

Case No. 78701

**In the Supreme Court of Nevada**

MOTOR COACH INDUSTRIES, INC.,

Appellant,

vs.

KEON KHIABANI; ARIA KHIABANI, MINORS, by  
and through their Guardian MARIE-CLAUDE  
RIGAUD; SIAMAK BARIN, as Executor of the  
Estate of KAYVAN KHIABANI, M.D.; the Estate of  
KAYVAN KHIABANI; SIAMAK BARIN, as  
Executor of the Estate of KATAYOUN BARIN,  
DDS; and the Estate of KATAYOUN BARIN, DDS,

Respondents.

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**APPEAL**

from the Eighth Judicial District Court, Clark County  
The Honorable ADRIANA ESCOBAR, District Judge  
District Court Case No. A-17-755977-C

**APPELLANT'S APPENDIX  
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D. LEE ROBERTS (SBN 8877)  
HOWARD J. RUSSELL (SBN 8879)  
WEINBERG, WHEELER,  
HUDGINS, GUNN & DIAL, LLC  
6385 S. Rainbow Blvd., Ste. 400  
Las Vegas, Nevada 89118  
(702) 938-3838

DANIEL F. POLSENBERG (SBN 2376)  
JOEL D. HENRIOD (SBN 8492)  
JUSTIN J. HENDERSON (SBN 13,349)  
ABRAHAM G. SMITH (SBN 13,250)  
LEWIS ROCA  
ROTHGERBER CHRISTIE LLP  
3993 Howard Hughes Pkwy, Ste. 600  
Las Vegas, Nevada 89169  
(702) 949-8200

DARRELL L. BARGER (*pro hac vice*)  
MICHAEL G. TERRY (*pro hac vice*)  
HARTLINE BARGER LLP  
800 N. Shoreline Blvd.  
Suite 2000, N. Tower  
Corpus Christi, Texas 78401  
JOHN C. DACUS (*pro hac vice*)  
BRIAN RAWSON (*pro hac vice*)  
HARTLINE BARGER LLP  
8750 N. Central Expy., Ste. 1600  
Dallas, Texas 75231

*Attorneys for Appellant*

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			36	8751–8822
98	Jury Trial Transcript	03/19/18	36 37	8842–9000 9001–9075
35	Motion for Determination of Good Faith Settlement Transcript	12/07/17	9	2101–2105
22	Motion for Summary Judgment on Foreseeability of Bus Interaction with Pedestrians or Bicyclists (Including Sudden Bicycle Movement)	10/27/17	3	589–597
26	Motion for Summary Judgment on Punitive Damages	12/01/17	3	642–664
117	Motion to Retax Costs	04/30/18	47 48	11743–11750 11751–11760
58	Motions in Limine Transcript	01/29/18	12 13	2998–3000 3001–3212
61	Motor Coach Industries, Inc.’s Answer to Second Amended Complaint	02/06/18	14	3474–3491
90	Motor Coach Industries, Inc.’s Brief in Support of Oral Motion for Judgment as a Matter of Law (NRCP 50(a))	03/12/18	32 33	7994–8000 8001–8017
146	Motor Coach Industries, Inc.’s Motion for a Limited New Trial (FILED UNDER SEAL)	05/07/18	51	12673–12704
30	Motor Coach Industries, Inc.’s Motion for Summary Judgment on All Claims Alleging a Product Defect	12/04/17	6 7	1491–1500 1501–1571
145	Motor Coach Industries, Inc.’s Motion to Alter or Amend Judgment to Offset Settlement Proceed Paid by Other Defendants (FILED UNDER SEAL)	05/07/18	51	12647–12672
96	Motor Coach Industries, Inc.’s Opposition to Plaintiff’s Trial Brief Regarding Admissibility of Taxation Issues and Gross Versus Net Loss Income	03/18/18	36	8823–8838
52	Motor Coach Industries, Inc.’s Pre-Trial Disclosure Pursuant to NRCP 16.1(a)(3)	01/19/18	12	2753–2777

120	Motor Coach Industries, Inc.'s Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim	05/07/18	48 49	11963–12000 12001–12012
47	Motor Coach Industries, Inc.'s Reply in Support of Its Motion for Summary Judgment on All Claims Alleging a Product Defect	01/17/18	11	2705–2719
149	Motor Coach Industries, Inc.'s Reply in Support of Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendants (FILED UNDER SEAL)	07/02/18	52	12865–12916
129	Motor Coach Industries, Inc.'s Reply in Support of Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim	06/29/18	50	12282–12309
70	Motor Coach Industries, Inc.'s Response to “Bench Brief on Contributory Negligence”	02/16/18	19	4728–4747
131	Motor Coach Industries, Inc.'s Response to “Plaintiffs’ Supplemental Opposition to MCI’s Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid to Other Defendants”	09/24/18	50	12322–12332
124	Notice of Appeal	05/18/18	49	12086–12097
139	Notice of Appeal	04/24/19	50	12412–12461
138	Notice of Entry of “Findings of Fact and Conclusions of Law on Defendant’s Motion to Retax”	04/24/19	50	12396–12411
136	Notice of Entry of Combined Order (1) Denying Motion for Judgment as a Matter of Law and (2) Denying Motion for Limited New Trial	02/01/19	50	12373–12384
141	Notice of Entry of Court’s Order Denying Defendant’s Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other	05/03/19	50	12480–12489

	Defendants Filed Under Seal on March 26, 2019			
40	Notice of Entry of Findings of Fact Conclusions of Law and Order on Motion for Determination of Good Faith Settlement	01/08/18	11	2581–2590
137	Notice of Entry of Findings of Fact, Conclusions of Law and Order on Motion for Good Faith Settlement	02/01/19	50	12385–12395
111	Notice of Entry of Judgment	04/18/18	42	10365–10371
12	Notice of Entry of Order	07/11/17	1	158–165
16	Notice of Entry of Order	08/23/17	1	223–227
63	Notice of Entry of Order	02/09/18	15	3511–3536
97	Notice of Entry of Order	03/19/18	36	8839–8841
15	Notice of Entry of Order (CMO)	08/18/17	1	214–222
4	Notice of Entry of Order Denying Without Prejudice Plaintiffs’ Ex Parte Motion for Order Requiring Bus Company and Bus Driver to Preserve an Immediately Turn Over Relevant Electronic Monitoring Information from Bus and Driver Cell Phone	06/22/17	1	77–80
13	Notice of Entry of Order Granting Plaintiffs’ Motion for Preferential Trial Setting	07/20/17	1	166–171
133	Notice of Entry of Stipulation and Order Dismissing Plaintiffs’ Claims Against Defendant SevenPlus Bicycles, Inc. Only	10/17/18	50	12361–12365
134	Notice of Entry of Stipulation and Order Dismissing Plaintiffs’ Claims Against Bell Sports, Inc. Only	10/17/18	50	12366–12370
143	Objection to Special Master Order Staying Post-Trial Discovery Including May 2, 2018 Deposition of the Custodian of Records of the Board of Regents NSHE and, Alternatively, Motion for Limited Post-Trial	05/03/18	51	12495–12602

	Discovery on Order Shortening Time (FILED UNDER SEAL)			
39	Opposition to “Motion for Summary Judgment on Foreseeability of Bus Interaction with Pedestrians of Bicyclists (Including Sudden Bicycle Movement)”	12/27/17	11	2524–2580
123	Opposition to Defendant’s Motion to Retax Costs	05/14/18	49	12039–12085
118	Opposition to Motion for Limited Post-Trial Discovery	05/03/18	48	11761–11769
151	Order (FILED UNDER SEAL)	03/26/19	52	12931–12937
135	Order Granting Motion to Dismiss Wrongful Death Claim	01/31/19	50	12371–12372
25	Order Regarding “Plaintiffs’ Motion to Amend Complaint to Substitute Parties” and “Countermotion to Set a Reasonable Trial Date Upon Changed Circumstance that Nullifies the Reason for Preferential Trial Setting”	11/17/17	3	638–641
45	Plaintiffs’ Addendum to Reply to Opposition to Motion for Summary Judgment on Foreseeability of Bus Interaction with Pedestrians or Bicyclists (Including Sudden Bicycle Movement)”	01/17/18	11	2654–2663
49	Plaintiffs’ Joinder to Defendant Bell Sports, Inc.’s Motion for Determination of Good Faith Settlement on Order Shortening Time	01/18/18	11	2735–2737
41	Plaintiffs’ Joint Opposition to Defendant’s Motion in Limine No. 3 to Preclude Plaintiffs from Making Reference to a “Bullet Train” and to Defendant’s Motion in Limine No. 7 to Exclude Any Claims That the Motor Coach was Defective Based on Alleged Dangerous “Air Blasts”	01/08/18	11	2591–2611

37	Plaintiffs' Joint Opposition to MCI Motion for Summary Judgment on All Claims Alleging a Product Defect and to MCI Motion for Summary Judgment on Punitive Damages	12/21/17	9	2129–2175
50	Plaintiffs' Motion for Determination of Good Faith Settlement with Defendants Michelangelo Leasing Inc. d/b/a Ryan's Express and Edward Hubbard Only on Order Shortening Time	01/18/18	11	2738–2747
42	Plaintiffs' Opposition to Defendant's Motion in Limine No. 13 to Exclude Plaintiffs' Expert Witness Robert Cunitz, Ph.D. or in the Alternative to Limit His Testimony	01/08/18	11	2612–2629
43	Plaintiffs' Opposition to Defendant's Motion in Limine No. 17 to Exclude Claim of Lost Income, Including the August 28 Expert Report of Larry Stokes	01/08/18	11	2630–2637
126	Plaintiffs' Opposition to MCI's Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendants	06/06/18	49	12104–12112
130	Plaintiffs' Supplemental Opposition to MCI's Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendants	09/18/18	50	12310–12321
150	Plaintiffs' Supplemental Opposition to MCI's Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendants (FILED UNDER SEAL)	09/18/18	52	12917–12930
122	Plaintiffs' Supplemental Verified Memorandum of Costs and Disbursements Pursuant to NRS 18.005, 18.020, and 18.110	05/09/18	49	12019–12038

91	Plaintiffs' Trial Brief Regarding Admissibility of Taxation Issues and Gross Versus Net Loss Income	03/12/18	33	8018–8025
113	Plaintiffs' Verified Memorandum of Costs and Disbursements Pursuant to NRS 18.005, 18.020, and 18.110	04/24/18	42	10375–10381
105	Proposed Jury Instructions Not Given	03/23/18	41	10207–10235
109	Proposed Jury Verdict Form Not Used at Trial	03/26/18	42	10298–10302
57	Recorder's Transcript of Hearing on Defendant's Motion for Summary Judgment on All Claims Alleging a Product Defect	01/23/18	12	2818–2997
148	Reply in Support of Motion for a Limited New Trial (FILED UNDER SEAL)	07/02/18	52	12755–12864
128	Reply on Motion to Retax Costs	06/29/18	50	12269–12281
44	Reply to Opposition to Motion for Summary Judgment on Foreseeability of Bus Interaction with Pedestrians or Bicyclists (Including Sudden Bicycle Movement)"	01/16/18	11	2638–2653
46	Reply to Plaintiffs' Opposition to Motion for Summary Judgment on Punitive Damages	01/17/18	11	2664–2704
3	Reporter's Transcript of Motion for Temporary Restraining Order	06/15/17	1	34–76
144	Reporter's Transcript of Proceedings (FILED UNDER SEAL)	05/04/18	51	12603–12646
14	Reporter's Transcription of Motion for Preferential Trial Setting	07/20/17	1	172–213
18	Reporter's Transcription of Motion of Status Check and Motion for Reconsideration with Joinder	09/21/17	1 2	237–250 251–312
65	Reporter's Transcription of Proceedings	02/13/18	16 17	3818–4000 4001–4037
66	Reporter's Transcription of Proceedings	02/14/18	17 18	4038–4250 4251–4308

68	Reporter's Transcription of Proceedings	02/15/18	18	4315–4500
69	Reporter's Transcription of Proceedings	02/16/18	19	4501–4727
72	Reporter's Transcription of Proceedings	02/20/18	20 21	4809–5000 5001–5039
73	Reporter's Transcription of Proceedings	02/21/18	21	5040–5159
74	Reporter's Transcription of Proceedings	02/22/18	21 22	5160–5250 5251–5314
77	Reporter's Transcription of Proceedings	02/23/18	22 23	5328–5500 5501–5580
78	Reporter's Transcription of Proceedings	02/26/18	23 24	5581–5750 5751–5834
79	Reporter's Transcription of Proceedings	02/27/18	24 25	5835–6000 6001–6006
80	Reporter's Transcription of Proceedings	02/28/18	25	6007–6194
81	Reporter's Transcription of Proceedings	03/01/18	25 26	6195–6250 6251–6448
82	Reporter's Transcription of Proceedings	03/02/18	26 27	6449–6500 6501–6623
83	Reporter's Transcription of Proceedings	03/05/18	27 28	6624–6750 6751–6878
86	Reporter's Transcription of Proceedings	03/07/18	29 30	7045–7250 7251–7265
88	Reporter's Transcription of Proceedings	03/09/18	30 31	7424–7500 7501–7728
89	Reporter's Transcription of Proceedings	03/12/18	31 32	7729–7750 7751–7993
99	Reporter's Transcription of Proceedings	03/20/18	37 38	9076–9250 9251–9297
100	Reporter's Transcription of Proceedings	03/21/18	38 39	9298–9500 9501–9716
101	Reporter's Transcription of Proceedings	03/21/18	39 40	9717–9750 9751–9799



102	Reporter's Transcription of Proceedings	03/21/18	40	9800–9880
103	Reporter's Transcription of Proceedings	03/22/18	40 41	9881–10000 10001–10195
104	Reporter's Transcription of Proceedings	03/23/18	41	10196–10206
24	Second Amended Complaint and Demand for Jury Trial	11/17/17	3	619–637
107	Special Jury Verdict	03/23/18	41	10237–10241
112	Special Master Order Staying Post-Trial Discovery Including May 2, 2018 Deposition of the Custodian of Records of the Board of Regents NSHE	04/24/18	42	10372–10374
62	Status Check Transcript	02/09/18	14 15	3492–3500 3501–3510
17	Stipulated Protective Order	08/24/17	1	228–236
121	Supplement to Motor Coach Industries, Inc.'s Motion for a Limited New Trial	05/08/18	49	12013–12018
60	Supplemental Findings of Fact, Conclusions of Law, and Order	02/05/18	14	3470–3473
132	Transcript	09/25/18	50	12333–12360
23	Transcript of Proceedings	11/02/17	3	598–618
27	Volume 1: Appendix of Exhibits to Motion for Summary Judgment on Punitive Damages	12/01/17	3 4	665–750 751–989
28	Volume 2: Appendix of Exhibits to Motion for Summary Judgment on Punitive Damages	12/01/17	4 5	990–1000 1001–1225
29	Volume 3: Appendix of Exhibits to Motion for Summary Judgment on Punitive Damages	12/01/17	5 6	1226–1250 1251–1490

1 Works, Esq. of CHRISTIANSEN LAW OFFICES; Defendant Motor Coach Industries, Inc. was  
2 represented by D. Lee Roberts, Jr., Esq. and Howard Russell, Esq. of the law firm WEINBERG  
3 WHEELER HUDGINS GUNN & DIAL; Defendant Bell Sports, Inc. was represented by Michael  
4 Stoberski, Esq. of the law firm OLSON CANNON GORMLEY ANGULO STOBERSKI;  
5 Defendants Michelangelo Leasing, Inc. and Edward Hubbard were represented by Eric Freeman,  
6 Esq. of the law firm SELMAN BREITMAN; and Defendant Sevenplus Bicycles, Inc. was  
7 represented by Michael J. Nunez, Esq. of the law firm MURCHISON & CUMMING, LLP. Having  
8 considered the briefing, the Declarations of Plaintiff Katayoun ("Katy") Barin and Anthony Nguyen  
9 MD in support of a preferential trial setting, and the arguments of counsel in light of NRS 16.025,  
10 and for other good cause appearing,

11 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Motion for  
12 Preferential Trial Setting is GRANTED. Pursuant to NRS 16.025(2), the Court finds that based  
13 upon clear and convincing medical evidence, including the Declaration of Anthony Nguyen, MD,  
14 Plaintiff Katy Barin suffers from an illness--late stage IV colon cancer and further metastasis into the  
15 liver, lungs, and other gastrointestinal nodes--that raises substantial medical doubt that she will  
16 survive for more than six months. The Court also finds that the interest of justice would be served  
17 by granting the present motion.

18 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, in compliance with NRS  
19 16.025(3)(a), the above-entitled case is set on a firm trial date, beginning on November 20, 2017  
20 9:30 AM.

21 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, to facilitate the  
22 preferential trial setting, the parties may commence discovery immediately, even though no joint  
23 case conference report has yet been filed.

24 ///

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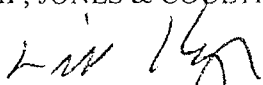
1 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that a status check hearing on  
 2 the status of discovery is scheduled on September 21, 2017, at 9:30 AM.

3 DATED this 20<sup>th</sup> day of July, 2017.

4   
 5 DISTRICT COURT JUDGE

6 Submitted by:


7 KEMP, JONES & COULTHARD, LLP

8   
 9 WILL KEMP, ESQ. (#1205)  
 10 ERIC PEPPERMAN, ESQ. (#11679)  
 11 3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
 12 Las Vegas, NV 89169

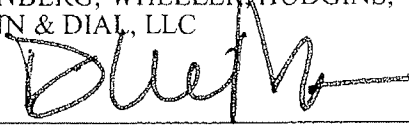
13 -and-  
 14 PETER S. CHRISTIANSEN, ESQ. (#5254)  
 15 KENDELEE L. WORKS, ESQ. (#9611)  
 16 CHRISTIANSEN LAW OFFICES  
 17 810 Casino Center Blvd.  
 18 Las Vegas, Nevada 89101  
 19 Attorneys for Plaintiffs

20 Approved as to form ~~and content~~ by:

21 SELMAN BREITMAN LLP

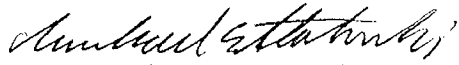
22   
 23 Eric O. Freeman, Esq. (#6648)  
 24 3993 Howard Hughes Pkwy., #200  
 25 Las Vegas, Nevada 89169  
 26 Attorneys for Defendants,  
 27 MICHELANGELO LEASING, INC.  
 28 and EDWARD HUBBARD

29 WEINBERG, WHEELER, HUDGINS,  
 30 GUNN & DIAL, LLC


31   
 32 D. Lee Roberts, Esq. (#8877)  
 33 Howard J. Russell, Esq. (#8879)  
 34 6385 So. Rainbow Blvd., #400  
 35 Las Vegas, Nevada 89118  
 36 Attorneys for Defendant, MOTOR  
 37 COACH INDUSTRIES, INC.

KEMP, JONES & COULTHARD, LLP  
 3800 Howard Hughes Parkway  
 Seventeenth Floor  
 Las Vegas, Nevada 89169  
 (702) 385-6000 • Fax (702) 385-6001  
 kjc@kempjones.com

1 OLSON, CANNON, GORMLEY,  
2 ANGULO & STOBERSKI

3   
4 Michael E. Stoberski, Esq. (#4762)  
5 9950 West Cheyenne Avenue  
6 Las Vegas, Nevada 89129  
7 Attorneys for Defendant,  
8 BELL SPORTS, INC.

9 MURCHISON & CUMMING, LLP

10   
11 Michael J. Nunez, Esq. (#10703)  
12 6900 Westcliff Drive, Suite 605  
13 Las Vegas, Nevada 89145  
14 Attorneys for Defendant, SevenPlus  
15 Bicycles, Inc.

KEMP JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway  
Seventeenth Floor  
Las Vegas, Nevada 89169  
(702) 385-6000 • Fax (702) 385-6001  
kje@kempjones.com

## **EXHIBIT 16**

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000504

## **EXHIBIT 16**

COMS

DISTRICT COURT

CLARK COUNTY, NEVADA

KEON KHIABANI and ARIA KHIABANI, )  
 minors by and through their natural mother, )  
 KATAYOUN BARIN; KATAYOUN BARIN, )  
 individually; KATAYOUN BARIN as Executrix )  
 of the Estate of Kayvan Khiabani, M.D. )  
 (Decedent), and the Estate of Kayvan Khiabani, )  
 M.D. (Decedent), )

Plaintiffs, )

v. )

CASE NO. A-17-755977-C

DEPT NO. XIV

MOTOR COACH INDUSTRIES, INC., )  
 a Delaware corporation; MICHELANGELO )  
 LEASING INC. d/b/a RYAN'S EXPRESS, an )  
 Arizona corporation; EDWARD HUBBARD, a )  
 Nevada resident; BELL SPORTS, INC. d/b/a )  
 GIRO SPORT DESIGN, a California corporation; )  
 SEVENPLUS BICYCLES, INC. d/b/a Pro Cyclery, )  
 a Nevada corporation; DOES 1 through 20; and )  
 ROE CORPORATIONS 1 through 20, )

Defendants. )

**COMMISSIONER'S DECISION ON REQUEST FOR EXEMPTION**NATURE OF ACTION: Personal injury – wrongful deathDATE OF FILING REQUEST FOR EXEMPTION: July 12, 2017EXEMPTION FILED BY: Plaintiff OPPOSITION: ResponseATTORNEY FOR PLAINTIFF: Eric Pepperman, Esq., Kemp, Jones & Coulthard ANDPeter S. Christiansen, Esq., Christiansen Law OfficesATTORNEY FOR DEFENDANT, MOTOR COACH INDUSTRIES, INC.: Howard J.Russell, Esq., Weinberg, Wheeler, Hudgins, Gunn & Dial

KHIABANI/A-17-755977-C

ATTORNEY FOR DEFENDANT, BELL SPORTS, INC. d/b/a GIRO SPORT DESIGN:

Michael E. Stoberski, Esq., Olson Cannon Gormley Angulo &

Stoberski

ATTORNEY FOR DEFENDANT, SEVENPLUS BICYCLES, INC. d/b/a PRO

CYCLERY: Michael J. Nunez, Esq., Murchison & Cumming

ATTORNEY FOR DEFENDANTS, MICHELANGELO LEASING INC. d/b/a RYAN'S

EXPRESS and EDWARD HUBBARD: Eric O. Freeman, Esq., Selman Breitman

FINDINGS

DECISION: EXEMPTION GRANTED XX

EXEMPTION DENIED       

DATED this 26<sup>th</sup> day of July, 2017.

  
ADR COMMISSIONER

KHIABANI/A-17-755977-C

**NOTICE**

Pursuant to Nevada Arbitration Rule 5(D), you are hereby notified you have five (5) days from the date you are served with this document within which to file written objections with the Commissioner at the ADR Office and serve all parties. The Commissioner's Decision is deemed served three (3) days after the Commissioner's designee deposits a copy of the Decision in the U.S. Mail.

A copy of the foregoing ADR Commissioner's Decision was:

☒

Mailed to the Plaintiff's/Defendant's counsel at their last known address(es) on the 31<sup>st</sup> day of July, 2017.

☐

Mailed to Plaintiff/Defendant at the following address(es) on the \_\_\_\_\_ day of July, 2017.

By



ADR COMMISSIONER'S DESIGNEE



## **EXHIBIT 17**

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## **EXHIBIT 17**

**ORDR**

MICHAEL E. STOBERSKI, ESQ.  
Nevada Bar No. 004762  
JOSLYN SHAPIRO, ESQ.  
Nevada Bar No. 010754  
OLSON, CANNON, GORMLEY  
ANGULO & STOBERSKI  
9950 West Cheyenne Avenue  
Las Vegas, Nevada 89129  
Telephone: 702-384-4012  
Facsimile: 702-383-0701  
Email: mstoberski@ocgas.com  
Email: jshapiro@ocgas.com  
Attorneys for Defendant  
BELL SPORTS, INC.

## DISTRICT COURT

## CLARK COUNTY, NEVADA

KEON KHIABANI and ARIA KHIABANI,  
minors by and through their natural mother,  
KATAYOUN BARIN; and KATAYOUN  
BARIN, individually,

Plaintiffs,

vs.

MOTOR COACH INDUSTRIES, INC., a  
Delaware corporation; MICHELANGELO  
LEASING INC. d/b/a RYAN'S EXPRESS, an  
Arizona corporation; EDWARD HUBBARD, a  
Nevada resident; BELL SPORTS, INC. d/b/a  
GIRO SPORT DESIGN, a Delaware corporation;  
SEVENPLUS BICYCLES, INC. d/b/a PRO  
CYCLERY, a Nevada corporation, DOES 1  
through 20; and ROE CORPORATIONS 1  
through 20.

Defendants.

CASE NO. A-17-755977-C  
DEPT. NO. XIV

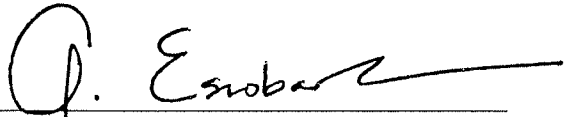

**ORDER ADMITTING TO PRACTICE**

Brian Keith Gibson having filed his Motion to Associate Counsel under Nevada  
Supreme Court Rule 42, together with a Verified Application for Association of Counsel,  
Certificate of Good Standing, and Order Admitting to Practice, said application having been

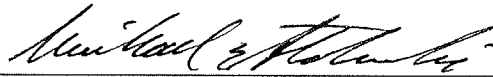
1 noticed, no objections having been made, and the Court being fully apprised in the premises, and  
2 good cause appearing:

3 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that said application is  
4 granted and Brian Keith Gibson is hereby admitted to practice in the above-entitled Court for the  
5 purposes of the above-entitled case.  
6

7 DATED this 11 day of August, 2017.

8  
9  
10   
11 DISTRICT COURT JUDGE  
12 

13 Submitted by:

14 

15 MICHAEL E. STOBERSKI, ESQ.  
16 Nevada Bar No. 004762  
17 JOSLYN SHAPIRO, ESQ.  
18 Nevada Bar No. 010754  
19 9950 West Cheyenne Avenue  
20 Las Vegas, Nevada 89129  
21 Telephone: 702-384-4012  
22 Facsimile: 702-383-0701  
23 Email: mstoberski@ocgas.com  
24 Email: jshapiro@ocgas.com  
25 Attorneys for Defendant  
26 BELL SPORTS, INC.  
27  
28

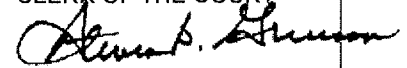
## EXHIBIT 18

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## EXHIBIT 18

Electronically Filed  
8/11/2017 5:34 PM  
Steven D. Grierson  
CLERK OF THE COURT


**ORDR**

MICHAEL E. STOBERSKI, ESQ.  
Nevada Bar No. 004762  
JOSLYN SHAPIRO, ESQ.  
Nevada Bar No. 010754  
OLSON, CANNON, GORMLEY  
ANGULO & STOBERSKI  
9950 West Cheyenne Avenue  
Las Vegas, Nevada 89129  
Telephone: 702-384-4012  
Facsimile: 702-383-0701  
Email: mstoberski@ocgas.com  
Email: jshapiro@ocgas.com  
Attorneys for Defendant  
BELL SPORTS, INC.

