
14 "Can you please again describe the
15 components?
16 "Yes. The A-pillar that we're
17 looking at here. And the A-pillar lower
18 going into the rocker. See that on the,
19 on the buck?"
20 And then he talks about these sections. And
21 he said:
22 "The main beef, a non-technical
23 term, of the entire car, very boxy,
24 thick members on the door hood where
25 this door is latched to. The A-pillar

1 cement is heavy and affects stability.
2 I wouldn't entertain it in the first
3 place. That's gonna not make it."
4 And, you know, why, why raise that issue?
5 There isn't anything about the stiffness of that upper
6 A-frame that's gonna do anything, because of the way
7 the vehicle is designed. And the stoutest part of the
8 body is exactly where the door frame is mounted. All
9 right?
10 So that's, that brings us to point No. 4.
11 And this is about the handling and stability. And
12 again, I appreciate your patience. There's so many
13 claims, we have to address every one. And we had to
14 bring in experts to address every single one.
15 And this one is very interesting. We brought
16 you the two men who put their signatures on the
17 certification that this vehicle was safe from rollover
18 resistance. And you know what? They've been accused
19 now of, first of all being fired because there
20 apparently were some problems with the UN105 steering.
21 But then they were hired and paid a lot of
22 money to defend. You know, when they run out of
23 substantive things to say, people turn it into a
24 personal attack. And that's what you've seen with
25 Mr. Tandy.

1 lower is probably the stoutest member on
2 the car," that he can think of, "and a
3 uni-body construction is probably the
4 stiffest."
5 And so he was asked:
6 "Well, if you push down on the roof,
7 what would happen?"
8 And he said:
9 "Well, that would be the main pivot
10 point for the roof, right at the cowl
11 area."
12 Okay? Right here is where he's talking
13 about. At that pivot point. And so he was asked
14 about that. And so then he was asked:
15 "Okay. And if I fill the upper
16 A-pillar with foam, would it make any
17 difference in resisting fore/aft
18 movement of the A-pillar?"
19 And he said:
20 "You fill it with foam, the A-pillar
21 in this vehicle, the roof crush
22 situation wouldn't make a bit of
23 difference.
24 "How about if you fill it with
25 cement? "Wouldn't do that because

1 But we wanted you to get to know Mr. Tandy.
2 We wanted you to get to know Mr. Pascarella. They did
3 the work. They got in the vehicles themselves and
4 went out on test tracks and did the work. Okay? And,
5 and -- so that you could evaluate the work that they
6 did.
7 So let's kind of go through this point very
8 quickly. We all understand, I think now, why an SUV
9 is an SUV. You can't go off road unless you have
10 higher clearances. Ford set that mission. Set that
11 target. And all SUVs are that way.
12 We talked about their design process. About
13 establishing the mission. Setting the targets. You
14 got to select the dimensions. You have to build and
15 rebuild prototypes. And that's what Ford does. And
16 then they test those prototypes. And then they go
17 back to design.
18 And they do this loop back and forth. And
19 they don't release it until it meets their own
20 guidelines and their own standards. And they have
21 standards far above what any governmental agency
22 requires of them. Particularly in rollover
23 resistance. And they confirm design intent by these
24 testings.
25 And so here's, here's a summary of what we

1 learned, I think from Mr. Tandy. The Explorer is a
2 compact SUV. It's built on a truck chassis. It's
3 required to have a higher CG to be able to get off
4 road. To be sure that it had high rollover
5 resistance, Ford designed it to pass track testing,
6 the J-turn testing, the ADAMS model.

7 And Ford is the only manufacturer that makes
8 itself do that. And everybody who's tested the
9 vehicle knows that it can withstand at least .8 "g's"
10 of force before it rolls over. Which is far above
11 what you're gonna experience in normal driving.

12 Defendant's Exhibit 938, Ford's resistance to
13 rollover guidelines. Not required. Nobody makes them
14 do this. They impose it on themselves. They won't
15 let the vehicle out to the public unless it passes.

16 They do the ADAMS J-turn simulation. It's
17 correlated to on track testing. They use the computer
18 model so that they can do very quick design changes,
19 test many different parameters, do thousands of
20 configurations in a single day. Instead of the old
21 days, where you had to make one prototype at a time
22 and test it. All right?

23 But then there was the allegation, Well, they
24 just do the model and they don't, they don't
25 correlate. That's false. We brought in Mr. Tandy,

1 him about anything having to do with these tests.
2 Why? Because they know the work was done. They know
3 the tests were done. They know the certification was
4 based on his own experience on track.

5 And you're gonna see these thick binders that
6 are those data books that we talked about. And the
7 DVDs showing the video tests. And they're there for
8 one reason: So that you can see and understand
9 exactly what they did.

10 This isn't the Mr. Ingebretsen style: Trust
11 me. These are my words. But I don't need to do
12 tests.

13 We believe you do have to do tests if you
14 want to prove something. Ford did that as they were
15 designing the vehicle. They've done it afterward. It
16 is not sensitive to this 235 versus 255 tire. It is
17 not some 20 pounds in the simulation makes a
18 difference. That isn't the truth.

19 The truth is what was done on the track. The
20 truth is what was done at Ford to demonstrate that
21 this vehicle had good rollover resistance, and good
22 handling and stability. And I wanted to talk for a
23 second about Mr. Tandy's safety chart. You'll see it.
24 And I won't invest the time to take it out. But the
25 three circles. All right?

1 the guy that did the work. Here's the exhibits.
2 They're in evidence, okay?

3 This exhibit shows, in 1983, Greg Stevens
4 doing the on test track work. This is Exhibit D-112.
5 And remember this discussion. It's comparing the
6 straight-line ADAMS to actual on-track tests. And
7 this is done at APG on 6/18/93, right when the vehicle
8 is being built.

9 They're out there on the track, measuring
10 with real prototypes against the model. It passed.
11 It tracks. The work was done. Another one, okay?
12 This is in '94 now. This is Defendant's 96. And this
13 is the reliability review summary. Showing the tests
14 that were done to comply with those standards.

15 Here's another one now in 1998. Objective
16 handling of the 1997 Explorer compared to ADAMS. This
17 one is about 128 pages thick. They're all in evidence
18 for you to see that work. Okay? So that's, that's
19 the work that was done.

20 And I want you to think about this for a
21 moment. What was Mr. Tandy questioned about? Almost
22 nothing. They went into his charts and asked about
23 the CG heights. And then went to his other chart and
24 said, Well, really maybe it's up here.

25 Didn't ask him about his work. Didn't ask

1 And that safety, it has to do with the
2 driver, the vehicle, and the environment. And as much
3 time that you can invest, as Ford did, in designing a
4 very safe and reliable product, you cannot avoid all
5 accidents that have to do with driver error and
6 environment.

7 You do the best that you can, but you can't
8 avoid those all together. And again, I'll spend just
9 a few moments on these. This track width comparison.
10 Center of gravity, height, and static stability
11 factor. And this one is interesting.

12 Mr. Emblem sort of did something funny. He
13 said: "Well, what if you load it all up? Doesn't
14 that red line kind of move up?"

15 Yes, it does. But then you'd be comparing a
16 fully-loaded Explorer, against an empty everything
17 else. And those of you who are statisticians and
18 engineers understand that the way you compare is
19 apples to apples. And so if you're going to load up
20 the Explorer, you need to load everything else up.

21 And you are back right where you are here.
22 It shows you there are no unusual characteristics
23 about this vehicle. It shows you that it was an
24 appropriate set of choices by Ford. But more
25 importantly, it was tested by Ford to make sure that

1 his son the same thing. They all read those warnings.
2 They all knew those warnings. And there they are:
3 "Avoid unnecessarily sharp turns or
4 other abrupt maneuvers."

5 Okay? It's right in front of them. It's in
6 the manual several different times. It also tells
7 them to wear your seat belt.

8 All right, let me come to kind of another
9 part. The judge told you about some questions
10 concerning when Kellie should have understood her
11 injury. I'm not gonna spend much time on this. But
12 you need, on the verdict form, because of the legal
13 issues in the case, to pick a date on which she
14 understood the harm and the cause of the harm.

15 So I want to go through very quickly the fact
16 that she hired an attorney, Keith Barton. She signed
17 a contract with him. Her mother was present when that
18 contract was signed, at all times, and she read it.

19 And then we, we saw the agreement, the scope
20 of services. And again, this is 1999. Okay?
21 November of 1990 -- about the accident, 1998. Scope
22 of services:

23 "The attorney was being hired to
24 represent you in the matter of your
25 claims against all parties arising out

1 Do not, please, go into the jury room and
2 assume that somehow, because a party is a company or a
3 corporation, they're not entitled to the same justice
4 that an individual is. Give Ford that same chance.
5 Give Ford the same chance to be able to prove to you
6 that this wasn't the kind of claim and the kind of
7 defect that's being alleged in this case.

8 We've talked about the expert opinion. I
9 want you to consider, as you think about that
10 instruction, who did tests. Mr. Ingebretsen put a
11 chain on a, on a vehicle and kind of ratched it up
12 until it might be able to touch. Okay? And that was
13 one of his tests. And then the other one, he squished
14 a rod and did this. But he didn't do anything else,
15 okay?

16 We've tried to examine everything that was
17 claimed. We did off road tests to reenter. We did
18 tests with the tie rod out, to see how it performed.
19 We took the tie rod out in the double steer maneuver.
20 We did drop tests, to show how much force can occur in
21 an accident and what can be fractured.

22 We did SEM tests. We brought in all of the
23 pictures and the data so that people could examine it
24 carefully. That's something to consider as you weigh
25 this evidence. Seat belt use. We've talked about

1 of injuries."

2 Okay? So the date on which she knew the harm
3 and knew who was responsible, she is hiring an
4 attorney to pursue, as it says here: "Your claims
5 against all parties." Okay?

6 All right. So I just want to sort of
7 conclude with a couple of thoughts on jury
8 instructions. And I do appreciate your patience. The
9 judge has given you several instructions. And rather
10 than read them to you, I'm gonna quickly touch on
11 them. And then go to the verdict form.

12 Number 3 was an important jury instruction.
13 And it says that sympathy is not to, to guide your
14 decision.

15 And it's very difficult, but it is the
16 foundation of justice in our system. Every one of us
17 here feels for the loss of a loved one. Every one of
18 us here knows that this family is hurting. You can
19 see it. You can see it when certain things are said
20 in the evidence. But you can't allow that to guide
21 your thoughts. You must base your decision on
22 evidence. And that's what that instruction is about.

23 Instruction No. 7 tells you that a
24 corporation is entitled to the same rights as an
25 individual.

1 that and what it's appropriate for. And we've talked
2 about the idea of using reasonable care as a
3 plaintiff.

4 And then the final point. That a party who's
5 making a plain -- a claim has the obligation to prove
6 each and every element. And we do not have, as the
7 defendant, any obligation to disprove anything. But
8 we believe that we have.

9 It is not our obligation. We can stand
10 silent. But we believe that we have shown that to
11 you. You're gonna be the judges of those facts.
12 Please weigh them carefully. And I think as you do,
13 you can see the truth behind these claims.

14 The accident happened in a very simple,
15 tragic way. It was driver inattention and
16 overcorrection. And some massive forces that hammered
17 that vehicle and broke those components.

18 And this theory is inconsistent with every
19 single dimension that you can think of. What people
20 noticed. What people did. The physical evidence.
21 The testing of vehicles with and without tie rods. It
22 doesn't add up. Okay?

23 I'm almost through. I have one more set of
24 comments. And again, it goes to burden of proof. And
25 when my remarks are done, I'm gonna sit down and

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1 you're never gonna hear from me in this case again.
2 And you're probably happy about that.
3 And there's a reason for that. It's because
4 of that burden of proof. And that affords the
5 plaintiff that last opportunity to be able to share
6 with you final thoughts.
7 And good lawyers -- and Mr. Emblem certainly
8 is one, and he's, he's been a gentleman as well --
9 always save their zingers for last. And so you're
10 probably gonna hear some. But as you're hearing them
11 I want to have you think about some things as he's
12 asking you those questions.
13 Why is it that no one noticed any problem
14 with the vehicle after this alignment? Not a noise.
15 Not a vibration. Not a body roll. Nothing. Why is
16 it that there's no physical evidence of any damage to
17 this tie rod? Why is it pristine, if it's getting
18 hammered because the sway bar link is out?
19 Why is there no evidence in the roadway that
20 would suggest some type of breakage in the tie rod?
21 Why is it that the vehicle is able to reenter the
22 roadway in an aggressive yaw if the tie rod is broken?
23 Why are there yaw marks, when the tests show you can't
24 get it?
25 Why are you claiming that there was rod

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1 foreshortening, when the measurement doesn't even
2 exist to show that you can foreshorten that rod? Why
3 are you saying the door came open, when the latch is
4 deformed and it doesn't deform on foreshortening?
5 Why is it that you're doing parlor tricks
6 with the seat belt, when there isn't such a claim?
7 Folks, when you weigh all of that evidence and add it
8 up, it comes to one thing. It's all about trying to
9 divert you. Trying to say a lot of different things,
10 and hoping that something sticks.
11 It isn't there. And you have a jury verdict
12 form, and there's one question that it starts with:
13 "Do you find that there is a defect
14 in this Ford Explorer? Yes or no?"
15 And if you answer no, then your work is done.
16 It says: "Go to question 11." You'll see the
17 signature. But that is what I would suggest to you.
18 And you are the finders of the fact that the evidence
19 amounts to.
20 Please weigh it carefully. You've done a
21 great job, and you've been very courteous. And as you
22 carefully weigh that evidence I ask you, please, put
23 the plaintiffs to their burden of proof. Don't allow
24 the kind of theories, and guesses, and words without
25 tests, words without proof to sway you from what

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1 really happened here.
2 It's wrong. It's tragic. And it was very
3 preventable by the individual that was behind the
4 wheel of a very safe vehicle. Thank you for your
5 time.
6 THE COURT: Wendy, can we have the lights
7 please?
8 I think before we get to the rebuttal we'll
9 take a break here, ladies and gentlemen. We'll take
10 15 minutes. I should tell you, this will be your last
11 break before you become a sequestered jury. And as I
12 told you before, what that means is that we'll not
13 allow contact with the outside world.
14 So if there's phone calls that need to be
15 made and those sort of things, now would be the time
16 to do that. During this break you're not to form or
17 express any opinions among yourselves or with others.
18 And we'll be in recess until about 12 minutes
19 to 3:00. You're excused, and we will be in recess.
20 (A recess was taken.)
21 MR. EMBLEM: Reverse bending fracture looks
22 like, and agreed that the Clayton tie rod looks like
23 that. That wasn't necessary. As a matter of fact, I
24 believe he said the reverse bending fatigue was the
25 most prominent and common failure mode. That's why

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1 you don't have to do it over, and over, and over
2 again.
3 And even more interesting, I think, than,
4 than those comments was the fact that -- of
5 Mr. Fowler's ability to do the impact -- since that
6 was their defense -- to do the impact test to show
7 that that could have been broken in that way.
8 But the only impact test we saw was the
9 lateral impact that was the breaking of the sway bar
10 link, and then the tie rod being hit with the
11 (Inaudible) sway bar. That's the test that we saw.
12 And it certainly bent the rod. If it had, as in our
13 case, been subjected to reverse bending, it surely
14 would have broken the rod.
15 Mr. O'Neill talked a lot about all the
16 testing that they had. When Mr. Tandy was on the
17 stand we talked about the sign offs, which are 784 and
18 785. These are sign offs by Mr. Pascarella. I think
19 that Mr. Tandy's was, was in 1995 -- or 1994 for the
20 '95 model, and then in '96 for the '96 model, et
21 cetera. Something like that.
22 But the testing criteria that they showed
23 you -- and I can't find the exhibit right now, was the
24 P-6-101 -- testing criteria for the J-turn testing.
25 When we find that exhibit -- you'll find it in the --

1 to have it in there.
2 THE COURT: Well, we want to make certain
3 that they're guided as much as possible. It seems to
4 me that that's a correct instruction to them in terms
5 of how to work their way through the special verdict.
6 That will be our special verdict.
7 Exceptions now to the, the charge to the
8 jury? Mr. Raty?
9 MR. RATY: Yes, your Honor.
10 THE COURT: And I wonder if you could do that
11 at the podium? As I say, we're on our other system --
12 we're on zeroes and ones now and we could use the
13 microphones, I think.
14 MR. RATY: All right. Thank you, your Honor.
15 I don't know if you specifically want me to address
16 you on these things or just to make a record of them.
17 THE COURT: You have the convenience of the
18 record for your exceptions.
19 MR. RATY: All right. The first thing I
20 would like to state is that we except, as outlined in
21 our objections filed with the court, our written
22 objections to defendant's proposed jury instructions
23 which were excepted -- or those ones which were
24 excepted.
25 We also except to jury instruction No. 25.

1 That is the proximate cause instruction. The jury has
2 been instructed only on proximate cause in regard to
3 strict liability pursuant to defendant's argument that
4 there are no causes of action without first proving a
5 defect in strict product liability.
6 We next except to jury instruction No. 27,
7 which is argumentative, and implies that the -- to
8 the, to the court, as a matter of law, that the
9 Explorer was, was safe.
10 We take exception to jury instruction No. 30.
11 There's been no evidence whatsoever that Tony Clayton
12 failed to keep a proper lookout. And that was also
13 the subject of a motion for directed verdict.
14 The same for jury instruction No. 31, we take
15 exception. There's no evidence that Mr. Clayton
16 failed to exercise reasonable care. Take exception to
17 jury instruction No. 31, as no government standards
18 are applicable to these specific defects alleged in --
19 and evidenced in the case. And so there's no reason
20 to have a jury instruction on government standards.
21 Take exception to jury instruction No. 46.
22 There's been no evidence presented. Or if there were,
23 the evidence is insufficient in order for the jury to
24 find a date, a specific date upon which plaintiff,
25 Kellie Montoya, knew or should have known of the harm

1 and -- the injury and the harm caused by the Explorer
2 defects.
3 Those are our exceptions to the jury
4 instructions. Should I make my exceptions to the
5 special verdict form at this time, your Honor?
6 THE COURT: Yes.
7 MR. RATY: Okay. The jury verdict form is
8 erroneous. It does not allow the jury to consider or
9 make findings on plaintiff's causes of action for
10 negligence and failure to warn.
11 The, the Court determined, based on defense
12 counsel's argument, that negligence and failure to
13 warn claims are subsumed in and obviated by question
14 No. 1 of the jury instruction -- or the jury special
15 verdict form.
16 Question No. 1 asks the jury to determine if
17 the Explorer was in a defective condition and
18 reasonably dangerous to the plaintiff. The defendant
19 argued, and the Court accepted the argument, that
20 under the Bishop case there is no claim in products
21 liability for negligence or for failure to warn
22 separate from a claim of strict liability.
23 In other words, the, the special verdict form
24 is crafted as such to reflect the, the notion that one
25 cannot obj -- that one cannot prove a defect through

1 negligence or failure to warn unless it's first been
2 proven that there's been a defect, in terms of strict
3 liability.
4 The jury form is also -- the special verdict
5 form is also erroneous in that it does not permit the
6 jury to determine a breach of warranty unless, again,
7 it's first found by the jury that there's been a
8 defect in terms of strict liability.
9 Jury verdict form is also erroneous in that
10 it requires the jury to find that the plaintiff's
11 injuries -- or that the defective condition in the
12 case at bar was the proximate cause rather than a
13 proximate cause of the plaintiff's injuries.
14 The jury verdict form is erroneous in that,
15 on the breach of warranty, that question does not use
16 the language "breach of warranty," or the -- it does
17 not use the language "breach of warranty," and is
18 confusing as to what the, the claims are which the
19 jury is being asked to find.
20 The special -- jury special verdict form is
21 also erroneous in that it requires the jury to find a
22 specific date on which Kellie Montoya knew, or through
23 exercise of reasonable diligence should have
24 discovered both her harm and its cause. There's no
25 specific date in evidence that could reasonably be

1 know what we have here going, but you don't have that
2 capability, maybe.

3 MS. NEVILLE: My guess is we have a
4 electronic copy, so we'll just e-mail it to the clerk.

5 THE COURT: Well, I'll -- I think we could
6 just redo it without that line.

7 And with that -- and we'll ask Francisco to
8 come forward too, because I don't know if I had
9 introduced him. Francisco (Inaudible) is a, an intern
10 here going to the college of law at the -- S.J.

11 Quinney College of Law. And he will help us.

12 If you would, take these exhibits back to the
13 jury room. So I'll need the officer and -- although I
14 do need counsel to make certain as we put them
15 together -- and I'm not sure whether we need to
16 prioritize them. The room will hold so much, if you
17 will -- maybe to direct us.

18 It's probably just the larger -- very larger
19 things that won't fit in there. But if we put the
20 other things. I think all the photographs, all the
21 various binders. Even the smaller tie rods and so
22 forth go back there.

23 MR. LARSEN: One other issue. We did have a
24 laptop that was available, if the --

25 THE COURT: Yeah.

1 THE COURT: In terms of where you can go, if
2 you have a cell phone -- and I think everyone does --
3 if you'll give Wendy the cell phone number. And vow
4 to be no lon -- no further away than 15 minutes. So.

5 (Inaudible speaker.)

6 THE COURT: I -- maybe I'm anticipating some
7 questions, possibly, so that we can gather together
8 quickly.

9 We'll be in recess.

10 (A recess was taken.)

11 THE COURT: We're back here in the matter of
12 Clayton versus Ford Motor Company. And everyone is
13 present who needs to be present. The jury is in the
14 box. We're a bit formal about this but we need to do
15 this, of course, on the record.

16 You have made a request to see the doors and
17 the buck. And they have their relative exhibit
18 numbers. I won't identify them particularly. We need
19 to -- the rules re -- require that I accommodate you
20 on that, to allow you to view these larger exhibits
21 that will not be accommodated in the jury room.

22 But that does have to be done in a certain
23 way. And this is the way we're gonna do this. We
24 will leave you in this courtroom for five minutes,
25 allowing you to take a look at these exhibits. Rock

1 MR. LARSEN: -- jury requests it. Or we
2 could send it in without a request and just
3 (Inaudible.) It's up to you.

4 THE COURT: Well, I think I would prefer
5 this. Would be -- if they request -- if they want to
6 look at the CDs, that we'll provide what you have.
7 And you know what -- we were talking about the same
8 machine and everyone?

9 MR. LARSEN: It's a machine that I showed to
10 plaintiff's counsel table this morning and asked
11 them --

12 MR. EMBLEM: We haven't looked at it yet, but
13 I'm sure it's gonna be fine. We'll just check it out.

14 THE COURT: We'll, just handle it that way.
15 On, on request, we'll provide the machine. And if
16 you'll look it over to -- anticipating that request,
17 so that we can see if there's any perceived problems
18 with that.

19 MR. LARSEN: We'll give the laptop to Wendy
20 so that she can give it to them, (Inaudible) not
21 available.

22 THE COURT: All right. Let me see. I don't
23 know that there's anything else. We'll be then in
24 recess awaiting this verdict.

25 (Inaudible speaker.)

1 will be on this side. We'll have this other door
2 secured.

3 At -- in five minutes, Rock will come back in
4 to escort you back out. If you're finished before
5 five minutes, then if you'll knock on the door, he'll
6 come and get you and take you back into the courtroom.

7 And so we'll leave now. And -- well, maybe
8 we'll give you some symmetry here. Seven minutes. A
9 quarter to 8:00. Seven forty-five. And we'll excuse
10 ourselves.

11 (A recess was taken.)

12 THE COURT: We're here in the matter of
13 Clayton versus Ford Motor Company. Appears to me that
14 everyone is present who needs to be present. And the
15 jury is in the box.

16 Mr. Shelley, you are the foreperson?

17 JUROR: Yes, your Honor.

18 THE COURT: Has this jury reached a verdict?

19 JUROR: We have, your Honor.

20 THE COURT: If you'll hand the verdict to
21 Rock.

22 (Pause.)

23 THE COURT: I'll publish the verdict. This
24 is in the matter of D. Clayton and others versus Ford
25 Motor Company.

1 "Special verdict. Case num -- Case
 2 No. 000909522.
 3 "Interrogatory No. 1: When the
 4 subject 1997 Ford Explorer left Ford
 5 Motor Company, was it in a defective
 6 condition, unreasonably dangerous to the
 7 plaintiffs?
 8 "Answer: No."
 9 (There was a glitch in the tape.)
 10 THE COURT: I'm going to begin again so that
 11 we can have a good record of everything that's said.
 12 My first question of you all is, is this the verdict
 13 of the jury, so say you all?
 14 (Responses in the affirmative.)
 15 THE COURT: Everyone has answered in the
 16 affirmative. I'll poll individ -- each individual of
 17 you. And the question is, was this and is this now
 18 the verdict of this jury? Paul DeJane?
 19 JUROR: Yes, your Honor.
 20 THE COURT: Gerri Cowley?
 21 JUROR: Yes, your Honor.
 22 THE COURT: Lam H. Thai?
 23 JUROR: Yes.
 24 THE COURT: Edith Ruth Reyes?
 25 JUROR: (Inaudible.)

1 experience that you will long remember.
 2 Know that we do it with thanks. The check is
 3 in the mail. You are excused with our thanks.
 4 (The jury was excused.)
 5 THE COURT: The jury has left the courtroom.
 6 We'll inform the alternates that they are no longer
 7 needed and are discharged. And Mr. O'Neill.
 8 MR. O'NEILL: Yes, sir.
 9 THE COURT: And Mr. Larsen, and Ms. Neville,
 10 if you'll prepare a judgment based on this special
 11 verdict.
 12 Your presentation is appreciated. I expected
 13 the best. I was not disappointed.
 14 MR. O'NEILL: Thank you, your Honor.
 15 THE COURT: We'll be in recess.
 16 (The recording was concluded.)
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 18
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 20
 21
 22
 23
 24
 25

1 THE COURT: Danny K. Baker?
 2 JUROR: (Inaudible.)
 3 THE COURT: Angela T. Mouritsen?
 4 JUROR: Yes.
 5 THE COURT: Adam Douglas Shelley?
 6 JUROR: Yes, your Honor.
 7 THE COURT: Shirley Marie Oakley?
 8 JUROR: Yes.
 9 THE COURT: Ladies and gentlemen, that
 10 concludes your service. Let me indicate to you, in
 11 the strongest terms, our deep appreciation. This, I
 12 know, has been quite an experience for the last
 13 several weeks. And I want you to know that all of us
 14 appreciate very much your sacrifice.
 15 I know jury service at the least is
 16 inconvenient, but many times represents a substantial
 17 sacrifice, both to fulfill your duty and to make this
 18 system work. Tonight you'll go home and someone will
 19 ask you what you did today. And I want you to tell
 20 them -- well, you can tell them anything you want.
 21 You're now free to talk to or not talk to
 22 anybody about this experience. But I hope that when
 23 you go home tonight you'll tell them, if you're gonna
 24 tell them anything, that you were part of this great
 25 system that we have. And I know that this is an

1 CERTIFICATE
 2
 3 STATE OF UTAH)
) ss.
 4 COUNTY OF SALT LAKE)
 5
 6 This is to certify that the foregoing transcript
 7 was prepared by me, KELLY L. WILBURN, a Registered
 8 Professional Reporter and Notary Public in and for the
 9 State of Utah.
 10
 11 That the transcript was prepared from a
 12 previously-recorded proceeding that was provided to me
 13 by means of a CD. That said recording was then
 14 written in stenotype by me and thereafter caused by me
 15 to be transcribed into typewriting. That I was not
 16 personally present at the said proceeding.
 17 And that a full, true, and correct transcription
 18 of said recording so taken and transcribed to the best
 19 of my ability is set forth in the foregoing pages,
 20 numbered 1 through 128, inclusive.
 21
 22 I further certify that I am not of kin or
 23 otherwise associated with any of the parties to said
 24 cause of action, and that I am not interested in the
 25 event thereof.
 WITNESS MY HAND AND OFFICIAL SEAL AT KEARNS, UTAH
 THIS 21st DAY OF February, 2007.
 Kelly L. Wilburn, CSR, RPR
 My Commission Expires:
 May 16, 2009

Addendum 13

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE CITY, STATE OF UTAH

DEE CLAYTON, et al.,)
)
 Plaintiffs,) Civil No. 000909522
vs.)
)
UTAH AUTO COLLECTION, et al.,)
)
 Defendants.)

JURY SELECTION

January 2, 2007
10:55 a.m.

Wendy Alcock
Registered Professional Reporter

FILED DISTRICT COURT
Third Judicial District

NOV - 1 2007

By bm SALT LAKE COUNTY
Deputy Clerk



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IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE CITY, STATE OF UTAH

DEE CLAYTON, et al.,)
)
 Plaintiffs,) Civil No. 000909522
vs.)
)
UTAH AUTO COLLECTION, et al.,))
)
 Defendants.)

JURY SELECTION

January 2, 2007
10:55 a.m.

Wendy Alcock
Registered Professional Reporter

1 a supervisor in the mail and distribution department.
 2 THE COURT: And you're a computer programmer?
 3 PROSPECTIVE JUROR: Well, no. I'm a
 4 telecommunications installation technician. Internet data
 5 communications.
 6 THE COURT: How long have you done that?
 7 PROSPECTIVE JUROR: Over eight years.
 8 THE COURT: Thank you, Mr. DeJane. Ms. Cowley?
 9 PROSPECTIVE JUROR: 39 years. Associate's
 10 degree. I work for Jordan School District as a teacher's
 11 assistant.
 12 THE COURT: Your degree is in what field of
 13 study?
 14 PROSPECTIVE JUROR: General studies. And I'm
 15 also -- not this quarter, but I go to the University of
 16 Utah for a psychology degree. I am married, and my
 17 husband works for Saia Motor Company.
 18 THE COURT: I haven't asked the others. I don't
 19 have that on the list, but you're welcome to tell us how
 20 many children you have and their ages.
 21 PROSPECTIVE JUROR: Two. 15 and 14.
 22 THE COURT: You're also welcome to, if you want
 23 to describe them as beautiful or some adjective, you're
 24 certainly welcome to take this opportunity. Thank you,
 25 Ms. Cowley. Ms. Rost-Hainsworth?

1 PROSPECTIVE JUROR: I believe I've been in Salt
 2 Lake County 45 years. I have a GED from Salt Lake
 3 Community College. I work for Steve Evans doing business
 4 at Sell Antiques.
 5 THE COURT: What do you do for him?
 6 PROSPECTIVE JUROR: It's varied. I answer
 7 phones, I help customers, I might do housekeeping if it's
 8 required, invoicing, I do all their computer work online.
 9 I'm not attending school right now. I am widowed, but I
 10 had not lived with my husband for seven years prior to his
 11 death.
 12 THE COURT: What type of work did he do?
 13 PROSPECTIVE JUROR: He was a carpenter. I have
 14 four children. That's it.
 15 THE COURT: What are their ages?
 16 PROSPECTIVE JUROR: 16, 26, 27, 31.
 17 THE COURT: Thank you. Mr. Thai?
 18 PROSPECTIVE JUROR: I've been in Salt Lake about
 19 20 years. I have a Bachelor's degree in mechanical
 20 engineering. I have a Master's in Business
 21 Administration. Let's see. I own my own company.
 22 THE COURT: I'm sorry, Mr. Thia, could you speak
 23 up?
 24 PROSPECTIVE JUROR: I own my own engineering
 25 consulting company.

1 THE COURT: It's an engineering consulting?
 2 PROSPECTIVE JUROR: Yes.
 3 THE COURT: You're an engineer?
 4 PROSPECTIVE JUROR: Yes.
 5 THE COURT: What type of engineer?
 6 PROSPECTIVE JUROR: Mechanical. I'm not going
 7 to school right now. I'm married with two kids, a boy and
 8 girl. My wife works for Social Security Administration in
 9 Murray.
 10 THE COURT: How long has she worked for Social
 11 Security?
 12 PROSPECTIVE JUROR: I think 15 years or so.
 13 THE COURT: Thank you. Ms. Erickson?
 14 PROSPECTIVE JUROR: I've lived in Salt Lake
 15 County most of the 40 years. I have a barber's license
 16 from Salt Lake Community College. I work at Beesley's
 17 Barber Shop, self-employed. Been there together with him
 18 for 30 years. Not attending school. I'm single. I have
 19 three sons.
 20 THE COURT: Ages?
 21 PROSPECTIVE JUROR: 45, 44 and 43.
 22 THE COURT: I presume all these children are
 23 beautiful children.
 24 PROSPECTIVE JUROR: Definitely.
 25 THE COURT: Before, Mr. Dinan, we call upon you

1 to answer the questions, let me indicate to you, as I say,
 2 we all you need to speak up. And I'm speaking up also.
 3 And it's being recorded here, what we're talking about, so
 4 we have to make sure we all speak up. And I may
 5 occasionally speak into the air, meaning that I'm
 6 describing something for the record. So if it seems like
 7 I'm describing what is the obvious, it is because the
 8 record needs to be clear in terms of who you are and what
 9 were we're seeing here.
 10 Mr. Dinan?
 11 PROSPECTIVE JUROR: I've lived here for 12
 12 years. I attended a few years of college back in New
 13 York. Work for Zions Bank in the investment department.
 14 Not currently attending school. I'm divorced.
 15 THE COURT: Employment -- your ex-wife, any
 16 employment outside the home?
 17 PROSPECTIVE JUROR: Allstate Insurance Company.
 18 THE COURT: Doing what sort of work for
 19 Allstate?
 20 PROSPECTIVE JUROR: At the time I believe she
 21 was involved with claims and things. That was quite a
 22 while ago.
 23 THE COURT: And in New York, which institution
 24 in New York? Which school?
 25 PROSPECTIVE JUROR: City College.

Addendum 14

ORIGINAL

IN THE THIRD DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

DEE CLAYTON, et al.,

Plaintiffs,

vs.

UTAH AUTO COLLECTION,
et al.,

Defendants.

Case No. 000909522

Judge Joseph C. Fratto

TRANSCRIPT OF TRIAL PROCEEDINGS

DATE: January 5, 2007

TIME: 9:13 a.m.

REPORTED BY: Kelly L. Wilburn, CSR, RPR

FILED DISTRICT COURT
Third Judicial District

NOV - 1 2007

By km SALT LAKE COUNTY
Deputy Clerk



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IN THE THIRD DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

DEE CLAYTON, et al.,)
) Case No. 000909522
Plaintiffs,)
)
vs.)
) Judge Joseph C. Fratto
UTAH AUTO COLLECTION,)
et al.,)
)
Defendants.)

TRANSCRIPT OF TRIAL PROCEEDINGS

DATE: January 5, 2007

TIME: 9:13 a.m.

REPORTED BY: Kelly L. Wilburn, CSR, RPR

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 19 -oOo-
 20
 21
 22
 23
 24
 25

1 Mr. Emblem, what's your view of it?
 2 MR. EMBLEM: Well, I'd sure hate to lose him,
 3 your Honor, but I'm here and listening. I understand
 4 it would limit our, our reserves to two.
 5 Any thoughts?
 6 I think an unhappy juror is not gonna be good
 7 for anybody. What do you think?
 8 MR. O'NEILL: Your Honor, I agree, unhappy
 9 jurors are not good for any of us. But the effect of
 10 that would be just as Mr. Emblem said, reduced to two,
 11 which puts us all in a position where we might run out
 12 of jurors and have to redo that again. And absolutely
 13 no one would want that.
 14 Number two I think for both of us Mr. Lam,
 15 for better or worse, was central to all of the efforts
 16 in voir dire. The three days that we spent. And
 17 there's just absolutely no way that I would
 18 voluntarily say release him.
 19 I think we all heard all of the hardships.
 20 And there were many, many that are still on this jury
 21 that still have very difficult things they have to
 22 deal with. So I feel for the guy, but I can't
 23 voluntarily let that one go. That served three days
 24 as part of our focus.
 25 THE COURT: Well, first -- and my position is

1 JANUARY 5, 2007 9:13 A.M.
 2 PROCEEDINGS
 3 MR. EMBLEM: Morning your Honor.
 4 THE COURT: Good morning. We're gathered
 5 here in the matter of Dee Clayton and others --
 6 Dolores Clayton versus the Ford motor company and
 7 others. Appears to me that everyone is present who
 8 needs to be present. The jury, however, is not in the
 9 courtroom.
 10 I come in here first because I wanted to
 11 inform everybody about a situation and solicit
 12 everyone's view in terms of what you would like to do.
 13 Juror No. 3, Lam Thai, was sort of clearly not happy
 14 that he had been selected as Juror No. 3.
 15 And has come in this morning with the bailiff
 16 and posed these questions, which are that he is
 17 wondering why his -- the burdens of service that he
 18 outlined were insufficient to excuse him. And an
 19 indication, apparently, that he has babysitter
 20 problems. His wife cannot get off of work and, and
 21 these sorts of things.
 22 I solicit your view in terms of what you
 23 would like to do with Mr. Thai, if anything. Or what
 24 you think would be appropriate in terms of addressing
 25 his questions and his situation.

1 that the decision has been made regarding his
 2 situation. And I made a determination. I'm not
 3 inclined, of course, to reevaluate with what we have.
 4 I don't know if -- and would not, unless you
 5 both either agreed to release him, for whatever
 6 reason, and we called upon one of the alternates to
 7 fill his spot. Or if you would want some further
 8 inquiry in terms of his situation to see if there
 9 should be a reconsideration of, of that.
 10 I'm not inclined to do that. But if the two
 11 of you would like to do that, I will. So it's either
 12 you both agree that -- or both sides agree that he
 13 should be released, given the circumstance.
 14 Or -- and/or inquire of him further. Or we'll just
 15 proceed forward.
 16 MR. EMBLEM: For me, your Honor, I think the
 17 decision of hardship is a decision for the Bench. And
 18 for Mr. O'Neill and myself, I think we're in the same
 19 position that we have to advocate for our clients in
 20 our best, best efforts.
 21 With that in mind, if further voir dire would
 22 help the Court make that decision, then I think that
 23 would be fine.
 24 THE COURT: Okay. I'm not inclined to -- as
 25 I say, if both of you urged me to do that, I would do

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1 it and maybe look and -- take another look at it. But
 2 I'm not inclined to reevaluate that unless you both
 3 agree to do that -- that I should do that.
 4 Should we proceed forward?
 5 MR. EMBLEM: I think we should, your Honor.
 6 THE COURT: Let's bring the jury in.
 7 MR. EMBLEM: Your Honor, my clients are
 8 present this morning. Mr. Clayton, Mrs. Clayton.
 9 This is the first cousin, Phil. And Kellie Montoya.
 10 THE COURT: Good morning.
 11 (Pause.)
 12 MR. O'NEILL: Your Honor, I thought I would
 13 just make a note. I just asked Mr. Emblem. He
 14 expects to finish before lunch, of course. And I
 15 don't know how that will fall on break, but it will
 16 take us just a few minutes to shuffle all the
 17 technology for -- so for purposes of a little break in
 18 between --
 19 (The jury entered the courtroom.)
 20 THE COURT: The jury is now in the courtroom.
 21 Before we begin let me maybe make some adjustments.
 22 Mr. Penrose, I'm wondering if on the back row would be
 23 a better place for you. Would that --
 24 MR. PENROSE: I'm, I'm open. Wherever you
 25 think is best.