## DISTRICT COURT

## CLARK COUNTY, NEVADA

KEON KHIABANI and ARIA KHIABANI,  
minors by and through their natural mother,  
KATAYOUN BARIN; and KATAYOUN  
BARIN, individually,

Plaintiffs,

vs.

MOTOR COACH INDUSTRIES, INC., a  
Delaware corporation; MICHELANGELO  
LEASING INC. d/b/a RYAN'S EXPRESS, an  
Arizona corporation; EDWARD HUBBARD, a  
Nevada resident; BELL SPORTS, INC. d/b/a  
GIRO SPORT DESIGN, a Delaware corporation;  
SEVENPLUS BICYCLES, INC. d/b/a PRO  
CYCLERY, a Nevada corporation, DOES 1  
through 20; and ROE CORPORATIONS 1  
through 20.

Defendants.

CASE NO. A-17-755977-C  
DEPT. NO. XIV

**ORDER ADMITTING TO PRACTICE**

C. Scott Toomey having filed his Motion to Associate Counsel under Nevada Supreme Court Rule 42, together with a Verified Application for Association of Counsel, Certificates of Good Standing, and Order Admitting to Practice, said application having been noticed, no

1 objections having been made, and the Court being fully apprised in the premises, and good cause  
2 appearing:

3 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that said application is  
4 granted and C. Scott Toomey is hereby admitted to practice in the above-entitled Court for the  
5 purposes of the above-entitled case.  
6

7 DATED this 8 day of August, 2017.

8  
9   
10 DISTRICT COURT JUDGE  
11 g

12 Submitted by:

13  
14 

15 MICHAEL E. STOBERSKI, ESQ.  
16 Nevada Bar No. 004762  
17 JOSLYN SHAPIRO, ESQ.  
18 Nevada Bar No. 010754  
19 9950 West Cheyenne Avenue  
20 Las Vegas, Nevada 89129  
21 Telephone: 702-384-4012  
22 Facsimile: 702-383-0701  
23 Email: mstoberski@ocgas.com  
24 Email: jshapiro@ocgas.com  
25 Attorneys for Defendant  
26 BELL SPORTS, INC.  
27  
28

## **EXHIBIT 19**

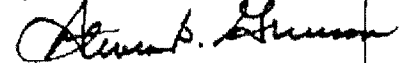
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## **EXHIBIT 19**

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Steven D. Grierson  
CLERK OF THE COURT



CMO  
FLOYD A. HALE, Esq.  
Nevada Bar No. 1873  
3800 Howard Hughes Parkway, 11<sup>th</sup> Floor  
Las Vegas, NV 89169  
(702)-457-5267  
Special Master

DISTRICT COURT

CLARK COUNTY, STATE OF NEVADA

KEON KHIABANI and ARIA KHIABANI, ) CASE NO. A-17-755977-C  
minors by and through their natural mother, ) DEPT. NO. XIV  
KATAYOUN BARIN; KATAYOUN BARIN, )  
individually; KATAYOUN BARIN as Executrix )  
of the Estate of Kayvan Khiabani, M.D. (Decedent) )  
and the Estate of Kayvan Khiabani, M.D. )  
(Decedent), )

Plaintiffs,

vs.

MOTOR COACH INDUSTRIES, INC., a )  
Delaware corporation; MICHELANGELO )  
LEASING, INC. d/b/a RYAN'S EXPRESS, an )  
Arizona corporation; EDWARD HUBBARD, a )  
Nevada resident; BELL SPORTS, INC. d/b/a )  
GIRO SPORT DESIGN, a California corporation; )  
SEVENPLUS BICYCLES, INC. d/b/a Pro Cyclery, )  
a Nevada corporation; DOES 1 through 20; and )  
ROE CORPORATIONS 1 through 20, )

Defendants.

CASE MANAGEMENT ORDER

**1. GENERAL PURPOSE**

**1.1 Purpose.** This litigation involves the Plaintiff's Complaint for damages related to a motor vehicle - bicycle accident that occurred on April 18, 2017 in Clark County, Nevada in which Dr. Kayvan Khiabani was killed. This action has been deemed complex by the District Court which included the appointment of a Special Master. This Case Management Order (the "Order") is entered to reduce the costs of litigation, to assist the parties in scheduling discovery before the trial date and to resolve their disputes if possible, and if not, to reduce the costs and difficulties of

EJDC - 000176



1 discovery and trial.

2 1.2 **Code Governs Where Silent.** On any matter as to which this Order is silent, the  
3 Nevada Revised Statutes and the Nevada Rules of Court shall be controlling.

4 **2. APPOINTMENT OF SPECIAL MASTER**

5 2.1 **Scope of Appointment.** Floyd Hale, Esq. is appointed as the Special Master and  
6 shall have the power and authority to:

7 1. Review all pleadings, papers or documents filed with the court or served  
8 on counsel concerning the action, and coordinate the entry of this Order and any amendments  
9 thereto.

10 2. Coordinate and make orders concerning the discovery of any photographs,  
11 records, papers, expert reports, or other documents by the parties, including the disclosure of  
12 witnesses, and the taking of the deposition of any party.

13 6. Refer to the presiding judge of the court in which the cause of action is  
14 filed any matter requiring assistance from the court.

15 7. Hear all discovery and/or scheduling motions.

16 2.2 **Law and Motion.** The Special Master will hear discovery motions under the  
17 same meet and confer and notice procedures that apply to the Discovery Commissioner. The form  
18 of discovery motions and oppositions may be made in letter form and shall be filed with the Special  
19 Master and properly served on all parties with proper notice. The parties must make an effort to  
20 resolve discovery disputes prior to submitting those issues to the Special Master by a personal  
21 conference or a telephone conference with adverse counsel. Unless a specific briefing schedule is  
22 issued by the Special Master: Opposition briefs are due 10 days after receipt of a Motion; Reply  
23 briefs are due 7 days after receipt of the Opposition.

24 **2.3 Objections to Special Master Order or Special Master Recommendations.**

25 The parties may submit objections to Special Master Orders or to Special Master  
26 Recommendations under the same procedures that apply to the Discovery Commissioner  
27 Recommendations, as specified at EDCR 2.34 (f) except that the objections may be served 10 days  
28 after the service of the Special Master Order. The inclusion of an executed District Court Order with

1 the Special Master Recommendations when initially served shall be considered an interlocutory  
2 Order for 10 days and does not effect the time for submitting objections and does not affect the  
3 standard for judicial review.

4       **2.4 Compensation.** The compensation of the Special Master shall be paid by the following  
5 parties: 20% by Plaintiffs; 20% by Motor Coach Industries, Inc.; 20% by Michelangelo Leasing Inc.  
6 and Edward Hubbard; 20% by Bell Sports, Inc.; and 20% by Sevenplus Bicycles,, Inc.. The Special  
7 Master shall have the power to recommend a different allocation, depending upon the actual  
8 participation of a party, ability to pay or the nature and purpose of the particular proceedings before  
9 the Special Master. Payment shall be made within 45 days of receipt of an invoice for services. A  
10 party will be responsible for compensating the Special Master until serving him with a written order  
11 removing that party from the litigation. As to discovery disputes, each party shall contribute to the  
12 compensation of the Special Master, subject to a recommendation for reallocation of such expense.

13 **3. NEW PARTIES**

14       When a party subsequently makes an appearance in the case, the party who sued the  
15 subsequently appearing party is responsible for serving a copy of this Order within 10 days after the  
16 subsequently appearing party files its first responsive pleading or answer. The compensation of the  
17 Special Master may be adjusted to consider new parties.

18 **4. EXPERT REPORTS**

19       The Special Master will schedule the designation of experts and the service of expert reports.  
20 Expert reports shall be provided as required by NRCP 16.1(a)(2). All expert reports must be  
21 provided as required under the Case Agenda. An expert failing to deposit a timely report meeting  
22 the requirements of N.R.C.P. 16.1(a)(2) is subject to being stricken as a designated expert. Unless  
23 the Case Agenda provides a specific date for an expert designation, the production of an expert  
24 report shall constitute a designation of an expert identified as the author of the report. The additional  
25 disclosures regarding that expert required pursuant to N.R.C.P. 16.1(a)(2) must also be provided.

26       Unless another date is provided in the Case Agenda, an expert's job file, including any  
27 summaries or compilations to be used a trial, must be deposited seven days after the deadline for that  
28 expert's report. The job file must contain all the information required to be produced pursuant to

1 N.R.C.P. 16.1(a)(2) unless already deposited with that expert's report.

2 **5. NON-PARTY DISCOVERY**

3 Any party shall be allowed to conduct non-party document discovery upon proper notice to  
4 all parties, and are required to serve any documents obtained from such discovery within fourteen  
5 (14) days of obtaining such discovery or, alternatively, provide a detailed list of the discovery.

6 **6. DEPOSITION PROCEDURES**

7 Expert depositions shall be scheduled to commence in accordance with the dates set forth in  
8 the Case Agenda. Custodial depositions, percipient witness depositions and persons most  
9 knowledgeable depositions may be conducted at anytime, unless the Special Master is requested to  
10 schedule those depositions in the Case Agenda. The initial Case Agenda is attached as Exhibit "A".

11 Expert deponents may charge a reasonable fee for the time expended in the deposition but  
12 may not charge for: preparation time; travel time; or for "minimum billing periods." Each party is  
13 responsible to pay the expert for the time that party's counsel questioned the expert. Payment of the  
14 expert's fee is due 30 days after a party's counsel receives a billing statement for those expert  
15 services.

16 If a witness that has previously been deposed is scheduled for a continuation of a deposition  
17 or an additional deposition, counsel questioning that witness are required to have reviewed the prior  
18 deposition transcripts.

19 **7. EFFECT OF THIS ORDER ON SUBSEQUENTLY APPEARING PARTIES**

20 This Order shall be applicable to all subsequently appearing parties.

21 **8. ELECTRONIC FILING AND SERVICE**

22 The parties to this matter stipulate to allow this case to be part of the Clark County District  
23 Court Electronic Filing Program. Parties appearing subsequent to entry of this Order shall have two  
24 (2) weeks (after making their initial appearance) to object to said stipulation and to request a District  
25 Court Hearing, with notice of said objection circulated to all parties.

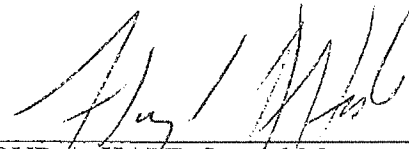
26 **9. CASE AGENDA**

27 The initial discovery schedule or Case Agenda was discussed with counsel during a July 24,  
28 2017, Special Master Hearing. Another Special Master Hearing was conducted on August 7, 2017,

1 at which time changes were made to the previous draft of the Case Agenda. The current Case  
2 Agenda, as drafted following the August 7, 2017, Special Master Hearing is attached hereto as  
3 Exhibit "A." It is being Recommended that the Court adopt and approve the Case Agenda attached  
4 hereto as Exhibit "A."


5 **IT IS SO RECOMMENDED**

6 8/7/17  
7 DATED

  
FLOYD A. HALE, Special Master  
Nevada Bar No. 1873

9 **IT IS SO ORDERED**

10 8/11/2017  
11 DATED

  
HONORABLE JUDGE ADRIAN ESCOBAR  
DISTRICT COURT JUDGE, DEPT. 14 *es*

**KHIABANI v. MOTOR COACH CASE AGENDA**  
**Case No. A-17-755977-C**  
**(Pursuant to August 7, 2017, Hearing)**

7/24/17 11:00 a.m.	Telephonic Special Master Hearing
August 2017	Commencement of percipient witness depositions
8/7/17 11:00 a.m.	Special Master Hearing, 3800 Howard Hughes Parkway, 11 <sup>th</sup> Floor, Las Vegas, Nevada
8/22/17 2:00 p.m.	Special Master Hearing, 3800 Howard Hughes Parkway, 11 <sup>th</sup> Floor, Las Vegas, Nevada
9/21/17 9:30 a.m.	Court Status Check
9/29/17	Plaintiff to provide expert reports regarding damages providing information that is required to be disclosed pursuant to NRCP 16.1(a)(2), expert designation, expert resumes and expert job files
10/2/17	Defending parties may commence depositions of Plaintiffs' damages experts
10/6/17	Plaintiff to provide remaining expert reports providing information that is required to be disclosed pursuant to NRCP 16.1(a)(2), expert designation, expert resumes and expert job files
10/9/17	Defending parties may commence depositions of Plaintiffs' non- damages experts
10/13/17	Defending parties to provide expert reports providing information that is required to be disclosed pursuant to NRCP 16.1(a)(2), expert designation, expert resumes and expert job files
10/20/17	Plaintiff to provide rebuttal expert reports providing information that is required to be disclosed pursuant to NRCP 16.1(a)(2), expert designation, expert resumes and expert job files
11/2/17 9:30 a.m.	Calendar call

**EXHIBIT "A"**  
**(Page 1 of 2)**

EJDC - 000181

11/10/17 Discovery cut-off date

11/20/17 Trial  
9:30 a.m.

**EXHIBIT "A"**  
**(Page 2 of 2)**

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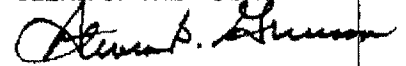
## **EXHIBIT 20**

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## **EXHIBIT 20**

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Steven D. Grierson  
CLERK OF THE COURT



SMO  
FLOYD A. HALE, Esq.  
Nevada Bar No. 1873  
3800 Howard Hughes Parkway, 11<sup>th</sup> Floor  
Las Vegas, NV 89169  
(702)-457-5267  
Special Master

DISTRICT COURT

CLARK COUNTY, STATE OF NEVADA

KEON KHIABANI and ARIA KHIABANI, ) CASE NO. A-17-755977-C  
minors by and through their natural mother, ) DEPT. NO. XIV  
KATAYOUN BARIN; KATAYOUN BARIN, )  
individually; KATAYOUN BARIN as Executrix )  
of the Estate of Kayvan Khiabani, M.D. (Decedent) )  
and the Estate of Kayvan Khiabani, M.D. )  
(Decedent), )

Plaintiffs,

vs.

MOTOR COACH INDUSTRIES, INC., a )  
Delaware corporation; MICHELANGELO )  
LEASING, INC. d/b/a RYAN'S EXPRESS, an )  
Arizona corporation; EDWARD HUBBARD, a )  
Nevada resident; BELL SPORTS, INC. d/b/a )  
GIRO SPORT DESIGN, a California corporation; )  
SEVENPLUS BICYCLES, INC. d/b/a Pro Cyclery, )  
a Nevada corporation; DOES 1 through 20; and )  
ROE CORPORATIONS 1 through 20, )

Defendants.

SPECIAL MASTER ORDER

This litigation involves the Plaintiffs' Complaint for damages related to a motor vehicle - bicycle accident that occurred on April 18, 2017, in Clark County, Nevada, in which Dr. Kayvan Khiabani was killed. This matter is set for an expedited trial date on November 20, 2017.

The Special Master was contacted on August 17, 2017, regarding a discovery dispute. Witness depositions were scheduled to commence August 17, 2017, through August 18, 2017, for Robert Pears and Michael Plantz. At the close of the business day before those depositions commenced, the Defendants provided hand-written witness statements of these witnesses that had



1 been drafted by an investigator, Claude Sonny Hildreth and signed by the witnesses. Those  
2 statements had been available to the defense since approximately August 4, 2017, but were only  
3 produced the night before the Pears deposition was to be conducted.

4 Counsel for the Plaintiffs would like to immediately schedule the deposition of the  
5 investigator, Mr. Hildreth, to question him regarding the witness statements that he obtained and that  
6 he wrote. Counsel for the Defendant agreed to contact Mr. Hildreth at the request of the Special  
7 Master to determine how soon his deposition could be conducted and if he would be willing to travel  
8 to Las Vegas for that deposition. Apparently Mr. Hildreth lives in McAllen, Texas which is near the  
9 Mexican border and the closest airport is actually in Mexico. He is approximately 157 miles from  
10 Corpus Christi, Texas. Due to the expedited trial date, November 20, 2017, this deposition may be  
11 scheduled on a shortened notice as possible for scheduling purposes.

12 DATED this 18th day of August, 2017.

13 By: /s/ Floyd A. Hale  
14 FLOYD A. HALE, Special Master  
15 Nevada Bar No. 1873  
3800 Howard Hughes Pkwy. 11<sup>th</sup> Fl.  
Las Vegas, NV 89169

16 CERTIFICATE OF SERVICE

17 I hereby certify that on August 18, 2017, I served a true and correct copy of the foregoing  
18 through the Court's efilng system, to:

19 Will Kemp, Esq.  
Kemp, Jones & Coulthard, LLP  
3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
20 Las Vegas, NV 89169  
Attorneys for Plaintiffs

21 Peter Christiansen, Esq.  
22 Christiansen Law Offices  
810 S. Casino Center Blvd., Suite 104  
23 Las Vegas, NV 89101  
Attorneys for Plaintiffs

24 D. Lee Roberts, Jr.  
25 Weinberg, Wheeler, Hudgins,  
Gunn & Dial, LLC  
26 6385 S. Rainbow Blvd. Suite 400  
Las Vegas, NV 89118  
27 Attorneys for Motor Coach Industries, Inc.

Eric Freeman, Esq.  
Selman Breitman, LLP  
3993 Howard Hughes Pkwy. Suite 200  
Las Vegas, NV 89169-0961  
Attorneys for Michelangelo Leasing, Inc.;  
Edward Hubbard

Michael Stoberski, Esq.  
Olson Cannon Gormley Angulo & Stoberski  
9550 W. Cheyenne Ave.  
Las Vegas, NV 89129  
Attorneys for Bell Sports, Inc.

Michael Nunez, Esq.  
Murchison & Cumming, LLP  
350 S. Rampart Blvd., Suite 320  
Las Vegas, NV 89145  
Attorneys for SevenPlus Bicycles, Inc.

28 By: /s/ Debbie Holloman  
Employee of JAMS

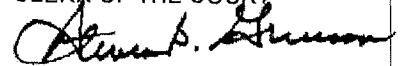
## **EXHIBIT 21**

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## **EXHIBIT 21**

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Steven D. Grierson  
CLERK OF THE COURT


**ORDR**

ERIC O. FREEMAN  
NEVADA BAR NO. 6648  
SELMAN BREITMAN LLP  
3993 Howard Hughes Parkway, Suite 200  
Las Vegas, NV 89169-0961  
Telephone: 702.228.7717  
Facsimile: 702.228.8824  
Email: efreeman@selmanlaw.com

Attorneys for Defendants MICHELANGELO  
LEASING INC. d/b/a RYAN'S EXPRESS and  
EDWARD HUBBARD

DISTRICT COURT

CLARK COUNTY, NEVADA

KEON KHIABANI and ARIA KHIABANI,  
minors by and through their natural mother,  
KATAYOUN BARIN; KATAYOUN BARIN,  
individually; KATAYOUN BARIN as  
Executrix of the Estate of Kayvan Khiabani,  
M.D. (Decedent), and the Estate of Kayvan  
Khiabani, M.D. (Decedent),

Plaintiffs,

v.

MOTOR COACH INDUSTRIES, INC. a  
Delaware corporation; MICHELANGELO  
LEASING INC. d/b/a RYAN'S EXPRESS, an  
Arizona corporation; EDWARD HUBBARD, a  
Nevada resident; BELL SPORTS, INC. d/b/a  
GIRO SPORT DESIGN, a Delaware  
corporation; SEVENPLUS BICYCLES, INC.  
d/b/a PRO CYCLERY, a Nevada corporation,  
DOES 1 through 20; and ROE  
CORPORATIONS 1 through 20,

Defendants.

Case No. A-17-755977-C

Dept.: XIV

**ORDER ADMITTING TO PRACTICE**

Paul E. Stephan, Esq., Jerry C. Popovich, Esq. and William J. Mall, Esq. having filed a  
Motion to Associate Counsel under Nevada Supreme Court Rule 42, together with a Verified  
Applications for Association of Counsel, Certificates of Good Standing, and the State Bar of

1 Nevada Statements, said application having been noticed, the Court having considered this matter,  
2 and the Court being fully apprised in the premises, and good cause appearing;


3 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said application is  
4 granted and Paul E. Stephan, Jerry C. Popovich, and William J. Mall are hereby admitted to  
5 practice in the above-entitled matter only.

6 DATED this 21 day of July, 2017.

7  
8   
9 DISTRICT COURT JUDGE  
10 

10 Submitted by:

11 SELMAN BREITMAN LLP

12   
13 Eric O. Freeman, Esq.  
14 Nevada Bar No: 6648  
15 3993 Howard Hughes Parkway, Suite 200  
16 Las Vegas, NV 89169

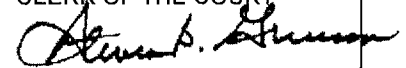
## **EXHIBIT 22**

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## **EXHIBIT 22**

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Steven D. Grierson  
CLERK OF THE COURT



SMR  
FLOYD A. HALE, Esq.  
Nevada Bar No. 1873  
3800 Howard Hughes Parkway, 11<sup>th</sup> Floor  
Las Vegas, NV 89169  
(702)-457-5267  
Special Master

DISTRICT COURT

CLARK COUNTY, STATE OF NEVADA

KEON KHIABANI and ARIA KHIABANI, ) CASE NO. A-17-755977-C  
minors by and through their natural mother, ) DEPT. NO. XIV  
KATAYOUN BARIN; KATAYOUN BARIN, )  
individually; KATAYOUN BARIN as Executrix )  
of the Estate of Kayvan Khiabani, M.D. (Decedent) )  
and the Estate of Kayvan Khiabani, M.D. )  
(Decedent), )

Plaintiffs,

vs.

MOTOR COACH INDUSTRIES, INC., a )  
Delaware corporation; MICHELANGELO )  
LEASING, INC. d/b/a RYAN'S EXPRESS, an )  
Arizona corporation; EDWARD HUBBARD, a )  
Nevada resident; BELL SPORTS, INC. d/b/a )  
GIRO SPORT DESIGN, a California corporation; )  
SEVENPLUS BICYCLES, INC. d/b/a Pro Cyclery, )  
a Nevada corporation; DOES 1 through 20; and )  
ROE CORPORATIONS 1 through 20, )

Defendants.

SPECIAL MASTER REPORT

This litigation involves the Plaintiff's Complaint for damages related to a motor vehicle - bicycle accident that occurred on April 18, 2017 in Clark County, Nevada. An initial Special Master hearing was conducted on July 24, 2017 for this litigation which has a preferential trial setting of November 20, 2017. A Case Agenda was issued following an August 7, 2017, Special Master Hearing. Records have been obtained by the parties through the use of Subpoenas, including the report of the Clark County Nevada Coroner's office. Records have also been obtained from the University Medical Center and records from the American Medical Response company. Parties have

1 also continued to produce records pursuant to the requirements of NRCP 16.1 and disclosures have  
2 included lists of witnesses.

3 Finally, Plaintiffs confirm that they do expect to produce expert reports regarding damages  
4 by the current September 29, 2017, deadline under the current Case Agenda. At the request of  
5 counsel, another Special Master Hearing will be conducted on September 11, 2017, at 4:30 p.m. to  
6 review discovery status and discovery scheduling.

7 RESPECTFULLY SUBMITTED this 22<sup>nd</sup> day of August, 2017

8  
9 By: /s/ Floyd A. Hale  
10 FLOYD A. HALE, Special Master  
11 Nevada Bar No. 1873  
12 3800 Howard Hughes Pkwy. 11<sup>th</sup> Fl.  
13 Las Vegas, NV 89169

14 CERTIFICATE OF SERVICE

15 I hereby certify that on August 23, 2017, I served a true and correct copy of the foregoing  
16 through the Court's efilng system, to:

17 Will Kemp, Esq.  
18 Kemp, Jones & Coulthard, LLP  
19 3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
20 Las Vegas, NV 89169  
21 Attorneys for Plaintiffs

22 Peter Christiansen, Esq.  
23 Christiansen Law Offices  
24 810 S. Casino Center Blvd., Suite 104  
25 Las Vegas, NV 89101  
26 Attorneys for Plaintiffs

27 D. Lee Roberts, Jr.  
28 Weinberg, Wheeler, Hudgins,  
Gunn & Dial, LLC  
6385 S. Rainbow Blvd. Suite 400  
Las Vegas, NV 89118  
Attorneys for Motor Coach Industries, Inc.

Eric Freeman, Esq.  
Selman Breitman, LLP  
3993 Howard Hughes Pkwy. Suite 200  
Las Vegas, NV 89169-0961  
Attorneys for Michelangelo Leasing, Inc.;  
Edward Hubbard

Michael Stoberski, Esq.  
Olson Cannon Gormley Angulo & Stoberski  
9550 W. Cheyenne Ave.  
Las Vegas, NV 89129  
Attorneys for Bell Sports, Inc.

Michael Nunez, Esq.  
Murchison & Cumming, LLP  
350 S. Rampart Blvd., Suite 320  
Las Vegas, NV 89145  
Attorneys for SevenPlus Bicycles, Inc.

By: /s/ Debbie Holloman  
Employee of JAMS

## **EXHIBIT 23**

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## **EXHIBIT 23**



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Steven D. Grierson  
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1 **SAO**

2 D. Lee Roberts, Jr., Esq.

3 Nevada Bar No. 8877

4 [lroberts@wwhgd.com](mailto:lroberts@wwhgd.com)

5 Howard J. Russell, Esq.

6 Nevada Bar No. 8879

7 [hrussell@wwhgd.com](mailto:hrussell@wwhgd.com)

8 Marisa Rodriguez, Esq.

9 Nevada Bar No. 13234

10 [mrrodriguez@wwhgd.com](mailto:mrrodriguez@wwhgd.com)

11 WEINBERG, WHEELER, HUDGINS,

12 GUNN &amp; DIAL, LLC

13 6385 S. Rainbow Blvd., Suite 400

14 Las Vegas, Nevada 89118

15 Telephone: (702) 938-3838

16 Facsimile: (702) 938-3864

17 *Attorneys for Defendant*18 *Motor Coach Industries, Inc.*

Darrell L. Barger, Esq.

*Admitted Pro Hac Vice*[dbarger@hdbdlaw.com](mailto:dbarger@hdbdlaw.com)

HARTLINE DACUS BARGER DREYER LLP

800 N. Shoreline Blvd.

Suite 2000, N Tower

Corpus Christi, TX 78401

Telephone: (361) 866-8000

John C. Dacus, Esq.

*Admitted Pro Hac Vice*[jdacus@hdbdlaw.com](mailto:jdacus@hdbdlaw.com)

Brian Rawson, Esq.