Page 7

1 THE COURT: All right. Well, Mr. --
 2 MR. PENROSE: Oh, good. Yeah, with this
 3 thing, sure, that probably is a good idea.
 4 THE COURT: If we, if we switched places with
 5 Mr. Thai. And we do have two -- three extra chairs.
 6 Now, that would permit maybe some spreading out when
 7 you get to the point where you, where that might be
 8 more comfortable.
 9 It's not necessary that you stay in this
 10 order completely in terms of your comfort. If your,
 11 if your seat is not as comfortable as maybe one other
 12 seat might be, we can make an adjustment to that. So
 13 we'll start with this.
 14 And as I say, if we need to adjust a bit for
 15 comfort. Hopefully that jury box is not too bad.
 16 It's -- the design of the jury box is sort of an art
 17 that we get involved with.
 18 Mr. Thai, I understand that you had some
 19 concerns about your selection. And you had some, some
 20 problems that have been -- had arisen.
 21 MR. THAI: Yeah, you know, I, you know, I
 22 just, I mean, you know, I'm doing my best to, to be
 23 impartial on this. But the thing I have a question
 24 about is, you know, to ease my, my, my understanding
 25 of the process is that, you know, I -- when we had

Page 8

1 the -- all the jury in here and everybody raised their
 2 opinion about why they can't be -- and there were a
 3 lot of, you know, financial hardship that they can't
 4 be here. Be jurors.
 5 So, and I -- one thing I do notice is that,
 6 you know, a lot of them are gone except for me, you
 7 know. And one thing I want to make sure that I have a
 8 peace of mind that, you know, I know what -- how this
 9 process work.
 10 Is that well -- is it my, my financial
 11 well-being not as important as so-and-so, you know,
 12 financial well-being, you know. That's the thing I
 13 need to clarify for me to, you know, to fully
 14 understand what.
 15 THE COURT: Well, I'd like to give you the
 16 courtesy of an answer to that. I understand your
 17 concern. It's my decision to make. There's statutory
 18 standards in terms of hardship, undue hardships and
 19 extreme inconvenience.
 20 And Rule 47 is the rule that governs these
 21 sorts of things. And I must make a determination. We
 22 had found ourself down to pretty well all of the
 23 jurors. And if we were not able to select a panel we
 24 would have necessarily had to -- this considerable
 25 preparation for this would have gone for naught, and

Page 9

1 the matter would have been delayed for a considerable
 2 period of time.
 3 You can imagine the coordination that must go
 4 into this sort of an event. So I needed to make an
 5 evaluation here in terms of everybody's situation, in
 6 terms of their hardship. Appreciating that it's a
 7 difficult -- and I hope you appreciate that it's a
 8 difficult decision.
 9 I mean, it's not easy to do this. And even
 10 for those who do this for a living, let alone those
 11 who must sacrifice so much to do it. I've made my
 12 determination. It was not comparing one to the other.
 13 I don't compare you one to the other.
 14 I take the statutory standard and see whether
 15 your situation in my view, in my judgment, reaches
 16 that point of hardship in which you would be excused.
 17 That decision was made. And I want you to know it was
 18 made in good faith. I took everything into account.
 19 And, and as we go along I know there are
 20 other situations that might arise. I'd like to
 21 accommodate them as much as possible. But you
 22 understand our situation here.
 23 And our, and our appreciation also for your
 24 sacrifice. See, it doesn't go certainly un --
 25 unnoticed and unappreciated at all. It's very much

Addendum 15

ORIGINAL

IN THE THIRD DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

DEE CLAYTON, et al., Plaintiffs, vs. UTAH AUTO COLLECTION, et al., Defendants.	}	Case No. 000909522 Judge Joseph C. Fratto
---	---	--

PARTIAL TRIAL TRANSCRIPT
BEGINNING OF PM SESSION

DATE: January 10, 2007
 TIME: 1:39 p.m.
 REPORTED BY: Kelly L. Wilburn, CSR, RPR

FILED DISTRICT COURT
Third Judicial District

OCT 24 2007

By fon SALT LAKE COUNTY
Deputy Clerk

11466

IN THE THIRD DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

DEE CLAYTON, et al.,)
) Case No. 000909522
Plaintiffs,)
)
vs.)
) Judge Joseph C. Fratto
UTAH AUTO COLLECTION,)
et al.,)
)
Defendants.)

PARTIAL TRIAL TRANSCRIPT
BEGINNING OF PM SESSION

DATE: January 10, 2007

TIME: 1:39 p.m.

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18 (801) 257-1800 (fax)

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1 JANUARY 10, 2007 1:39 P.M.

2 PROCEEDINGS

3 THE COURT: Good afternoon.

4 MR. EMBLEM: Afternoon, your Honor.

5 THE COURT: We're back with Clayton versus
6 the Ford Motor Company and others. And the jury --
7 everyone is present who needs to be present. The jury
8 is not in the box. Couple matters that need to be
9 taken up outside of their presence. I understand an
10 evidentiary question that you'd like me to resolve
11 outside of their presence, if I'm correct?

12 MS. NEVILLE: Yes, your Honor. And --

13 THE COURT: Before we get to that I have a
14 matter that I believe I need to take up with you. I
15 was advised during this break by Rock that he had
16 overheard some comments between the jurors in the jury
17 room.

18 Apparently Mr. Tu (sic) -- and we can have
19 Rock clarify that more -- but apparently had, in terms
20 of these bits of conversation, indicated to the jurors
21 that he had made up his mind. And Rock, why don't you
22 tell us what you exactly heard, the best you could.

23 THE BAILIFF: It was, it was Mr., Mr. Thai.

24 THE COURT: Mr. Thai.

25 THE BAILIFF: And from what I'm, just the

1 impression I'm getting is he's still a little upset
2 about, about being here. And that he -- I, I remember
3 him saying that, that, "You guys all know what I think
4 already."

5 And, and then I remember from his, from his
6 questioning in there with, with you guys --

7 THE COURT: Well, hold on. Let me just have
8 you zero in on exactly what you heard him say.

9 THE BAILIFF: Okay. It was that and also
10 that he made the comment that, that he thought that
11 everybody was being too, too open-minded or something
12 to that. I'm not using his exact words, but that's
13 kind of what he was saying.

14 And, and I just didn't want to let this go
15 forward and know in my mind that maybe this guy had
16 already made up his mind was gonna try to convince
17 everybody else the same thing. So I just brought it
18 up to the judge, so.

19 THE COURT: Any?

20 MR. EMBLEM: Well, for me your Honor --

21 THE COURT: You want to give your view on
22 that?

23 MR. EMBLEM: I think we probably should voir
24 dire him further to be certain that, that he hasn't --
25 if he has committed himself already I think it might

1 be cause for recusing him. Do You have anything on
2 that?

3 MR. O'NEILL: I don't know how to react to
4 the individual voir dire yet, but it's problematic.
5 And I think it reflects his desire to get off the jury
6 that we've already talked about, your Honor. So I'm
7 not sure where all this takes us.

8 But maybe that is the first step, just so we
9 can clarify. If there's already been discussions
10 among the jury, that could be problematic as well. I
11 don't know.

12 THE COURT: Well, as I understand what
13 actually was said -- and maybe we're inferring
14 something that may or may not be there. I'm inclined
15 to think that that's where we are. That he's
16 expressed it on his frustration of being here.

17 But I suppose one can infer from this several
18 things. I don't know that we do any -- I don't know
19 that we have enough here to move forward to any second
20 stage. I did feel that we needed to report that to
21 you and see what your reaction was, and what you
22 thought might be appropriate.

23 But Mr. Emblem, further questioning about
24 what exactly he said to him -- said to the jury, do
25 you think that's appropriate at this point?

1 MR. EMBLEM: Well, in light of, in light of
2 that -- your comments, your Honor, I just would
3 retract a little bit from that more strict position
4 and perhaps suggest a personal admonition. That's --
5 an example maybe of bringing him in first and saying,
6 Mr. Thai, you know you're not supposed to do that.
7 That may be best here, perhaps. Just a thought.

8 MR. LARSEN: My thought is just maybe another
9 cautionary instruction again. But this time maybe
10 just explain to the jurors that it's understandable to
11 gonna go back into the jury room, and that they're
12 gonna want to talk about what they just saw.

13 Whether something funny happened on the
14 stand, or something was boring, or something like
15 that. And that's understandable. But the reason that
16 we've ask them not to form any opinions because it is
17 very important to be able to hear and see all the
18 evidence before you draw those conclusions.

19 And try to keep an open mind. Try not to
20 express your opinions or conclusions to others.
21 Because you might get entrenched in your opinions or
22 belief, and evidence later on may, may want -- may
23 make you feel like you need to change that.

24 And you may now have become entrenched,
25 because you've taken strong positions with the jurors

1 and you can't back off of those. And I think that
2 kind of instruction may be helpful.

3 THE COURT: We gave such an instruction, did
4 we not, preliminarily? Let me see. I have those --
5 our preliminary instructions.

6 (Pause.)

7 THE COURT: Well, I'm -- can't put my finger
8 on it, but I, I thought we had given an instruction.
9 Make sure you listen to all the evidence before
10 reaching any conclusion. Can someone draw me to that?

11 MR. O'NEILL: The preliminary instruction?

12 THE COURT: That preliminary instruction?
13 That's presuming, I suppose, I'm right that we gave
14 such an instruction. But I'm, I'm certain we did.

15 MS. EMBLEM: Your Honor, you also gave the
16 instruction before lunchtime today. I heard you say
17 that.

18 MR. EMBLEM: Every time --

19 MS. EMBLEM: Every time you let the jury go
20 you tell them that.

21 THE COURT: Well, I suppose it's being
22 suggested, and Mr. Emblem I suppose suggested it to,
23 that I -- well, we suggest more of an individual. But
24 I think rather than isolate someone for that sort of
25 special treatment that maybe everyone appropriately

1 gets a reminder.

2 MR. EMBLEM: Sure.

3 THE COURT: And I think to give them such an
4 instruction now, and maybe the same one that we gave
5 before regarding keeping an open mind until it's
6 all -- maybe that is appropriate. I was just trying
7 to draw on the language that I thought we already had
8 given them.

9 MR. O'NEILL: And your Honor, I guess --

10 THE COURT: Any idea where that is?

11 MR. O'NEILL: Yeah, we'll find -- I guess
12 we'll find that. And as you, as you had pointed out,
13 your Honor, we may be assuming things.

14 What I was trying to understand in listening
15 to Rock's description is whether the comment he
16 overheard was kind of a one-sided circumstance, if you
17 will, with Mr. Thai, you know, sharing some things.
18 And I guess that's one thing.

19 But I guess there was a version in there
20 where you mentioned that, you know, "You others are
21 being too open-minded," which suggests to me that
22 there might have been a broader discussion among the
23 jurors. And I don't know how to read or -- read the
24 tea leaves or --

25 THE BAILIFF: Yeah, I don't either. And I'm

1 not saying that I'm, I'm convinced that he is. I
2 just -- it's just been bothering me that I heard those
3 things. And then I would -- then I just thought about
4 him, you know, maybe trying to convince all the jurors
5 with his, you know, knowledge as a --

6 THE COURT: Well, I think, I think what we're
7 doing is we're trying -- we're inferring -- we're
8 trying to infer something with the comment. I think
9 there are many inferences that can be drawn. And
10 maybe just as simple as he keeps stressing his
11 frustration of being here.

12 But -- and certainly if we hear more of that
13 we probably need to explore that further. But I think
14 for at this point with what we have in front of us
15 it's appropriate to give them an instruction regarding
16 keeping their mind open till they hear all the case.

17 MR. O'NEILL: And your Honor, this is --

18 THE COURT: And I'll willing to give that
19 instruction again.

20 MR. O'NEILL: I, I think -- I don't have the
21 number on it but this is 1.8, your Honor. I believe
22 it's that first one maybe is the language on there.

23 THE COURT: And Mr. Emblem, Mr. O'Neill,
24 let -- would there be any objection if I gave the
25 first six paragraphs, the first six numbered

Addendum 16

IN THE THIRD DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

DEE CLAYTON, et al.,	}	Case No. 000909522
Plaintiffs,	}	
vs.	}	Judge Joseph C. Fratto
UTAH AUTO COLLECTION, et al.,	}	
Defendants.	}	

PARTIAL TRANSCRIPT - P.M. SESSION - END OF DAY

DATE: February 1, 2007

TIME: 3:12 p.m. to 3:15 p.m.

REPORTED BY: Kelly L. Wilburn, CSR, RPR

FILED DISTRICT COURT
Third Judicial District

NOV 20 2007

By fon SALT LAKE COUNTY
Deputy Clerk



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11487

IN THE THIRD DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

DEE CLAYTON, et al.,)
) Case No. 000909522
Plaintiffs,)
)
vs.)
) Judge Joseph C. Fratto
UTAH AUTO COLLECTION,)
et al.,)
)
Defendants.)

PARTIAL TRANSCRIPT - P.M. SESSION - END OF DAY

DATE: February 1, 2007

TIME: 3:12 p.m. to 3:15 p.m.

REPORTED BY: Kelly L. Wilburn, CSR, RPR

1 APPEARANCES
 2 For the Plaintiffs
 3 THOR O. EMBLEM, ESQ.
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 18 -oOo-
 19
 20
 21
 22
 23
 24
 25

1 And at this point you become a sequestered
 2 jury. Which means you are not to have contact with
 3 the outside world, as it were. There won't be any
 4 telephones. So we'll take your cell phones just to
 5 make certain that -- we'll hold your cell phones.
 6 And you'll be in the jury room deliberating
 7 for as long as it takes to -- in terms of a verdict.
 8 And, and so I think the timing is going to be that it
 9 may go to you on either Thursday or earlier on Friday.
 10 But most probably we're looking to, to submit it to
 11 you and entertain the arguments and so forth on the
 12 12th of February, which is Monday. The 12th of
 13 February.
 14 With that, we will excuse you until Jan --
 15 February 5th at 9:00. You are not to form or express
 16 any opinions among yourselves or with others. You're
 17 not to do any independent investigation or analysis.
 18 If is someone attempts to talk to you, you should
 19 report that at the earliest opportunity.
 20 And the order -- the standing order always is
 21 that you're -- you are to have a wonderful Friday and
 22 a wonderful weekend. And we'll have you back here at
 23 9:00 on the 5th of February. You are excused. And we
 24 are in recess.
 25 (Court was recessed at 3:15 p.m.)

1 FEBRUARY 1, 2007 3:12 P.M.
 2 PROCEEDINGS
 3 THE COURT: No, that's tomorrow. Today is
 4 Thursday. Tomorrow we're -- is a dark day. So
 5 what -- we won't have you back Friday. And won't have
 6 you back until the 5th of February at 9:00.
 7 And I wanted to advise you as closely as I
 8 can. Keeping in mind that my predictions are
 9 sometimes a bit faulty, but I'm trying to keep you
 10 advised in terms of where we are.
 11 It would appear that starting on the 5th
 12 we'll be able to finish with the defense by the 7th.
 13 And then there's a possibility of rebuttal. And that
 14 may be the 8th and/or the 9th. But it may be less
 15 than that. There is some possibility that the matter,
 16 in terms of the evidence, will be concluded by the end
 17 of the 8th or sometime during the 9th.
 18 I don't want to submit the matter to you on
 19 Friday night and I'm not going to do that to you. And
 20 so we may have to go over to Monday the 12th. But
 21 after the evidence is submitted to you, you understand
 22 we have the reading of the jury instructions and then
 23 the closing arguments of counsel. And then the matter
 24 is submitted to you. And you go back into the jury
 25 room.

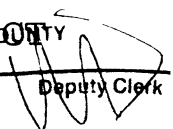
1 CERTIFICATE
 2
 3 STATE OF UTAH)
) ss
 4 COUNTY OF SALT LAKE)
 5
 6 This is to certify that the foregoing proceedings
 were taken before me, KELLY L WILBURN, a Registered
 7 Professional Reporter and Notary Public in and for the
 State of Utah.
 8
 9 That the proceedings were reported by me in
 10 stenotype and thereafter caused by me to be
 transcribed into typewriting. And that a full, true,
 11 and correct transcription of the requested portion of
 said proceedings so taken and transcribed is set forth
 12 in the foregoing pages, numbered 1 through 4,
 inclusive
 13
 14 I further certify that I am not of kin or
 15 otherwise associated with any of the parties to said
 cause of action, and that I am not interested in the
 16 event thereof.
 17 WITNESS MY HAND AND OFFICIAL SEAL AT KEARNS, UTAH
 THIS 15th DAY OF November, 2007
 18
 19
 20
 21
 22
 23
 24
 25

Kelly L. Wilburn, CSR, RPR
 My Commission Expires
 May 16, 2009

Addendum 17

JUN 01 2007

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH


Deputy Clerk

DEE CLAYTON, et al.,
Plaintiffs,
vs.
UTAH AUTO COLLECTION, et al.,
Defendants.

MEMORANDUM DECISION
Case No. 000909522
Hon. JOSEPH C. FRATTO, JR.
May 30, 2007

The above-entitled matter comes before the Court pursuant to Plaintiffs' Motion for Judgment Notwithstanding the Verdict and Motion for New Trial, and Plaintiffs' Motion to Tax Costs. The Court heard oral argument with respect to the motions on May 7 and May 15, 2007. Following the hearings, the matters were taken under advisement.

The Court having considered the motions, memoranda, exhibits attached thereto and for the good cause shown, hereby enters the following ruling.

Specifically, this Complaint centers around an automobile accident occurring on November 27, 1998, wherein Anthony Clayton was killed after the 1997 Ford Explorer he was driving rolled over. Kellie Montoya was the front seat passenger in the vehicle at the time of the accident.

Turning initially to their Motion for Judgment Notwithstanding the Verdict and Motion for New Trial, Plaintiffs argue the Court should enter judgment in favor of Plaintiffs, notwithstanding the jury's verdict, because Parker Engineering tampered with the evidence by adjusting the fork bolts on the Clayton door latch to match its newly produced version of the facts proffered by Ed Caulfield (Ford's expert) on how the latch opened. Specifically, assert Plaintiffs, Caulfield testified that if the door latch was open, it would be due to foreshortening, not Ford's theory of overloading the door. In this case, contend Plaintiffs, there was overwhelming evidence presented at trial that the door latch was open.