*Admitted Pro Hac Vice*[brawson@hdbdlaw.com](mailto:brawson@hdbdlaw.com)

HARTLINE DACUS BARGER DREYER LLP

8750 N. Central Expressway

Suite 1600

Dallas, TX 75231

Telephone: (214) 369-2100

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

16 KEON KHIABANI and ARIA KHIABANI,  
17 minors by and through their natural mother,  
18 KATAYOUN BARIN; and KATAYOUN  
19 BARIN, individually; KATAYOUN BARIN as  
20 Executrix of the Estate of Kayvan Khiabani,  
21 M.D. (Decedent), and the Estate of Kayvan  
22 Khiabani, M.D. (Decedent),

23 **Plaintiffs,**24 **v.**

25 MOTOR COACH INDUSTRIES, INC., a  
26 Delaware corporation; MICHELANGELO  
27 LEASING INC. d/b/a RYAN'S EXPRESS, an  
28 Arizona corporation; EDWARD HUBBARD, a  
Nevada resident; BELL SPORTS, INC. d/b/a  
GIRO SPORT DESIGN, a Delaware corporation;  
SEVENPLUS BICYCLES, INC. d/b/a PRO  
CYCLERY, a Nevada corporation, DOES 1  
through 20; and ROE CORPORATIONS 1  
through 20,

29 **Defendants.**

Case No.: A-17-755977-C

Dept. No.: XIV

**STIPULATED PROTECTIVE ORDER**

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC  
6385 S. Rainbow Blvd., Suite 400  
Las Vegas, Nevada 89118  
(702) 938-3838

000532

000532

1       Whereas PLAINTIFFS, Defendant MOTOR COACH INDUSTRIES, INC., Defendant  
2 MICHELANGELO LEASING INC. d/b/a RYAN'S EXPRESS, Defendant EDWARD  
3 HUBBARD, Defendant BELL SPORTS, INC. d/b/a GIRO SPORT DESIGN, and Defendant  
4 SEVENPLUS BICYCLES, INC. d/b/a PRO CYCLERY (hereinafter the "Parties), will be required  
5 to exchange, and will exchange, certain documents pursuant to NRCP 16.1 and NRCP 34, as well  
6 as serve interrogatories, notices of depositions and similar discovery requests, the responses to  
7 which counsel will submit may include the disclosure of trade secrets, proprietary data and/or  
8 confidential business information or confidential information of employees or third parties  
9 ("Confidential Information" as defined in paragraph 1 herein); and

10       Whereas the Parties, by and through their counsel, have agreed to produce such information  
11 for inspection, copying and use in the present action, subject to the terms and conditions of this  
12 Stipulated Protective Order ("Protective Order");

13       Subject to the approval of this Court, the Parties hereby stipulate to the following Protective  
14 Order:

15       1.     In connection with this action, the Parties may designate any document, thing,  
16 material, testimony or other information derived there from as "Confidential Information" under  
17 the terms of this Protective Order. Confidential Information means:

18       Trade secrets, proprietary data, and/or confidential business information including a  
19 formula, pattern, compilation, program, device, method, technique, or process that:

- 20       (a)    Derives independent economic value, actual or potential, from not being generally  
21 known to the public or to other persons who can obtain economic value from its  
22 disclosure or use; and  
23       (b)    Is the subject of efforts that are reasonable under the circumstances to maintain its  
24 secrecy.

25       By designating a document, thing, material, testimony or other information derived there  
26 from as "Confidential" under the terms of this Protective Order, the Party making the designation  
27 is certifying to the Court that there is a good faith basis both in law and in fact for the designation.

28     ///

1           2. Confidential documents shall be so designated by stamping copies of the document  
2 produced to a Party with the legend "CONFIDENTIAL." Stamping the legend  
3 "CONFIDENTIAL" on the cover of any multipage document shall designate all pages of the  
4 document as confidential, unless otherwise indicated by the producing Party.

5           3. Testimony taken at a deposition, conference, hearing or trial may be designated as  
6 confidential by making a statement to that effect on the record at the deposition or other  
7 proceeding. Arrangements shall be made with the court reporter taking and transcribing such  
8 proceeding to separately bind such portions of the transcript containing information designated as  
9 confidential, and to label such portions appropriately.

10           4. Material designated as CONFIDENTIAL under this Protective Order, the  
11 information contained therein, and any summaries, copies, abstracts, or other documents derived in  
12 whole or in part from material designated as confidential (hereinafter "Confidential Material")  
13 shall be used only for the purpose of the prosecution, defense, or settlement of this action, and for  
14 no other purpose.

15           5. Confidential Material produced pursuant to this Protective Order may be discussed  
16 or made available only to the Court, to counsel for a Party (including the paralegal, clerical, and  
17 secretarial staff employed by such counsel), and to the "qualified persons" designated below:

- 18           (a) a Party, or an officer, director, member of the Board of Governors, shareholder, or  
19 employee, or independent contractor of a Party reasonably deemed necessary by  
20 counsel for that Party to aid in the prosecution, defense, or settlement of this action;  
21           (b) a Party's liability insurer and its directors, officers, and employees;  
22           (c) experts or consultants (together with their staff) retained by such counsel to assist  
23 in the prosecution, defense, or settlement of this action;  
24           (d) certified shorthand court reporter(s) engaged in this action;  
25           (e) a witness at any deposition or other proceeding in this action reasonably deemed  
26 necessary by counsel for that Party to aid in the prosecution, defense, or settlement  
27 of this action; and  
28           (f) any other person as to whom the Parties in writing agree.

1 Prior to receiving any Confidential Material, each “qualified person” shall be provided with  
2 a copy of this Protective Order.

3 6. Depositions likely to contain Confidential Information shall be taken only in the  
4 presence of qualified persons.

5 7. The Parties may further designate certain discovery material or testimony of a  
6 highly confidential and/or proprietary nature as “CONFIDENTIAL—ATTORNEY’S EYES  
7 ONLY” (hereinafter “Attorney’s Eyes Only Material”), in the manner described in paragraphs 2  
8 and 3 above. Attorney’s Eyes Only Material, and the information contained therein, shall be  
9 disclosed only to the Court, to counsel for the Parties (including in-house counsel, paralegal,  
10 clerical and secretarial staff employed by such counsel), but shall not be disclosed to a Party, or to  
11 an officer, director, member of the Board of Governors, or employee, or independent contractor of  
12 a Party, unless otherwise agreed or ordered. If disclosure of Attorney’s Eyes Only Material is  
13 made pursuant to this paragraph, all other provisions in this Protective Order with respect to  
14 confidentiality shall also apply.

15 8. A Party that files or intends to file Confidential Information with the Court for the  
16 purposes of adjudication or to use at trial will follow the procedures set forth by the Nevada Rules  
17 of Civil Procedure and the Eighth Judicial District Court Rules for obtaining Court approval for  
18 filing such records under seal. All Confidential Information submitted in connection with  
19 discovery motions will be submitted under seal.

20 9. Nothing herein shall impose any restrictions on a Party from disclosing its own  
21 Confidential Material as it deems appropriate, nor from using or disclosing material that is in the  
22 public domain.

23 10. This Protective Order shall be without prejudice to the right of the Parties (i) to  
24 bring before the Court at any time the question of whether any particular document or information  
25 is confidential or whether its use should be restricted or (ii) to present a motion to the Court for a  
26 separate protective order as to any particular document or information, including restrictions  
27 differing from those as specified herein. This Protective Order shall not be deemed to prejudice  
28 the Parties in any way in any future application for modification of this Protective Order.

1           11. This Protective Order is entered solely for the purpose of facilitating the exchange  
2 of documents and information between the Parties to this action without involving the Court  
3 unnecessarily in the process. Nothing in this Protective Order nor the production of any  
4 information or document under the terms of this Protective Order nor any proceedings pursuant to  
5 this Protective Order shall be deemed to have the effect of an admission or waiver by any Party or  
6 of altering the confidentiality or non-confidentiality of any such document or information or  
7 altering any existing obligation of any Party or the absence thereof.


8           12. This Protective Order shall survive the final termination of this action, to the extent  
9 that the information contained in Confidential Material is not or does not become known to the  
10 public, and the Court shall retain jurisdiction to resolve any dispute concerning the use of  
11 information disclosed hereunder. Unless otherwise agreed by the Parties in writing, upon the  
12 "Return/Destruction Deadline" for a given party, that party shall either assemble and return to each  
13 originating party all documents, material and deposition transcripts designated as confidential and  
14 all copies of same in their custody or in the custody of any "qualified persons" in their control, or  
15 shall certify the destruction thereof. For Plaintiffs, the Return/Destruction Deadline will be within  
16 90 days of (i) a given Plaintiff's dismissal of their action or (ii) final judgment as to that Plaintiff,  
17 following appellate matters if any. For defendants, the Return/Destruction Deadline will be within  
18 90 days of (i) the dismissal of all actions and cross-actions against a given Defendant or (ii) final  
19 judgment as to that Defendant, following appellate matters if any.

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC  
6385 S. Rainbow Blvd., Suite 400  
Las Vegas, Nevada 89118  
(702) 938-3838

Case: A-17-755977-C  
Case Name: Khiabani v. Motor Coach Industries, Inc.  
Document: Stipulation and Protective Order

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.


Dated this 16<sup>th</sup> day of August, 2017.

  
D. Lee Roberts, Jr., Esq.  
Howard J. Russell, Esq.  
Marisa Rodriguez, Esq.  
WEINBERG, WHEELER, HUDGINS,  
GUNN & DIAL, LLC  
6385 S. Rainbow Blvd., Suite 400  
Las Vegas, Nevada 89118  
  
Darrell L. Barger, Esq.  
HARTLINE DACUS BARGER DREYER LLP  
800 N. Shoreline Blvd.  
Suite 2000, N Tower  
Corpus Christi, TX 78401

John C. Dacus, Esq.  
Brian Rawson, Esq.  
HARTLINE DACUS BARGER DREYER LLP  
8750 N. Central Expressway  
Suite 1600  
Dallas, TX 75231

*Attorneys for Defendant  
Motor Coach Industries, Inc.*

Dated this 14 day of August, 2017.

  
Will Kemp, Esq.  
Eric Pepperman, Esq.  
KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Pkwy., 17<sup>th</sup> Floor  
Las Vegas, NV 89169

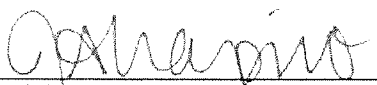
Peter S. Christiansen, Esq.  
Kendele L. Works, Esq.  
CHRISTIENSEN LAW OFFICES  
810 S. Casino Center Blvd.  
Las Vegas, NV 89101

*Attorneys for Plaintiffs*

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC  
6385 S. Rainbow Blvd., Suite 400  
Las Vegas, Nevada 89118  
(702) 938-3838

Case: A-17-755977-C  
Case Name: Khiabani v. Motor Coach Industries, Inc.  
Document: Stipulation and Protective Order

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

<p>Dated this <u>18th</u> day of August, 2017.</p> <p></p> <p>Michael E. Stoberski, Esq.  Joslyn Shapiro, Esq.  OLSON CANNON GORMLEY ANGULO &amp;  STOBERSKI  9950 W. Cheyenne Ave.  Las Vegas, NV 89129</p> <p>Keith Gibson, Esq.  LITTLETON JOYCE UGHETTA PARK &amp; KELLY  LLP  The Centre at Purchase  4 Manhattanville Rd., Suite 202  Purchase, NY 10577</p> <p><i>Attorneys for Defendant Bell Sports, Inc.  d/b/a Giro Sport Design</i></p>	<p>Dated this _____ day of August, 2017.</p> <p>_____  Eric O. Freeman, Esq.  SELMAN BREITMAN LLP  3993 Howard Hughes Pkwy., Suite 200  Las Vegas, NV 89169  efreeman@selmanlaw.com</p> <p><i>Attorney for Defendants Michelangelo Leasing  Inc. d/b/a Ryan's Express and Edward  Hubbard</i></p>
<p>Dated this _____ day of August, 2017.</p> <p>_____  Michael J. Nunez, Esq.  MURCHISON &amp; CUMMING, LLP  6900 Westcliff Dr., Suite 605  Las Vegas, NV 89145  mnunez@murchisonlaw.com</p> <p><i>Attorney for Defendant SevenPlus Bicycles,  Inc. d/b/a Pro Cyclery</i></p>	

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC  
6385 S. Rainbow Blvd., Suite 400  
Las Vegas, Nevada 89118  
(702) 938-3838

Case: A-17-755977-C  
Case Name: Khiabani v. Motor Coach Industries, Inc.  
Document: Stipulation and Protective Order

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.


Dated this \_\_\_\_ day of August, 2017.

Michael E. Stoberski, Esq.  
Joslyn Shapiro, Esq.  
OLSON CANNON GORMLEY ANGULO &  
STOBERSKI  
9950 W. Cheyenne Ave.  
Las Vegas, NV 89129

Keith Gibson, Esq.  
LITTLETON JOYCE UGHETTA PARK & KELLY  
LLP  
The Centre at Purchase  
4 Manhattanville Rd., Suite 202  
Purchase, NY 10577


*Attorneys for Defendant Bell Sports, Inc.  
d/b/a Giro Sport Design*

Dated this 14 day of August, 2017.

  
Eric O. Freeman, Esq.  
SELMAN BREITMAN LLP  
3993 Howard Hughes Pkwy., Suite 200  
Las Vegas, NV 89169  
efreeman@selmanlaw.com

*Attorney for Defendants Michelangelo Leasing  
Inc. d/b/a Ryan's Express and Edward  
Hubbard*

Dated this 15 day of August, 2017.

  
Michael J. Nunez, Esq.  
MURCHISON & CUMMING, LLP  
6900 Westcliff Dr., Suite 605  
Las Vegas, NV 89145  
mnunez@murchisonlaw.com

*Attorney for Defendant SevenPlus Bicycles,  
Inc. d/b/a Pro Cyclery*

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC  
6385 S. Rainbow Blvd., Suite 400  
Las Vegas, Nevada 89118  
(702) 938-3838

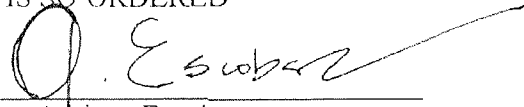


Case: A-17-755977-C  
Case Name: Khiabani v. Motor Coach Industries, Inc.  
Document: Stipulation and Protective Order

**ORDER**


Based on the foregoing, it is hereby ORDERED, ADJUDGED AND DECREED that the above noted **STIPULATION AND PROTECTIVE ORDER** is hereby approved and adopted.

IT IS SO ORDERED

  
Hon. Adriana Escobar

Dated: 23 August<sup>5</sup>, 2017

Submitted by:

  
D. Lee Roberts, Jr., Esq.  
Howard J. Russell, Esq.  
Marisa Rodriguez, Esq.  
WEINBERG, WHEELER, HUDGINS,  
GUNN & DIAL, LLC  
6385 S. Rainbow Blvd., Suite 400  
Las Vegas, Nevada 89118

*Attorneys for Defendant  
Motor Coach Industries, Inc.*

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC  
6385 S. Rainbow Blvd., Suite 400  
Las Vegas, Nevada 89118  
(702) 938-3838

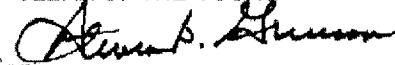
## EXHIBIT 24

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## EXHIBIT 24

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8/24/2017 2:39 PM  
Steven D. Grierson  
CLERK OF THE COURT


**ORDR**

D. Lee Roberts, Jr., Esq.

Nevada Bar No. 8877

[lroberts@wwhgd.com](mailto:lroberts@wwhgd.com)

Howard J. Russell, Esq.

Nevada Bar No. 8879

[hrussell@wwhgd.com](mailto:hrussell@wwhgd.com)

Marisa Rodriguez, Esq.

Nevada Bar No. 13234

[mrrodriguez@wwhgd.com](mailto:mrrodriguez@wwhgd.com)

WEINBERG, WHEELER, HUDGINS,

GUNN &amp; DIAL, LLC

6385 S. Rainbow Blvd., Suite 400

Las Vegas, Nevada 89118

Telephone: (702) 938-3838

Facsimile: (702) 938-3864

*Attorneys for Defendant**Motor Coach Industries, Inc.*

Darrell L. Barger, Esq.

*Admitted Pro Hac Vice*[dbarger@hdbdlaw.com](mailto:dbarger@hdbdlaw.com)

HARTLINE DACUS BARGER DREYER LLP

800 N. Shoreline Blvd.

Suite 2000, N Tower

Corpus Christi, TX 78401

Telephone: (361) 866-8000

John C. Dacus, Esq.

*Admitted Pro Hac Vice*[jdacus@hdbdlaw.com](mailto:jdacus@hdbdlaw.com)

Brian Rawson, Esq.

*Admitted Pro Hac Vice*[brawson@hdbdlaw.com](mailto:brawson@hdbdlaw.com)

HARTLINE DACUS BARGER DREYER LLP

8750 N. Central Expressway

Suite 1600

Dallas, TX 75231

Telephone: (214) 369-2100

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

KEON KHIABANI and ARIA KHIABANI,  
minors by and through their natural mother,  
KATAYOUN BARIN; and KATAYOUN  
BARIN, individually; KATAYOUN BARIN as  
Executrix of the Estate of Kayvan Khiabani,  
M.D. (Decedent), and the Estate of Kayvan  
Khiabani, M.D. (Decedent),

Plaintiffs,

v.

MOTOR COACH INDUSTRIES, INC., a  
Delaware corporation; MICHELANGELO  
LEASING INC. d/b/a RYAN'S EXPRESS, an  
Arizona corporation; EDWARD HUBBARD, a  
Nevada resident; BELL SPORTS, INC. d/b/a  
GIRO SPORT DESIGN, a Delaware corporation;  
SEVENPLUS BICYCLES, INC. d/v/a PRO  
CYCLERY, a Nevada corporation, DOES 1  
through 20; and ROE CORPORATIONS 1  
through 20,

Defendants.

Case No.: A-17-755977-C

Dept. No.: XIV

**ORDER ADMITTING TO PRACTICE**

1 Michael G. Terry having filed a Motion to Associate Counsel under Nevada Supreme Court  
2 Rule 42, together with a Verified Application for Association of Counsel, "Certificate of Good  
3 Standing"; and the State Bar of Nevada Statement; said application having been noticed, the Court  
4 having considered this matter, and the Court being fully apprised in the premises, and good cause  
5 appearing:

6 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that said application is  
7 granted and Michael G. Terry is hereby admitted to practice in the above-entitled Court for the  
8 purposes for the above-entitled matter only.

9 DATED this 23 day of August, 2017.

10  
11  
12   
13 \_\_\_\_\_  
14 DISTRICT COURT JUDGE *g*

15 Submitted by:

16   
17 \_\_\_\_\_

18 D. Lee Roberts, Jr., Esq.  
19 Howard J. Russell, Esq.  
20 Marisa Rodriguez, Esq.  
21 WEINBERG, WHEELER, HUDGINS,  
22 GUNN & DIAL, LLC  
23 6385 S. Rainbow Blvd., Suite 400  
24 Las Vegas, Nevada 89118

25 *Attorneys for Defendant*  
26 *Motor Coach Industries, Inc.*  
27  
28

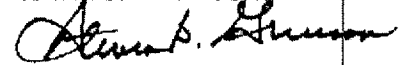
## **EXHIBIT 25**

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## **EXHIBIT 25**

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8/25/2017 11:29 AM  
Steven D. Grierson  
CLERK OF THE COURT


**ORDR**

MICHAEL E. STOBERSKI, ESQ.  
Nevada Bar No. 004762  
JOSLYN SHAPIRO, ESQ.  
Nevada Bar No. 010754  
OLSON, CANNON, GORMLEY  
ANGULO & STOBERSKI  
9950 West Cheyenne Avenue  
Las Vegas, Nevada 89129  
Telephone: 702-384-4012  
Facsimile: 702-383-0701  
Email: mstoberski@ocgas.com  
Email: jshapiro@ocgas.com  
Attorneys for Defendant  
BELL SPORTS, INC.

## DISTRICT COURT

## CLARK COUNTY, NEVADA

KEON KHIABANI and ARIA KHIABANI,  
minors by and through their natural mother,  
KATAYOUN BARIN; and KATAYOUN  
BARIN, individually,

Plaintiffs,

vs.

MOTOR COACH INDUSTRIES, INC., a  
Delaware corporation; MICHELANGELO  
LEASING INC. d/b/a RYAN'S EXPRESS, an  
Arizona corporation; EDWARD HUBBARD, a  
Nevada resident; BELL SPORTS, INC. d/b/a  
GIRO SPORT DESIGN, a Delaware corporation;  
SEVENPLUS BICYCLES, INC. d/b/a PRO  
CYCLERY, a Nevada corporation, DOES 1  
through 20; and ROE CORPORATIONS 1  
through 20.

Defendants.

CASE NO. A-17-755977-C  
DEPT. NO. XIV

**ORDER ADMITTING TO PRACTICE**

James C. Ughetta having filed his Motion to Associate Counsel under Nevada Supreme Court Rule 42, together with a Verified Application for Association of Counsel, Certificates of Good Standing, and Order Admitting to Practice, said application having been noticed, no

1 objections having been made, and the Court being fully apprised in the premises, and good cause  
2 appearing:

3 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that said application is  
4 granted and James C. Ughetta is hereby admitted to practice in the above-entitled Court for the  
5 purposes of the above-entitled case.  
6

7 DATED this 23 day of August, 2017.

8  
9   
10 DISTRICT COURT JUDGE  
11 

12 Submitted by:

13  
14 

15 MICHAEL E. STOBERSKI, ESQ.

16 Nevada Bar No. 004762

17 JOSLYN SHAPIRO, ESQ.

18 Nevada Bar No. 010754

19 9950 West Cheyenne Avenue

20 Las Vegas, Nevada 89129

21 Telephone: 702-384-4012

22 Facsimile: 702-383-0701

23 Email: mstoberski@ocgas.com

24 Email: jshapiro@ocgas.com

25 Attorneys for Defendant

26 BELL SPORTS, INC.  
27  
28

## **EXHIBIT 26**

000547

000547

## **EXHIBIT 26**



**β ε τ α**  
Business Economics Taxes Accounting

August 28, 2017

Will Kemp  
Kemp, Jones & Coulthard  
3800 Howard Hughes Parkway, 17th Floor  
Las Vegas, NV 89169

**Re: Kayvan Khiabani**

Larry D. Stokes, Ph.D.  
Business & Economic  
Analysis

Dear Mr. Kemp:

Bonnie Coombs-Stokes,  
MBA, CPA  
Accounting & Taxes

At your request, I have estimated the present value of the loss of earnings, income and fringe benefits resulting from the death of Dr. Kayvan Khiabani. I have also calculated the present value of the loss of his household services. The data, information and techniques used to arrive at my conclusions are shown in the accompanying report and details of my annual calculations are contained in the two table pages at the end of the report.

To summarize, the present value of the loss of earnings, income and fringe benefits resulting from the death of Dr. Khiabani totals \$15,262,417. The present value of the loss of his household services totals \$53,673. My conclusions are based on data and information that were available to me as of August 28, 2017, and are subject to change should additional information subsequently become available that would alter my conclusions.

Thank you for allowing me to be of service to you in the Khiabani matter. Please feel free to call me if you have any questions.

Sincerely,



Larry D. Stokes, Ph.D.

**Beta Business Consulting, LLC**  
10575 North 114<sup>th</sup> Street, Suite 103 Scottsdale, Arizona 85259  
Tel (480) 551-9680 Fax (480) 551-2184  
e-mail: ldstokes45@gmail.com

EJDC - 000209

**AN ANALYSIS OF ECONOMIC LOSS**

Kayvan Khiabani

August 28, 2017

**PERSONAL INFORMATION**

Sex: Male.  
Race or Ethnic Group: White.  
Date of Birth: September 7, 1965.  
Date of Death: April 18, 2017.  
Age at Date of Death: 51 Years.  
Marital Status: Married, Katayoun (Katy) Barin, Age 48.  
Area of Residence: Las Vegas, Nevada.  
Number of Children In Household: Two children.

Name	Birth Date	Current Age
Aria Khiabani	2/2/2001	16
Keon Khiabani	5/8/2003	14

**Educational History:**

Mr. Khiabani attended Vanier College in Montreal, Canada. He then attended McGill University where he received his medical education, completing it in 2000.

**Employment History:**

University of Reno; Las Vegas, Nevada.  
Dates of Employment: October, 2002 to April 18, 2017.  
Occupation: Professor of Surgery.  
Rate of Pay: \$995,000 per year.

**Documents Utilized in Preparing this Report:**

Data sources used in this analysis are cited throughout the report. In addition to these sources, the following information was used in the preparation of this analysis.

A Personal History Questionnaire completed by Katy Barin dated August 10, 2017.

Internal Revenue Service Form W-2 for Kayvan Khiabani for the 2011 to 2016 time period.

**Earnings History:**

Year	Source:	Kayvan's Earnings
2011	Income Tax Information	\$835,235
2012	" " "	837,589
2013	" " "	964,965
2014	" " "	978,651
2015	" " "	985,106
2016	" " "	990,503

**LOSS OF EARNINGS, INCOME AND FRINGE BENEFITS:**

The estimation of the loss of earnings, income and fringe benefits begins with the establishment of an occupational category and a beginning dollar value or earnings base. Since earnings grow over time, growth rates of earnings are calculated and applied to the earnings base.

Real earnings are calculated over the normal worklife expectancy. Earnings are adjusted by factors in the age-earnings profile. Employers' contributions for certain fringe benefits are included in the analysis. At the end of the worklife expectancy, an adjustment is used to reduce employment based income to retirement income levels. The reduced income levels are calculated to the end of the normal life expectancy. Discount rates are calculated and used to adjust all estimates to present value.

**Earnings Bases and Past Growth Rates of Earnings:**

Dr. Khiabani's earnings are based on his 2016 annual earnings of \$990,503. From 2016 to 2017, earnings are grown on an annual basis using employment cost index (ECI) data for wages and salaries of state and local government workers, not seasonally adjusted, fourth quarter. ECI data for 2017 is estimated using the growth rate for the prior year. Data are for workers in management, professional and related occupations. Details are summarized in the table at the top of the next page.

The data source is the U.S. Department of Labor Bureau of Labor Statistics, "Employment Cost Index."

URL: <http://data.bls.gov/PDQ/outside.jsp?survey=ci>

**Past Growth Rates of Earnings:**

Year	ECI	ECI Growth	Annual Earnings
State and local government workers in management, professional and related occupations			
2016	123.4		\$990,503
2017	125.7	1.90%	1,009,315

**Growth Rates of Prices and Earnings, Projected Real Growth:**

Real rates of growth are used to estimate future earnings levels in this analysis. Real growth rates of earnings are calculated by subtracting the average compound historical growth rate of prices from the average compound historical growth rate of earnings.

In this analysis, the time period over which earnings and price data were collected begins in 2002 and ends in 2016. Annual data are used to calculate historical and projected real rates of growth.

Average annual earnings data for growth rate calculations are for male, year-round, full-time doctors.

The source for annual earnings data is the U.S. Bureau of the Census, "Current Population Survey." Data used are for all races.