Alternatively, Plaintiffs move the Court for a new trial based on prejudicial error. Specifically, argue Plaintiffs, the Court refused to allow the Plaintiffs to present evidence that another Ford door latch engineer, Tom Tiede, had previously found that the door latch was fully open, which would have affected the jury's decision on whether the door latch was defective. Additionally, Plaintiffs contend that it was prejudicial error to permit Officer Pace to testify and that his testimony bolstered the testimony of Ford's experts. Finally, Plaintiffs argue a new trial should be granted because the errors that occurred at trial were compounded because the Court ordered the jury sequestered on

Friday afternoon until it reached a verdict.

Defendants oppose the motion arguing the subject door latch was inspected and photographed by Plaintiffs' expert, Andrew Gilberg, long before Caulfield and Packer Engineering were involved in this case. Indeed, assert Defendants, in his inspection report, Gilberg notes that he could not move the lower fork bolt into the secondary position. In addition, contend Defendants, Gilberg testified that the fork bolts were pinned and would not move to the fully open position.

At the time of trial, argue Defendants, Gilberg had custody of the subject latch which was marked and admitted as Plaintiffs' Exhibit 334. At no time, assert Defendants, did Gilberg suggest that the subject door latch had been modified, tampered with or damaged, other than during the rollover accident. Nor, contend Defendants, had Gilberg, ever accused Caulfield, Kevin Vosburgh or Packer Engineering of tampering or fraud in any way. Indeed, argue Defendants, Gilberg testified that the latch frame and internal components were severely damaged during the rollover and that the fork bolts would not fully open.

As an initial matter, a Rule 50 motion for judgment notwithstanding the verdict is governed by the same rules applicable to a Rule 59 motion for directed verdict. This said, as a procedural matter, Plaintiffs' motion for JNOV is denied as

they failed to timely move for directed verdict on the door latch claim. Indeed, even if this did not decide the matter, after reviewing the record, the Court is of the opinion there is ample evidence to support the jury's finding regarding the door latch. Consequently, Plaintiffs' JNOV motion is also denied on the merits.

With respect to the motion for new trial, the Court notes the decision to exclude the Tiede Report occurred after considerable opportunity for both sides to present their arguments. Further, the Court remains convinced that the decision to exclude was based upon sound reasoning. With respect to Trooper Pace, the record indicates he provided sufficient foundational testimony to support his statements regarding the conclusions of his accident investigation and there is no basis to find the decision not to strike his testimony was improper under either Rule 702 or Rule 403. Finally, under the circumstances, the Court is not convinced there was any error on its part in ordering the jury sequestered during deliberations.

Turning next to the Motion to Tax Costs, as an initial matter, although the Court's Pre-Trial Order required the parties to "exchange" their "documents and exhibits," such are not taxable as costs. Indeed, "[t]rial exhibits are expenses of litigation and not taxable as costs. *Beaver County v. Quest,*

Inc., 2001 UT 81 P25 (Utah 2001) *see also*, *Young v. State*, 2000 UT 91, P23 (Utah 2000)

With respect to vehicle storage, the Court is not persuaded the cost of storing/towing the vehicle is authorized under the statute. Accordingly, such are denied.

As for mediation costs, these are recoverable under Utah law and are awarded. *See Stevenett v. Wal-Mart Stores, Inc.*, 977 P.2d 508, 516 (Utah Court App. 1999).

With regard to costs for a copy of Ford's expert witness and employee designee deposition transcripts, after reviewing the record and the relevant law, the Court is not persuaded such were essential to Defendants's case or that there were no other methods of acquiring the information contained in the depositions. Consequently, these costs are denied.

On the issue of reporter fees and transcripts, the parties agreed in advance to share such costs and that is what the Court is ordering.

Deposition costs for Cantu, Pace and Barton are permitted as all three were used in the development and defense of this case. Further, Ford is entitled to recover fees paid to witnesses, but is admonished to review its entries and check for duplication.

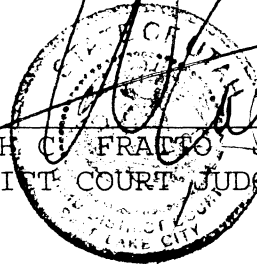
Finally, any judgment for recoverable costs is awarded against all losing parties as Plaintiffs' claim, although based

on different causes of action, rested on the underlying theory that the Ford Explorer was defective and unreasonably dangerous.

Based upon the forgoing, Plaintiffs' Motion to Tax Costs is granted in part and denied in part. Defendants are asked to prepare an amended and verified bill of costs in accordance with this ruling.

DATED this 30th day of May, 2007.


JOSEPH C. FRATTO, SR.
DISTRICT COURT JUDGE



Addendum 18

THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

of

Case Title	Judge	Case #
Fred Clayton vs Ford Motor Company	Joseph C Fratto Jr	000909522
Plaintiff Attorney	Defendant Attorney	
Thor Emblem, Tracy Emblem, Matthew Raty	Dan Larsen, Tim O'Neill, Kimberly Neville	

Jury Trial Non-Jury Trial Other: PLAINTIFFS

No.	Description	Off	Obj	Sus/Ovrl	Rcv	Date	Witness
1-31	Photos (memorabilia) of Tony Clayton	X	nobj		X	1/9/07	Fred
2A	FMEP 1083 Video Clip "Moose" dated 9/19/96	X	obj	sustain		1/9/07	Fred
2B	FMEP 1093 video clip "Green Acres" 3/19/96	X	obj	sustain		1/9/07	Fred
3	1997 Explorer Sales Brochure	X	nobj		X	1/9/07	Fred
5	Clayton Explorer info - VIN & Utah Auto Collection invoice	X	nobj		X	1/9/07	Fred
7	1997 vehicle warranty guide	X	nobj		X	1/9/07	Fred
8	Vehicle owner's guide	X	nobj		X	1/9/07	Fred
9	Vehicle 4 wheel drive handbook (pgs 3 & 4)	X	nobj		X	1/9/07	Fred
10	Invoice 12/10/97 & warranty info for Clayton vehicle	X	nobj		X	1/9/07	Fred
11	Invoice 3/10/98 & warranty info from Clayton vehicle service	X	nobj		X	1/9/07	Fred
13B	Copy of Tony Clayton's drivers license	X	nobj		X	1/9/07	Fred
17A	Photo of driver seated in Explorer	X	obj	overrule	X	1/10/07	Fred
17B	photo of driver seated in Explorer	X	obj	overrule	X	1/10/07	Fred
18-1	Photo from Kellie Montoya's album	X	nobj		X	1/29/07	Montoya
20	Curriculum Vitae of Ronald L Probert	X	nobj		X	1/10/07	Probert
21A	UDOT I-80 aerial survey & plan section of 1-80	X	nobj		X	1/10/07	Probert
21B	video of scene topography	X	nobj		X	1/17/07	Ingebretsen
22	Utah Highway Patrol scene diagram & measurements	X	nobj	substitute	X	1/10/07	Probert
23	1-26 Utah Highway Patrol scene photos	X	nobj		X	1/10/07	Probert
3 17aa	blow up of UHP photo	X	nobj		X	2/6/07	Pascarella
3 17ab	blow up of UHP photo	X	nobj		X	2/6/07	Pascarella
3 18aa	blow up of UHP photo	X	nobj		X	2/6/07	Pascarella

Ford
0909522

1/11/07
 Exhibits
 10/11/07

	Description	Off	Obj	Sus/Ovrl	Rev	Date	Witness
	blow up of UHP photo	X	nobj		X	2/6/07	Pascarella
	Aerial photo	X	nobj		X	1/10/07	Probert
5	Model Ford Explorer	X	nobj		X	1/12/07	
1A-H	8 photos - holes	X	nobj		X	1/18/07	Ingebretsen
16 1-5	Ingebretsen and Probert photos (large)	X	nobj		X	1/18/07	Ingebretsen
26-6	photo	X	nobj		X	1/19/07	Ingebretsen
26-7	Photo	X	nobj		X	1/19/07	Ingebretsen
26-8	Photo	X	nobj		X	1/19/07	Ingebretsen
6-3356	Photo - scrapes on metal	X			X	1/17/07	Ingebretsen
6-3358	Photo - scrapes on metal with yellow paint	X			X	1/17/07	Ingebretsen
6-3372	Photo - partial of wheel and tire	X			X	1/17/07	Ingebretsen
6-3373	Photo - partial of wheel and tire with hole in it	X			X	1/17/07	Ingebretsen
27A	Germane site reconstruction (FMC 00049)	X	nobj		X	1/10/07	Probert
27B	Germane site reconstruction (draft 10/05)	X	nobj		X	1/10/07	Probert
27C	Germane site reconstruction (revised)	X	nobj		X	1/10/07	Probert
28A	Evanston, Wyoming climate rainfall (1998-2004)	w/dr	obj			1/10/07	Probert
28B	Evanston Uinta County rainfall (1961-1995)	w/dr	obj			1/10/07	Probert
29A	photo of Clayton Explorer taken at Co-Parts Auction	X	nobj		X	1/29/07	Bingham
29B	photo of Clayton Explorer taken at Co-Parts Auction	X	nobj		X	1/29/07	Bingham
30 1-5	photos of Clayton Explorer taken by Mr. Bingham	X	nobj		X	1/29/07	Bingham
31A	Clayton Explorer tie rod - driver side	X	nobj		X	1/18/07	Ingebretsen
11-B1	Clayton Explorer tie - outer wedge	X	nobj		X	1/18/07	Ingebretsen
11-B2	Clayton Explorer tie rod - inner cup	X	nobj		X	1/18/07	Ingebretsen
11-B3	Clayton Explorer tie rod - test portion (in plastic)	X	nobj		X	1/18/07	Ingebretsen
32	Clayton Explorer right front tire and wheel	X	nobj		X	1/17/07	Ingebretsen
32A	Clayton Explorer left front tire and wheel				X	1/19/07	
33A	Gilberg photo - exemplar door - Bingham yard	X	nobj		X	1/29/07	Bingham
33B	Gilberg photo - exemplar door - Bingham yard	X	nobj		X	1/29/07	Bingham
34	VIN tool www.fleet.ford.com IFMDU34X61ZA01986	X	nobj		X	1/29/07	Bingham
35A	Curriculum Vitae David Ingebretsen	X	nobj		X	1/12/07	Ingebretsen
35B	Probert/Ingebretsen video animation rollover	X	nobj		X	1/11/07	Ingebretsen

ayton vs Ford
 case # 000909522

Page 3

No.	Description	Off	Obj	Sus/Ovrl	Rev	Date	Witness
35C	still frames of animation at 1/4 turns	X	nobj		X	1/17/07	Ingebretsen
5D1	Scientific formula written by Ingebretsen	X	obj	sustain		1/23/07	Ingebretsen
5D2	Dynamic demonstrative document - Ingebretsen	X	obj	overrule	X	1/23/07	Ingebretsen
5D3	demonstrative document - Ingebretsen	X	nobj		X	1/23/07	Ingebretsen
36	Sales training video	X	obj	sustain		1/25/07	
36A	Explorer UN105 1994 sales training video	X	obj	sustain		1/25/07	
39	Brilmyer/Weaver Safety Engineering Evaluation	X	obj	sustain		1/23/07	Ingebretsen
40	Brilmyer/Weaver Roof strength study dated 7/8/68	X	obj	sustain		1/23/07	
41	ESV Rollover test methods dated 10/22/71	X	obj	ovrl/redact	X	1/23/07	Ingebretsen
42A	static stability factor 4/12/02 (FMC 00399)	X	nobj		X	1/17/07	Ingebretsen
46	vehicle axis coordinates	X	nobj		X	1/17/07	Ingebretsen
16A	UN105 CG measurements Carr Engineering	X	obj	redacted	X	1/17/07	Ingebretsen
16B	photo 1996 Ford Explorer 4x4 P235 tires	X	nobj		X	1/17/07	Ingebretsen
16C	Ford VIMF 1997 4x4 Explorer XLT	X	obj	redacted	X	1/17/07	Ingebretsen
16D	Tandy Engineering center of gravity measurement	X	obj	redacted	X	1/17/07	Ingebretsen
47	light truck safety guideline strategy 2/27/87	X	obj	sustain		1/25/07	Ferrell
49	video clips	X	obj	sustain		1/23/07	
50A	1990 Explorer handling stability & index comparison	X	obj	sustain		1/23/07	
52	UN 46 & BR II handling stability & index comparison	X	obj	sustain		1/23/07	
53A	5/10/89 report UN46 prototype testing & summary	X	obj	sustain		1/23/07	
58	6/26/89 memo from R Stornant UN46 design revisions	X	obj	sustain		1/23/07	
9A	Design Committee 1/9/87	X	obj	sustain		1/23/07	
9D	Sloan 8/14/89 memo re: Visit to consumer reports	X	obj	sustain		1/23/07	
9E	Explorer Q&A Consumer Reports publicity & name change	X	obj	sustain		1/23/07	
65	9/12/89 Stornant memo re: J Turn test 2/ P235 tires	X	obj	sustain		1/23/07	
66	modeling policy	X	obj	sustain		2/8/07	Tandy
69	Bronco II loading for DPG testing	X	obj	sustain		1/23/07	
70	2/17/98 email from Pascarella to Darold	X	obj	sustain		1/23/07	
1A	Corporate safety segment design guideline	X	nobj		X	2/6/07	Pascarella
5A	7/26/88 Snodgrass memo re: PN 38	X	obj	sustain		1/23/07	
5B	12/4/87 agenda re: Bronco II UN46 product planning	X	obj	sustain		1/23/07	

layton vs Ford
 case # 000909522

Page 4

*include
 examples
 w/ handwritten*

No.	Description	Off	Obj	Sus/Ovrl	Rev	Date	Witness
77A	front suspension parts - UN46 & UN105 designs	X	nobj		X	1/18/07	Ingebretsen
77C	photo undercarriage of UN106 Ford Explorer	X	nobj		X	1/17/07	Ingebretsen
84B	10mm sway bar link assembly plan	X	nobj		X	1/18/07	Ingebretsen
35A-1	10mm sway bar link (exemplar)	X	nobj		X	1/17/07	Ingebretsen
35A-2	10mm sway bar link-used(exemplar)Clayton SUV	X	nobj		X	1/18/07	Ingebretsen
85B	After market sway bar link (exemplar)	X	nobj		X	1/18/07	Ingebretsen
85C	UN 46 sway bar link (exemplar)	X	nobj		X	1/23/07	Ingebretsen
85B	After market sway bar link information <i>EXEMPLAR SWAY BAR</i>	X	nobj		X	1/23/07	Ingebretsen
86	12mm bolt (exemplar)	X	nobj		X	1/18/07	Ingebretsen
88A	5/3/95 potential failure mode & effects design	X	obj	ovrl/redact	X	1/23/07	Ingebretsen
88B	potential failure mode & effects design analysis 5/12/92	x	obj	sustain		2/6/07	Pascarella
96	stay bar evidence book pgs w/ handwritten notes & testing	X	obj	sustain		2/6/07	Pascarella
109A	Pascarella photo of Clayton vehicle suspension & steering components	X	obj	overrule	X	2/1/07	Caulfield
110	photo of Expedition sway bar	X	nobj		X	1/23/07	Ingebretsen
117	10/6/00 FMEA draft J Turn test	X	obj	overrule	X	1/23/07	Ingebretsen
118	1995 sway bar CAE study 10/30/00	X	obj	overrule	X	1/23/07	Ingebretsen
119	1995 Explorer vehicle characteristics	X	obj	overrule	X	1/23/07	
120	1995 sway bar CAE study dated 10/30/00	X	obj	overrule	X	1/23/07	Ingebretsen
121	11/2/00 subjective assessment of disconnected sway bar link on explorer	X	obj	overrule	X	1/23/07	Ingebretsen
122B	8 D Report 11/10/00 (Explorer)	X	obj	overrule	X	1/23/07	
127A	Slalom video with sway bar link in dated 9/16/05	X	nobj		X	1/18/07	Ingebretsen
127B	Pascarella sway bar link impact video 3/31/04	X	nobj		X	1/18/07	Ingebretsen
127D	Slalom video with sway bar link out dated 9/16/05	X	nobj		X	1/18/07	Ingebretsen
152B	Explorer frame test video (Ingebretsen)	X	nobj		X	1/18/07	Ingebretsen
164	Skynar/Mast Jounce rebound 4/10/95	X	obj	overrule	X	1/23/07	Ingebretsen
179	Visteon tie rod summary 4/20/99	X	obj	overrule	X	1/23/07	Ingebretsen
85A	UW 152 PAT dated 5/15/96	X	obj	overrule	X	1/23/06	
218	Invoices & warrant information for Clayton vehicle service 3/10/98	X	nobj		X	2/7/07	Tonnelli
20A	tie rod MORS	X	obj	sustain			
21E	95SO8, 1995 Ford Explorer - Inner tie rod (C) & A	X	obj	ovrl/redact	X	1/25/07	
37C	deviation front & rear tire minimum clearance requirements	X	obj	sustain		2/6/07	Pascarella

ayton vs:Ford
 sc # 000909522

Page 5

not taken
 & exhibits
 withdrawn

No.	Description	Off	Obj	Sus/Ovrl	Rev	Date	Witness
255	Metals handbook (9 th ed) Volume 11	X	obj	sustain		1/18/07	Ingebretsen
55A	Metals handbook (9 th ed) Volume 11 page 3	X	nobj		X	1/18/07	Ingebretsen
261	tie rod (inner & outer) w/ ball & socket (exemplar)	X	nobj		X	1/18/07	Ingebretsen
61A	Rubber Boot	X	nobj		X	1/18/07	Ingebretsen
63B	3 Ingebretsen photos of tie rods	X	nobj		X	1/18/07	Ingebretsen
63C	steel failure mode - reverse bending (demo)(wire hanger)					1/25/07	Ingebretsen
63E1	video Metchem testing lab tie rod bending 4/13/05	X	nobj		X	1/18/07	Ingebretsen
63E2	video Metchem testing lab tie rod bending 4/13/05	X	nobj		X	1/18/07	Ingebretsen
63F	video Metchem testing lab tie rod bending 4/21/05	X	nobj		X	1/18/07	Ingebretsen
63G	video Metchem testing lab tie rod bending 7/3/05	X	nobj		X	1/18/07	Ingebretsen
63H-8	test tie rods	X	nobj		X	1/18/07	Ingebretsen
63I-8	test tie rods	X	nobj		X	1/18/07	Ingebretsen
63L	bushing washer & nut combo (exemplar)	X	obj	sustain		1/18/07	Ingebretsen
64A	Pascarella bent tie rod demonstration 3/24/06	X	nobj		X	1/18/07	Ingebretsen
64C	video	X			X	1/19/07	Ingebretsen
64 E1	still photo of video P264C time 01:09	X	nobj		X	2/6/07	Pascarella
64 E2	still photo of video P264C time 01:11 w/ tire mark notations	X	nobj		X	2/6/07	Pascarella
64 E3	still photo of video (P264C) time 01:22	X	nobj		X	2/6/07	Pascarella
64 E4	still photo of video (P264C) time 01:24 w/ tire mark notations	X	nobj		X	2/6/07	Pascarella
64 D1	still photo of video P264C time 7:40	X	nobj		X	2/6/07	Pascarella
64 D2	still photo of video P264C time 7:42 w/ watermark tire marks	X	nobj		X	2/6/07	Pascarella
64 D3	still photo of video P264C time 7:43 w/ tire mark notations	X	nobj		X	2/6/07	Pascarella
64 D4	still photo of video P264C time 7:47 w/ watermark vehicle	X	nobj		X	2/6/07	Pascarella
64 D5	still photo of video P264C time 7:48 w/ watermark vehicle	X	nobj		X	2/6/07	Pascarella
64 D6	still photo of video P264C time 7:48 w/ watermark vehicle	X	nobj		X	2/6/07	Pascarella
64EE	blow up of photo	X	nobj		X	2/6/07	Pascarella
64DD	blow up of photo	X	nobj		X	2/6/07	Pascarella
65A-H	Photos of Clayton tie rods	X	nobj		X	1/18/07	Ingebretsen
66B	2 wheel off the pavement demo 1996 Explorer 3/25/99	X	nobj	redacted	X	1/18/07	Ingebretsen
66C	1997 Explorer tie rod maneuvers video 7/28/06	X	nobj		X	1/18/07	Ingebretsen
68B	video Explorer shock pull test Pascarella 11/1/05	X	nobj		X	1/18/07	Ingebretsen