URL (2002): [http://www.census.gov/hhes/www/cpstables/macro/032003/perinc/new06\\_037.htm](http://www.census.gov/hhes/www/cpstables/macro/032003/perinc/new06_037.htm)

URL (2015): <http://www.census.gov/data/tables/time-series/demo/income-poverty/cps-pinc/pinc-06.2015.html>

Earnings for 2015 are adjusted to 2016 levels by using Employment Cost Index data which are cited above.

Consumer Price Index data for 2002 and 2016 are from the U.S. Department of Labor. Data are the U.S. city average for all urban consumers, all items, current series. <https://data.bls.gov/pdq/querytool.jsp?survey=cu>

Details of the data and the calculated growth rates are shown in the table at the top of the next page.

**Growth Rates of Prices and Earnings, Projected Real Growth:**

	-----Years-----		Historical	Projected
	2002	2016	Growth	Real Growth
Average Annual Earnings	\$174,826	\$234,623	2.12%	0.04%
Consumer Price Index	179.9	240.0	2.08%	NA

**Age-Earnings Profile:**

In a typical working career, a young worker earns less than the average wage for a given occupation. In mid-career, an experienced worker earns higher than average wages. Later in a career, earnings often tend to diminish somewhat from mid-career levels. The way a worker's earnings vary through a working career is called an age-earnings profile.

The age-earnings profile is affected by a worker's age, sex and level of educational attainment. In this analysis, adjustments to average earnings because of factors in the age-earnings profile vary from 97.8% to 100.4%.

Earnings data for the age-earnings profile are averages calculated from 2002 to 2015 data. Data are from the U.S. Bureau of the Census, "Current Population Survey," Table P-32. Data for all races are used.

URL: <http://www.census.gov/data/tables/time-series/demo/income-poverty/historical-income-people.html>

**Worklife Expectancy:**

At the time of his death, Mr. Khiabani was 51 years of age. Given his level of educational attainment, the normal worklife expectancy is 18.0 years through 2035.3. At that time, Mr. Khiabani would be 69 years old.

The data source for worklife expectancy is Gary R. Skoog and James E. Ciecka and Kurt V. Krueger: "The Markov Process Model of Labor Force Activity; Extended Tables of Central Tendency, Shape, Percentile Points, and Bootstrap Standard Errors." *Journal of Forensic Economics* 22(2), 2011, pp.165-229. Values are rounded to one decimal point.

**Life Expectancy:**

At the time of his death, Mr. Khiabani had a normal life expectancy of 29.0 years through the year 2046.3. Life expectancy data are from Arias E, Heron M, Xu JQ. United States life tables, 2013. National vital statistics reports; vol 66 no 3. Hyattsville, MD: National Center for Health Statistics. 2017.  
URL: [https://www.cdc.gov/nchs/data/nvsr/nvsr66/nvsr66\\_03.pdf](https://www.cdc.gov/nchs/data/nvsr/nvsr66/nvsr66_03.pdf)

**Income Adjustment at End of Worklife:**

At the end of the worklife expectancy, an adjustment is used to reduce employment based income to retirement income levels. In this analysis, income levels are reduced by 61.8% from the end of the worklife expectancy to the end of the normal life expectancy. No real growth is assumed in this income.

Data on consumer income by age of respondent are from the U.S. Department of Labor, Bureau of Labor Statistics, "Consumer Expenditure Survey, 2014 - 2015."  
URL: <http://www.bls.gov/ce/>

**Fringe Benefits:**

Fringe benefits that are provided by employers are often not paid to workers in the form of direct money payments. They do, however, have economic value and contribute to a worker's well-being. Employers' contributions for health benefits and one-half of Social Security and Medicare are included in this analysis. Fringe benefits are included only through 2021, the year in which the youngest child in the household becomes age 18.

Data for Social Security and Medicare contributions are from the Social Security Administration. Health and retirement benefit data are from the U.S. Department of Labor Bureau of Labor Statistics, "Employer Cost for Employee Compensation".  
URL: <http://data.bls.gov/cgi-bin/dsrv?cm>

**Social Security Benefit:**

Contributions for Social Security and Medicare are identical for all employers and equal 6.20% and 1.45% of earnings respectively.

**Health Benefit:**

An average contribution for state and local government workers in management, professional and related occupations of \$12,359 per year was used in this analysis.

**Fringe Benefit Growth Rates:**

No real growth is assumed in employers' contributions for Social Security, Medicare and retirement benefits.

Real rates of growth are used to estimate future health benefit contributions. The real growth rate is calculated by subtracting the average compound historical growth rate of prices from the average compound historical growth rate of the cost of fringe benefits. Details are shown in the table below.

**Health Benefit Growth Rates:**

	-----Years-----		Historical Growth	Projected Real Growth
	2006	2016		
Health Benefits	103.1	131.8	2.48%	0.73%
Consumer Price Index	201.6	240.0	1.76%	NA

Price Index data for 2006 and 2016 are from the U.S. Department of Labor.  
<https://data.bls.gov/pdq/querytool.jsp?survey=cu>

**Personal Consumption Allowance:**

Personal consumption expenditures are outlays that would have been made for the purchase of goods and services that would have benefited the deceased person. These outlays include such items as food, clothing, medical care, entertainment and other personal services. Expenditures on gifts and contributions are also included even though these expenditures would not have directly benefited the deceased person. Finally, outlays for insurance, pensions and social security are included.

Items that are not included in personal consumption are housing expenditures and the net outlay for vehicles. These items are considered public goods that are essentially indivisible within the household. Expenditures on these items also tend to give rise to asset accumulation within the estate.

Katy Barin is extremely ill and is not expected to survive very long into the future. In this analysis, Katy is included in the household through the 2018 calendar year for purposes of calculating the personal consumption allowance.

Personal consumption expenditures are subtracted from the earnings, income and fringe benefits of the deceased to arrive at the economic loss. The personal consumption allowance that is subtracted in this analysis is calculated by multiplying a personal consumption percentage times direct household earnings.

Personal consumption expenditures, as a percentage of income, decrease as income increases and as the number of persons in a household increase. Consumption percentages are generally different in each year of the analysis. They range from a low of 8.2% to a high of 34.2% in this analysis.

Data on consumer income before taxes, household size and expenditures are from the U.S. Department of Labor, Bureau of Labor Statistics, "Consumer Expenditure Survey, Cross-Tabulated Tables 2014 - 2015."

URL: <http://www.bls.gov/cex/tables.htm>

#### **VALUE OF HOUSEHOLD SERVICES:**

Household services such as household work inside and outside of the home, caring for and helping household members, shopping and transportation related to household members have considerable value to a household. However, family members who do such work are not typically paid for their efforts.

Household services performed by family members enhances the value of family assets and the quality of life the family enjoys. A loss of household work resulting from the injury or death of a family member is a component of economic loss that is addressed in this analysis.

Household services are calculated through 2021, the year in which Keon Khiabani reaches age 18. Katy Barin is included through the 2018 calendar year.

#### **Average Hours Per Year Devoted to Household Work:**

Since most family members do not record the amount of time they allocate toward various types of household work, data from the American Time Use Survey are used to estimate the time spent on household work. The time spent on this work varies based on employment, race, number and age of members of the household and the level of educational attainment.

The data source for household work data is the U.S. Department of Labor Bureau of Labor Statistics, "American Time Use Survey", 2013 and 2014.

URL: [http://www.bls.gov/tus/datafiles\\_2013.htm](http://www.bls.gov/tus/datafiles_2013.htm)

URL: [http://www.bls.gov/tus/datafiles\\_2014.htm](http://www.bls.gov/tus/datafiles_2014.htm)



**Dollar Value of Household Services:**

A wage rate from the competitive labor market is utilized to value household services. In this analysis, a 2016 wage rate of \$13.71 per hour was used. This wage is the average wage for workers in Food Preparation and Serving Related Occupations, Building and Grounds Cleaning and Maintenance Occupations, and Personal Care and Service Occupations in the Las Vegas-Henderson-Paradise, Nevada area.

The data source is the U.S. Department of Labor Bureau of Labor Statistics.  
URL: [https://www.bls.gov/oes/current/oes\\_29820.htm#35-0000](https://www.bls.gov/oes/current/oes_29820.htm#35-0000)

**Growth Rate of the Dollar Value of Time per Hour:**

Real rates of growth in household services are used in estimating future hourly dollar values. The real rate of growth is the difference between the historical growth in the cost of household operations and inflation in general. Details are shown in the table below. Index numbers for 2002 and 2016 are from the U.S. Department of Labor. Data are the U.S. city average for all urban consumers, all items, current series.  
<https://data.bls.gov/pdq/querytool.jsp?survey=cu>

**Growth Rate of the Dollar Value of Time per Hour:**

	-----Years-----		Historical	Projected
	2002	2016	Growth	Real Growth
Household Operations	119.0	171.6	2.65%	0.57%
Consumer Price Index	179.9	240.0	2.08%	NA

**Personal Production Allowance:**

The personal production allowance is an estimate of the value of household services that would have been produced by the deceased person for his or her own personal benefit. The personal production allowance is subtracted from the value of household services to arrive at the loss of the value of household services.

The personal production allowance that is subtracted is calculated by multiplying a personal production percentage times the value of household services. The personal production percentages varies according to the sex of the deceased person and other characteristics of the household. In this analysis, personal production percentages range from a low of 18.0% to a high of 22.5%.

Personal production allowances are calculated from data in the U.S. Department of Labor Bureau of Labor Statistics, "American Time Use Survey", cited above.

### PRESENT VALUE DISCOUNT RATE:

Economic losses that occur in the future must be discounted to present value. The present value technique recognizes the fact that money currently available can be invested, and interest can be earned on that investment. A present value amount is, therefore, less than the sum of future losses. The technique insures that both the principal amount and the interest earned over time will be exhausted at the end of the time period of the analysis.

A real discount rate is used in this analysis. In this technique, inflation is deducted from nominal interest rates to arrive at a real discount rate.

Economic losses that occur in the past are also adjusted to present value. Past values are brought to present value by adjusting for decreases in the buying power of the dollar over time. Annual changes in the Consumer Price Index are used for this adjustment.

The nominal present value discount rate is based on an average of historical and recent yield rates on 3-month and 1, 5, and 10-year Treasury constant maturity issues. The average annual yield rate on these low-risk securities from 2002 through 2015 was 2.24%. The above securities had an annual yield averaging 1.32% in 2016. Averaging the historical and recent yield rates results in a composit yield rate of 1.78%.

The average of the year to year inflation rates from 2002 through 2015 was 2.11%. In 2016, the inflation rate was 0.32%. Averaging the historical and recent inflation rates results in a composit inflation rate of 1.22%. Subtracting the composit inflation rate from the composit yield rate results in a real discount rate of 0.57%

The data source for yield or interest rate information is the Federal Reserve.  
URL: <https://www.federalreserve.gov/datadownload/Build.aspx?rel=H15>

Inflation or Consumer Price Index data are from the U.S. Department of Labor. Data are the U.S. city average for all urban consumers, all items, current series.  
<https://data.bls.gov/pdq/querytool.jsp?survey=cu>

**CONCLUSIONS:**

Present Value of Earnings, Income and Fringe Benefits:	\$21,112,263
Present Value of Personal Consumption:	(\$5,849,846)
Present Value of the Loss of Earnings, Income and Fringe Benefits:	<u>\$15,262,417</u>
Present Value of Household Services:	\$67,319
Present Value of Personal Production:	(\$13,646)
Present Value of the Loss of Household Services:	<u>\$53,673</u>
Present Value of the Total Economic Loss:	<u>\$15,316,090</u>



Larry D. Stokes, Ph.D.

## PRESENT VALUE OF EARNINGS, INCOME AND FRINGE BENEFITS: Kayvan Khiabani.

Year	Earnings and Income	Fringe Benefits	Total Earnings, Income and Fringe Benefits	Personal Consumption Allowance	Loss of Earnings, Income and Fringe Benefits
2017	708,076	12,540	720,616	(58,199)	662,417
2018	1,007,811	16,629	1,024,440	(82,829)	941,611
2019	1,003,739	16,649	1,020,388	(164,058)	856,330
2020	999,327	16,669	1,015,997	(163,330)	852,667
2021	994,582	16,689	1,011,271	(162,550)	848,721
2022	989,508		989,508	(161,718)	827,790
2023	984,110		984,110	(320,770)	663,340
2024	978,395		978,395	(318,909)	659,486
2025	972,367		972,367	(316,949)	655,418
2026	966,032		966,032	(314,892)	651,140
2027	959,394		959,394	(312,740)	646,654
2028	952,460		952,460	(310,495)	641,965
2029	945,233		945,233	(308,157)	637,076
2030	937,719		937,719	(305,729)	631,990
2031	929,923		929,923	(303,211)	626,712
2032	921,849		921,849	(300,607)	621,242
2033	913,504		913,504	(297,916)	615,588
2034	904,890		904,890	(295,141)	609,749
2035	514,656		514,656	(171,684)	342,972
2036	343,803		343,803	(117,604)	226,199
2037	341,864		341,864	(116,940)	224,924
2038	339,935		339,935	(116,280)	223,655
2039	338,017		338,017	(115,624)	222,393
2040	336,110		336,110	(114,972)	221,138
2041	334,213		334,213	(114,323)	219,890
2042	332,328		332,328	(113,678)	218,650
2043	330,453		330,453	(113,037)	217,416
2044	328,588		328,588	(112,399)	216,189
2045	326,734		326,734	(111,765)	214,969
2046	97,467		97,467	(33,340)	64,127
Totals:	\$21,033,086	\$79,177	\$21,112,263	(\$5,849,846)	\$15,262,417

Table Page 1

## PRESENT VALUE OF HOUSEHOLD WORK: Kayvan Khiabani

Year	Present Value of Household Work	Present Value of Personal Production Allowance	Present Value of the Loss of Household Work
2017	13,202	(2,370)	10,832
2018	18,778	(3,386)	15,392
2019	11,886	(2,635)	9,251
2020	11,783	(2,630)	9,153
2021	11,670	(2,624)	9,045
Totals:	\$67,319	(\$13,646)	\$53,673

Table Page 2

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## **EXHIBIT 27**

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## **EXHIBIT 27**

EJDC - 000222

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Steven D. Grierson  
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**ORDR**

D. Lee Roberts, Jr., Esq.  
Nevada Bar No. 8877  
[lroberts@wwhgd.com](mailto:lroberts@wwhgd.com)

Howard J. Russell, Esq.  
Nevada Bar No. 8879  
[hrussell@wwhgd.com](mailto:hrussell@wwhgd.com)

Marisa Rodriguez, Esq.  
Nevada Bar No. 13234  
[mrodriguez@wwhgd.com](mailto:mrodriguez@wwhgd.com)

WEINBERG, WHEELER, HUDGINS,  
GUNN & DIAL, LLC

6385 S. Rainbow Blvd., Suite 400  
Las Vegas, Nevada 89118

Telephone: (702) 938-3838

Facsimile: (702) 938-3864

*Attorneys for Defendant*

*Motor Coach Industries, Inc.*

Darrell L. Barger, Esq.

*Admitted Pro Hac Vice*

[dbarger@hdbdlaw.com](mailto:dbarger@hdbdlaw.com)

HARTLINE DACUS BARGER DREYER LLP

800 N. Shoreline Blvd.

Suite 2000, N Tower

Corpus Christi, TX 78401

Telephone: (361) 866-8000

John C. Dacus, Esq.

*Admitted Pro Hac Vice*

[jdacus@hdbdlaw.com](mailto:jdacus@hdbdlaw.com)

Brian Rawson, Esq.

*Admitted Pro Hac Vice*

[brawson@hdbdlaw.com](mailto:brawson@hdbdlaw.com)

Michael G. Terry, Esq.

*Admitted Pro Hac Vice*

[mterry@hdbdlaw.com](mailto:mterry@hdbdlaw.com)

HARTLINE DACUS BARGER DREYER LLP

8750 N. Central Expressway, Suite 1600

Dallas, TX 75231

Telephone: (214) 369-2100

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

KEON KHIABANI and ARIA KHIABANI,  
minors by and through their natural mother,  
KATAYOUN BARIN; and KATAYOUN  
BARIN, individually; KATAYOUN BARIN as  
Executrix of the Estate of Kayvan Khiabani,  
M.D. (Decedent), and the Estate of Kayvan  
Khiabani, M.D. (Decedent),

Plaintiffs,

v.

MOTOR COACH INDUSTRIES, INC., a  
Delaware corporation; MICHELANGELO  
LEASING INC. d/b/a RYAN'S EXPRESS, an  
Arizona corporation; EDWARD HUBBARD, a  
Nevada resident; BELL SPORTS, INC. d/b/a  
GIRO SPORT DESIGN, a Delaware corporation;  
SEVENPLUS BICYCLES, INC. d/v/a PRO  
CYCLERY, a Nevada corporation, DOES 1  
through 20; and ROE CORPORATIONS 1  
through 20,

Defendants.

Case No.: A-17-755977-C

Dept. No.: XIV

**ORDER ADMITTING TO PRACTICE**

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC  
6385 S. Rainbow Blvd., Suite 400  
Las Vegas, Nevada 89118  
(702) 938-3838

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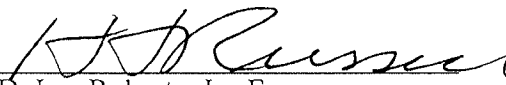
David A. Dial having filed a Motion to Associate Counsel under Nevada Supreme Court Rule 42, together with a Verified Application for Association of Counsel, "Certificate of Good Standing"; and the State Bar of Nevada Statement; said application having been noticed, the Court having considered this matter, and the Court being fully apprised in the premises, and good cause appearing:

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that said application is granted and David A. Dial is hereby admitted to practice in the above-entitled Court for the purposes for the above-entitled matter only.

DATED this 6 day of <sup>September</sup> ~~August~~, 2017.

  
DISTRICT COURT JUDGE *g*

Submitted by:

  
D. Lee Roberts, Jr., Esq.  
Howard J. Russell, Esq.  
Marisa Rodriguez, Esq.  
WEINBERG, WHEELER, HUDGINS,  
GUNN & DIAL, LLC  
6385 S. Rainbow Blvd., Suite 400  
Las Vegas, Nevada 89118

Darrell L. Barger, Esq.  
HARTLINE DACUS BARGER DREYER LLP  
800 N. Shoreline Blvd.  
Suite 2000, N Tower  
Corpus Christi, TX 78401

John C. Dacus, Esq.  
Brian Rawson, Esq.  
Michael Terry, Esq.  
HARTLINE DACUS BARGER DREYER LLP  
8750 N. Central Expressway  
Suite 1600  
Dallas, TX 75231

*Attorneys for Defendant  
Motor Coach Industries, Inc.*



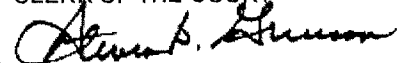
## **EXHIBIT 28**

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## **EXHIBIT 28**

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CLERK OF THE COURT


**SAO**

D. Lee Roberts, Jr., Esq.

Nevada Bar No. 8877

[lroberts@wwhgd.com](mailto:lroberts@wwhgd.com)

Howard J. Russell, Esq.

Nevada Bar No. 8879

[hrussell@wwhgd.com](mailto:hrussell@wwhgd.com)

Marisa Rodriguez, Esq.

Nevada Bar No. 13234

[mrodriguez@wwhgd.com](mailto:mrodriguez@wwhgd.com)

WEINBERG, WHEELER, HUDGINS,

GUNN &amp; DIAL, LLC

6385 S. Rainbow Blvd., Suite 400

Las Vegas, Nevada 89118

Telephone: (702) 938-3838

Facsimile: (702) 938-3864

Darrell L. Barger, Esq.

*Admitted Pro Hac Vice*[dbarger@hdbdlaw.com](mailto:dbarger@hdbdlaw.com)

HARTLINE DACUS BARGER DREYER LLP

800 N. Shoreline Blvd.

Suite 2000, N Tower

Corpus Christi, TX 78401

Telephone: (361) 866-8000

John C. Dacus, Esq.

*Admitted Pro Hac Vice*[jdacus@hdbdlaw.com](mailto:jdacus@hdbdlaw.com)

Brian Rawson, Esq.

*Admitted Pro Hac Vice*[brawson@hdbdlaw.com](mailto:brawson@hdbdlaw.com)

HARTLINE DACUS BARGER DREYER LLP

8750 N. Central Expressway

Suite 1600

Dallas, TX 75231

Telephone: (214) 369-2100

*Attorneys for Defendant**Motor Coach Industries, Inc.***DISTRICT COURT****CLARK COUNTY, NEVADA**

KEON KHIABANI and ARIA KHIABANI,  
minors by and through their natural mother,  
KATAYOUN BARIN; and KATAYOUN  
BARIN, individually; KATAYOUN BARIN as  
Executrix of the Estate of Kayvan Khiabani,  
M.D. (Decedent), and the Estate of Kayvan  
Khiabani, M.D. (Decedent),

Plaintiffs,

v.

MOTOR COACH INDUSTRIES, INC., a  
Delaware corporation; MICHELANGELO  
LEASING INC. d/b/a RYAN'S EXPRESS, an  
Arizona corporation; EDWARD HUBBARD, a  
Nevada resident; BELL SPORTS, INC. d/b/a  
GIRO SPORT DESIGN, a Delaware corporation;  
SEVENPLUS BICYCLES, INC. d/b/a PRO  
CYCLERY, a Nevada corporation, DOES 1  
through 20; and ROE CORPORATIONS 1  
through 20,

Defendants.

Case No.: A-17-755977-C

Dept. No.: XIV

**STIPULATION AND ORDER TO  
CONTINUE HEARING ON MOTION FOR  
RECONSIDERATION**

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC  
6385 S. Rainbow Blvd., Suite 400  
Las Vegas, Nevada 89118  
(702) 938-3838

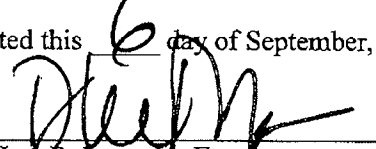
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1 It is hereby stipulated and agreed by the parties hereto, through their respective counsel,  
 2 that the hearing on Defendants Michelangelo Leasing, Inc. and Edward Hubbard's Motion for  
 3 Reconsideration Regarding the Court Granting Plaintiffs' Motion for Preferential Trial Setting  
 4 currently set for Thursday, September 7, 2017 at 9:30 am, and the hearing on all joinders thereto,  
 5 be reset for Thursday, September 21, 2017 at 9:30 am (concurrent with the Status Check on  
 6 calendar for this case).

7 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

8 Dated this 6 day of September, 2017.

9   
 10 D. Lee Roberts, Jr., Esq.  
 11 Howard J. Russell, Esq.  
 12 Marisa Rodriguez, Esq.  
 13 WEINBERG, WHEELER, HUDGINS,  
 14 GUNN & DIAL, LLC  
 15 6385 S. Rainbow Blvd., Suite 400  
 16 Las Vegas, Nevada 89118

17 Darrell L. Barger, Esq.  
 18 HARTLINE DACUS BARGER DREYER LLP  
 19 800 N. Shoreline Blvd.  
 20 Suite 2000, N Tower  
 21 Corpus Christi, TX 78401

22 John C. Dacus, Esq.  
 23 Brian Rawson, Esq.  
 24 HARTLINE DACUS BARGER DREYER LLP  
 25 8750 N. Central Expressway  
 26 Suite 1600  
 27 Dallas, TX 75231

28 ***Attorneys for Defendant  
 Motor Coach Industries, Inc.***

Dated this \_\_\_\_ day of September, 2017.

Will Kemp, Esq.  
 Eric Pepperman, Esq.  
 KEMP, JONES & COULTHARD, LLP  
 3800 Howard Hughes Pkwy., 17<sup>th</sup> Floor  
 Las Vegas, NV 89169

Peter S. Christiansen, Esq.  
 Kendele L. Works, Esq.  
 CHRISTIANSEN LAW OFFICES  
 810 S. Casino Center Blvd.  
 Las Vegas, NV 89101

***Attorneys for Plaintiffs***

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC  
 6385 S. Rainbow Blvd., Suite 400  
 Las Vegas, Nevada 89118  
 (702) 938-3838

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8 Dated this \_\_\_\_ day of September, 2017.

9 Dated this 6 day of September, 2017.

10  
 11 D. Lee Roberts, Jr., Esq.  
 12 Howard J. Russell, Esq.  
 13 Marisa Rodriguez, Esq.  
 14 WEINBERG, WHEELER, HUDGINS,  
 15 GUNN & DIAL, LLC  
 16 6385 S. Rainbow Blvd., Suite 400  
 17 Las Vegas, Nevada 89118

18 Darrell L. Barger, Esq.  
 19 HARTLINE DACUS BARGER DREYER LLP  
 20 800 N. Shoreline Blvd.  
 21 Suite 2000, N Tower  
 22 Corpus Christi, TX 78401

23 John C. Dacus, Esq.  
 24 Brian Rawson, Esq.  
 25 HARTLINE DACUS BARGER DREYER LLP  
 26 8750 N. Central Expressway  
 27 Suite 1600  
 28 Dallas, TX 75231

*Attorneys for Defendant  
 Motor Coach Industries, Inc.*

Will Kemp, Esq.  
 Eric Pepperman, Esq.  
 KEMP, JONES & COULTHARD, LLP  
 3800 Howard Hughes Pkwy., 17<sup>th</sup> Floor  
 Las Vegas, NV 89169

Peter S. Christiansen, Esq.  
 Kendele L. Works, Esq.  
 CHRISTIANSEN LAW OFFICES  
 810 S. Casino Center Blvd.  
 Las Vegas, NV 89101

*Attorneys for Plaintiffs*

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC  
 6385 S. Rainbow Blvd., Suite 400  
 Las Vegas, Nevada 89118  
 (702) 938-3838

Case: A-17-755977-C  
Case Name: *Khiabani v. Motor Coach Industries, Inc.*  
Document: *Stipulation and Order To Continue Hearing on Motion for Reconsideration*

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated this \_\_\_\_\_ day of September, 2017.

Dated this \_\_\_\_\_ day of September, 2017.

Michael E. Stoberski, Esq.  
Joslyn Shapiro, Esq.  
OLSON CANNON GORMLEY ANGULO &  
STOBERSKI  
9950 W. Cheyenne Ave.  
Las Vegas, NV 89129


Eric O. Freeman, Esq.  
SELMAN BREITMAN LLP  
3993 Howard Hughes Pkwy., Suite 200  
Las Vegas, NV 89169  
efreeman@selmanlaw.com

Keith Gibson, Esq.  
LITTLETON JOYCE UGHETTA PARK & KELLY  
LLP  
The Centre at Purchase  
4 Manhattanville Rd., Suite 202  
Purchase, NY 10577

*Attorney for Defendants Michelangelo Leasing Inc. d/b/a Ryan's Express and Edward Hubbard*

*Attorneys for Defendant Bell Sports, Inc. d/b/a Giro Sport Design*

Dated this 4 day of September, 2017.

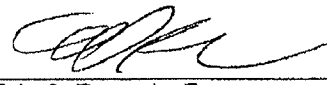
  
Michael J. Nunez, Esq.  
MURCHISON & CUMMING, LLP  
6900 Westcliff Dr., Suite 605  
Las Vegas, NV 89145  
mnunez@murchisonlaw.com

*Attorney for Defendant SevenPlus Bicycles, Inc. d/b/a Pro Cyclery*

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC  
6385 S. Rainbow Blvd., Suite 400  
Las Vegas, Nevada 89118  
(702) 938-3838

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Case Name: *Khiabani v. Motor Coach Industries, Inc.*  
Document: *Stipulation and Order To Continue Hearing on Motion for Reconsideration*

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

<p>Dated this ____ day of September, 2017.</p> <p>_____  Michael E. Stoberski, Esq.  Joslyn Shapiro, Esq.  OLSON CANNON GORMLEY ANGULO &amp;  STOBERSKI  9950 W. Cheyenne Ave.  Las Vegas, NV 89129</p> <p>_____  Keith Gibson, Esq.  LITTLETON JOYCE UGHETTA PARK &amp; KELLY  LLP  The Centre at Purchase  4 Manhattanville Rd., Suite 202  Purchase, NY 10577</p> <p><i>Attorneys for Defendant Bell Sports, Inc.  d/b/a Giro Sport Design</i></p>	<p>Dated this <u>6</u> day of September, 2017.</p> <p>  _____  Eric O. Freeman, Esq.  SELMAN BREITMAN LLP  3993 Howard Hughes Pkwy., Suite 200  Las Vegas, NV 89169  efreeman@selmanlaw.com</p> <p><i>Attorney for Defendants Michelangelo Leasing  Inc. d/b/a Ryan's Express and Edward  Hubbard</i></p>
<p>Dated this ____ day of September, 2017.</p> <p>_____  Michael J. Nunez, Esq.  MURCHISON &amp; CUMMING, LLP  6900 Westcliff Dr., Suite 605  Las Vegas, NV 89145  mnunez@murchisonlaw.com</p> <p><i>Attorney for Defendant SevenPlus Bicycles,  Inc. d/b/a Pro Cyclery</i></p>	

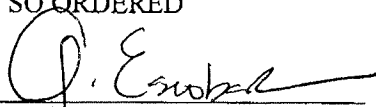
Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC  
6385 S. Rainbow Blvd., Suite 400  
Las Vegas, Nevada 89118  
(702) 938-3838

Case: A-17-755977-C  
Case Name: *Khiabani v. Motor Coach Industries, Inc.*  
Document: *Stipulation and Order To Continue Hearing on Motion for Reconsideration*

**ORDER**


Based on the foregoing, it is hereby ORDERED, ADJUDGED AND DECREED that the above noted **TO CONTINUE HEARING ON MOTION FOR RECONSIDERATION** is Granted, Hearing is reset for Thursday, September 21, 2017 at 9:30am, concurrent with currently scheduled Status Check.

IT IS SO ORDERED

  
Hon. Adriana Escobar

Dated: 16 September, 2017

Submitted by:

  
D. Lee Roberts, Jr., Esq.  
Howard J. Russell, Esq.  
Marisa Rodriguez, Esq.  
WEINBERG, WHEELER, HUDGINS,  
GUNN & DIAL, LLC  
6385 S. Rainbow Blvd., Suite 400  
Las Vegas, Nevada 89118

*Attorneys for Defendant  
Motor Coach Industries, Inc.*

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC  
6385 S. Rainbow Blvd., Suite 400  
Las Vegas, Nevada 89118  
(702) 938-3838

## **EXHIBIT 29**

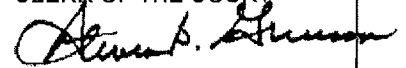
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## **EXHIBIT 29**



Electronically Filed  
9/12/2017 2:09 PM  
Steven D. Grierson  
CLERK OF THE COURT



SMO  
FLOYD A. HALE, Esq.  
Nevada Bar No. 1873  
3800 Howard Hughes Parkway, 11<sup>th</sup> Floor  
Las Vegas, NV 89169  
(702)-457-5267  
Special Master

DISTRICT COURT

CLARK COUNTY, STATE OF NEVADA

KEON KHIABANI and ARIA KHIABANI, ) CASE NO. A-17-755977-C  
minors by and through their natural mother, ) DEPT. NO. XIV  
KATAYOUN BARIN; KATAYOUN BARIN, )  
individually; KATAYOUN BARIN as Executrix )  
of the Estate of Kayvan Khiabani, M.D. (Decedent) )  
and the Estate of Kayvan Khiabani, M.D. )  
(Decedent), )

Plaintiffs,

vs.

MOTOR COACH INDUSTRIES, INC., a )  
Delaware corporation; MICHELANGELO )  
LEASING, INC. d/b/a RYAN'S EXPRESS, an )  
Arizona corporation; EDWARD HUBBARD, a )  
Nevada resident; BELL SPORTS, INC. d/b/a )  
GIRO SPORT DESIGN, a California corporation; )  
SEVENPLUS BICYCLES, INC. d/b/a Pro Cyclery, )  
a Nevada corporation; DOES 1 through 20; and )  
ROE CORPORATIONS 1 through 20, )

Defendants.

SPECIAL MASTER REPORT AND ORDER ALLOWING MOTOR COACH  
INDUSTRIES TO COMMENCE EDWARD HUBBARD DEPOSITION

SPECIAL MASTER REPORT

This litigation involves the Plaintiffs' Complaint for damages related to a motor vehicle -  
bicycle accident that occurred on April 18, 2017 in Clark County, Nevada, in which Kayvan  
Khiabani was killed. **This matter is set for trial on November 20, 2017.**

A Special Master Hearing was conducted on September 11, 2017, regarding discovery issues  
and discovery status. At that time, counsel for the Plaintiffs reported that the Plaintiffs' expert  
reports regarding damages will be provided prior to or by the September 29, 2017, date required by

1 the current Case Agenda. The Plaintiffs' expert reports regarding remaining issues are also  
2 anticipated to be provided by October 6, 2017, as required by the current Case Agenda.

3 **SPECIAL MASTER ORDER ALLOWING MOTOR COACH INDUSTRIES**  
4 **TO COMMENCE EDWARD HUBBARD DEPOSITION**

5 Edward Hubbard was the driver of the tour bus involved in the collision with the bicycle  
6 being operated by the decedent, Dr. Kayvan Khiabani. Motor Coach Industries manufactured the  
7 tour bus which was owned and operated by Michelangelo Leasing, Inc. d/b/a Ryan's Express at the  
8 time of the accident. A discovery dispute has arisen regarding the procedure for conducting Mr.  
9 Hubbard's deposition. The issues regarding that deposition were raised as a result of the following  
10 chronology:

11 August 16, 2017, Motor Coach Industries provided a **NOTICE TO TAKE VIDEO**  
12 **DEPOSITION OF EDWARD HUBBARD** on September 5, 2017;

13 Plaintiffs' counsel requested that the September 5, 2017, Hubbard deposition be  
14 moved to a later date since Hubbard's driving records were not yet available;

15 Motor Coach Industries' counsel agreed to move the September 5, 2017, deposition  
16 at the request of Plaintiffs' counsel but would not re-notice that deposition until Mr.  
17 Hubbard's attorney provided a new date for the deposition to be conducted;

18 August 17, 2017, Plaintiffs' counsel set Mr. Hubbard's deposition for Saturday,  
19 September 16, 2017, although Mr. Hubbard's counsel did not previously approve of  
20 that date;

21 On September 1, 2017, Motor Coach Industries reset the Hubbard deposition for  
22 September 20, 2017, at 10:00 a.m. since Mr. Hubbard's counsel stated that the  
23 witness would be available on that date;

24 Subsequently, on September 1, 2017, Plaintiffs' counsel submitted a Notice to take  
25 Mr. Hubbard's deposition at 8:30 a.m., one hour and thirty minutes prior to the  
26 Hubbard deposition as scheduled by Motor Coach Industries.

27 Consequently, Motor Coach initially scheduled the deposition of the driver, Edward Hubbard,  
28 to be conducted on September 5, 2017. That deposition was only continued because Plaintiffs'  
counsel requested that the deposition be delayed to allow the Plaintiffs to obtain Mr. Hubbard's  
driving records.<sup>1</sup> Motor Coach's counsel did agree to move the deposition and contacted Mr.

---

<sup>1</sup>Plaintiffs' counsel notes that the reason that Hubbard's deposition was not previously set  
by Plaintiffs' counsel was because initial disclosures had not even been provided in addition to  
the fact that Mr. Hubbard's driving records were not available.

1 Hubbard's counsel for other available dates. Upon obtaining the other available dates, Motor Coach  
2 counsel served a new Notice to take the deposition of Mr. Hubbard on September 1, 2017, with the  
3 deposition commencing at 10:00 a.m. on September 20, 2017. Previously, on August 17, 2017,  
4 Plaintiffs' counsel set the deposition of Mr. Hubbard for Saturday, September 16, 2017, without  
5 approval or consent by Mr. Hubbard's attorney. Finally, when Motor Coach obtained authority to  
6 reschedule the deposition for 10:00 a.m. on September 20, 2017, Plaintiffs' counsel then submitted  
7 a Notice to take that deposition 90 minutes earlier at 8:30 a.m. on that same date.

8 Plaintiffs' counsel submitted a brief noting that the Plaintiffs had the burden of proof for  
9 issues regarding allegations as to driver negligence and that the tour bus was negligently designed,  
10 creating blind spots for the driver. Finally, Plaintiffs' counsel argued that the deposition should be  
11 conducted in the same order as the evidence to be introduced at trial, with the Plaintiff being allowed  
12 to conduct the opening questioning of this witness.

13 The Special Master is ruling that Motor Coach Industries may commence the deposition  
14 questioning of Mr. Hubbard for the following reasons:

- 15 1. Motor Coach Industries initially scheduled the deposition with an August 16,  
16 2017, Notice for a September 5, 2017, deposition;
- 17 2. Motor Coach Industries agreed to move the September 5, 2017, deposition at the  
18 request of the Plaintiffs to allow the Plaintiffs to obtain Mr. Hubbard's driving  
19 records;
- 20 3. Although Plaintiffs submitted a new deposition notice on August 17, 2017, for a  
21 Saturday, September 16, 2017, deposition, that was not scheduled with consent of  
22 Mr. Hubbard's counsel;
- 23 4. At the time the Plaintiffs provided an August 17, 2017, Notice of deposition, the  
24 Motor Coach August 16, 2017, Notice of deposition was still pending;
- 25 5. Motor Coach ultimately moved the deposition to 10:00 a.m. on September 20,  
26 2017 with the approval and consent of Mr. Hubbard's attorney.  
27 Based upon the above listed factors,

28 IT IS ORDERED that Motor Coach Industries may commence the deposition questioning  
of witness and party, Edward Hubbard, on September 20, 2017, at 10:00 a.m., with that deposition

///

///

1 being conducted by agreement at the offices of Kemp, Jones & Coulthard.

2 DATED this 13<sup>th</sup> day of September, 2017.

3  
4 By: /s/ Floyd A. Hale  
5 FLOYD A. HALE, Special Master  
6 Nevada Bar No. 1873  
3800 Howard Hughes Pkwy. 11<sup>th</sup> Fl.  
Las Vegas, NV 89169

7 CERTIFICATE OF SERVICE

8 I hereby certify that on September 13, 2017, I served a true and correct copy of the foregoing  
9 through the Court's efilng system, to:

10 Will Kemp, Esq.  
Kemp, Jones & Coulthard, LLP  
3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
11 Las Vegas, NV 89169  
Attorneys for Plaintiffs

Michael Nunez, Esq.  
Murchison & Cumming, LLP  
350 S. Rampart Blvd., Suite 320  
Las Vegas, NV 89145  
Attorneys for SevenPlus Bicycles, Inc.

12 Peter Christiansen, Esq.  
13 Christiansen Law Offices  
810 S. Casino Center Blvd., Suite 104  
14 Las Vegas, NV 89101  
Attorneys for Plaintiffs

By: /s/ Debbie Holloman  
Employee of JAMS

15 D. Lee Roberts, Jr.  
16 Weinberg, Wheeler, Hudgins,  
Gunn & Dial, LLC  
17 6385 S. Rainbow Blvd. Suite 400  
Las Vegas, NV 89118  
18 Attorneys for Motor Coach Industries, Inc.

19 Eric Freeman, Esq.  
Selman Breitman, LLP  
20 3993 Howard Hughes Pkwy. Suite 200  
Las Vegas, NV 89169-0961  
21 Attorneys for Michelangelo Leasing, Inc.;  
Edward Hubbard

22 Michael Stoberski, Esq.  
23 Olson Cannon Gormley Angulo & Stoberski  
9550 W. Cheyenne Ave.  
24 Las Vegas, NV 89129  
Attorneys for Bell Sports, Inc.  
25  
26  
27  
28

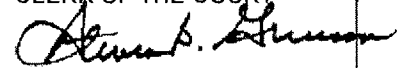
## **EXHIBIT 30**

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## **EXHIBIT 30**

Electronically Filed  
9/27/2017 3:10 PM  
Steven D. Grierson  
CLERK OF THE COURT



SMR  
FLOYD A. HALE, Esq.  
Nevada Bar No. 1873  
3800 Howard Hughes Parkway, 11<sup>th</sup> Floor  
Las Vegas, NV 89169  
(702)-457-5267  
Special Master

DISTRICT COURT

CLARK COUNTY, STATE OF NEVADA

KEON KHIABANI and ARIA KHIABANI,	)	CASE NO. A-17-755977-C
minors by and through their natural mother,	)	DEPT. NO. XIV
KATAYOUN BARIN; KATAYOUN BARIN,	)	
individually; KATAYOUN BARIN as Executrix	)	
of the Estate of Kayvan Khiabani, M.D. (Decedent)	)	
and the Estate of Kayvan Khiabani, M.D.	)	
(Decedent),	)	

Plaintiffs,

vs.

MOTOR COACH INDUSTRIES, INC., a  
Delaware corporation; MICHELANGELO  
LEASING, INC. d/b/a RYAN'S EXPRESS, an  
Arizona corporation; EDWARD HUBBARD, a  
Nevada resident; BELL SPORTS, INC. d/b/a  
GIRO SPORT DESIGN, a California corporation;  
SEVENPLUS BICYCLES, INC. d/b/a Pro Cyclery,  
a Nevada corporation; DOES 1 through 20; and  
ROE CORPORATIONS 1 through 20,

Defendants.

**SPECIAL MASTER REPORT**

This litigation involves the Plaintiffs' Complaint for damages related to a motor vehicle - bicycle accident that occurred on April 18, 2017, in Clark County, Nevada, in which Kayvan Khiabani was killed. **This matter is set for trial on November 20, 2017.**

A Special Master Hearing was conducted on September 25, 2017, to review the status of discovery since the trial date is in approximately two months. At that time, the Special Master was advised that tentative settlements have been reached with all defending parties with the exception of MOTOR COACH INDUSTRIES, INC.

1 The parties have reported that discovery is proceeding pursuant to the current Case Agenda.  
2 The parties are cooperating to schedule the expert depositions which also should be completed  
3 pursuant to the current Case Agenda. A Special Master Hearing has been scheduled for October 9,  
4 2017, at 4:00 p.m. to review discovery status.

5 DATED this 27<sup>th</sup> day of September, 2017.

6  
7 By: /s/ Floyd A. Hale  
8 FLOYD A. HALE, Special Master  
9 Nevada Bar No. 1873  
3800 Howard Hughes Pkwy. 11<sup>th</sup> Fl.  
Las Vegas, NV 89169

10 CERTIFICATE OF SERVICE

11 I hereby certify that on September 27, 2017, I served a true and correct copy of the foregoing  
12 through the Court's efilng system, to:

13 Will Kemp, Esq.  
14 Kemp, Jones & Coulthard, LLP  
15 3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
Las Vegas, NV 89169  
Attorneys for Plaintiffs

Michael Nunez, Esq.  
Murchison & Cumming, LLP  
350 S. Rampart Blvd., Suite 320  
Las Vegas, NV 89145  
Attorneys for SevenPlus Bicycles, Inc.

16 Peter Christiansen, Esq.  
17 Christiansen Law Offices  
18 810 S. Casino Center Blvd., Suite 104  
Las Vegas, NV 89101  
Attorneys for Plaintiffs

By: /s/ Debbie Holloman  
Employee of JAMS

19 D. Lee Roberts, Jr.  
20 Weinberg, Wheeler, Hudgins,  
21 Gunn & Dial, LLC  
6385 S. Rainbow Blvd. Suite 400  
Las Vegas, NV 89118  
Attorneys for Motor Coach Industries, Inc.

22 Eric Freeman, Esq.  
23 Selman Breitman, LLP  
24 3993 Howard Hughes Pkwy. Suite 200  
Las Vegas, NV 89169-0961  
Attorneys for Michelangelo Leasing, Inc.;  
Edward Hubbard

25 Michael Stoberski, Esq.  
26 Olson Cannon Gormley Angulo & Stoberski  
27 9550 W. Cheyenne Ave.  
Las Vegas, NV 89129  
Attorneys for Bell Sports, Inc.

# EXHIBIT 31

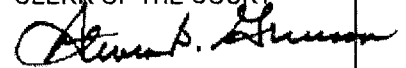
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# EXHIBIT 31



SMR  
FLOYD A. HALE, Esq.  
Nevada Bar No. 1873  
3800 Howard Hughes Parkway, 11<sup>th</sup> Floor  
Las Vegas, NV 89169  
(702)-457-5267  
Special Master



## DISTRICT COURT

## CLARK COUNTY, STATE OF NEVADA

KEON KHIABANI and ARIA KHIABANI,  
minors by and through their natural mother,  
KATAYOUN BARIN; KATAYOUN BARIN,  
individually; KATAYOUN BARIN as Executrix  
of the Estate of Kayvan Khiabani, M.D. (Decedent)  
and the Estate of Kayvan Khiabani, M.D.  
(Decedent),

CASE NO. A-17-755977-C  
DEPT. NO. XIV

Plaintiffs,

vs.

MOTOR COACH INDUSTRIES, INC., a  
Delaware corporation; MICHELANGELO  
LEASING, INC. d/b/a RYAN'S EXPRESS, an  
Arizona corporation; EDWARD HUBBARD, a  
Nevada resident; BELL SPORTS, INC. d/b/a  
GIRO SPORT DESIGN, a California corporation;  
SEVENPLUS BICYCLES, INC. d/b/a Pro Cyclery,  
a Nevada corporation; DOES 1 through 20; and  
ROE CORPORATIONS 1 through 20,

Defendants.

SPECIAL MASTER REPORT REGARDING DR. JACK E.  
HUBBARD DEPOSITION

On September 29, 2017, Plaintiffs' counsel served the expert report of Dr. Jack E. Hubbard, Ph.D., M.D. Dr. Hubbard's deposition was previously scheduled to be conducted in the Minneapolis, Minnesota area by Lee Roberts, counsel for Motor Coach Industries, Inc., who had already planned on being in the Minneapolis area that week. Upon receiving the Dr. Hubbard report on September 29, 2017, Mr. Roberts requested an agreement with Plaintiffs' counsel that if the deposition went forward on October 5, 2017, that Mr. Roberts could take a continued deposition of Dr. Hubbard at a later date. The parties could not reach an agreement regarding that issue and an

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1 emergency Special Master Hearing was conducted on October 3, 2017, to resolve this dispute.

2 Counsel for Motor Coach Industries, Inc. argues that the subject of Dr. Hubbard's report, pain  
3 and suffering of Dr. Khiabani immediately prior to his death, was a unique theory and required  
4 consultation with a defense expert or experts. For that reason, Motor Coach Industries' counsel  
5 wanted to delay the deposition or, alternatively, have an agreement that the deposition could be  
6 continued on a separate date, if commenced on October 5, 2017.

7 Since defense counsel will have Dr. Hubbard's report for one week by October 5, 2017, the  
8 deposition will go forward as previously scheduled in the Minneapolis area. Although a Special  
9 Master ruling is not being issued at this time, counsel for Motor Coach Industries may submit a  
10 request to the Special Master for a continued deposition of Dr. Hubbard if that party believes that  
11 it is necessary. Counsel for the parties will be allowed to brief the issue and the Special Master will  
12 then consider that dispute-

13 RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of October, 2017

14  
15 By: /s/ Floyd A. Hale  
16 FLOYD A. HALE, Special Master  
17 Nevada Bar No. 1873  
18 3800 Howard Hughes Pkwy. 11<sup>th</sup> Fl.  
19 Las Vegas, NV 89169

20 CERTIFICATE OF SERVICE

21 I hereby certify that on October 3, 2017, I served a true and correct copy of the foregoing  
22 through the Court's efilng system, to:

23 Will Kemp, Esq.  
24 Kemp, Jones & Coulthard, LLP  
25 3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
26 Las Vegas, NV 89169  
27 Attorneys for Plaintiffs

28 Peter Christiansen, Esq.  
Christiansen Law Offices  
810 S. Casino Center Blvd., Suite 104  
Las Vegas, NV 89101  
Attorneys for Plaintiffs

D. Lee Roberts, Jr.  
Weinberg, Wheeler, Hudgins,  
Gunn & Dial, LLC  
6385 S. Rainbow Blvd. Suite 400  
Las Vegas, NV 89118  
Attorneys for Motor Coach Industries, Inc.  
  
Eric Freeman, Esq.  
Selman Breitman, LLP  
3993 Howard Hughes Pkwy. Suite 200  
Las Vegas, NV 89169-0961  
Attorneys for Michelangelo Leasing, Inc.;  
Edward Hubbard

1 Michael Stoberski, Esq.  
2 Olson Cannon Gormley Angulo & Stoberski  
3 9550 W. Cheyenne Ave.  
4 Las Vegas, NV 89129  
5 Attorneys for Bell Sports, Inc.

6 Michael Nunez, Esq.  
7 Murchison & Cumming, LLP  
8 350 S. Rampart Blvd., Suite 320  
9 Las Vegas, NV 89145  
10 Attorneys for SevenPlus Bicycles, Inc.

11 By: /s/ Debbie Holloman  
12 Employee of JAMS  
13  
14  
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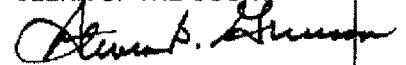
## EXHIBIT 32

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## EXHIBIT 32

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Steven D. Grierson  
CLERK OF THE COURT



SMR  
FLOYD A. HALE, Esq.  
Nevada Bar No. 1873  
3800 Howard Hughes Parkway, 11<sup>th</sup> Floor  
Las Vegas, NV 89169  
(702)-457-5267  
Special Master

DISTRICT COURT

CLARK COUNTY, STATE OF NEVADA

KEON KHIABANI and ARIA KHIABANI, ) CASE NO. A-17-755977-C  
minors by and through their natural mother, ) DEPT. NO. XIV  
KATAYOUN BARIN; KATAYOUN BARIN, )  
individually; KATAYOUN BARIN as Executrix )  
of the Estate of Kayvan Khiabani, M.D. (Decedent) )  
and the Estate of Kayvan Khiabani, M.D. )  
(Decedent), )

Plaintiffs, )

vs. )

MOTOR COACH INDUSTRIES, INC., a )  
Delaware corporation; MICHELANGELO )  
LEASING, INC. d/b/a RYAN'S EXPRESS, an )  
Arizona corporation; EDWARD HUBBARD, a )  
Nevada resident; BELL SPORTS, INC. d/b/a )  
GIRO SPORT DESIGN, a California corporation; )  
SEVENPLUS BICYCLES, INC. d/b/a Pro Cyclery, )  
a Nevada corporation; DOES 1 through 20; and )  
ROE CORPORATIONS 1 through 20, )

Defendants. )

SPECIAL MASTER REPORT

This litigation involves the Plaintiffs' Complaint for damages related to a motor vehicle -  
bicycle accident that occurred on April 18, 2017, in Clark County, Nevada, in which Kayvan  
Khiabani was killed. **This matter is set for trial on November 20, 2017.**

A Special Master Hearing was conducted on October 9, 2017, to review the status of  
discovery since the matter is set for trial in six weeks. The current Case Agenda authorized the  
commencement of the depositions of Plaintiffs' damage experts on October 2, 2017. Those  
depositions will be completed by October 16, 2017, with the deposition of Dr. Larry Stokes, an  
economic expert being conducted on that date. The Plaintiffs' remaining expert reports were

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1 provided by the current October 6, 2017, deadline. The depositions of the Plaintiffs' non-damage  
2 experts are also scheduled to be conducted as required by the Case Agenda.

3 Finally, it is anticipated that the defending parties will provide by their expert reports by the  
4 October 13, 2017, deadline. A Special Master Hearing is scheduled for October 19, 2017, to review  
5 the status of expert reports and expert depositions.

6 RESPECTFULLY SUBMITTED this 10th day of October, 2017.

7  
8 By: /s/ Floyd A. Hale  
9 FLOYD A. HALE, Special Master  
10 Nevada Bar No. 1873  
3800 Howard Hughes Pkwy. 11<sup>th</sup> Fl.  
Las Vegas, NV 89169

11 CERTIFICATE OF SERVICE

12 I hereby certify that on October 10, 2017, I served a true and correct copy of the foregoing  
13 through the Court's efilng system, to:

14 Will Kemp, Esq.  
15 Kemp, Jones & Coulthard, LLP  
3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
16 Las Vegas, NV 89169  
Attorneys for Plaintiffs

Michael Stoberski, Esq.  
Olson Cannon Gormley Angulo & Stoberski  
9550 W. Cheyenne Ave.  
Las Vegas, NV 89129  
Attorneys for Bell Sports, Inc.

17 Peter Christiansen, Esq.  
18 Christiansen Law Offices  
810 S. Casino Center Blvd., Suite 104  
19 Las Vegas, NV 89101  
Attorneys for Plaintiffs

Michael Nunez, Esq.  
Murchison & Cumming, LLP  
350 S. Rampart Blvd., Suite 320  
Las Vegas, NV 89145  
Attorneys for SevenPlus Bicycles, Inc.

20 D. Lee Roberts, Jr.  
21 Weinberg, Wheeler, Hudgins,  
Gunn & Dial, LLC  
22 6385 S. Rainbow Blvd. Suite 400  
Las Vegas, NV 89118  
23 Attorneys for Motor Coach Industries, Inc.