Clayton vs. Ford
Case # 000909522

*in-Hand
EXHIBITS
UN-Numbered*

No.	Description	Off	Obj	Sus/Ovrl	Rev	Date	Witness
268C	loose shock demo Pascarella 3/24/06	X	nobj		X	1/18/07	Ingebretsen
272A	Intra Co memo: assessment of roof crush	X	obj	sustain		1/23/07	Ingebretsen
278	Interoffice operations memo 10/25/93: 1995 UN105	X	obj	overrule	X	1/23/07	Ingebretsen
279	3/12/92 regulatory design standard deviation roof crush	X	obj	sustain		1/23/07	Ingebretsen
293	4/11/96 crash worthiness & energy management of Polyurethane foam	X	obj	overrule	X	1/23/07	Ingebretsen
294	4/20/96 use of polyurethane foam in a roof crush	X	obj	overrule	X	1/23/07	Ingebretsen
296A	Ford Falcon Brochure (1996) re: FMVSS216 standards	X	obj	ovrl/redact	X	1/19/07	Ingebretsen
296B	Ford Falcon ad (1996) re: FMVSS 216 & A&B pillars	X	obj	ovrl/redact	X	1/23/07	Ingebretsen
296C	Ford Futura brochure (1996) FMVSS 216 standards & roof strength	X	obj	sustain		1/23/07	Ingebretsen
302	Larry Ragan inspection photos of Clayton Explorer	X	nobj		X	1/23/07	Ingebretsen
302AA	Larry Ragan photo	X	obj	overrule	X	2/1/07	Caulfield
302BB	Larry Ragan photo	X	obj	overrule	X	2/1/07	Caulfield
303	1996 Explorer Explorer - Ragan research photos	X	nobj		X	1/23/07	Ingebretsen
304	Catherine Ford Corrigan inspection - 7 photos	X	nobj		X	1/17/07	Ingebretsen
304A-G	Catherine Ford Corrigan photos	X	obj	overrule	X	2/1/07	Caulfield
305	Exponent scale site diagram					1/17/07	Ingebretsen
310B	UN 105 "A" pillar segment	X	nobj		X	1/19/07	Ingebretsen
310B-1	paper towel tube with polyurethane in						Ingebretsen
310B-2	paper towel tube - empty						Ingebretsen
310C	UN105 ^{Explorer} Ford pick-up "A" pillar segment	X	obj	overrule	X	1/19/07	Ingebretsen
310E	Curriculum Vitae of Andrew Gilberg	X	nobj		X	1/11/07	Gilberg
312	actual seat belt (exemplar)	X	obj	sustain		1/12/06	Ingebretsen
313	video UN 46 seat belt test T25194 (RCF-67 buckle)	X	obj	sustain		1/17/07	
315A	Teknacon photos taken 5/13/05 Clayton Explorer	X	nobj		X	1/11/07	Gilberg
316	door latch (exemplar)	X	nobj		X	1/11/07	Gilberg
316A	Inside Explorer door latch (exemplar)	X	nobj		X	1/11/07	Gilberg
316B	Inside handle rod (exemplar)	X	nobj		X	1/11/07	Gilberg
317	Explorer door - unmodified (exemplar)	X	nobj		X	1/11/07	Gilberg
318	Explorer door - modified (exemplar)	X	nobj		X	1/11/07	Gilberg
320	photos taken by Packer Engineering (Vosberg) inspection 7/21/05	X	nobj		X	2/1/07	Caulfield

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Page 7

No.	Description	Off	Obj	Sus/Ovrl	Rev	Date	Witness
328	Morse exemplar test 7/19/01 photos/video	X	obj	overrule	X	1/11/07	Gilberg
334	Clayton driver side door latch (removed)	X	nobj		X	1/11/07	Gilberg
344B	Ford review of door latch release system 3/30/92	X	obj	sustain		1/11/07	Gilberg
346	Preistman U.S. Patent dated 8/31/65 #3,203,721	X	nobj		X	1/11/07	Gilberg
388B	1950 advertisement 'Better to stay in occupant compartment'	X	obj	sustain		1/11/07	Gilberg
389	Engineering document	X	obj	overrule	X	1/23/07	Ingebretsen
395	3/5/91 product planning committee meeting	X	obj	sustain			
396	Tom Tiede Report regarding Clayton Vehicle door latch failure 1/30/03	X	obj	sustain		2/1/07	Caulfield
398	door latch integrity study DOT HS 808 1888	X	obj	sustain		1/11/07	Gilberg
400	Insurance Institute for Highway Safety 1996 Ford Explorer	X	obj	sustain		1/11/07	Gilberg
402	SAE tech paper 640165 (1964) accident ejection	X	obj	sustain		1/11/07	Gilberg
403	Gilberg crash test videos	X	obj	sustain		1/11/07	Gilberg
107C	Curriculum Vitae of O.C. Ferrell	X	nobj		X	1/25/07	Ingebretsen
109B	"Built Ford Tough" sign	X	obj	ovrl/redact	X	1/25/07	Ferrell
109D	"This century we made History" - ad	X	obj	sustain		1/25/07	Ferrell
109E	May 1995 National Geographic Ford ad	X	obj	sustain		1/25/07	Ferrell
109F	"Think of it as preventative medicine" Ford Explorer	X	obj	sustain		1/25/07	Ferrell
412	The best Explorer ever - Ford ad	X	obj	sustain		1/25/07	Ferrell
417	Explorer black book and the utility market	X	obj	sustain		1/25/07	Ferrell
426	Summary of testimony for Dr. Germane	X	obj	sustain		1/31/07	Germane
126A	high lighted summary of Dr. Germane testimony	X	obj	sustain		1/31/07	Germane
126B	Graph of Dr. Germane's testimony	X	obj	sustain		1/31/07	Germane
427	U.S. District Court case #2-02-0225-18	X	obj	sustain		1/31/07	Germane
428	Edward M Caulfield Ph.D., P.E. testimony record			Sustain		2/1/07	Caulfield
429	graph/testimony of Edward Caulfield	X	obj	sustain		2/1/07	Caulfield
430	billing & invoice from Packard to Ford	X	obj	sustain		2/1/07	Caulfield
431	9/15/05 report of Dr. Caulfield					2/1/07	Caulfield
432	Gilberg report on door failure investigation 7/1/05					2/1/07	
468	Technical memo rollover methodology 10/21/98	X	obj	sustain		1/25/07	

Clayton vs Ford
Case # 000909522

No.								
482A	news article re: explorer	X	obj	sustain		1/10/07	Fred	
482B	news article re: Ford Explorer	X	obj	sustain		1/10/07	Fred	
482C	news article re: Firestone tires	X	obj	sustain		1/10/07	Fred	
482D	news article re: explorer stability	X	obj	sustain		1/10/07	Fred	
482E	news article re: tires	X	obj	sustain		1/10/07	Fred	
482G	Misc. news articles re: Explorer stability	X	obj	sustain		1/10/07	Fred	
490	Germane photos 6/11/02	X	obj	overrule	X	2/1/07	Caulfield	
493	History behind the code	X	obj	sustain		2/8/07	Tandy	
502	US Patent No. 5,505,480 controlled stabilizer bar 4/9/96					2/6/07	Pascarella	
541	James photos 31/3/03 door latch in open position	X	obj	sustain		2/1/07	Caulfield	
542A	Linovitz door latch photos 12/17/01	X	obj	sustain		2/1/07	Caulfield	
542B	Linovitz door latch photos 12/17/01	X	obj	sustain		2/1/07	Caulfield	
544A	Vosberg removal of door latch photo 10/27/06	X	obj	overrule	X	2/1/07	Caulfield	
544B	Vosberg removal of door latch photo 10/27/06	X	obj	overrule	X	2/1/07	Caulfield	
545	testimony list							
570	Carr Engineering professional fee document	X	obj	sustain		2/7/07	Tandy	
572	Deposition testimony of Donald F Tandy Jr	X	obj	sustain		2/7/07	Tandy	
572A	Deposition testimony of Donald F Tandy Jr	X	obj	sustain		2/7/07	Tandy	
572B	Deposition testimony of Donald F Tandy Jr, highlighted	X	obj	sustain		2/7/07	Tandy	
575	calculations -(as modified)	X	nobj		X	2/8/07	Tandy	

Received all exhibits above on ** by W. Densley, Deputy Clerk.

Exhibits: _____ returned to counsel _____ in the court's file _____ in the court's exhibit room

THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

page 1 of

Case Title	Judge	Case #
Fred Clayton vs Ford Motor Company	Joseph C Fratto Jr	000909522
Plaintiff Attorney	Defendant Attorney	
Thor Emblem, Tracy Emblem, Matthew Raty	Dan Larsen, Tim O'Neill, Kimberly Neville	

Jury Trial Non-Jury Trial Other: DEFENDANTS

No.	Description	Off	Obj	Sus/Ovrl	Rcv	Date	Witness
1	Curriculum Vitae of Donald Tandy	X	nobj		X	2/7/07	Tandy
2-195	Seatbelt Warning on visor	X	nobj		X	1/10/07	Fred
3A	Charts A-track width for bar & range	X	nobj		X	2/7/07	Tandy
4A	Charts A-center of gravity heights bar & range	X	nobj		X	2/7/07	Tandy
5A	Chart - static stability ratio for selected vehicles	X	obj	overrule	X	1/25/07	Ingebretsen
9	Chart - demands vs vehicle capacities	X	nobj		X	2/7/07	Tandy
21	1996 Explorer 4 door 4x4 w/ P235/75/R15 tires clearance illustration	X	nobj		X	2/7/07	Tandy
318A	Utah Highway Patrol scene photo	X	obj	overrule	X	1/24/07	Ingebretsen
93	Ford Motor Company UN105 APG J-turn test summary	X	nobj		X	2/7/07	Tandy
96	Ford Motor Company UPN105 LTE reliability review	X	nobj		X	2/7/07	Tandy
106	data notes on J-turn evaluations 2000 Explorer 4x2	X	obj	overrule	X	2/6/07	Pascarella
106A-E	video notes on J-turn evaluation 2000 Explorer 4x2	X	obj	overrule	X	2/6/07	Pascarella
109	Ford Motor Co. 1/4 U/PN105 4dr 4x4 TRC test plan	X	nobj		X	2/7/07	Tandy
111	Ford Motor Co. CAE model correlation Keith Gorder	X	nobj		X	2/7/07	Tandy
112	Ford Motor Co. UN105 ADAMS validation charts	X	nobj		X	2/7/07	Tandy
177	49 CFR part 575 denial of wirth petition Fed reg. Vol 42 no. 71,					2/8/07	Tandy
22a.53	Tandy Engineering data & analysis NHTSA rollover research	X	nobj		X	2/7/07	Tandy
49A	video - Tandy Engineering - demonstration	X	nobj		X	2/7/07	Tandy
261	data notes & photos P6-101 evaluation vehicle handling	X	obj	sus/redact	X	2/7/07	Tandy
262	video P6-101 evaluation of vehicle handling 9/23-26/00	X	obj	sus/redact	X	2/7/07	Tandy
63 G1	still photo of tie rod test from P263	X	nobj		X	1/24/07	Ingebretsen
63 G2	still photo tie rod test from P263	X	nobj		X	1/24/07	Ingebretsen

No.	Description	Off	Obj	Sus/Ovrl	Rev	Date	Witness
264	video P6-101 evaluation of vehicle handling overview	X	obj	sus/redact	X	2/7/07	Tandy
267	data, notes, photos-Carr Engineering performance test	X	nobj		X	2/7/07	Tandy
268	video-Carr Engineering performance test 8/27 28/01 & 9/3/01	X	nobj		X	2/7/07	Tandy
347	Curriculum Vitae of Gary Fowler	X	nobj		X	2/6/07	Fowler
348	Binder, Fowler Inc photos	X	obj	redact	X	2/6/07	Fowler
148.38	Blown up photo	X	nobj		X	2/6/07	Fowler
148.26	Photo blow up	X	nobj		X	2/6/07	Fowler
148.41	photo blow up	X	nobj		X	2/6/07	Fowler
148.43	Photo blow up	X	nobj		X	2/6/07	Fowler
148.44	Photo blow up	X	nobj		X	2/6/07	Fowler
148.46	Photo blow up	X	nobj		X	2/6/07	Fowler
148.74	Photo blow up	X	nobj		X	2/6/07	Fowler
148.119	photo blow up	X	nobj		X	2/6/07	Fowler
148.125	photo blow up	X	nobj		X	2/6/07	Fowler
148.130	photo blow up	X	nobj		X	2/6/07	Fowler
148.143	photo blow up	X	nobj		X	2/6/07	Fowler
148.146	photo blow up	X	nobj		X	2/6/07	Fowler
148.148	photo blow up	X	nobj		X	2/6/07	Fowler
148.154	photo blow up	X	nobj		X	2/6/07	Fowler
148.161	photo blow up	X	nobj		X	2/6/07	Fowler
148.178	photo blow up	X	nobj		X	2/6/07	Fowler
148.179	photo blow up	X	nobj		X	2/6/07	Fowler
148.185	photo blow up	X	nobj		X	2/6/07	Fowler
148.186	photo blow up	X	nobj		X	2/6/07	Fowler
149.1	Photo blow up	X	nobj		X	2/6/07	Fowler
150	photo blow up	X	nobj		X	2/6/07	Fowler
160	Curriculum Vitae of Robert Pascarella	X	nobj		X	2/5/07	Pascarella
161	Clayton vehicle inspection photos	X	nobj		X	2/5/07	Pascarella
163H	DVD 1996 Explorer 4x4 maneuvers	X	nobj		X	2/5/07	Pascarella
163I	1996 Explorer 4x4 maneuvers video 9/16/05	X	nobj		X	1/34/07	Ingebretsen
31-1	photo	X	nobj		X	2/5/07	Pascarella

Inmate
 Exhibit
 Withdrawal

No.	Description	Off	Obj	Sus/Ovrl	Rcv	Date	Witness
163 1-2	photo	X	nobj		X	2/5/07	Pascarella
364	1996 Explorer 4x4 data book 9/16/05	X	nobj		X	2/5/07	Pascarella
365	2001 Explorer 4x2 APG durability video	X	obj	overrule	X	2/5/07	Pascarella
366	1997 Explorer tie rod maneuvers video MPG 7/28/06	X	nobj		X	1/19/07	Inglbrecht
367	video-Explorer stabilizer bar link/assembly compression load test 3/5/04	X	nobj		X	2/5/07	Pascarella
368	video-Explorer stabilizer bar kink component fatigue test 3/8/04	X	nobj		X	2/5/07	Pascarella
369	DVD video suspension impact demonstration 3/31/04	X	nobj		X	2/5/07	Pascarella
370	Explorer stabilizer bar link load plots	X	nobj		X	2/5/07	Pascarella
371	photo of instrumented strain gaged stabilizer bar link	X	nobj		X	2/5/07	Pascarella
376	Spacer Asy F87A-5K483-AA drawing	X	nobj		X	2/5/07	Pascarella
383	front suspension illustration 1997 IL-F77A-040100-018	X	nobj		X	2/5/07	Pascarella
384	PL-F57A-040105-AA 1995 front stabilizer bar layout	X	nobj		X	2/5/07	Pascarella
385	front suspension illustration 1995 PL-F57A-040100-CB	X	nobj		X	2/5/07	Pascarella
387	Explorer top shock mount pull test and data	X	nobj		X	2/5/07	Pascarella
387A	Shock and pull video					2/5/07	Pascarella
388	DVD 1996 Explorer bent tie rod & top shock mount disconnect	X	nobj		X	2/5/07	Pascarella
389	M-8 and M-10 test data from Polymer Technologies	X	nobj		X	2/5/07	Pascarella
390	1996 Explorer front suspension buck, 1995-1997	X	nobj		X DL	2/5/07	Pascarella
394	UN105 Explorer APG tie rod loads	X	nobj		X	2/5/07	Pascarella
395	U105 Explorer APG stabilizer bar link loads	X	nobj		X	2/5/07	Pascarella
403	1995-1997 Explorer shock mount exemplar	X	obj	overrule	X DL	2/5/07	Pascarella
404	1995-1997 Explorer Tie Rod Exemplar rack & pinion	X	nobj		X DL	2/5/07	Pascarella
405	Curriculum Vitae of Michael James	X	nobj		X	2/7/07	James
412	Michael James vehicle seatbelt inspection photo SV-38	X	nobj		X	2/7/07	James
413	Michael James vehicle seatbelt inspection photo SV-39	X	nobj		X	2/7/07	James
416	Michael James vehicle seatbelt inspection photo SV-94	X	nobj		X	2/7/07	James
418	Michael James vehicle seatbelt inspection photo SV-104	X	nobj		X	2/7/07	James
419	Michael James vehicle seatbelt inspection photo SV-108	X	nobj		X	2/7/07	James
423	Michael James vehicle inspection photos (seatbelt)	X	nobj		X	2/7/07	James
24A	seat belt	X	nobj		X	2/7/07	James
24B	seat belt RCF buckle	X	nobj		X	2/7/07	James