By: /s/ Debbie Holloman  
Employee of JAMS

24 Eric Freeman, Esq.  
25 Selman Breitman, LLP  
3993 Howard Hughes Pkwy. Suite 200  
26 Las Vegas, NV 89169-0961  
Attorneys for Michclangelo Leasing, Inc.;  
Edward Hubbard

JS 44 (Rev. 06/17)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<b>I. (a) PLAINTIFFS</b> Keon Khiabani and Aria Khiabani, minors by and through their natural mother, KATAYOUN BARIN; and KATAYOUN BARIN, individually; et al.		<b>DEFENDANTS</b> Motor Coach Industries, Inc., a Delaware Corporation, et al.	
(b) County of Residence of First Listed Plaintiff <u>Clark County</u> (EXCEPT IN U.S. PLAINTIFF CASES)		County of Residence of First Listed Defendant <u>Delaware</u> (IN U.S. PLAINTIFF CASES ONLY)	
(c) Attorneys (Firm Name, Address, and Telephone Number) Will Kemp, Esq./Eric Pepperman, Esq. Kemp Jones & Coulthard, LLP 3800 Howard Hughes Pkwy., 17th floor, Las Vegas, NV 89169		Attorneys (If Known) D. Lee Roberts, Jr., Esq./Howard J. Russell, Esq. Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC 6385 S. Rainbow Blvd., Suite 400, Las Vegas, NV 89118	

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- |  |  |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question<br>(U.S. Government Not a Party)                     |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 4 Diversity<br>(Indicate Citizenship of Parties in Item III) |

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
|   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input checked="" type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act  <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act  <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Arbitration <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> Habeas Corpus; <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

**V. ORIGIN** (Place an "X" in One Box Only)

- |  |  |  |   |  |  |   |
|--|--|--|---|--|--|---|
| <input type="checkbox"/> 1 Original Proceeding | <input checked="" type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) | <input type="checkbox"/> 6 Multidistrict Litigation - Transfer | <input type="checkbox"/> 8 Multidistrict Litigation - Direct File |
|--|--|--|---|--|--|---|

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 USC 1332, 1441, 1446

Brief description of cause:

Negligent design and manufacture of a motor coach

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ in excess of \$15,000

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

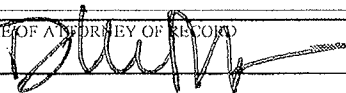
JUDGE

DOCKET NUMBER

DATE

10/17/17

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

21

21



*Steven D. Grierson*

OSCC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

\*\*\*\*\*

KATAYOUN BARIN, PLAINTIFF(S)  
VS.  
MOTOR COACH INDUSTRIES INC,  
DEFENDANT(S)

CASE NO.: A-17-755977-C

DEPARTMENT 14

**CIVIL ORDER TO STATISTICALLY CLOSE CASE**

Upon review of this matter and good cause appearing,  
IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to  
statistically close this case for the following reason:

**DISPOSITIONS:**

- ☐ Default Judgment
- ☐ Judgment on Arbitration
- ☐ Stipulated Judgment
- ☐ Summary Judgment
- ☐ Involuntary Dismissal
- ☐ Motion to Dismiss by Defendant(s)
- ☐ Stipulated Dismissal
- ☐ Voluntary Dismissal
- ☒ Transferred (before trial) [To USDC 10/17/17]
- ☐ Non-Jury – Disposed After Trial Starts
- ☐ Non-Jury – Judgment Reached
- ☐ Jury – Disposed After Trial Starts
- ☐ Jury – Verdict Reached
- ☐ Other Manner of Disposition

DATED this 18<sup>th</sup> day of October, 2017.

*[Signature]*  
\_\_\_\_\_  
SENIOR DISTRICT COURT JUDGE

*for Judge Escobar*

## CERTIFICATE OF SERVICE

I hereby certify that on or about the date signed, a copy of this Order was electronically served and/or placed in the attorney's folders maintained by the Clerk of the Court and/or transmitted via facsimile and/or mailed, postage prepaid, by United States mail to the proper parties as follows:

D. Lee Roberts, Jr., Esq.  
Howard J. Russell, Esq.  
David A. Dial, Esq.  
Marisa Rodriguez, Esq.  
WEINBERG WHEELER  
HUDGINS GUNN & DIAL LLC  
Facsimile: (702) 938-3864  
Email: [lroberts@wwhgd.com](mailto:lroberts@wwhgd.com)  
[hrussell@wwhgd.com](mailto:hrussell@wwhgd.com)  
[ddial@wwhgd.com](mailto:ddial@wwhgd.com)  
[mrodriguez@wwhgd.com](mailto:mrodriguez@wwhgd.com)

AND:

Darrell L. Barger, Esq.  
Michael G. Terry, Esq.  
John C. Dacus, Esq.  
Brian Rawson, Esq.  
HARTLINE DACUS BARGER  
DREYER LLP  
Email: [dbarger@hdbdlaw.com](mailto:dbarger@hdbdlaw.com)  
[mterry@hdbdlaw.com](mailto:mterry@hdbdlaw.com)  
[jdacus@hdbdlaw.com](mailto:jdacus@hdbdlaw.com)  
[brawson@hdbdlaw.com](mailto:brawson@hdbdlaw.com)  
*Attorneys for Defendant Motor Coach Industries, Inc.*

Will Kemp, Esq.  
Eric Pepperman, Esq.  
KEMP JONES & COUTHARD LLP  
Email: [e.pepperman@kempjones.com](mailto:e.pepperman@kempjones.com)

AND:

Peter S. Christiansen, Esq.  
Kendele L. Works, Esq.  
CHRISTIENSEN LAW OFFICES  
Email: [pete@christiansenlaw.com](mailto:pete@christiansenlaw.com)  
[kworks@christiansenlaw.com](mailto:kworks@christiansenlaw.com)  
*Attorneys for Plaintiff*

Keith Gibson, Esq.  
James C. Ughetta, Esq.  
LITTLETON JOYCE UGHETTA PARK &  
KELLY LLP  
Email: [Keith.Gibson@littletonjoyce.com](mailto:Keith.Gibson@littletonjoyce.com)  
[James.Ughetta@LittletonJoyce.com](mailto:James.Ughetta@LittletonJoyce.com)  
*Attorneys for Defendant Bell Sports, Inc.  
d/b/a Giro Sport Design*

Michael E. Stoberski, Esq.  
Joslyn Shapiro, Esq.  
OLSON CANNON GORMLEY ANGULO &  
STOBERSKI  
Email: [mstoberski@ocgas.com](mailto:mstoberski@ocgas.com)  
[jshapiro@ocgas.com](mailto:jshapiro@ocgas.com)

AND:

C. Scott Toomey, Esq.  
LITTLETON JOYCE UGHETTA PARK &  
KELLY LLP  
Email: [Scott.Toomey@littletonjoyce.com](mailto:Scott.Toomey@littletonjoyce.com)  
*Attorneys for Defendant Bell Sports, Inc. d/b/a  
Giro Sport Design*

Eric O. Freeman, Esq.  
SELMAN BREITMAN LLP  
Email: [efreeman@selmanlaw.com](mailto:efreeman@selmanlaw.com)  
*Attorney for Defendants Michelangelo Leasing  
Inc. d/b/a Ryan's Express & Edward Hubbard*

Michael J. Nunez, Esq.  
MURCHISON & CUMMING, LLP  
Email: [mnuez@murchisonlaw.com](mailto:mnuez@murchisonlaw.com)  
*Attorney for Defendant SevenPlus Bicycles, Inc.  
d/b/a Pro Cyclery*

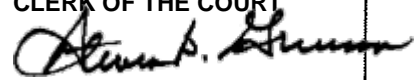
Paul E. Stephan, Esq.  
Jerry C. Popovich, Esq.  
William J. Mall, Esq.  
SELMAN BREITMAN LLP  
Email: [pstephan@selmanlaw.com](mailto:pstephan@selmanlaw.com)  
[jpopovich@selmanlaw.com](mailto:jpopovich@selmanlaw.com)  
[wmall@selmanlaw.com](mailto:wmall@selmanlaw.com)  
*Attorneys for Defendants Michelangelo Leasing Inc.  
d/b/a Ryan's Express and Edward Hubbard*

Daniel F. Polsenberg, Esq.  
Joel D. Henriod, Esq.  
LEWIS ROCA ROTHGERBER CHRISTIE LLP  
Email: [DPolsenberg@LRRC.com](mailto:DPolsenberg@LRRC.com)  
[JHenriod@LRRC.com](mailto:JHenriod@LRRC.com)  
*Attorneys for Motor Coach Industries, Inc.*

  
Diana D. Powell, Judicial Assistant

22

22



1 WILL KEMP, ESQ. (#1205)  
ERIC PEPPERMAN, ESQ. (#11679)  
2 e.pepperman@kempjones.com  
KEMP, JONES & COULTHARD, LLP  
3 3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
Las Vegas, NV 89169  
4 Telephone: (702) 385-6000

5 PETER S. CHRISTIANSEN, ESQ. (#5254)  
pete@christiansenlaw.com  
6 KENDELEE L. WORKS, ESQ. (#9611)  
kwords@christiansenlaw.com  
7 CHRISTIANSEN LAW OFFICES  
810 Casino Center Blvd.  
8 Las Vegas, Nevada 89101  
Telephone: (702) 240-7979

9 *Attorneys for Plaintiffs*

10  
11 **DISTRICT COURT**

12 **COUNTY OF CLARK, NEVADA**

13 KEON KHIABANI and ARIA KHIABANI,  
minors by and through their natural mother,  
14 KATAYOUN BARIN; KATAYOUN BARIN,  
individually; KATAYOUN BARIN as  
15 Executrix of the Estate of Kayvan Khiabani,  
M.D. (Decedent), and the Estate of Kayvan  
16 Khiabani, M.D. (Decedent),

17 *Plaintiffs,*

18 *vs.*

19 MOTOR COACH INDUSTRIES, INC.,  
a Delaware corporation; MICHELANGELO  
20 LEASING INC. d/b/a RYAN'S EXPRESS, an  
Arizona corporation; EDWARD HUBBARD, a  
21 Nevada resident; BELL SPORTS, INC. d/b/a  
GIRO SPORT DESIGN, a California  
22 corporation; SEVENPLUS BICYCLES, INC.  
d/b/a Pro Cyclery, a Nevada corporation;  
23 DOES 1 through 20; and ROE  
24 CORPORATIONS I through 20.

25 *Defendants.*

Case No. A-17-755977-C

Dept. No. XIV

**MOTION FOR SUMMARY JUDGMENT**  
**ON FORESEEABILITY OF BUS**  
**INTERACTION WITH PEDESTRIANS OR**  
**BICYCLISTS (INCLUDING SUDDEN**  
**BICYCLE MOVEMENT)**

26  
27 NOW APPEAR Plaintiffs, by and through counsel of record, and hereby move the Court to

28 hold that bus and pedestrian or bicyclist interaction (including sudden bicycle movement) is a

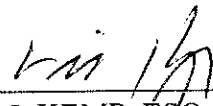
685000  
KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway  
Seventeenth Floor  
Las Vegas, Nevada 89169  
(702) 385-6000 • Fax (702) 385-6001  
kjc@kempjones.com

000589

1 foreseeable "misuse" as a matter of law and can not by a "defense." It will eliminate the fourth  
2 element of strict liability for defective product from consideration by the jury. Product Liability  
3 Instruction 7 PL.3 ("4. That the product was used in a manner which was reasonably foreseeable by  
4 the defendant.") This will eliminate MCI's Sixteenth Affirmative Defense ("Plaintiffs' injuries were  
5 the result of unforeseeable misuse of the product at issue").

6  
7 DATED this 21<sup>st</sup> day of October, 2017.

8 KEMP, JONES & COULTHARD, LLP

9  
10   
11 WILL KEMP, ESQ. (#1205)  
12 ERIC PEPPERMAN, ESQ. (#11679)  
13 3800 Howard Hughes Parkway, 17th Floor  
14 Las Vegas, Nevada 89169

15 -and-

16 PETER S. CHRISTIANSEN, ESQ. (#5254)  
17 KENDELEE L. WORKS, ESQ. (#9611)  
18 CHRISTIANSEN LAW OFFICES  
19 810 South Casino Center Blvd.  
20 Las Vegas, Nevada 89101

21 *Attorneys for Plaintiffs*  
22  
23  
24  
25  
26  
27  
28

065000  
KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway  
Seventeenth Floor  
Las Vegas, Nevada 89169  
(702) 385-6000 • Fax (702) 385-6001  
kjc@kempjones.com

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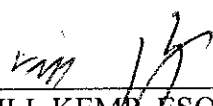
**NOTICE OF MOTION**

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Plaintiffs' Motion For Summary Judgment On Foreseeability Of Bus Interaction With Pedestrians Or Bicyclists (Including Sudden Bicycle Movement) will be heard by Department XIV on the 30 day of November, 2017, at 9:30 AM/~~PM~~, or as soon thereafter as this matter may be heard.

DATED this 27<sup>th</sup> day of October, 2017.

KEMP, JONES & COULTHARD, LLP

  
\_\_\_\_\_  
WILL KEMP, ESQ. (#1205)  
ERIC PEPPERMAN, ESQ. (#11679)  
3800 Howard Hughes Parkway, 17th Floor  
Las Vegas, Nevada 89169

-and-

PETER S. CHRISTIANSEN, ESQ. (#5254)  
KENDELEE L. WORKS, ESQ. (#9611)  
CHRISTIANSEN LAW OFFICES  
810 South Casino Center Blvd.  
Las Vegas, Nevada 89101

*Attorneys for Plaintiffs*

**I. STATEMENT OF FACTS**

A plethora of literature proves that buses and bicycles were frequently involved in accidents prior to 2008; 2008 being the model year of the 2008 J-4500 bus involved in this accident. For example, a **June 2001** article published in the Journal of the National Academy of Forensic Engineers notes:

The predominant accident type seems to be pedestrians or cyclists pulled into the bus-wheel, as opposed to individuals being struck by the vehicle body. Further questioning of transit personnel indicates that, in most cases, the accidents occur from

1 the rotating bus transmit wheel on the bus as it passes the individual as opposed to the  
2 cyclist of pedestrian running into the stationary transit vehicle or tire.

3 . . . .

4 The first area of concern is the description of the low-pressure gradient between the  
5 rotating high velocity bus wheel and the pedestrian or cyclist.

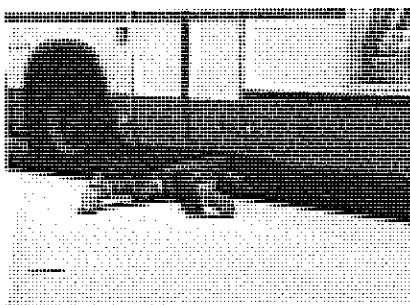
6 . . . .

### 7 Conclusion

8 As described in the Bernoulli analysis, and from the field data, **the causal factor of**  
9 **most cyclist-pedestrian accidents with transit buses are from the individuals**  
10 **either being dragged into the rotating wheel by the lower pressure gradient or**  
11 **from the physical impacting of the bus during a turning radius.**

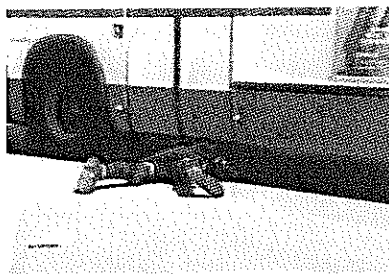
12 Where not only this precise type of accident but its cause was being discussed in scientific papers  
13 published 16 years before the April 18, 2017 accident, there is no question that interaction between  
14 bicyclists and bus rear tires is foreseeable.

15 The "S-1 Gard" is a barrier device designed to be installed before the rear tires to move  
16 persons falling under the bus out of the way. A picture from the S-1 Gard literature depicts a  
17 bicyclist falling under a bus:



18  
19  
20  
21  
22  
23 This S-1 Gard literature was reviewed in 1998 by MCI personnel -- ten years before the subject bus  
24 was made in this case. (See Pablo Fierros Dep., p. 33, lines 19-23; "Q. Okay. But you saw some  
25 flier similar to Exhibit 3 that related to the S-I Gard. Is that correct? A. Yeah, I think somebody  
26 handed to me something like that, yes."; p. 35, lines 19-24; conceding he probably went to  
27 November 1998 trade show in Indianapolis)  
28

1 S-1 Gard even made a video that depicts a bicyclist falling under a bus directly in front of the  
 2 rear tires and being saved by the S-1 Gard:



3  
 4  
 5  
 6  
 7  
 8 The fact that the supplier of the S-1 Gard safety barrier released a video in 1998 that depicted the  
 9 exact accident scenario in this case decisively demonstrates that bus and bicycle accidents are  
 10 foreseeable.  
 11

12 The MCI Person Most Knowledgeable admitted that MCI always knew that there was a  
 13 potential that a bicyclist would fall into buses:

14 Q. Okay. Let me ask it a little differently. Do you recognize that there's a theoretical  
 15 potential that pedestrians or bicyclists could potentially be run over by rear tires of a  
 16 bus under some scenarios.

17 A. There may be a scenario where that could occur.

18 Q. Okay. And generally -- you understand generally that that could happen under  
 19 some scenarios?

20 A. It's possible that that could happen.

21 . . . .

22 Q. Well, let's put it differently. You knew back in, let's say, 2--- that this was a  
 23 potential scenario?

24 A. There's a potential that a bus tire can roll over something, that's correct.

25 Q. Okay. Including people?

26 A. Anything, yeah. Tires on all vehicles can run over something?

27 Q. And you knew that back in 2000?

28 A. Yes.

Q. Probably before that time?

A. Probably before that time.

26 (Hoogenstrat Dep., 85:5 to 86:8) Hoogestraat repeatedly confirmed that MCI foresaw this precise  
 27 danger:  
 28



1 Q. Protect people or objects that could potentially be run over by the rear tires?

2 A. Well, objects that get underneath the bus, there is a potential that the rear tires can  
3 run over them. That's true.

4 (Hoogestraat Dep., 87:19-23) Because Hoogestraat was produced as a PMK under Rule 30(b)(6),  
5 this testimony is binding upon MCI and can not be disputed in any way. No evidence exists that a  
6 bicyclist contacting a bus is some extraordinary event that was beyond the realm of contemplation.

### 7 I. ARGUMENT

8 Foreseeable misuse is **not** a defense in a product liability action:

9 . . . . once a court or jury determines that a design defect exists misuse precludes  
10 recovery only when the plaintiff misuses the product in a manner in which the  
11 defendant could **not** foresee. **Negligent driving of a vehicle is a foreseeable risk**  
12 **against which a manufacturer is required to take precautions.** Specifically, it is  
13 foreseeable that a plaintiff, who is intoxicated, will drive negligently and get in an  
14 accident since intoxication leads to a significant number of accidents yearly.  
15 Therefore, evidence of Andrews' intoxication is not relevant to whether a design  
16 defect in his motorcycle was the proximate cause of his injuries.

17 Andrews v. Harley Davidson, Inc., 106 Nev. 533, 537, 796 P.2d 1092, 1095 (1990) (Bold added) In  
18 the Harley Davidson case, the motorcycle driver was legally drunk. The Supreme Court held that  
19 this must be excluded because it was foreseeable misuse that people drive cars and motorcycles  
20 while drinking.

21 "Misuse of the product must be anticipated by the manufacturer. Foreseeable misuses of a  
22 product will not absolve the manufacturer." Bass, Products Liability Design and Manufacturing  
23 Defects 2d, Sec. 3:5 "Foreseeable misuse" (2001) Hence, "foreseeable misuse" is both not a factual  
24 issue in this case and is not a legal defense. By the same token, an event that is foreseeable that is  
25 not a misuse (i.e., being subject to an airblast that causes your bicycle to wobble) can not possibly be  
26 a defense in this case.

27 Riding a bicycle that slightly veers into a bus is not even a "misuse" but is instead a collision  
28 event that should be anticipated by a manufacturer. The strict liability issues focusing on

1 unreasonable design are four alternative assertions: (1) whether the bus was defectively designed  
 2 because it had aerodynamic properties that a consumer would not reasonably expect (air blasts or  
 3 rear tire suction); (2) whether the bus was defectively designed because it had right side blind spots  
 4 that a consumer would not reasonably expect; (3) whether the bus was defectively designed because  
 5 MCI's failure to install side proximity sensors made the product unreasonably dangerous; or (4)  
 6 whether the bus was defectively designed because MCI's failure to install an S-1 Gard (or  
 7 comparable barrier preventing impact with the rear tires) made the produce unreasonably dangerous.  
 8

## 9 **II. CONCLUSION**

10 It is foreseeable that bicyclists may interact with buses, including that bikes may veer into  
 11 buses. An article published in 2001 discusses this same hazard. Defendants employees have  
 12 conceded this exact point. Just as the Supreme Court in Andrews v. Harley Davidson, Inc., 106  
 13 Nev. 533, 537, 796 P.2d 1092, 1095 (1990) excluded evidence of driver intoxication because it was  
 14 a "foreseeable misuse", so too should this Court exclude argument that it was not foreseeable that a  
 15

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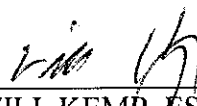
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1 bicyclist would interact with a bus, including coming into contact with the rear tires. Hence, this  
2 Court should grant summary judgment on the fourth element for strict liability for defective product  
3 and on MCI's Sixteenth Affirmative Defense ("Plaintiffs' injuries were the result of unforeseeable  
4 misuse of the product at issue.")

5 DATED this 21<sup>st</sup> day of October, 2017.

6 KEMP, JONES & COULTHARD, LLP

7  
8   
9 WILL KEMP, ESQ. (#1205)  
10 ERIC PEPPERMAN, ESQ. (#11679)  
11 3800 Howard Hughes Parkway, 17th Floor  
12 Las Vegas, Nevada 89169

13 -and-

14 PETER S. CHRISTIANSEN, ESQ. (#5254)  
15 KENDELEE L. WORKS, ESQ. (#9611)  
16 CHRISTIANSEN LAW OFFICES  
17 810 South Casino Center Blvd.  
18 Las Vegas, Nevada 89101

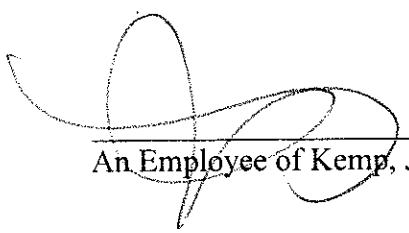
19 *Attorneys for Plaintiffs*  
20  
21  
22  
23  
24  
25  
26  
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28

965000  
KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway  
Seventeenth Floor  
Las Vegas, Nevada 89169  
(702) 385-6000 • Fax (702) 385-6001  
kjc@kempjones.com

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CERTIFICATE OF SERVICE

I hereby certify that on the 27 day of October, 2017, the foregoing MOTION FOR SUMMARY JUDGMENT ON FORESEEABILITY OF BUS INTERACTION WITH PEDESTRIANS OR BICYCLISTS (INCLUDING SUDDEN BICYCLE MOVEMENT) was served on all parties currently on the electronic service list via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2.

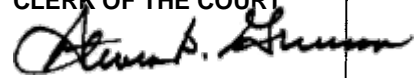
  
An Employee of Kemp, Jones & Coulthard.

765000  
KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway  
Seventeenth Floor  
Las Vegas, Nevada 89169  
(702) 385-6000 • Fax (702) 385-6001  
kjc@kempjones.com

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1 **RTRAN**

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4 **DISTRICT COURT**  
5 **CLARK COUNTY, NEVADA**  
6

7 Katayoun Barin,

8 Plaintiff,

9 vs.

10 Motor Coach Industries Inc,

11 Defendant.  
12

CASE NO. A – 17-755977-C

DEPT. XIV

**TRANSCRIPT OF PROCEEDINGS**

13 **BEFORE THE HONORABLE ADRIANA ESCOBAR, DISTRICT COURT JUDGE**  
14 **THURSDAY, NOVEMBER 02, 2017**  
15  
16  
17  
18

19 **APPEARANCES:**  
20

21 For the Plaintiff:

William Kemp  
Peter Christiansen  
Kendelee Works

23 For the Defendant:

24 Daniel Polsenberg  
Lee Robert  
Joel Henriod  
25 Darrell Barger  
Howard Russell

1 THE COURT: Good morning counsel, your appearances please.  
2 And just be sure that you speak loudly so that we don't have to repeat.

3 MR. KEMP: William Kemp on behalf of Plaintiff.

4 MR. CHRISTIANSEN: Pete Christiansen and Kendelee Works, also on  
5 behalf of Plaintiff Your Honor.

6 MS. WORKS: Good morning Your Honor.

7 MR. POLSENBERG: Good morning Your Honor, Dan Polsenberg, Joel  
8 Henriod, Darrell Barger, Lee Roberts and Howard Russell for Motor Coach  
Industries.

9 THE CLERK: Could we do that again?

10 MR. POLSENBERG: Hi, I'm Dan, okay; I'll let them do it so it will be easier for  
11 you.

12 MR. HENRIOD: Joel Henriod.

13 MR. ROBERTS: Lee Roberts.

14 MR. BARGER: Darrell Barger.

15 MR. RUSSELL: Howard Russell.

16 THE COURT: I was in the elevator with a gentlemen this morning, I think, I  
17 recognize, good morning. Let's see all right so today there has been some  
movement on this case. It went to Federal Court correct.

18 MR. POLSENBERG: And we're back.

19 THE COURT: You're back. Let's see so I have, Plaintiff's motion to amend  
20 complaint and to substitute parties on order shortening time. And I also have, the  
21 defense opposition (unintelligible) there was something else I read last night. And  
also requesting a different time frame.

22 MR. POLSENBERG: Yes.

23 THE COURT: Very good, go on.  
24  
25

1 MR. KEMP: Yes, Judge our motion to amend leaves freely granted in this  
2 case the only amendment being sought is Dr. Barin has died so we are replacing the  
3 co-guardian, who has always been the co-guardian, not always, but at least 6  
4 months ago. We are replacing the co-guardian into the case and we have opened  
5 up an estate for her and we are placing that into the case. So it's a.... I'm surprised  
6 that it wasn't agreed to by stipulation, but it appears that nothing is agreed to in this  
7 case. So their opposition is really not an opposition to the motion to amend, it's a  
8 request to continue the trial. Which, first of all, I don't know how proper this is to fill  
9 a countermotion three o'clock the day before a hearing and then request it be heard  
10 but I'm prepared to talk about it. Just a little history here. We filed a motion for  
11 preferential trial setting, they told Judge Jones it was impossible, that was their word  
12 —impossible, to do the fact discovery, that we needed to do, and the expert  
13 discovery. Then they filed a motion for rehearing, where they told you that since we  
14 had done the impossible fact discovery already, that it was impossible to do the  
expert discovery. Now they have a new list and (*could you sit down Mr. Polsenberg  
please*).

15 MR. POLSENBERG: If you want.

16 MR. KEMP: *I didn't stand up during your*....

17 MR. POLSENBERG: I mean you can if you want.

18 MR. KEMP: Okay, with regards to the items that they now claim that are  
19 impossible to do. They are on page nine, 1. Depositions of five plaintiff's experts, 2.  
20 Depositions of the Motor Coach experts. All of these would have been done except  
21 for their removal Your Honor. As you may know, they removed the case last  
22 Tuesday, after they had done a Plaintiff expert deposition on Monday, and a Plaintiff  
23 expert deposition on Tuesday. The apparent strategy there was to try to get bogged  
24 down in Federal Court, have all the Plaintiff's discovery in the bag and then use that  
25 to their advantage, while they fought a remand that I, I think they hoped it would take  
months. Instead, Judge Bouleware remanded the case in eight days. I've never had  
a case remanded in eight days. But, in any event, we are back here in eight days.



1 So those depositions would have been done but, let me talk about where we're at,  
2 the five Plaintiff's depositions, we already did another one this morning so there is  
3 actually four left. Two of them we are doing tomorrow, so there's two left and they  
4 both can be done next week. Their five depositions, we went to Special Master Hale  
5 on Monday and when they refused to provide dates for any of their experts, which  
6 has been an ongoing thing for the last two weeks, he ordered that they provide  
7 dates and those depositions are all scheduled. The fact witnesses, they list one fact  
8 witness, Detective Saulsberry, he's really not a fact witness Your Honor, he didn't  
9 see the accident. He's the investigating officer, that deposition was set to be taken  
10 two weeks ago. That was cancelled because of the removal and it's been reset to  
11 be taken I believe next week on Wednesday. The cell phone, that's been on going  
12 thing, for the last three or four months, we're being cooperative with them. I don't  
13 think there's going to be any cell phone data come out of that, but in any event we're  
14 being cooperative. I don't see why that is any reason to delay a trial. Five, the  
15 records from Clark High School for the minor Plaintiff's... the minor Plaintiff's went to  
16 Clark High School. I don't really know why that's even relevant discovery. I mean if  
17 they got a B instead of an A does that mean they love their mother less or she loved  
18 them less. But in any event that's between them and Clark High School. A  
19 subpoena went out about three weeks ago on that; they could have got it out five  
20 months ago if they wanted to, Your Honor. But I don't see that being a real big  
21 thing. The discovery of the counseling records. We have gotten counseling records  
22 that I don't know if they were produced to them but these report to be the only  
23 records from this counselor, and again after the doctor was run over by the bus and  
24 was killed on April 18, all the family went to see a counselor. Whose name was  
25 Kalas, K-a-l-a-s and I have his records here. They are taking the deposition of the  
two boys tomorrow because the two boys are in town, they have moved to Montreal.  
They moved to Montreal, they are attending school in Montreal, both of them and  
tomorrow they are taking the deposition of the two boys and they are in town,  
because Saturday there is a service for Dr. Barin. She is already buried, they

1 already had the funeral in Montreal, but there is a service here at 3:00 o'clock on  
2 Saturday. So in any event the entire family is in town and because of that, we are  
3 taking the depositions of the two boys and the co-guardian tomorrow, which we  
4 expect to be relatively short depositions. So with regards to the counselor, I think  
5 they'll have their opportunity to talk about that, how many times kids went, tomorrow.  
6 Seven, discovery into the pending medical board investigation of Dr. Khiabani. I  
7 don't know what this is

8 THE COURT: I'm sorry Doctor.....

9 MR. KEMP: Dr. Khiabani

10 THE COURT: Khiabani.

11 MR. KEMP: Yea, I don't know what this is but they've had six months to  
12 chase this down. I have no idea what this is; maybe Mr. Polsenberg can enlighten  
13 us on that. Eight, discovery into the pending claim against the estate of Dr. Barin.  
14 They took Dr. Barin's deposition, before she died, that's been done, it was  
15 videotaped, it lasted about 2 ½ hours. I don't know what other discovery they want,  
16 when I read their brief it appears that they want to get a cancer doctor now, because  
17 we have a cancer doctor that gave an opinion. He filed a report they taken his  
18 deposition, that's Dr. Panigrahy he filed his report on October 4 and they deposed  
19 him on October 10 I believe. But in any event, he said that stress exacerbates  
20 cancer and because of the stress of the husband's death, that resulted in Dr. Barin  
21 dying. That's what he said, okay. And I thought um..... You know they had a  
22 cancer doctor, if you remember, and the motion for rehearing Mr. Roberts brought in  
23 this statistician, who he told the Court in order to get a trial continuance, he told the  
24 Court that Dr. Barin was going to live eighteen months. That's what he told the  
25 Court on the record, that's what he said in the pleadings. She died eighteen days  
later. So apparently what this discovery...and they had, they can designate that  
statistician, I'll let them do it today, you know, even if it's late. That's their cancer  
expert okay. Now apparently they want to get another cancer expert, because  
they're upset with what Dr. Panigrahy told them. His report was timely filed, they had

1 an opportunity to file rebuttal report they can seek leave with the Special Master to  
2 add a rebuttal report, they haven't done so, I don't see any reason to continue trial  
3 for that reason. Now we're getting into the core of their argument Your Honor; which  
4 is, they can continue a trial because of what Mr. Polsenberg calls in his pleading  
5 changed circumstances. Well unfortunately, that's not what the statute says. The  
6 statute says, and I'm reading from 16.025, *that the Court shall not continue the date*  
7 *for trial after a preferential trial setting has been set. Shall not continue it, quote,*  
8 *accept for the physical disability of a party or attorney in the action or for other good*  
9 *cause enter on the record, unquote.* So what they say is, Judge since it was set  
10 because someone was going to die, even though all the discovery is done, even  
11 though we are ready for trial, even though there's a compelling need for trial and a  
12 compelling need for trial, we have a family who not one parent but both parents are  
13 now gone because of this accident. A family who was making income from both  
14 parents which is not making income from both parents now. And we got two minors  
15 who.....as the counselor says, it's in the best interest of the minors to get this thing  
16 resolved. So we have a compelling reason to try the case Your Honor. They don't  
17 want to try the case because they say under the case law, that good cause is if Dr.  
18 Barin dies before trial, they get an automatic continuance. That's their basic  
19 argument. Why, I looked at the cases, even though they filed this late. I pulled the  
20 cases that they cited, no Nevada cases. What they did cite was a federal case out  
21 of Georgia, it's the F.SUPP. case they talked about on page, it's the Owens case,  
22 it's on page eight Your Honor. That case someone filed a motion in Federal Court  
23 for an expedited trial date. And before the motion was heard, the person died.  
24 That's not what we have in this case; in this case, the motion was granted the  
25 rehearing was denied. Trials been ordered and we have done like fifty-five  
depositions to get ready for trial. We're ready to go. So, first of all, that case  
doesn't involve the statute, second of all it's a different circumstances. The next  
case they site is this Summer Field case, which is Judge Mosely's case, that  
involved a summary judgment. And basically, the Plaintiff in that case made an

1 argument that under rule 56F they didn't have time to retain an expert to oppose a  
2 summary judgment. The Court held that Judge Mosely should have given them  
3 more time. Well Your Honor, not only have they had time to retain experts, but  
4 they've retained six experts in this case only five of which we're going to  
5 depose....and that's six experts not counting Mr. Roberts cancer expert. So, Your  
6 Honor, for that reason, the case law doesn't support the proposition and so what we  
7 really have here, is probably the most flagrant example I've ever seen of Defendants  
8 doing anything to continue a trial. They filed a removal; we got it back in 8 days.  
9 You know go up and down the hall and ask any of the District Court Judges have  
10 they ever seen a removal come back in 8 days. I've never seen it happen in 8 days.  
11 And they suggest they're going to remove again when they know from the pleading  
12 that because the two minors have moved to Montreal that there is no diversity  
13 jurisdiction now. They can't remove again. If they remove, again they will be  
14 subject to sanction from both the Federal Court and the State Bar. So the threat that  
15 they're going to remove again I think is pretty hollow. But in any event, Your Honor  
16 that's where we're at there is no good cause to continue the trial, we are ready to  
17 go. You know we've got the case ready. I think we can get the Plaintiff case done in  
18 a reasonable amount of time faster than I what I thought we could do. Because  
19 we're....they frankly, they have designated a lot fewer experts than I thought they  
20 would. They only have six like I said. They didn't designate an economist you know  
21 for obvious reasons Mr. Roberts doesn't want the statistician to tell the jury she's  
22 going to live eighteen months so they didn't designate a cancer doctor, they don't  
23 have a aerodynamics expert, you know there is a lot of things that they I thought that  
24 they would have that they don't have. But anyway, the bottom line is the case is  
25 going to go a lot faster, than I think we projected when we were hearing the motion  
for rehearing. So for those reasons Your Honor, we would ask you to grant the  
motion to amend. And I'm not saying they can't file a proper motion to continue trial,  
and I'm sure they will, you know desperate men do desperate things, and these are  
desperate men Your Honor. They don't want to try this case, so there is going to be

1 another frivolous removal, we will get it back, I'm sure, there is probably going to be  
2 a motion to continue to you, there's probably going to be five risk to the Nevada  
3 Supreme Court. I expect all of this okay, because they do not want to try the case.  
4 It's not a matter of if the case is ready for trial, it's they do not want to try this case.  
5 That's where we are at in this matter Your Honor. And so I'd ask that you grant the  
6 motion to amend at this time.

7 MR. POLSENBERG: I don't want to prepare a case where, or try a case  
8 where I'm not prepared. That is certainly true, look this is a sad case, this is one of  
9 the saddest cases I have ever seen. The way it has just recently developed. And  
10 my heart goes out to all the Plaintiff's and their family. But the circumstances have  
11 changed and those weren't my words. I think those were Mr. Kemp's words....let's  
12 look at the situation, let me break it down into a couple of parts. Um....we moved at  
13 an incredible pace in this case, a pace that was...not only is seemingly impossible, it  
14 was impossible. We're not ready to try this case. We're not done discovery, I've  
15 just gotten seventeen pretrial motions from the other side. I haven't even written my  
16 pretrial motions yet, because we are not done discovery. And normally they are not;  
17 you don't get into the pretrial phase until you're done with discovery. So this has  
18 moved in a pace that I don't remember if it was you or Judge Jones who said it's  
19 very difficult but let's give it a try. We have given it a try, we haven't been in bad  
20 faith, we haven't been dragging our feet. This is a case where we have done our  
21 best but there is no way we can try this case. This is November 2017; we are set to  
22 try this case in November 2017. We have a great deal....these complicated cases  
23 have a great deal of pretrial work that needs to be done. Motions on both sides, long  
24 hearings from you, you having to make a number of rulings before we even start  
25 picking a jury. I understand the Legislature's intent in enacting 16.025. I'm not sure  
the Legislature totally understands, blanket rules apply to individual cases. I think  
application of 16.025 would be unconstitutional in this case. But circumstances, to  
borrow a phrase, have changed. It's very sad that Dr. Barin died. But because of  
that, we don't have the compelling reason to have to go to trial in 120 days. We

1 have the need for more discovery, there isn't the need to accelerate the trial. Their  
2 argument for the compelling reason to still go to trial, and they gave two, it's that two  
3 people died; that, now there are two people that have died from this. The effect on  
4 the family and the lost income, and I think that's part of what they mean by the effect  
5 on the family. But that doesn't really take this out of being different from any other  
6 case. There is effect on every family, but due process doesn't mean that you rush  
7 to judgment on these cases. I say 16.025 and I say as a matter of law, it no longer  
8 applies. Yeah, it does have a provision in there that says when you can continue  
9 with trial, but that is under the assumption that the underlying principal still applies,  
10 that somebody is over the age of 70, that there is an impending death, those  
11 circumstances are still there. And they are not here anymore. So I would make the  
12 argument that we can't go to trial this fast, even if Dr. Barin were still alive. Now that  
13 she has passed, I don't think the statute applies. And we should handle this case in,  
14 in Mr. Kemp's words from one of the transcripts, a traditional manner. But I'll go a  
15 step further. Their amendment, remember Mr. Kemp started today by saying that  
16 leave to amend should be freely granted, and all he's doing here is adding a co-  
17 guardian. No. Wrong on two points. Leave to amend should be freely granted  
18 under Rule 15. We are not under Rule 15 here, we are under Rule 16. We are so  
19 far into this case, that under normal principles of scheduling orders, they are past  
20 any reasonable deadline to amend, and they would have to show good cause to  
21 amend, and what they are trying to do is add a claim for wrongful death that didn't  
22 exist before. Now this is definitely, a Will Kemp, kind of cause of action . . .

20 THE COURT: Well . . .

21 MR. POLSENBERG: He is probably . . .

22 THE COURT: Mr. Polsenberg . . . but, but it has, it has just occurred, the  
23 death has just occurred.

24 MR. POLSENBERG: Has just occurred.

25 THE COURT: Right.

MR. POLSENBERG: Right. And so now, they want to amend to bring a

1 clam for her death, which adds all new issues. Her cancer . . . bringing in a  
2 statistician to say, look, she's going to live a certain period of time. Earlier, only  
3 went to the need to accelerate the trial. That wasn't our medical case, on this avant-  
4 garde, and I was going to say this is Will Kemp cause of issue, it of all the living  
5 lawyers I know he has the best scientific mind. And this is... you know there is a line  
6 from a John Wayne movie, the one that took place in Ireland, The Quiet Man, A  
7 Quiet Man, and it's where they say, you know, that's a fight I would walk a long time  
8 to see. This is going to be a very interesting case. We are going to be on the outer  
9 fringes of law and medicine, for whether an accident causing the death of one  
10 spouse causes the death of the other spouse. We didn't...that wasn't an issue in  
11 the case before the fact that they had somebody who brought in something that said  
12 that this could affect her cancer wasn't a wrongful death case the matter the  
13 Superior Court as made clear that a cause of action for wrongful death doesn't arise  
14 until the death. Now that her death has occurred and I am certainly sorry that it did,  
15 but now that it has occurred it opens up whole number of other issues to address,  
16 medical yes, scientific yes, financial yes, we are now going to be looking at what her  
17 financial situation is and the....whatever alleged decrease in probable support. To  
18 her sons as a result of that this is a whole nother case this is a much bigger case,  
19 this is an incredible more complicated case than it was before. So if they are adding  
20 that cause of action, and I don't ....I would love to make the argument that they can't  
21 under futurity principles but I think that it would be more appropriate to let them  
22 amend and let us do discovery and proper briefing and motions for summary  
23 judgement. To see if they have a cause of action but to do this in November of 2017  
24 and make us try it in November of 2017 is just inappropriate. I don't think it, I think  
25 it's more than a (unintelligible) discretion. I think it would be errors a matter of law to  
allow this. Thank you Your Honor.

MR. KEMP: Your Honor just briefly in reply. Mr. Posenberg mentions we  
have 17 pretrial motions. Usually we have 55 or 60 we paired them back and we just  
filed our essential motions. He said he's going to file seven so that's 24 motions

1 Your Honor.

2 MR. POLSENBERG: I didn't say seven.

3 MR. KEMP: Okay, however many you want say he files as many as I do Your  
4 Honor that still on thirty-four. Usually these cases we resolve a lot more, so yes we  
5 will have to have a motion hearing. But we would have to have a motion hearing  
6 whether we tried the case November 20 or a different time. Next, they seem to think  
7 that there is no reason to expedite trial. That's not what the Federal Court thought  
8 this is what Judge Bouleware told them and I'm reading from page 17 line 18 the  
9 transcript, and this is after Mr. Robert threaten Judge Bouleware that he going to  
10 just removing the case until Judge Bouleware keeps it. Judge Bouleware says  
11 *quote well here's what I will tell you is this if I keep jurisdiction this case will proceed*  
12 *to trial before the end of the year.* That means this year Your Honor so *I'm not*  
13 *incline to stay this case at all* because they forgot to tell you they filed a motion for  
14 stay with the Federal Court, that was denied. I will give this case a preferential trial  
15 setting as it would have in the stayed Court and it will be tried before the end of the  
16 year. This is what Judge Bouleware told them Your Honor. It will be tried before the  
17 end of the year. I went through their items of discovery to show the Court that none  
18 of these things were impossible Mr. Polsenberg didn't address them he just said  
19 there is a need for more discovery no specifics I think it's pretty obvious that Special  
20 Master Hale has been cracking the whip here. And the case will be ready for trail.  
21 He says that we have added this claim for wrongful death and they're no issues Well  
22 Dr. Panigrahy report that was filed on October 4 said exactly what happen in this  
23 case he said that when there is stress. And Dr. Panigrahy he's from Harvard he's  
24 he is probable the number one cancel doctor in the world. He has his three different  
25 cancer journal. He filed a 53-page report on October 4 and he said that when there  
is stress caused by death of one's spouse that it's going to exacerbate the cancer  
and he predicted that Dr. Barin was going to die within 6 months. In the end, date  
of that 6 months was 5 days after his deposition. So Mr. Roberts said to him a Dr.  
Panigrahy she still alive your and idiot and he said no I'm sticking by my guns and



1 Dr. Barin died 3 days later Your Honor. So the point here is we brought up this exact  
2 issue in the expert report. They deposed Dr. Panigrahy in Boston already this issue  
3 as already been developed. Now moving on to the other damages We have an  
4 economist (unintelligible) Dr. Stokes. The economist already set forth Dr. Barin  
5 wage loss, that was in the economist report that we filed on October 4<sup>th</sup> they took his  
6 deposition explored that briefly they choose not to file their own economist their not  
7 challenging that and to be honest she's a dentist she made quite a bit less than her  
8 husband because he was a surgeon. But in any event that was address in our  
9 economist report they've taken the depositions so for them to say that they....well  
10 maybe they aren't ready but I was ready I put them in my expert reports. They took  
11 the depositions this is no reason to continue the trial because really they want a  
12 new...really what this comes down to...all roads lead back to them wanting a new  
13 cancer expert. That's really, what their argument is here. But in any event Your  
14 Honor, there's a compelling reason to keep the trial date there no good cause to  
15 continue the trial date so we would just ask that the motion to amend but granted  
16 and we go forward.

15 MR. POLSENBERG: It's November 2017 and it you're going to add a claim  
16 for wrongful death now and they say well look we developed it before hand...Plaintiff  
17 say that Plaintiff developed it before hand and they even admit we haven't  
18 developed it because there wasn't a death if you add a new claim for wrongful death  
19 of a person who died of less than a month ago and make us go to trial this month  
20 and mean that just error on it's face. That's a denial of due process they say there is  
21 no issues about the wrongful death of course there are and now that she has died  
22 all these issues become at issue and we have to bring them up. They may have cut  
23 down from their normal 55 motions down to 17, but that doesn't mean I have to cut  
24 my normal 55 motions down to 17 or to 7. There is a huge amount of work that  
25 needs to be done. It's impossible to get it done now and their claim about their  
compelling reason is the loss of income of the two parents. I know that is a terrible  
situation but, they have settle with other defendant's here and....

1 THE COURT: Excuse me my understanding is that those settlements aren't  
2 finalized yet. Is that correct?

3 MR. KEMP: That's correct Your Honor, what we need to do is due good faith  
4 hearing....

5 THE COURT: I'm sorry to interrupt you Mr. Polsenberg....

6 MR. POLSENBERG: That's fine...

7 MR. KEMP: And Mr..... Roberts told the Federal Courts he would stipulate to  
8 good faith....on those settlements. I don't know if that has changed because....

9 THE COURT: on four Defendants'?

10 MR. KEMP: Yes, Mr. Polsenberg's argument.....seems to be arguing in his  
11 brief that I need to file a motion for good faith. But in any event, they said they  
12 would stipulate to it. Then what we have to do is take it to the Probate Court get  
13 Probate approval as we have to take it to get minor's comp approvals, all of which  
14 we need the good faith first and so as soon as we have the settlement agreement  
15 we will get it to Mr. Roberts and get the good faith.

16 MR. ROBERTS: Your Honor, if I could address that issue? You notice that  
17 none of the other Defendants are here, all of the none diverse Defendants are  
18 absence from this hearing. We removed on the basis that there are only two parties  
19 left of the Plaintiffs are all Nevada residence (unintelligible) is Nevada. Motor Coach  
20 is not there is complete diversity. The Court Judge Bouleware never reached the  
21 issue of the fact that the children have (unintelligible) moved to Canada and whether  
22 that changes his jurisdiction. He sent this case back here because Mr. Kemp and  
23 Mr. Christiansen told the Court oh we don't have settlements we haven't agreed to  
24 all the material terms. These things could fall through, there's not really a settlement  
25 here. So we have a November 20 trial date, we have people who are extensively still  
parties who aren't even at this hearing because they know they've settled but the  
point that I was making with Judge Bouleware is that as soon as those settlements  
are completed then there will be complete diversity and we will be entitled to remove  
again. That's what I told Judge Bouleware, now the fact that they aren't here if what

1 Mr. Christiansen told the Federal Court is true that they are going to take and  
2 indefinite period of time the beyond November 20. How can we go to trial with  
3 parties who have settle still here, we can't. The trial date is unfeasible just for the  
4 reason that they told the Court it's going to take a long time to finalize the  
5 settlements and we don't have a long time before this case is set for trial.

6 MR. POLSENBERG: Let me add something else about Judge Bouleware.  
7 Judge Bouleware did not have in front of him the fact that Dr. Barin had died or the  
8 ideal that they want to add in a new claim now, he was simply saying... Mr.  
9 Christiansen had represented to the Judge that the reason that we were trying to  
10 remove the case to Federal Court, which I can tell you it wasn't the reason was  
11 because we were trying to get rid of the November 20<sup>th</sup> trial date. And so Judge  
12 Bouleware reacting like a trial Judge says well even if you are in front of me we're  
13 still going to go to trial on an accelerated basis. To try...if that were a motivation he  
14 was trying to take that motivation away from us. But if we were in Federal Court we  
15 would be pointing out these same things if they move to amend an Federal Court is  
16 just as rigid on rule 16 as is the Nevada Supreme Court. If they had moved to  
17 amend, then yes that would have changed the circumstances and it would have  
18 required either a denial of the amendment or it would have required continuing the  
19 trial.

20 MR. KEMP: Judge I don't know for this can go back and forth forever but I do  
21 think I am....

22 MR. POLSENBERG: I have the countermotion so I do get to go last.

23 MR. KEMP: Well do you really have a countermotion that you filed at 3:00  
24 with that any opportunity to be heard. But anyway, with regards to Judge Bouleware  
25 the statement that Judge Bouleware did not have the fact that Dr. Barin died in front  
of him, that's completely erroneous Your Honor. They even argued to Judge  
Bouleware that we didn't have authority to act for the Plaintiff's because the motion  
to amend had not been granted and she had died. So not only did he know that she  
died, but they were arguing that we didn't have any authority to speak for the estate

1 because the executor hadn't been substituted in, so he knew fully that she had died.  
2 Now getting to Mr. Roberts argument about know complete diversity I...this is not  
3 an issue for this Court this is really an issue for the Federal Court. But under the  
4 diversity statute, you can remove if you have citizens of different states. The minors  
5 in this case have both moved to Montreal, Mr. Roberts called all the Plaintiff's  
6 citizens of Nevada, they are not citizens of Nevada, under the Federal law and this  
7 was briefed to Judge Bouleware under Federal law they are now deemed what is  
8 known as stateless persons. They do not have a state because they are not a  
9 citizen of a state. They have moved to a foreign Country. So if they had moved to  
10 Canada, Britain, doesn't matter where but they are not a citizen of the State of  
11 Nevada now. They live in Montreal they are going to school there. So any removal  
12 would be frivolous and like I said before probably subject to sanctions by Judge  
13 Bouleware certainly subject to bar sanctions, but in any event I aspect to see this I  
14 already told the Court I aspect to see this for them to do this again but you know I  
15 can't control what other people do. Moving to their final point which was the good  
16 faith hearing. What....we never said that there is not really a settlement or that there  
17 is no settlements we told the special master that there were tentative settlements,  
18 we told Judge Bouleware there were tentative settlements, and the tentative  
19 settlements that we have to have a settlement agreement drafted, we have to have  
20 a good faith hearing, we have to have a minor compromise and we have to have a  
21 state compromise. For purposes of this Court's trial the only thing that needs to be  
22 done is you have to have the good faith hearing. And here is the reason for that the  
23 good faith hearing is what cuts off the claims indemnity and contribution and by the  
24 way they haven't even filed a cross claim, they have not filed cross claims against  
25 any of these defendants as we sit here today. No cross claims what so ever, but in  
any event the good faith hearing kept...cuts off potential cross claims against  
defendants they have already stipulated that this is going to be in good faith, they  
stood up and told Judge Bouleware that on the record that....and I've got it in the  
transcript here...if we need the citation. Mr. Roberts told him on the record that they

1 were going to agree that these settlements were in good faith. So there is no reason  
2 to delay this trial until the good faith hearing. Now the suggestion that is being made  
3 for the first time I think in the history of Nevada. That you...you can't treat a party as  
4 settled until you go through the probate and the minor compromise I mean that is  
5 ridiculous Your Honor. I've never seen anyone do that because that doesn't affect  
6 the good faith determination. All that will effect is potential...the only real issue that  
7 will protect.... effect is a potential altercation between the parties because what the  
8 a Probate Commissioner will look at is let's just take a hypothetical that maybe there  
9 is in this case there is not, but maybe there is a million dollars claim against the  
10 estate. And they say oh you should put the money in the estate and not give it to  
11 the minors and traditionally what we do is we give it all to the minors Your Honor.  
12 That is the only potential scenario that there is going to be a dispute and what will  
13 have to happen then is we have to re-allocate the settlement proceeds. We have to  
14 move them from one Plaintiff to another, but that doesn't affect the good faith  
15 determination. Because the good faith is based on the amount of the determination.  
16 So for that reason Your Honor, we....yes we do tentative settlements that's the word  
17 we have always used we're proceedings as fast as possible and the circumstances  
18 to finalize them I don't see being quite candid with the Court, I don't see any chance  
19 we could finalize them before November 20<sup>th</sup> and the reason for that is Dr. Barin  
20 died there is a sagittary period for creditors. We have to give creditors I can't  
21 remember if it is 90 or 120 days, but I mean you know unless Mr. Polsenberg gets  
22 the legislature to in act a new statute in the next week say that the time period for  
23 creditor's claims is kept to one or two days can't shorten that Your Honor there is no  
24 way to shorten that. I don't think there is a lot of creditor's in this case, but in any  
25 event the primary point is that they have agreed to stipulate to good faith, they've  
agreed to that on the record. So to suggest that we can't do a trial now because we  
can't have a good faith hearing, I think that's inappropriate, but I think this really  
emphasizes what going on in this case. Every single hearing before you, every  
single hearing before Judge Bouleware, every single hearing before the Special

1 Master delay, delay, delay impossible to do, okay apparently we about now done the  
2 impossible, the case is ready for trial. And I would just ask the Court to grant the  
3 motion to amend and we move forward.

4 MR. POLSENBERG: Before Mr. Roberts jumped up and then Mr. Kemp  
5 jumped up, I just on the 2<sup>nd</sup> point of my notes. On my rebuttal argument and that  
6 was the last point that Mr. Kemp made and that was about it's impossible... I have a  
7 bunch of lawyers here who have been going through this whole process and I have  
8 under (unintelligible) I can have them make representations to you about how this is  
9 impossible to get done the discovery along to get done. But I can go further than  
10 that I mean there are a lot of faces to litigation under the rules of civil procedures  
11 there's pleading there's discovery, there's pretrial. We are not even in pretrial yet  
12 and we are a couple of weeks away from this trial date. So we are not done  
13 discovery, were not started the pretrial stuff in my opinion. We just cannot go to trial  
14 and that's severe prejudice we have a need to get a continuance and they don't  
15 have a counter veiling prejudice other than that which exist in the normal case. And  
16 the only reason I brought up the settlements and yes, in case it's unclear I stipulate  
17 that their settlements are in good faith. I don't know why we have to go... I don't  
18 know why we're talking about Judge Bouleware, I don't know why we're talking  
19 about diversity, I don't know why we're talking about good faith settlement other than  
20 it's not an issue. And we could probably severe those claims right now, but none of  
21 that goes to what I'm talking about and that's we can't go to trial on November 20<sup>th</sup>  
22 and there is no reason we have to go to trial. In their motion to amend to bring in a  
23 whole nother cause of action prohibits going to trial. So that's all I'm talking about. If  
24 you're going to grant their motion to amend move the trial even if you denied their  
25 motion to amend we've got to move the trial because of the circumstances have  
changed. Thank you Your Honor.