WITH 129
 C-111115
 IN 11/11/07

No.	Description	Off	Obj	Sus/Ovrl	Rev	Date	Witness
426-133	Warning	X	nobj		X	1/10/07	Fred
437-2	chart on rollover severity	X	obj	overrule	x	1/25/07	Ingebretsen
448	Dr. Geoffrey Germane Curriculum Vitae	X	nobj		X	1/30/07	Germane
149 A-1	photo boards of subject 1997 Ford Explorer	X	nobj		X	1/30/07	Germane
452	scaled diagram of the accident site	X	nobj		X	1/30/07	Germane
452A	scaled diagram of the accident site	X	nobj		X	1/30/07	Germane
452B	scaled diagram of the accident site	X	nobj		X	1/30/07	Germane
455	scaled Ford Explorer model						
457	light vehicle rollover frequency 1995-2001	X	nobj		X	1/25/07	Ingebretsen
459	minor, serious, fatal injuries in rollover by # of rolls NASS CDS 95-01	X	nobj		X	1/25/07	Ingebretsen
460	Edward M Caulfield, Ph.D., P.E. Curriculum Vitae	X	nobj		X	1/31/07	Caulfield
462	Excerpts from FMVSS 206 standard and SAE J839	X	obj	overrule	X	1/31/07	Caulfield
464	Door latch exemplar	X	nobj		X	1/31/07	Caulfield
164A1	Door latch exemplar	X	nobj		X DL	1/31/07	Caulfield
164A2	Door latch exemplar	X	nobj		X DL	1/31/07	Caulfield
164B1	mini latch	X	nobj		X HA	1/31/07	Caulfield
164B2	mini latch	X	nobj		X DL	1/31/07	Caulfield
467	KGV photos & inspection notes 7/21/05	X	obj	overrule	X	1/31/07	Caulfield
67.103	blow up photo	X	obj	overrule	X	1/31/07	Caulfield
67.17	Blow up photo	X	obj	overrule	X	1/31/07	Caulfield
67.100	blow up photo	X	obj	overrule	X	1/31/07	Caulfield
67.15	Blow up photo	X	obj	overrule	X	1/31/07	Caulfield
67.40	Blow up photo	X	obj	overrule	X	1/31/07	Caulfield
70.34	Blow up photo	X	obj	overrule	X	1/31/07	Caulfield
70-36	blow up photo	X	obj	overrule	X	1/31/07	Caulfield
70.29	Blow up photo	X	obj	overrule	X	1/31/07	Caulfield
468	Vehicle inspection 1998 Ford Explorer	X	nobj		X	1/31/07	Caulfield
469	FMVSS 206 Transverse load test 9/14/05	X	nobj		X	1/31/07	Caulfield
470	EMC inspection photos 1/16/06	X	nobj		X	1/31/07	Caulfield
471	MWR photos 1997 Ford Explorer lateral pull-left front striker	X	nobj		X	1/31/07	Caulfield
71A	MWR video 1997 Ford Explorer lateral pull-left front striker	X	nobj		X	1/31/07	Caulfield

UN-1414-14
 EPH-1611-15
 10/11/07/08

No.	Description	Off	Obj	Sus/Ovrl	Rev	Date	Witness
473	left side striker post displacement	X	nobj		X	1/31/07	Caulfield
475	photos left front longitudinal door push 1997 Ford Explorer	X	nobj		X	1/31/07	Caulfield
75A	video left front longitudinal door push 1997 Ford Explorer	X	nobj		X	1/31/07	Caulfield
484	video -						
76A	1997 Ford Explorer door exemplar	X	nobj		X ^{TY}	1/31/07	Caulfield
477	KGV photos - subject latch removal 10/27/06	X	nobj		X	1/31/07	Caulfield
478	KEF photos - subect latch enlargement	X	nobj		X	1/31/07	Caulfield
555	3/9/99 letter to GIECO Insurance from Kellie Montoya	X	nobj		X	1/10/07	Fred
558	Barton contingency fee contract 4/13/99	x	obj	overrule	x	1/29/07	Montoya
568	Release in full of all claims	x	obj	overrule	x	1/29/07	Montoya
H 1-26	Utah Highway Patrol photos	X	obj	overrule	X	1/30/07	Pace
585	Utah Highway Patrol key code	X	obj	overrule	X	1/30/07	Pace
710	Factory invoice for subject 1997 Ford Explorer	X	nobj		X	1/10/07	Fred
784	safety segment design guideline for resistance to rollover	X	nobj		X	2/5/07	Pascarella
785	safety segment design guideline for resistance to rollover	X	nobj		X	2/5/07	Pascarella
367	product engineering dimension & tolerance	X	nobj		X	2/6/07	Fowler
326	8/15/80 engineering test procedure P6-101 rate handling	X	nobj		X	2/7/07	Tandy
330	chart of Ford vehicle design process	X	obj	sustain		2/7/07	Tandy
338	8/26/94 Ford report - resistance to rollover guidelines	X	nobj		X	2/7/07	Tandy
348	Diagram of door measurements	X	nobj		X	1/12/07	Gilberg
349	photo	X	nobj		X	2/1/07	Caulfield
350	Consumer Report September 1990						
352	photo - underside of shock absorber mount	X	nobj		X	1/24/07	Ingebretsen
353	Chart/summary of Ingebretsen's testimony	X	obj	sustain		1/25/07	Ingebretsen
354	Diagram of caster	X	obj	overrule	X	1/25/07	Ingebretsen
355	Summary of Ingebretsen's testimony	w/dr	obj			1/25/07	Ingebretsen
56A		X	nobj		X	1/31/07	Caulfield
56B		X	nobj		X	1/31/07	Caulfield
357	summary of Caulfield's testimony						Caulfield
358	still photo from Morse video	X	nobj		X	2/1/07	Caulfield

Addendum 19

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Attorneys for Plaintiffs

FILED DISTRICT COURT
Third Judicial District

NOV 17 2006

SALT LAKE COUNTY

Deputy Clerk

THIRD DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

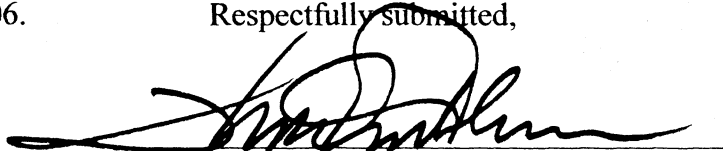
<p>DOLORES CLAYTON, et al.</p> <p>Plaintiffs,</p> <p>v.</p> <p>UTAH AUTO COLLECTION, et al.</p> <p>Defendants.</p>	<p>Case No. 000909522</p> <p>PLAINTIFFS' MOTION IN LIMINE NO. 11 TO EXCLUDE FORD'S EXPERT, GEOFFREY GERMANE'S TESTIMONY AS TO 99 PERCENT STATISTICAL RATE</p> <p>Judge Joseph C. Fratto</p>
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Plaintiffs Move the Court for an Order excluding Ford's expert, Geoffrey Germane's testimony as to 99 percent statistical rate because (1) the evidence is not relevant under Evidence Rules 401, 402 and 702 and would not assist the trier of fact; (2) the testimony is more

prejudicial than probative and would unnecessarily mislead or confuse the jury under Evidence Rule 403.

Dated: November 16, 2006.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thor O. Emblem", written over a horizontal line.

THOR O. EMBLEM
MATTHEW H. RATY

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Attorneys for Plaintiffs

FILED DISTRICT COURT
 Third Judicial District
 NOV 17 2006
 SALT LAKE COUNTY
 Deputy Clerk

THIRD DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

<p>DOLORES CLAYTON, et al.</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>UTAH AUTO COLLECTION, et al.</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 000909522</p> <p>PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION IN LIMINE NO. 11 TO EXCLUDE FORD'S EXPERT, GEOFFREY GERMANE'S TESTIMONY AS TO 99 PERCENT STATISTICAL RATE</p> <p style="text-align: right;">Judge Joseph C. Fratto</p>
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Plaintiffs submit their Memorandum in Support of Plaintiffs' Motion in Limine No. 11 to exclude Ford's expert, Geoffrey Germane's testimony as to 99 percent statistical rate because (1) the evidence is irrelevant under Evidence Rules 402 and 702 and would not assist the trier of

fact; and (2) and the testimony is more prejudicial than probative and would unnecessarily mislead or confuse the jury under Evidence Rule 403.

STATEMENT OF FACTS

Ford's expert, Geoffrey Germane, has stated in his report as follows:

“The severity of the subject rollover accident exceeded that of more than 99 % of all rollovers documented in national accident statistical databases based on number of rolls, and far exceeds the average speed of fatal rollovers in the U.S.” (Exhibit A.)

At Germane's deposition on October 26, 2005, he stated that he drew his statistical conclusion on “severity” of the accident from all vehicles, trucks, vans, pickup trucks and passenger cars. (Exhibit B, p. 103-131.) This testimony is irrelevant; the purported statistical basis is suspect; and the evidence would be more prejudicial than probative and likely confuse the jury. This fallacious analytical result is expected to be repeated by other Ford witnesses.

ARGUMENT

GERMANE'S “STATISTICAL” TESTIMONY IS IRRELEVANT TO THE ISSUES OF DEFECT; THE STATISTICAL BASIS IS SUSPECT AND IT THEREFORE SHOULD BE EXCLUDED.

Witnesses qualified as experts may testify if scientific, technical, or other specialized knowledge assists the trier of fact to understand the evidence or to determine a fact in issue. (Utah R. Evid. 702.) Any expert evidence, scientifically based or otherwise, must, on balance, “be helpful to the trier of fact.” Such evidence must be scrutinized carefully to avoid the tendency of the finder of fact to abandon its responsibility to decide the critical issues and simply adopt the judgment of the expert despite an inability to accurately appraise the validity of the underlying science. (See, *Ostler v. Albina Transfer Co.*, 781 P.2d 445, 448 (Utah Ct. App. 1989).)

This trial is about the **DESIGN** of the Ford Explorer. Plaintiffs have sued Ford claiming that the Explorer was designed with several dangerous characteristics; the accident resulted from

broken suspension parts; a defective door latching system; and the inherent instability design of the Explorer. Ford knew about the Explorer's instability but failed to provide warnings of design deviations and dangerous conditions.

An integral element of a Rule 702 determination to admit expert evidence is a balancing of the probativeness of the evidence against its potential for unfair prejudice. This balancing mimics that under Rule 403, and is necessary to a determination of helpfulness. (*Haupt v. Heaps, supra*, 2005 UT App 436, P25.) Evidence Rule 403 permits the court to order evidence excluded if its probative value is substantially outweighed by the danger of unfair prejudice (See, *Martin v. Safeway Stores, Inc., Utah*, 565 P.2d 1139 (1977)) or if it confuses or misleads the jury on the issues. "The balancing test of rule 403 thus excludes matter of scant or cumulative probative force, dragged in by the heels for the sake of its prejudicial effect." (*State v. Bartley*, 784 P.2d 1231, 1237 (Utah Ct. App. 1989).)

Where the probative value of offered evidence is not great, any such probative value may be outweighed by considerations such as confusion of the jury and prolonging of the trial. The testimony or evidence should appropriately be excluded. (Cf., *Terry v. Zions Coop. Mercantile Inst.*, 605 P.2d 314, 323 (Utah 1979). If Germane is permitted to testify on statistics, Plaintiffs will have to have rebuttal epidemiologist, Dr. Michael Freeman, testify as to how Germane's statistics are slanted, consuming unnecessary time. Indeed the evidence is speculative in that it is based on "statistics" drawn from other types of accidents besides SUV rollovers. Where evidence is shown to support only conjectural inferences which has little probative value, reviewing courts have reversed cases on grounds that the improperly admitted evidence could only have served to confuse and mislead the jury or to prejudice the outcome of the case. (See, *Pearce v. Wistisen*, 701 P.2d 489, 491-492 (Utah 1985).)

In *Ostler v. Albina Transfer Co.*, *supra*, 781 P.2d 445, the court found that other accident evidence did not meet the substantially similar circumstances to permit admissibility. In that case, the plaintiff admitted that the videotape differed from the actual accident in that the videotape was produced during daylight conditions and employed an alert, professional stunt driver. The *Ostler* court found that the conditions of the film's production were far from similar to the actual accident. The court stated:

“The differences in lighting and driver alertness and skill were crucial. The literal controversy of this lawsuit is the inexplicable departure of a vehicle from the lane of traffic. The videotape does not, and cannot, depict the conditions that caused that departure. Any other depiction is, as the trial court concluded, not reconstruction, but speculation. In contrast to *Whitehead*, the circumstances of this accident are not known, and there is no indication that the design characteristics of vehicles were responsible. The discrepancies between the film and plaintiff's accident seem to go beyond weight.” (*Ostler v. Albina Transfer Co.*, *supra*, 781 P.2d 445, 448-449.)

The *Ostler* court additionally concluded that even giving plaintiff the benefit of our doubt as to the film's relevance and similarity, the trial court properly excluded the videotape as substantive evidence on the grounds of potential confusion to mislead the jury. (*Ibid*; See Utah R. Evid. 403.)

At Germane's deposition on October 26, 2005, he testified that he drew his statistical conclusion on “severity” of the accident from all vehicles, trucks, vans, pickup trucks and passenger cars. (Exhibit B, p. 103-131.) Here, Germane's testimony about ***statistical evidence from other dissimilar vehicle designs and accidents***, has a great potential to confuse and mislead the jury. Germane's testimony does NOT meet the reliability standard. A reliability standard is necessary because while often helpful, scientific testimony also has the potential to overawe and confuse, and even to be misused for that purpose. (*Haupt v. Heaps*, 2005 UT App 436, P18 (Utah Ct. App. 2005).) “Testimony not found to be inherently reliable may not be admitted.” (*Ibid*.)

Additionally, probabilities cannot conclusively establish that a single event did or did not

occur and are particularly inappropriate when used to establish facts “not susceptible to quantitative analysis.” (See, e.g., *People v. Collins*, 438 P.2d 33, 40-41 (Cal. 1968).) “Even where statistically valid probability evidence has been presented...courts have routinely excluded it when the evidence invites the jury to focus upon a seemingly scientific, numerical conclusion rather than to analyze the evidence before it and decide where truth lies....” (*State v. Rammel*, 721 P.2d 498, 501 (Utah 1986), emphasis added.)

Ford’s evidence has a great potential to mislead the jury on the issue of design defect by establishing through “expert” testimony that statistically, the Explorer accident exceeded 99 percent of all rollover accidents. This is a numerical conclusion impermissible because it causes the jury to focus on a seeming numerical conclusion and confuses the jury.

Consequently, Germane’s testimony on this issue should be excluded in its entirety at trial and Ford should be cautioned to warn and not permit its other expert witnesses to state or repeat this fallacious conclusion.

Dated: November 16, 2006.

Respectfully submitted,



THOR O. EMBLEM
MATTHEW H. RATY

Exhibit A

mph. The roll distance and the number and direction of abrasions on the vehicle body panels indicate a four-roll event. The vehicle rolled approximately 108 ft. in the median. The final 65 ft. of the roll sequence was on the pavement for the westbound lanes of Interstate 80. The vehicle came to rest in the no. 2 westbound lane. The average roll rate for the vehicle during the rollover sequence was approximately 288-307 deg/sec.

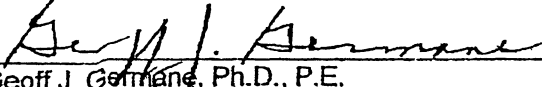
5. During the rollover the vehicle experienced heavy impacts through the wheels and tires, and corners of the vehicle. There was oscillation of the roll axis as the vehicle received impulses alternately in front and to the rear of its center of gravity. The roof structure sustained multiple severe contacts. The magnitude of the impacts was potentially enhanced by suspension forces through the wheels and tires that affected the rollover mechanics.
6. The driver door window glass likely fractured during the second roll, slightly west of the rest position of the driver as documented by the investigating officer. There is no physical evidence that components of the steering system failed prior to the rollover. The left and right side tie rods sustained damage consistent with buckling and fracture under compression loading during the rollover of the vehicle. During a heavy right front impact the right front wheel well was contacted by the tire. The threaded portion of the tie rod link was bent due to compression loading. The tire mark physical evidence is consistent with what would be expected by a vehicle in a steering-induced yaw just prior to rollover.

7. The severity of the subject rollover accident exceeded that of more than 99% of all rollovers documented in national accident statistical databases based on number of rolls, and far exceeds the average speed of fatal rollovers in the U.S.

Accident Causation Opinions

1. The rollover accident was caused by the failure of Mr. Clayton to maintain control of his vehicle while attempting to re-enter the roadway.

This report is preliminary in nature, and the opinions contained herein may be altered, supplemented, or changed depending upon any additional information, which may be obtained, and analyses performed in the course of the continuing investigation. In addition, if more specific information regarding the alleged defects in the vehicle is obtained, this report may be supplemented.



Geoff J. Germans, Ph.D., P.E.
Mechanical Engineer

Exhibit B

1 the middle, you say, the left and right side tie rods
2 sustained damage consistent with buckling fracture
3 under compression holding.

4 Did you obtain that information -- rely on
5 another expert of any type for that portion of your
6 conclusion?

7 A. No.

8 Q. All right. Have you done failure mode
9 analysis?

10 A. I have -- by failure mode analysis, if you
11 mean have I analyzed how components react to loading,
12 the answer is yes, I have not only studied that but I
13 have taught it at the university level and I have
14 tested it and performed laboratory and field testing
15 on those very issues.

16 Q. Have you tested Explorer tie rods?

17 A. I have not. There is unmistakable
18 evidence on the tie rods that suggest they were bent,
19 however.

20 Q. Do you draw any -- make any assumptions or
21 draw any conclusions about when the bending occurred?

22 A. I believe that that occurred during the
23 rollover.

24 Q. In your conclusion number seven you say,
25 the severity of the subject accident exceeds more

1 and vans.

2 Q. I am going to ask you to briefly look
3 through this stack of documents which we were
4 provided and ask you to identify the NASS, n-a-s-s,
5 data that you used to arrive at this conclusion.

6 There were four files which we received yesterday
7 from your records and one was called cumulative
8 frequency, 1995 to 2001, NASS.

9 A. Correct.

10 Q. Is that one of these here?

11 A. That's that.

12 Q. I am going to mark that as Exhibit
13 Number 11.

14 Okay. Then one is identified as NASS
15 weighted data. Is that this one?

16 A. Well --

17 Q. No, this is --

18 A. This is a plot and these are the
19 underlying data from which you could make the two
20 plots.

21 Q. Okay. So we'll mark this as 12. And this
22 was the document that was identified as NASS weighted
23 data, is that correct?

24 A. I don't know what it was identified as. I
25 didn't call it that.

1 than 99 percent of the rollovers documented in the
2 national accident statistical databases.

3 How did you determine that?

4 A. From data produced by the Department of
5 Transportation, in which one can look at the
6 frequency or the occurrence of rollover events and
7 one determines that a four rollover event is an
8 extremely rare event among all rollovers. And
9 rollovers themselves are not very common occurrences
10 when cast into the constellation of all motor vehicle
11 collisions.

12 Q. So this was -- the data that you withdrew
13 to obtain this conclusion was for all rollover events
14 included in the national database?

15 A. Right.

16 Q. All vehicles, trucks, motorcycles?

17 A. Not motorcycles, it's what's called light
18 trucks, would include SUVs, vans, pickup trucks and
19 passenger cars.

20 Q. Under 8,000 pounds?

21 A. The criteria would be, you know, what's
22 called a light truck. I'm sorry, light vehicles. I
23 said light truck; I meant light vehicles.

24 Q. Light vehicle would include automobile?

25 A. Passenger cars as well as pickup trucks

1 Q. I am going mark this as 12.

2 The third one was the minor, serious and
3 fatal data.

4 A. That would be this one.

5 Q. Also on 11?

6 A. Well --

7 Q. It's --

8 A. You have identified two as 11. I am not
9 sure you want to do that.

10 Q. Oh, it's two documents. Okay. Thank you
11 for that. So this would be 13.

12 And the fourth -- was there a fourth or is
13 that all of it?

14 A. Well, I am surprised this even came
15 through. This is just essentially this right here
16 that -- it's these blocks right here.

17 Q. So the fourth is also included in that
18 which we have marked as Exhibit 12?

19 A. This is extraneous, I would say.

20 Q. Thank you.

21 Starting with that which we have marked as
22 Exhibit 11, that's a graph, is that right? Did you
23 graph this?

24 A. Correct.

25 Q. Did you use a particular program to plot

Addendum 20

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ORIGINAL

THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

DEE CLAYTON, et al.,)
) Case No. 000909522
) Plaintiffs,)
))
) VS.)
) JUDGE:
) JOSEPH C. FRATTO, JR.
 UTAH AUTO COLLECTION,)
 et al.,)
))
) Defendants.)

TRIAL TESTIMONY OF
 GEOFFREY J. GERMANE, PH.D., P.E.,
 VOLUME I

TAKEN AT: SCOTT MATHESON COURTHOUSE
 450 South State
 Salt Lake City, Utah

DATE: Tuesday, January 30, 2007

REPORTED BY: Catherine L. Kennedy, RPR, CSR
 Wendy Alcock, RPR, CSR

FILED DISTRICT COURT
 Third Judicial District

OCT 24 2007

SALT LAKE COUNTY

By *BN*
 Deputy Clerk

1 sway bar, and the shock absorber, as has been described?

2 A I'm not sure the sway bar was damaged, was it?

3 Q The sway bar on the front right side was
4 missing, the link.

5 A The link, yes. I believe so, yes.

6 Q So, again, based upon the forces generated in
7 this accident, is that sufficient to damage all those
8 components?

9 A I believe so, yes.

10 Q Now let me ask you whether you examine national
11 statistics regarding rollover severity as part of your
12 work as an accident reconstruction expert.

13 A I do.

14 Q Let me show you what's in evidence as
15 Defendant's Exhibit 457. And, again, Dr. Germane, is this
16 a chart that you prepared as part of your materials in
17 this case?

18 A Yes.

19 Q If you can, explain to the jury -- they've seen
20 it already, but what this graph is showing and its
21 significance in this accident.

22 A This is really information or data for light-
23 vehicle rollovers in the U.S. And "light vehicle" is
24 defined as passenger cars, vans, SUVs, and pickup trucks.

25 Q And before you move past that, does it include

1 Volkswagen Beetles?

2 A It does. It includes all light vehicles. And
3 it's simply a plot of the cumulative frequency of number
4 of rollovers and accidents. And this is for all tow-away
5 accidents, a sample in the United States from 1992 to 2001
6 and it's plotted as a -- the vertical access is
7 cumulative. So when you get to 100 percent, we've
8 accounted for all rollovers listed. And the horizontal
9 axis is broken down by quarter roll, every 90-degree of
10 roll angle.

11 Q And the jury has seen this as well, but we have
12 four full rolls in this accident?

13 A Correct.

14 Q And so according to this data, that's the 16/4
15 point?

16 A Sixteen quarter rolls.

17 Q Sixteen quarter rolls. And what does the data
18 tell you at four full rolls?

19 A Well, it shows that virtually every single
20 rollover accident that is part of the sample database for
21 those years that has already occurred has fewer rolls than
22 the number of rolls that we have in this particular
23 accident.

24 Q Does that mean that four full rolls is worse
25 than 99 percent of the accidents studied in this database?

1 A If you define "worse" as having more rolls, yes.

2 Q Would you, sir, describe this accident as a
3 high-energy severe rollover?

4 A It is.

5 Q In your experience in studying rollover
6 accidents, is it common to experience these four full
7 rollovers that we see in this case?

8 A Well, in my experience we see very severe
9 events, and so we see quite a few three- and four-roll
10 accidents. But it's a very rare event in terms of the
11 constellation of all motor vehicle accidents.

12 Q And, again, you covered this, but what makes it
13 four full rollovers instead of two or one is what?

14 A The initial speed, the terrain, those sorts of
15 things. The distance it rolled.

16 Q And so the initial speed and terrain in this
17 case made it worse than 99 percent of the other accidents
18 studied in this database?

19 A It's more than 99 percent. It's actually in the
20 upper tenth percent or less.

21 Q And, again, Dr. Germane, to summarize, as an
22 accident reconstruction expert do you have an opinion to a
23 reasonable degree of engineering probability about whether
24 the physical evidence shows any problem with the
25 suspension system prior to rollover?

Addendum 21

Ford's Motion in Limine No. 2 - The Report of Testing of Dennis Guenther

Granted Denied _____ Other _____

Ford's Motion in Limine No. 3 - Documents Allegedly not Produced By Defendants in This Action or Any Other Action

Granted Denied _____ Other _____

Ford's Motion in Limine No. 4 - Reference to Destruction of Documents

Granted Denied _____ Other _____

Ford's Motion in Limine No. 5 - Firestone Tire Recall

Granted Denied _____ Other _____

Ford's Motion in Limine No. 6 - Punitive Damages Awards, Verdicts, or Judgments Against Ford

Granted Denied _____ Other _____

Ford's Motion in Limine No. 7 - Claims of Fraud on the National Highway Traffic Safety Administration

Granted Denied _____ Other _____

Ford's Motion in Limine No. 8 - Interpreting Documents Produced by Ford as Evidence of Intent

Granted Denied _____ Other _____

Ford's Motion in Limine No. 9 - Punishment on Behalf of Individuals Who Are Not Parties and Sales or Accidents of Vehicles Outside Utah

Granted *JK* Denied _____ Other _____

Ford's Motion in Limine No. 10 - Punishment on Behalf of Consuming Public / Jurors Should Send a Message

Granted _____ Denied *JK* Other _____

Ford's Motion in Limine No. 11 - Derogatory Remarks Regarding Ford's Counsel

Granted *JK* Denied _____ Other _____

Ford's Motion in Limine No. 12 - Remarks Regarding the Absence or Identity of Ford's Corporate Representative

Granted *JK* Denied _____ Other _____

Ford's Motion in Limine No. 13 - The Golden Rule Appeal and Ford's Moral Duties

Granted *JK* Denied _____ Other _____

Ford's Motion in Limine No. 14 - Privileged Material or Ford's Claims of Privilege

Granted *JK* Denied _____ Other _____

Ford's Motion in Limine No. 15 - Legal Advice of Ford's Office of General Counsel

Granted *JK* Denied _____ Other _____

Ford's Motion in Limine No. 16 - Reference to Side Curtain Airbags

Granted _____ Denied *[Signature]* Other _____

Ford's Motion in Limine No. 17 - Reference to Non-Scientific Publications, Newspaper Articles, Etc.

Granted _____ Denied *[Signature]* Other _____

Ford's Motion in Limine No. 18 - Evidence from Internet

Granted _____ Denied *[Signature]* Other _____

Ford's Motion in Limine No. 19 - Failure to Warn, Recall or Retrofit Subsequent to Delivery

Granted *[Signature]* Denied _____ Other _____

Ford's Motion in Limine No. 20 - Reference to Test Reports and/or Test Videotapes Referring to or Depicting Tests From More Than Twenty-Years Ago

Granted _____ Denied *[Signature]* Other _____

Ford's Motion in Limine No. 21 - References or Inferences That Ford or the Auto Industry Influenced the National Highway Traffic Safety Administration

Granted *[Signature]* Denied _____ Other _____

Ford's Ford's Motion in Limine No. 22 - Non-Final Reports from the National Highway Traffic Safety Administration

Granted *[Signature]* Denied _____ Other _____

Ford's Motion in Limine No. 23 - Opinions that Ford's Conduct Rises to the Level Sufficient to Award Punitive Damages, or that the Product was "Unreasonably Dangerous"

Granted _____

Denied _____

Other JP

granted in part and denied in part

Ford's Motion in Limine No. 24 - Reference to the Plaintiffs as "Victims"

Granted JP

Denied _____

Other _____

Ford's Motion in Limine No. 25 - Requests by Ford to Exclude Certain Evidence

Granted JP

Denied _____

Other _____

Ford's Motion in Limine No. 26 - References to Witnesses Not Called by Ford

Granted JP

Denied _____

Other _____

Ford's Motion in Limine No. 27 - Personal Beliefs or Opinions of Counsel

Granted JP

Denied _____

Other _____

Ford's Motion in Limine No. 28 - Reference to Watergate tapes

Granted _____

Denied JP

Other _____

Ford's Motion in Limine No. 29 - Questioning in Voir Dire Regarding the Ability or Willingness of a Juror to Award a Specific Amount of Damages

Granted _____

Denied _____

Other JP *withdrawn*

withdrawn

Ford's Motion in Limine No. 30 - Expert Opinion Regarding Warnings

Granted _____ Denied *AF* Other _____

Ford's Motion in Limine No. 31 - Evidence and Expert Opinion Regarding Particular Advertising Materials

Granted _____ Denied *AF* Other _____

Ford's Motion in Limine No. 32 - Issues Regarding FMVSS Testing

Granted *AF* Denied _____ Other _____

Ford's Motion in Limine No. 33 - Alleged Defects Not Previously Listed in Complaint, Discovery Responses or Supported by Expert Testimony.

Granted *AF* Denied _____ Other _____

Ford's Motion in Limine No. 34 - Other Similar Incidents or Accidents.

Granted *AF* Denied _____ Other _____

Ford's Motion in Limine No. 35 - Andrew Gilberg's Graphic Photographs of Individuals Killed in Unrelated Crashes.

Granted *AF* Denied _____ Other _____

Ford's Motion in Limine No. 36 - Design Changes to Later Model Year Ford Explorers.

Granted *AF* Denied _____ Other _____

Ford's Motion in Limine No. 37 – To Exclude Evidence Regarding Bronco II and UN46 Model Explorers.

Granted _____ Denied Other _____

Ford's Motion in Limine No. 38 – To Exclude Dr. Joseph C. Wu.

Granted _____ Denied Other _____

Ford's Motion in Limine No. 39 – To Admit Evidence Regarding Seatbelt Non-Use.

Granted Denied _____ Other _____

Ford's Motion in Limine No. 40 – To Exclude Memorial or "Day in the Life" Videos, Photographs, and/or Narrations

Granted Denied _____ Other _____

Ford's Motion in Limine No. 41 – To Limit the Testimony of Justin D. Fair

Granted _____ Denied Other _____

Ford's Motion in Limine No. 42 – To Exclude Testimony "Regarding Human Value of Life" Damages.

Granted Denied _____ Other _____

Ford's Motion in Limine No. 43 – To Exclude the Depositions Designated in Plaintiffs' Pre-Trial Disclosures.

Granted Denied _____ Other _____

Ford's Motion in Limine No. 44 – Any Reference to or Evidence, Testimony, or Argument Concerning “Consumer Safety” as the Purpose of the Suit.

Granted Denied _____ Other _____

Ford's Motion in Limine No. 45 – Any Reference to or Evidence, Testimony, or Argument Concerning Witnesses Equally Available.

Granted Denied _____ Other _____

Ford's Motion in Limine No. 46 – Any Reference to or Evidence, Testimony, or Argument Concerning Effect of Jury's Answers to Questions in the Special Verdict.

Granted Denied _____ Other _____

Ford's Motion in Limine No. 47 – Any Reference to or Evidence, Testimony, or Argument Concerning Any Damages to Anyone Else Other Than the Plaintiff.

Granted Denied _____ Other _____

Ford's Motion in Limine No. 48 – Any Reference to or Evidence, Testimony, or Argument Concerning Nationwide Conduct.

Granted Denied _____ Other _____

Ford's Motion in Limine No. 49 – Any Reference to or Evidence, Testimony, or Argument Concerning Settlement Offers.

Granted Denied _____ Other _____

Ford's Motion in Limine No. 50 - To Exclude Any Reference to Unrelated Alleged Defects or Recalls.

Granted Denied Other

PLAINTIFFS' MOTIONS

Plaintiffs' Motion in Limine No. 1 - for a Stipulation/Order as to Documents Produced by Ford in Paper or CD Format or through its Discovery Website forddocs.com

Granted Denied Other

Plaintiffs' Motion in Limine No. 2 - to Exclude any Reference, Evidence, Testimony, Argument or Innuendo on the Amount of Settlement with Fred Clayton's Insurance Carrier

Granted Denied Other

Plaintiffs' Motion in Limine No. 3 - to Exclude any Reference, Evidence, Testimony, Argument or Innuendo Pertaining to Kellie Montoya and Keith Barton's Communications with GEICO Insurance, the Barton File Documents, and to Instruct that Jury that they are Not Allowed to Speculate Regarding the Settlement

Granted Denied Other

Plaintiffs' Motion in Limine No. 4 - to Exclude any Reference, Evidence, Testimony, Argument or Innuendo that Kellie Montoya Resided with Tony Clayton

Granted Denied Other

Plaintiffs' Motion in Limine No. 5 - to Exclude any Reference, Evidence, Testimony, Argument or Innuendo that Kellie Montoya's Tests/Medical Care was Directed by Counsel

Granted Denied Other

Plaintiffs' Motion in Limine No. 6 - to Exclude any Reference, Evidence, Testimony, Argument or Innuendo as to Plaintiffs' Lawyers Going After Ford's Deep Pockets; Trial Lawyers Causing Large Jury Verdicts; Tort Reform; Winning the Lottery; Windfall; And to Exclude any Reference that Plaintiffs' Counsel is Not From Utah

Granted *JR* Denied _____ Other _____

Plaintiffs' Motion in Limine No. 7 - to Exclude any Reference, Evidence, Testimony, Argument or Innuendo that Tony Clayton Weighed 300 lbs. on the Day of the Rollover

Granted *JR* Denied _____ Other _____

Plaintiffs' Motion in Limine No. 8 - to Exclude any Reference, Evidence, Testimony, Argument or Innuendo Pertaining to Hearsay Assumptions Made by EMS and Medical Providers

Granted _____ Denied *JR* Other _____

Plaintiffs' Motion in Limine No. 9 - to Exclude Improper Statistical Evidence and Testimony of Ford's Expert William Wecker

Granted _____ Denied *JR* Other _____

Plaintiffs' Motion in Limine No. 10 - to Exclude any Evidence, Testimony, Argument, Innuendo or Reference by Ford's Counsel and Ford's Witnesses as it Relates to Statistics and Comparison of Other Manufacturer's Vehicles and Dissimilar Vehicles

Granted _____ Denied *JR* Other _____

Plaintiffs' Motion in Limine No. 11 - to Exclude Ford's Expert, Geoffrey Germane's Testimony as to 99 Percent Statistical Rate

Granted _____ Denied *JR* Other _____

Plaintiffs' Motion in Limine No. 12 - to Exclude any Reference, Evidence, Testimony, Argument or Innuendo that Ford Employees and Ford Witnesses and their Families Drive Explorers and are Proud of the Explorer

Granted *J* Denied _____ Other _____

Plaintiffs' Motion in Limine No. 13 - to Exclude any Reference, Evidence, Testimony, Argument or Innuendo Regarding the Lack of a Federal Standard or Test Governing Rollover Stabil.

Granted _____ Denied _____ Other *J*
 Granted in part and denied in part

Plaintiffs' Motion in Limine No. 14 - to Exclude any Reference, Evidence, Testimony, Argument, Innuendo or Jury Instruction regarding Rebuttable Presumption (M.U.J.I. No. 1212)

Granted _____ Denied *J* Other _____

Plaintiffs' Motion in Limine No. 15 - to Exclude all Evidence, Testimony, Argument, Innuendo and Reference by Ford's Counsel and Ford's Witnesses as it Relates to NHTSA Making Rulings or Denials on Requests to Investigate Defects

Granted *J* Denied _____ Other _____

Plaintiffs' Motion in Limine No. 16 - for Special Jury Instruction Regarding Occupant Seat Belt Use

Granted _____ Denied _____ Other *J* *Jury instruction conference*

Plaintiffs' Motion in Limine No. 17 - to Admit Deposition Transcript and Videotape Testimony

Granted _____ Denied *J* Other _____

Plaintiffs' Motion in Limine No. 18 - for an Order Prohibiting Ford from Presenting Cumulative Witness Testimony

Granted _____ Denied JK Other _____

Plaintiffs' Motion in Limine No. 19 - to Exclude Ford's Expert Witnesses from the Courtroom [Evidence Rule 615]

Granted _____ Denied JK Other _____

Plaintiffs' Motion in Limine No. 20 - to Exclude any Reference, Evidence, Testimony, Argument or Innuendo Regarding Abandoned or Dismissed Allegations and Claims

Granted JK Denied _____ Other _____

Plaintiffs' Motion in Limine No. 21 - to Exclude any Reference, Evidence, Testimony, Argument or Innuendo that Plaintiffs Consulted with Expert Consultant Metallurgist Larry Kashur

Granted JK Denied _____ Other _____

Plaintiffs' Motion in Limine No. 22 - to Seat Ford's Rehabilitation Expert, John Janzen, Out of the Jury's Presence

Granted _____ Denied JK Other _____

Plaintiffs' Motion in Limine No. 23 - to Limit One Defense Counsel Per Issue at Trial [Evidence Rule 611]

Granted _____ Denied JK Other _____

Plaintiffs' Motion in Limine No. 24 - to Exclude any Reference, Evidence, Testimony, Argument or Innuendo that any Plaintiff has Previously Been Involved in Other Litigation

Granted *JJ* Denied _____ Other _____

Plaintiffs' Motion in Limine No. 25 - to Exclude any Reference, Evidence, or Testimony Regarding Late Tests After Expert Discovery/Cut-Off Produced by Ford

Granted _____ Denied _____ Other *JJ*
granted in part and denied in part

Plaintiffs' Motion in Limine No. 26 - to Exclude Ford's Non-Timely Designated Medical Expert, John Hoffman, M.D., From Testifying at Trial

Granted _____ Denied *JJ* Other _____

Plaintiffs' Motion in Limine No. 27 - to Exclude Testimony of 14 Medical Witnesses Identified by Ford as Potential Witnesses

Granted _____ Denied _____ Other *JJ* *under advisement*

Plaintiffs' Motion in Limine No. 28 - for an Order that Ford Limit the Use of its Experts' Curriculum Vitae to Oral Examination

Granted _____ Denied *JJ* Other _____

Plaintiffs' Motion in Limine No. 29 - to Exclude any Reference, Evidence, Testimony, Argument or Innuendo by Ford's Counsel or Ford's Witnesses Regarding the Speculative Causation Opinions of Hector Cantu and Ross Pace

Granted _____ Denied *JJ* Other _____

Plaintiffs' Motion in Limine No. 30 - to Exclude Miscellaneous Irrelevant Evidence

Granted _____

Denied _____

Other

unable to consider

Plaintiffs' Motion to Permit the Jury to View the Vehicle [URCP 47 (k)].

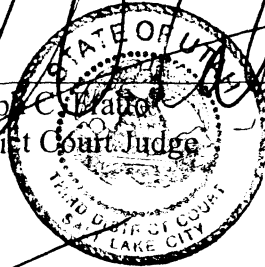
Granted

Denied _____

Other _____

DATED this *29th* day of December, 2006.

Judge Joseph C. Blanton
Third District Court Judge



Addendum 22

JUL 26 2006

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

Deputy Clerk

DEE CLAYTON, et al.,
Plaintiffs,
vs.
UTAH AUTO COLLECTION, et al.,
Defendants.

MEMORANDUM DECISION

Case No. 000909522

Hon. JOSEPH C. FRATTO, JR.

July 17, 2006

The above-entitled matter comes before the Court pursuant to BCW Enterprises and FRN of Greater Salt Lake City, LLC's Motion for Summary Judgment, Ford Motor Company's Motion for Partial Summary Judgment, Defendants's Motion in Limine Re: David Ingebretsen, Defendant's Motion in Limine Re: O.C. Ferrell, Plaintiffs' Objection and Motion to Exclude Evidence, and Plaintiffs' Motion to Strike Portions of Ford's Reply Brief. The Court heard oral argument with respect to the motions on June 21, 2006. Following the hearing, the matters were taken under advisement.

The Court having considered the motions, memoranda, exhibits attached thereto and for the good cause shown, hereby enters the following ruling.

Focusing initially on the motions in limine, the Court finds Defendants' objections go to weight, rather than admissibility.

Indeed, Ford will have the opportunity to cross-examine the witnesses in question regarding the alleged deficiencies and it should be left the jury to determine the weight properly given. Defendants' motions in limine are, respectfully, denied.

As for Plaintiffs' Objection and Motion to Exclude Evidence, the Court finds the Accident Report is admissible under the hearsay exception contained in Rule 803(C) and Officer Pace has testified he has both personal knowledge of the accident scene and advanced training in accident investigation and reconstruction. This said, with regard to Ford's pending motion for summary judgment, the Court will consider the facts contained in the Accident Report.

With respect to Plaintiffs' Motion to Strike, while Ford's Reply Memorandum suggests standards for the Court to apply when considering Plaintiffs' evidence, and argues that under such standards Plaintiffs' exhibits are insufficient, the motion is not one to strike nor does it seek a ruling on the admissibility of Plaintiffs' exhibits. Considering the argument for what it is, the Court is not persuaded striking portions of Ford's reply brief is appropriate and denies the motion to do so.

Turning next to the merits of BCW Enterprises, Inc. and FRN of Greater Salt Lake City, LLC's Motion for Summary Judgment, although it is Defendants' position they were at most passive

distributors, viewing the evidence in the light most favorable to Plaintiffs and drawing all reasonable inferences therefrom, the Court finds factual disputes exist with respect to whether the dealership knew of the sway bar link defects before it serviced the Explorer, whether the sway bar link was out when the Explorer was serviced and, whether the dealership was negligent in failing to detect the missing sway bar link. Moreover, there are factual question as to the various entities and their relationship, or lack thereof, with each other. Accordingly, the Court cannot rule as a matter of law that Utah Auto Collection is NOT the alter ego of Warner Super Ford.

Based upon the forgoing, BCW Enterprises and FRN of Greater Salt Lake City, LLC's Motion for Summary Judgment is, respectfully, denied.

Finally, with regard to Ford Motor Company's Motion for Partial Summary Judgment, in their Opposition Memorandum, Plaintiffs agreed to withdraw their Fifth Claim for Relief alleging Utah Consumer Sales Practices Act Claims. Accordingly, summary judgment is granted on this issue.

As to Plaintiffs' defect claims, after reviewing the evidence in the record, the Court finds disputed issues of fact preclude summary judgment regarding the Ford Explorer's stability and handling, up and down travel of the front wheel, shock

absorber, high center of gravity design, adequacy of occupant crash protection, interior softness, roof strength and related unlatching of the door as well as interior and exterior door handle operation. The Court further finds triable issues of fact exist with respect to Plaintiffs' claim of failure to warn, thus precluding summary judgment on this issue as well. Moreover, the Court is persuaded Plaintiffs' have set forth sufficient evidence to support their fraud claim as well as Ms. Montoya's claim for negligent infliction of emotional distress.

Finally, applying the most significant relationship test, the Court finds Utah law applies with respect to claims for punitive damages and further concludes that Plaintiffs' have presented sufficient evidence to permit the issue of punitive damages to go forward.

Based upon the forgoing, Ford Motor Company's Motion for Partial Summary Judgment is granted as to Plaintiffs' Utah Consumer Sales Practices Act Claims and denied as to the remaining issues.

Dated this 17 day of July, 2006.


SEAL OF THE STATE OF UTAH
JOSEPH C. FRATTO, JR.
DISTRICT COURT JUDGE

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 000909522 by the method and on the date specified.

METHOD NAME

Fax THOR O EMBLEM 760-738-9409
Fax DAN R LARSEN (801)257-1800
Fax MATTHEW H RATY (801)495-2262
Fax TIMOTHY B SCHADE
(801)257-1800

Dated this 26 day of July, 20 06.



Deputy Court Clerk

Addendum 23

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Attorneys for Plaintiffs

FILED DISTRICT COURT
Third Judicial District
NOV 17 2006
SALT LAKE COUNTY
Deputy Clerk

THIRD DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

<p>DOLORES CLAYTON, et al.</p> <p>Plaintiffs,</p> <p>v.</p> <p>UTAH AUTO COLLECTION, et al.</p> <p>Defendants.</p>	<p>Case No. 000909522</p> <p>PLAINTIFFS' MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION IN LIMINE NO. 29 TO EXCLUDE ANY REFERENCE, EVIDENCE, TESTIMONY, ARGUMENT OR INNUENDO BY FORD'S COUNSEL OR FORD'S WITNESSES REGARDING THE SPECULATIVE CAUSATION OPINIONS OF HECTOR CANTU AND ROSS PACE</p> <p>Judge Joseph C. Fratto</p>
--	---

Plaintiffs submit this Memorandum in Support of Plaintiffs' Motion in Limine No. 29 to

exclude any reference, testimony, argument or innuendo by Ford's counsel or Ford's witnesses regarding the speculative causation opinions of Hector Cantu and Ross Pace.

INTRODUCTION

Neither Hector Cantu or Ross Pace observed Tony Clayton asleep or distracted looking for something in the Explorer. Hector Cantu states:

“There was two or maybe three ways [the rollover occurred] He either fell sleep (sic) or he was looking for something...and in this case I would say he was looking at something to the passenger side, or maybe he just dosed off. **I don't know...**” (Exhibit A.)

Ross Pace said the same thing.

“My conclusion was it was one of two things that caused the accident. He was either asleep, or he had reached down and picked something up and taken his eyes off the road...” (Exhibit B.)

When Officer Pace investigated, he did not know of the broken tie rod or suspect that there was a design defect in the Ford Explorer that caused it to have trouble handling maneuvers. (Exhibit C.)

ARGUMENT


THE SPECULATIVE CAUSATION OPINIONS OF HECTOR CANTU AND ROSS PACE SHOULD BE EXCLUDED.

Where evidence is supported only by conjectural inferences, and therefore has minimal probative value, reviewing courts have reversed cases on grounds that the improperly admitted evidence could only have served to confuse and mislead the jury or to prejudice the outcome of the case. (See, *Pearce v. Wistisen*, 701 P.2d 489, 491-492 (Utah 1985).) Insinuations and allusions are not evidence. Because the evidence, testimony is speculative, it is irrelevant under Evidence Rule 402. Additionally, Evidence Rule 403 permits the court to order evidence excluded if its probative value is substantially outweighed by the danger of unfair prejudice. (See also, *Martin v. Safeway Stores, Inc.*, Utah, 565 P.2d 1139 (1977).)

This Court should enter an order preventing Ford from eliciting any reference, evidence, testimony, argument and innuendo

Dated: November 16, 2006.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Thor O. Emblem', written over a horizontal line.

THOR O. EMBLEM
MATTHEW H. RATY

Exhibit A

COPY OF TRANSCRIPT

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

DEE CLAYTON, an individual;)
FRED CLAYTON, an individual)
and as Special)
Administrator for the)
ESTATE OF ANTHONY CLAYTON,)

Plaintiffs,)

Case No. 000909522

vs.)

Deposition of:
HECTOR CANTU

UTAH AUTO COLLECTION, a)
Utah corporation and)
successor in interest to)
WARNER SUPER FORD STORE, a)
Utah corporation; FORD)
MOTOR COMPANY, a foreign)
corporation doing business)
in Utah, and JOHN DOES I)
through X,)

Defendants.)

Judge Burton

September 23, 2004 - 8:30 a.m.

Location: Uinta County Courthouse
Jury Room, Second Floor
225 Ninth Street
Evanston, Wyoming 82930

Reporter: Kathy Morgan, CSR, RPR
Notary Public in and for the State of Utah



50 South Main, Suite 830
Salt Lake City, Utah 84144

7928

1 A. Let's see. About three, four miles.

2 Q. And that was the last time? You didn't
3 pass him after that?

4 A. No. I come up behind him.

5 Q. So at some point you started to get
6 closer to him?

7 A. Yes.

8 Q. And I guess at this point can you kind
9 of give me an overview of how this accident
10 occurred?

11 A. Okay. There was two or maybe three ways
12 you could look at that. He either fell sleep or
13 he was looking for something, and usually the way
14 you look is the way your vehicle will go. And in
15 this case I would say he was looking at something
16 to the passenger side, or maybe he just dosed off.
17 I don't know. But at any rate he started to veer
18 off to the right side. When he hit the rumble
19 strips, the only thing I can think is it startled
20 him and he quickly jerked to the left. At that
21 point there was no brakes applied because the
22 lights didn't come on, and if he had, he would
23 have rolled right there, because he went on two
24 wheels, and the wheels he went on is the right
25 side wheels, passenger side. And he crossed the

Exhibit B



TempestSM
REPORTING

COPY

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

-0-

DEE CLAYTON, et al.,	:	
	:	
Plaintiffs,	:	Case No. 000909522
	:	(Judge Joseph C. Fratto)
-v-	:	
	:	
UTAH AUTO COLLECTION, et al.,	:	Deposition of:
	:	<u>ROSS PACE</u>
Defendants.	:	

-0-

Place:	MILLER, VANCE & THOMPSON 2200 N. Park Avenue, #D200 Park City, Utah 84068
--------	---

Date:	June 16, 2004 10:25 a.m.
-------	-----------------------------

Reporter:	Vickie Larsen, CSR/RPR
-----------	------------------------

-0-

1 vehicle had continued straight down the road without
2 making the gentle right-hand turn?

3 A. That's correct.

4 Q. And in your experience is that a common
1:28:26 5 scenario for inattentive or drowsy driver?

6 A. It is.

7 Q. And did you draw any conclusions
8 investigating this accident as to whether or not the
9 driver of this vehicle was acting consistent with --
:28:49 10 with an inattentive or drowsy driver?

11 A. I did.

12 Q. And what was your conclusion?

13 A. My conclusion was it was one of two
14 things that caused the accident. He was either
:28:59 15 asleep, or he had reached down and picked something up
16 and taken his eyes off the road.

17 Q. And looking at this Photograph Number 11,
18 going back down the eastbound lanes, is that stretch
19 of highway straight for a long period of time?

:29:23 20 A. Relatively straight, yes, it is.

21 Q. For about how far of a distance?

22 A. It would go back about approximately a
23 mile where it's fairly straight.

24 Q. Any other significant information that
:29:39 25 you can identify in that photograph?

Exhibit C

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

-0-

DEE CLAYTON, et al., :

Plaintiffs, : Case No. 000909522
(Judge Joseph C. Fratto)

-v- :

UTAH AUTO COLLECTION, et al.,: Deposition of:
ROSS PACE

Defendants. :

-0-

Place: MILLER, VANCE & THOMPSON
2200 N. Park Avenue, #D200
Park City, Utah 84068

Date: June 16, 2004
10:25 a.m.

Reporter: Vickie Larsen, CSR/RPR

-0-

21 Did you take a look at that right front tire or the

22 tie rod or the sway bar link to see why it was rotated

23 that far?

24 A. I did not.

11:06:49 25 Q. Okay. Did you notice whether or not

1 MR. STEFFENSEN: Okay.

2 Q. Now, is that -- is that theory, given
3 your experience in looking at Exhibit Number 24,
4 possible?

13:38:13 5 MR. LARSEN: Okay. Objection. Vague.

6 Facts not in evidence. Mischaracterizes what his
7 testimony was previously. Speculation. And your
8 question was a demonstration with hand movements
9 that's not clear on the record exactly what you were
13:38:29 10 indicating to the witness, so it's going to make it
11 vague.

12 Q. BY MR. STEFFENSEN: Okay. Is it
13 possible?

14 A. Just like I told you before, it's
13:38:36 15 probably possible.

16 Q. Okay. Thank you. When you investigated
17 this accident you didn't suspect that there was a
18 design defect in the Ford Explorer that caused them to
19 have trouble handling these types of maneuvers, did
13:38:58 20 you?

21 A. I did not.

22 Q. Had you heard any discussions among any

23 of the highway patrolmen that there was a design

24 defect in the Ford Explorer that caused rollovers?

13:39:07 25 A. No, sir.

Addendum 24

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FILED DISTRICT COURT
Third Judicial District

NOV 17 2006

SALT LAKE COUNTY

[Signature]
Deputy Clerk

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Attorneys for Plaintiffs

THIRD DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

<p>DOLORES CLAYTON, et al.</p> <p>Plaintiffs,</p> <p>v.</p> <p>UTAH AUTO COLLECTION, et al.</p> <p>Defendants.</p>	<p>Case No. 000909522</p> <p>PLAINTIFFS' MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION IN LIMINE NO. 18 FOR AN ORDER PROHIBITING FORD FROM PRESENTING CUMULATIVE WITNESS TESTIMONY</p> <p>Judge Joseph C. Fratto</p>
--	---

Plaintiffs submit this Memorandum in Support of Plaintiffs' Motion in Limine No. 18 for an Order preventing Ford from eliciting cumulative testimony on the same subject from different witnesses pursuant to Evidence Rule 611. Cumulative testimony has minimal probative value and would unnecessarily consume time and mislead the jury.

Ford, who has unlimited corporate funds to hire “experts” should not be allowed to parade cumulative expert testimony regarding the same subject matter by various “engineers.” Ford should be limited to one engineering expert per issue. (Cf., *Goodwin v. MTD Prods.*, supra, 232 F.3d 600, 610 [A court’s “decision to exclude a videotape of essentially the same subject matter material that the expert had just testified to is not an abuse of discretion”].)

III. FORD SHOULD NOT BE ALLOWED TO PRESENT CUMULATIVE SEATBELT TESTIMONY, AND SHOULD NOT BE PERMITTED TO PRESENT THE BIOMECHANICS OF TONY CLAYTON’S INJURY AT ALL.

In his report, Ford’s seat belt expert, Michael James opines that Tony Clayton did not wear his seat belt. (Exhibit A.) Another Ford engineer, Larry Ragan whom Ford designated for roof design, mentions in his report that Tony Clayton was apparently unrestrained and ejected during the rollover. (Exhibit B.) Ford has additionally designated Catherine Ford Corrigan to testify about the “biomechanics” of Tony’s injuries. She mentions in her report and throughout her deposition testimony the fact that Tony Clayton was unrestrained. (Exhibit C.) Ms. Corrigan’s testimony does not involve any opinion as to Plaintiff, Kellie Montoya’s injuries incurred in the rollover. (Exhibit D.)

Plaintiffs also anticipate Ford will call (retired) Highway Patrol Officer Pace to testify (as he testified at his deposition) that he concluded that Tony Clayton was unbelted (Exhibit E), and attempt to elicit through other witness testimony that Tony was not wearing his seatbelt.

In *Whitehead v. American Motors Sales Corp.*, 801 P.2d 920, 927-928 (Utah, 1989), the Utah Supreme Court acknowledged that evidence of “how the presence of seatbelts affected the design safety” of the vehicle was admissible for a very limited purpose. The Supreme Court held “[t]he failure to wear a seat belt does not constitute contributory or comparative negligence and may not be introduced as evidence in any civil litigation on the issue of injuries or on the issue of

mitigation of damages.” In *Whitehead v. American Motors Sales Corp.*, *supra*, 801 P.2d 920, 927-928, the trial court excluded such evidence, stating:

“[T]o speculate what the seatbelt might have done in this type of situation is just something that the jury ought not to, and they will not have, under my ruling, the obligation to consider.... I want no more evidence in this case with regard to seatbelts.”

The Utah Supreme Court found the court had properly excluded cumulative occupant seatbelt evidence in light of Utah Code Ann. § 41-6-186. The reason for this rule is the lack of connection between failure to wear a seat belt and the occurrence of the rollover. A defendant should not be able to diminish the consequences of his negligence merely by the plaintiff's failure to anticipate that negligence. (See for example, *Quick v. Crane*, 111 Idaho 759, 780 [727 P.2d 1187, 1208-1209] (Idaho 1986).)

Plaintiffs believe that Tony was wearing his seatbelt and will present limited evidence to that effect. However, Ford also is entitled to address (for a limited purpose) as support for their contention that the Explorer was safe and crashworthy as designed for the occupant, evidence of seat belt use. Because the seat belt use or non use cannot be argued by Ford to mitigate damages as a matter of law, Ford will nonetheless be presenting cumulative testimony allowing the jury to use it for impermissible purposes.

Ford should not be permitted to parade cumulative seat belt use testimony throughout the trial by discussing it with numerous witnesses. Only one witness needs to testify regarding seat belt use as to how it relates to occupant protection design and crashworthiness. Ford's expert, Michael James is already testifying about the seat belt design, ie., occupant protection.

Ms. Corrigan's testimony about the biomechanics of Tony Clayton's injuries (is simply another attempt to say he was not seat belted) is not probative, and is cumulative and should not be permitted for any purpose. Her testimony is aimed at Tony's injury and it is clear from Utah

Code Ann. § 41-6-186, that Ford cannot use the lack of seat belt use to mitigate damages in this case. Accordingly, Ms. Corrigan's testimony about seat belt use, Ross Pace's opinion, and that of Larry Ragan, Ford's roof design expert, should be ordered excluded in its entirety since the jury cannot consider the driver's failure to wear a seat belt in determining injuries or damages.

In *Pearce v. Wistisen*, 701 P.2d 489 (Utah 1985), the decedent drowned when the tow rope he had grasped for skiing became entangled in the boat's propeller. The father argued that evidence of teen drinking the night before the incident unduly prejudiced the jury. The court held that the probative value of the evidence that teenagers had imbibed alcohol the night before the boating incident was not outweighed by its prejudicial effect. The court reversed and remanded for a new trial.

Analogous, allowing repeated and numerous experts to testify about their opinions from Ford's standpoint that Tony Clayton was not wearing his seatbelt would not add anything further to the case and would invite the jury to place extensive weight on the number of experts who opined and therefore likely use the seatbelt testimony for an impermissible purpose - - as evidence of comparative fault. Therefore, the cumulative testimony should be excluded.

IV. FORD SHOULD NOT BE ALLOWED TO PRESENT CUMULATIVE ENGINEERING TESTIMONY ABOUT THE GENERAL STABILITY OF THE EXPLORER OR THE TESTS DESIGNED BY FORD.

Generally, a trial court has discretion to determine the suitability of expert testimony in a case. (*Ostler v. Albina Transfer Co.*, 781 P.2d 445, 447 (Utah Ct. App. 1989).) The trial court may exclude even relevant expert testimony if "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." (Utah R. Evid. 403; *State v. Kinsey*, 797 P.2d 424, 427 (Utah Ct. App. 1990.)