MR. KEMP: Judge this last point they....

MR. POLSENBERG: Judge I'm going to talk after he talks every time...

THE COURT: I know....

1 MR. KEMP: Is that....

2 THE COURT: I'm giving you...we have others waiting...

3 MR. KEMP: I understand, Your Honor

4 THE COURT: I know this is a very

5 MR. KEMP: One quick point

6 THE COURT: I'm very sorry about your client by the way...

7 MR. KEMP: They haven't take one single fact deposition in this case, so hear  
they sit

8 THE COURT: speak louder Mr. Kemp....

9 MR. KEMP: So here they're saying that it is impossible, they need more time  
10 for discovery they haven't deposed any fact witnesses. They haven't taken any fact  
11 witnesses depositions. The only notice they filed for a fact witness was the bus  
12 driver and I filed that. They were fighting to go first, that's the only fact witness  
13 deposition they've taken in 6 months. And so Mr. Polsenberg stands up here and  
14 says he needs more time for discovery when in the last 6 months he has taken one  
single fact witness deposition.

15 MR. POLSENBERG: Do you want us to go through the whole history of the  
16 discovery? I mean it's....I'm trying to be polite it would be unrealistic to say we  
17 haven't done discovery in this case. And we've tried and the fact that we're not  
18 done is not the reason to deny this motion. We're not asking for the ordinary course  
19 where we're moving this trial back 2 years. I'm just asking for the spring I mean I  
20 would even settle for February or March. Their new claim I got to tell you that's  
21 going to be a back breaker to get ready by February, but if that what Your Honor  
wants us to do, we will do that, but we can't do November 20 2017.

22 THE COURT: Okay, anything else?

23 MR. POLSENBERG: No thank you, Your Honor.

24 THE COURT: Did you have...Even though, because of our fast track you had  
something that you filed, have you thoroughly gone through that? You have right?

25 MR. POLSENBERG: I'm sorry....

1 MR. ROBERTS: Our countermotion....

2 MR. POLSENBURG: Right.

3 THE COURT: Your countermotion.....

4 MR. POLSENBURG: And the reason that we had it had to do the  
countermotion Mr. Kemp...

5 THE COURT: (unintelligible) (*Mr. Polsenberg speaking over the Court*)

6 MR. POLSENBURG: says that its....you know it doesn't count, but they are  
7 the ones who brought this motion to amend on shorten time. So that's when I had to  
8 raise my limited objection to their motion.

9 THE COURT: And for the record, given the track that we have been on that is  
10 why...I feel its...while it's just recently filed it's consistent with our schedule...

11 MR. POLSENBURG: Right.

12 THE COURT: Okay....I would rather articulate this is writing, but and I can  
13 get this out today but I... or one of you perhaps can (unintelligible) it. I am going to  
14 grant Plaintiff's (*um where is it... right here*) motion to amend the complaint. So  
15 that's going to happen and I'm also going to grant...I understand Mr. Kemp is  
16 disgusted the other part (*I have it here somewhere*) that the rule also says that  
17 unless something else happens to the Plaintiff that...in other words that this cannot  
18 be lengthen, but I think this is a very unique situation in that we now have regrettably  
19 the Plaintiff death, so I will grant...this was expedited and I stayed the grounds  
20 because of the Plaintiff delicate situation and I think it was the correct thing to do no  
21 matter how fast everyone needed to move. But I am not one that is going to allow  
22 this to go on forever I think moving this to no later than March would be correct for  
23 trial. And so I'm going to grant... I'm going to vacate the trial, but we're going to,  
right now set a new trial date okay, so that doesn't slip through the cracks. What do  
we have open in February and March?

24 THE CLERK: Are we doing another calendar call?

25 THE COURT: Yes we're doing another calendar call.

THE CLERK: That would be March 12<sup>th</sup>.



1 THE COURT: Very good and again just... it's a two week trial correct.

2 MR. POLSENBERG: Um I'm thinking it's probably four.

3 THE COURT: Four week trial. Okay, that fine.

4 MR. KEMP: Thank you, Your Honor.

5 MR. POLSENBERG: Thank you, Your Honor.

6 THE COURT: Have a good day counsel, if I don't see you before happy  
holidays. Wait I'd like before we go I like counsel someone to...

7 MR. POLSENBERG: I'll do it.

8 THE COURT: Mr. Polsenberg prepare the order, with detail finding and facts.

9 MR. POLSENBERG: I'll do finding of fact conclusion of law.

10 THE COURT: Make sure that Mr. Kemp has a chance to take a look at it as  
to form and substance. And I'd like you just send it to Mr. Jayne in word.

11 MR. POLSENBERG: Excellent. Thank you, Your Honor.

12 THE COURT: Thank you very much.

13 MR. POLSENBERG: Have a good day, Your Honor.

14 THE COURT: You too.

1 RECORDED BY: SANDRA ANDERSON, COURT RECORDER

2 LAS VEGAS, NEVADA, NOVEMBER 2, 2017, AT 10:13 A.M.

3  
4  
5 [Proceedings concluded at 11:00 a.m.]

6 \* \* \* \* \*

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9  
10 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
11 audio/video proceedings in the above-entitled case to the best of my ability.

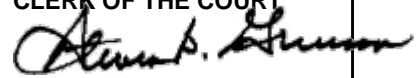
12  
13 

14 SANDY ANDERSON

15 Court Recorder/Transcriber

24

24



1 WILL KEMP, ESQ. (#1205)  
ERIC PEPPERMAN, ESQ. (#11679)  
2 [e.pepperman@kempjones.com](mailto:e.pepperman@kempjones.com)  
KEMP, JONES & COULTHARD, LLP  
3 3800 Howard Hughes Parkway, 17th Floor  
Las Vegas, Nevada 89169  
4 Telephone: (702) 385-6000  
Facsimile: (702) 385-6001

5  
6 PETER S. CHRISTIANSEN, ESQ. (#5254)  
[pete@christiansenlaw.com](mailto:pete@christiansenlaw.com)  
KENDELEE L. WORKS, ESQ. (#9611)  
7 [kworks@christiansenlaw.com](mailto:kworks@christiansenlaw.com)  
CHRISTIANSEN LAW OFFICES  
8 810 South Casino Center Blvd.  
Las Vegas, Nevada 89101  
9 Telephone: (702) 240-7979  
Facsimile: (866) 412-6992

10 *Attorneys for Plaintiffs*

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 KEON KHIABANI and ARIA KHIABANI,  
14 minors, by and through their Guardian,  
MARIE-CLAUDE RIGAUD; SIAMAK  
15 BARIN, as Executor of the Estate of Kayvan  
Khiabani, M.D. (Decedent), the Estate of  
16 Kayvan Khiabani, M.D. (Decedent);  
SIAMAK BARIN, as Executor of the Estate  
17 of Katayoun Barin, DDS (Decedent); and the  
Estate of Katayoun Barin, DDS (Decedent);

18 Plaintiffs,

19  
20 vs.

21 MOTOR COACH INDUSTRIES, INC.,  
a Delaware corporation; MICHELANGELO  
22 LEASING INC. d/b/a RYAN'S EXPRESS,  
an Arizona corporation; EDWARD  
23 HUBBARD, a Nevada resident; BELL  
SPORTS, INC. d/b/a GIRO SPORT  
24 DESIGN, a Delaware corporation;  
SEVENPLUS BICYCLES, INC. d/b/a PRO  
25 CYCLERY, a Nevada corporation, DOES 1  
through 20; and ROE CORPORATIONS 1  
26 through 20.

27 Defendants.  
28

Case No.: A-17-755977-C

Dept. No.: XIV

**SECOND AMENDED COMPLAINT  
AND DEMAND FOR JURY TRIAL**

000619  
KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway  
Seventeenth Floor  
Las Vegas, Nevada 89169  
(702) 385-6000 • Fax (702) 385-6001  
[kic@kempjones.com](mailto:kic@kempjones.com)

000619

COME NOW Plaintiffs, KEON KHIABANI and ARIA KHIABANI, minors, by and through their Guardian, MARIE-CLAUDE RIGAUD; SIAMAK BARIN, as Executor of the Estate of Kayvan Khiabani, M.D. (Decedent), the Estate of Kayvan Khiabani, M.D. (Decedent); SIAMAK BARIN, as Executor of the Estate of Katayoun Barin, DDS (Decedent); and the Estate of Katayoun Barin, DDS (Decedent); by and through their attorneys, Will Kemp, Esq. and Eric Pepperman, Esq. of the law firm KEMP, JONES & COULTHARD, LLP and Peter S. Christiansen, Esq. and Kendelee L. Works, Esq. of CHRISTIANSEN LAW OFFICES, and for their claims against the Defendants, and each of them, complain and allege as follows:

### **THE PARTIES**

1. Plaintiff minors, KEON KHIABANI and ARIA KHIABANI, are the natural children of Dr. Kayvan Khiabani (Decedent) and Katayoun "Katy" Barin (Decedent).

2. Plaintiff minor KEON KHIABANI is a citizen of the United States. Keon lives and attends school in Montreal, Canada with his duly appointed Guardians.

3. Plaintiff minor ARIA KHIABANI is a citizen of the United States. Aria lives and attends school in Montreal, Canada with his duly appointed Guardians.

4. Plaintiff MARIE-CLAUDE RIGAUD is the duly authorized Guardian of Keon Khiabani and Aria Khiabani. She is a citizen and resident of Montreal, Canada. As Guardian, MARIE-CLAUDE RIGAUD is authorized to bring this action on behalf of the Plaintiff Minors.

5. Plaintiff SIAMAK BARIN is a duly authorized Executor of the Estate of Kayvan Khiabani, M.D. (Decedent). As Executor, Siamak Barin is authorized to bring this action on behalf of Plaintiff the Estate of Kayvan Khiabani, M.D. (Decedent).

6. Plaintiff SIAMAK BARIN is a duly authorized Executor of the Estate of Katayoun Barin, DDS (Decedent). As Executor, Siamak Barin is authorized to bring this action on behalf of Plaintiff the Estate of Katayoun Barin, DDS (Decedent).

7. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times, Defendant MOTOR COACH INDUSTRIES, INC. ("MCI") was and is a corporation organized and existing under the laws of the State of Delaware and authorized to do business in the State of Nevada, including Clark County. MCI designs, manufacturers, markets, and sells

1 commercial tour buses (aka Motor Coaches). Defendant MCI designed, manufactured, and sold  
2 the 2008, full-size Motor Coach involved in the incident described herein.

3 8. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times,  
4 Defendant MICHELANGELO LEASING INC. d/b/a RYAN'S EXPRESS ("Ryan's Express")  
5 was and is a corporation organized and existing under the laws of the State of Arizona and  
6 authorized to do business in the State of Nevada. Ryan's Express is a ground transportation  
7 company that provides charter bus services for group transportation. Defendant Ryan's Express  
8 owned and operated the MCI bus involved in the incident described herein.

9 9. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times,  
10 Defendant EDWARD HUBBARD was and is a resident of Clark County, Nevada. Edward  
11 Hubbard is employed by Ryan's Express as a bus driver. As part of his duties and  
12 responsibilities, Hubbard operates full-size Motor Coaches and was operating the MCI bus at  
13 the time of the incident described herein.

14 10. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times,  
15 Defendant BELL SPORTS, INC. d/b/a GIRO SPORT DESIGN ("Giro") was and is a  
16 corporation organized and existing under the laws of the State of California and authorized to  
17 do business in the State of Nevada, including Clark County. GIRO designs, manufactures,  
18 markets, and sells protective gear and accessories for sport activities, including cycling helmets.  
19 Defendant Giro designed, manufactured, and sold the helmet that Dr. Kayvan Khiabani was  
20 wearing at the time of the incident described herein.

21 11. Plaintiffs are informed and believe, and thereupon allege, that at all relevant times,  
22 Defendant SEVENPLUS BICYCLES, INC. d/b/a PRO CYCLERY ("Pro Cyclery") was and is  
23 a corporation organized and existing under the laws of the State of Nevada and authorized to do  
24 business in the State of Nevada, including Clark County. Pro Cyclery is engaged in the retail  
25 sale of bicycles and cycling accessories, including cycling helmets. Upon information and  
26 belief, Defendant Pro Cyclery sold to Dr. Kayvan Khiabani the helmet that Dr. Khiabani was  
27 wearing at the time of the incident described herein.

28

000622  
KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway  
Seventeenth Floor  
Las Vegas, Nevada 89169  
(702) 385-6000 • Fax (702) 385-6001  
kjc@kempjones.com

1 12. The true names and capacities, whether individual, corporate, association or otherwise of  
2 the Defendants, DOES 1 through 20 and/or ROE CORPORATIONS 1 through 20, inclusive,  
3 are unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names. Plaintiffs  
4 are informed and believe, and thereupon allege, that each of the Defendants designated herein as  
5 DOES and/or ROE CORPORATIONS is responsible in some manner for the events and  
6 happenings herein referred to, and in some manner caused the injuries and damages to Plaintiffs  
7 alleged herein. Plaintiffs will ask leave of the court to amend this Complaint to insert the true  
8 names and capacities of said Defendants, DOES 1 through 20 and/or ROE CORPORATIONS 1  
9 through 20, inclusive when the same have been ascertained by Plaintiffs, together with the  
10 appropriate charging allegations, and to join such Defendants in this action.

11 13. Whenever it is alleged in this Complaint that a Defendant did any act or thing, it is  
12 meant that such Defendant's officers, agents, servants, employees, or representatives did such  
13 act or thing and at the time such act or thing was done, it was done with full authorization or  
14 ratification of such Defendant or was done in the normal and routine course and scope of  
15 business, or with the actual, apparent and/or implied authority of such Defendant's officers,  
16 agents, servants, employees, or representatives. Specifically, Defendants are liable for the  
17 actions of its officers, agents, servants, employees, and representatives.  
18

19 14. All of the Defendants as named herein are jointly and severally liable to Plaintiffs for  
20 Plaintiffs' damages.

21 15. Plaintiffs are informed and believe, and thereupon allege, that Defendants, and each of  
22 them, jointly and in concert undertook to perform the acts as alleged herein, that Defendants and  
23 each of them had full knowledge of the acts of each co-Defendant as alleged herein, and that  
24 each Defendant authorized or subsequently ratified the acts of each co-Defendant as alleged  
25 herein, making each co-Defendant an agent of the other Defendants and making each Defendant  
26 jointly responsible and liable for the acts and omissions of each co-Defendant as alleged herein.  
27  
28

**JURISDICTION AND VENUE**

16. This is an action for damages in excess of Fifteen Thousand Dollars (\$15,000.00), exclusive of costs, interest, and attorneys' fees.

17. Venue is proper in this Court because the incident giving rise to this lawsuit occurred in Clark County, Nevada.

**GENERAL ALLEGATIONS**

18. On or about April 18, 2017, Dr. Kayvan Khiabani was riding his Scott Solace 10 Disc road bicycle southbound in a designated bicycle lane on S. Pavilion Center Drive near the Red Rock Resort and Casino in Las Vegas, Nevada. At the time, Dr. Khiabani was wearing a bicycle helmet designed, manufactured, and sold by Giro. Upon information and belief, Dr. Khiabani purchased the Giro helmet at the retail level from Defendant Pro Cyclery.

19. Upon information and belief, at approximately 10:34 AM, as he approached the intersection of S. Pavilion Center Drive and Griffith Peak Drive, Dr. Khiabani was overtaken by a large tour bus on his left side.

20. The bus was a 2008, full-size Motor Coach that was designed, manufactured, and sold by Defendant MCI and further identified by Vehicle Identification No. 2M93JMHA28W064555 and Utah License Plate No. Z044712. Upon information and belief, the subject bus was designed and manufactured without proximity sensors to alert the driver of adjacent pedestrians and/or bicyclists that may be difficult to see or to alert such pedestrians and/or bicyclists.

21. At the time, the bus was owned and operated by Defendant Ryan's Express and being driven by Defendant Edward Hubbard, an employee of Ryan's Express.

22. Upon information and belief, at the time that it overtook Dr. Khiabani, the bus was traversing out of the right-hand turn lane and crossing over the designated bicycle lane from the right side of Dr. Khiabani to the left side of Dr. Khiabani.

23. As it crossed over the designated bicycle lane to overtake Dr. Khiabani on the left, the bus and Decedent's bicycle collided.

24. As a direct and proximate result of this collision, Dr. Khiabani suffered catastrophic internal and external injuries, including to his head, severe shock to his nervous system, and



1 great pain and suffering. Dr. Khiabani was transported from the scene of the accident and  
2 ultimately died from his injuries.

3 **FIRST CLAIM FOR RELIEF**

4 **(STRICT LIABILITY: DEFECTIVE CONDITION OR**  
5 **FAILURE TO WARN AGAINST DEFENDANT MCI)**

6 25. Plaintiffs incorporate by this reference each and every allegation previously made in  
7 this Complaint, as if fully set forth herein.

8 26. Defendant MCI, or its predecessors and/or affiliates, were responsible for the design,  
9 manufacture, construction, assembly, testing, labeling, distribution, marketing, and sale of the  
10 subject bus.

11 27. At the time of the above-described incident, the subject bus was being used in a manner  
12 foreseeable by Defendant MCI.

13 28. As so used, and from the time the bus left the hands of Defendant MCI, the subject bus  
14 was defective, unfit, and unreasonably dangerous for its foreseeable use.

15 29. The subject bus was further defective and unreasonably dangerous in that Defendant  
16 MCI failed to provide adequate warnings about dangers that were known or should have been  
17 known by MCI and/or failed to provide adequate instructions for the bus' safe and proper use.

18 30. The aforementioned incident was a direct and proximate result of a defect or defects in  
19 the bus and/or the failure of Defendant MCI to warn of defects that were either known or should  
20 have been known or to instruct in the safe and proper use of the bus. As a result, Defendant  
21 MCI should be held strictly liable in tort to Plaintiffs.

22 31. As a direct and proximate result of the defective nature of the subject bus, Decedent Dr.  
23 Kayvan Khiabani suffered catastrophic personal injuries and died.

24 32. As a direct and proximate result of the acts and omissions of Defendant MCI, Decedent  
25 sustained past, present, and future lost wages, which would otherwise have been gained in his  
26 employment if not for his death proximately caused by this accident, far in excess of Fifteen  
27 Thousand Dollars (\$15,000.00).

28

1 33. As a direct and proximate result of the acts and omissions of Defendant MCI, the  
2 Plaintiff minors each have been deprived of their father's comfort, support, companionship,  
3 society, and consortium, and further, each has suffered great grief, sorrow, and extreme  
4 emotional distress as a result of the death of their father, to each for general damages far in  
5 excess of Fifteen Thousand Dollars (\$15,000.00) and economic damages far in excess of Fifteen  
6 Thousand Dollars (\$15,000.00). The minor children also seek to recover for the pain, suffering,  
7 and disfigurement of their father.  
8

9 34. As a direct and proximate result of the acts and omissions of Defendant MCI, prior to  
10 her death, Katy Barin was deprived of her husband's comfort, support, companionship, society,  
11 and consortium, and further, had suffered great grief, sorrow, and extreme emotional distress as  
12 a result of the death of her husband, for general damages far in excess of Fifteen Thousand  
13 Dollars (\$15,000.00) and economic damages far in excess of Fifteen Thousand Dollars  
14 (\$15,000.00).  
15

16 35. As a direct and proximate result of the acts and omissions of Defendant MCI, Decedent  
17 Kayvan Khiabani, MD's Estate and/or Executor Siamak Barin has incurred medical, funeral and  
18 burial expenses, and other expenses relating thereto, far in excess of Fifteen Thousand Dollars  
19 (\$15,000.00).  
20

21 36. As a direct and proximate result of the acts and omissions of Defendant MCI, Decedent  
22 Katy Barin, DDS's Estate and/or Executor Siamak Barin has incurred medical, funeral and  
23 burial expenses, and other expenses relating thereto, far in excess of Fifteen Thousand Dollars  
24 (\$15,000.00).  
25

26 37. As a direct and proximate result of the acts and omissions of Defendant MCI, Plaintiffs  
27 have suffered general and special damages in an amount far in excess of Fifteen Thousand  
28 Dollars (\$15,000.00).

1 38. In carrying out its responsibilities for the design, manufacture, construction, assembly,  
 2 testing, labeling, distribution, marketing, and sale of the subject bus, Defendant MCI acted with  
 3 fraud, malice, express or implied, oppression, and/or conscious disregard of the safety of others.  
 4 As a direct and proximate result of the conduct of Defendant MCI, Plaintiffs are entitled to  
 5 punitive damages in excess of Fifteen Thousand Dollars (\$15,000.00).  
 6

7 39. Plaintiffs have been required to retain legal counsel to prosecute this action, and are  
 8 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

### 9 **SECOND CLAIM FOR RELIEF**

#### 10 **(NEGLIGENCE AGAINST DEFENDANTS RYAN'S EXPRESS** 11 **AND EDWARD HUBBARD)**

12 40. Plaintiffs incorporate by this reference each and every allegation previously made in this  
 13 Complaint, as if fully set forth herein.

14 41. Defendant Ryan's Express is vicariously liable for the wrongful acts or omissions of its  
 15 employee, Defendant Hubbard, in connection with the subject accident because: (i) at the time  
 16 of the subject accident, Defendant Hubbard was under the control of Defendant Ryan's Express,  
 17 and (ii) at the time of the subject accident, Defendant Hubbard was acting within the scope of  
 18 his employment with Ryan's Express.

19 42. Defendants Ryan's Express and Edward Hubbard owed a duty of care to Dr. Khiabani  
 20 and Plaintiffs to exercise due care in the operation of the 2008, full-size commercial tour bus.

21 43. Defendants were negligent and breached this duty of care, *inter alia*: (i) by overtaking  
 22 Dr. Khiabani at an unsafe speed, which, upon information and belief, also exceeded the posted  
 23 speed limit; (ii) by failing to give an audible warning with the horn before overtaking Dr.  
 24 Khiabani; (iii) by failing to overtake Dr. Khiabani in a reasonably safe manner; (iv) by failing to  
 25 ensure that Dr. Khiabani's bicycle was safely clear before overtaking the bicycle; (v) by failing  
 26 to leave at least 3 feet between any portion of the bus and Dr. Khiabani and/or his bicycle at the  
 27 time that the bus overtook Dr. Khiabani; (vi) by failing to yield the right-of-way to Dr.  
 28

1 Khiabani; and (vii) by entering, crossing over, and/or driving within the designated bicycle lane  
2 while Dr. Khiabani was traveling therein.

3 44. As a direct and proximate result of these negligent acts and omissions, Decedent Dr.  
4 Kayvan Khiabani suffered catastrophic personal injuries and died.

5 45. As a direct and proximate result of the negligent acts and omissions of Defendants  
6 Ryan's Express and Edward Hubbard, Decedent sustained past, present, and future lost wages,  
7 which would otherwise have been gained in his employment if not for his death proximately  
8 caused by this accident, far in excess of Fifteen Thousand Dollars (\$15,000.00).

9 46. As a direct and proximate result of the negligent acts and omissions of Defendants  
10 Ryan's Express and Edward Hubbard, the Plaintiff minors each have been deprived of their  
11 father's comfort, support, companionship, society, and consortium, and further, each has  
12 suffered great grief, sorrow, and extreme emotional distress as a result of the death of their  
13 father, to each for general damages far in excess of Fifteen Thousand Dollars (\$15,000.00) and  
14 economic damages far in excess of Fifteen Thousand Dollars (\$15,000.00). The minor children  
15 also seek to recover for the pain, suffering, and disfigurement of their father.  
16

17 47. As a direct and proximate result of the negligent acts and omissions of Defendants  
18 Ryan's Express and Edward Hubbard, prior to her death, Katy Barin was deprived of her  
19 husband's comfort, support, companionship, society, and consortium, and further, had suffered  
20 great grief, sorrow, and extreme emotional distress as a result of the death of her husband, for  
21 general damages far in excess of Fifteen Thousand Dollars (\$15,000.00) and economic damages  
22 far in excess of Fifteen Thousand Dollars (\$15,000.00).  
23

24 48. As a direct and proximate result of the negligent acts and omissions of Defendants  
25 Ryan's Express and Edward Hubbard, Decedent's Estate and/or Executor Siamak Barin has  
26 incurred medical, funeral and burial expenses, and other expenses relating thereto, far in excess  
27 of Fifteen Thousand Dollars (\$15,000.00).  
28

1 49. As a direct and proximate result of the negligent acts and omissions of Defendants  
2 Ryan's Express and Edward Hubbard, Plaintiffs have suffered general and special damages in  
3 an amount far in excess of Fifteen Thousand Dollars (\$15,000.00).

4 50. Plaintiffs have been required to retain legal counsel to prosecute this action, and are  
5 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.  
6

7 **THIRD CLAIM FOR RELIEF**

8 **(NEGLIGENCE PER SE AGAINST DEFENDANTS**

9 **RYAN'S EXPRESS AND EDWARD HUBBARD)**

10 51. Plaintiffs incorporate by this reference each and every allegation previously made in this  
11 Complaint, as if fully set forth herein.

12 52. When the subject bus overtook Dr. Khiabani at the time of the incident, Defendants  
13 Ryan's Express and Edward Hubbard violated Nev. Rev. Stat. § 484B.270, *inter alia*: (i) by  
14 overtaking Dr. Khiabani at an unsafe speed, which, upon information and belief, also exceeded  
15 the posted speed limit; (ii) by failing to give an audible warning with the horn before overtaking  
16 Dr. Khiabani; (iii) by failing to overtake Dr. Khiabani in a reasonably safe manner; (iv) by  
17 failing to ensure that Dr. Khiabani's bicycle was safely clear before overtaking the bicycle; (v)  
18 by failing to leave at least 3 feet between any portion of the bus and Dr. Khiabani and/or his  
19 bicycle at the time that the bus overtook Dr. Khiabani; (vi) by failing to yield the right-of-way  
20 to Dr. Khiabani; and (vii) by entering, crossing over, and/or driving within the designated  
21 bicycle lane while Dr. Khiabani was traveling therein.

22 53. These violations, and each of them, were a legal cause of the incident and Plaintiffs'  
23 resulting injuries.

24 54. Plaintiffs belong to the class of persons that the safety requirements in NRS 484B.270  
25 are intended to protect.  
26  
27  
28

KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway  
Seventeenth Floor  
Las Vegas, Nevada 89169  
(702) 385-6000 • Fax (702) 385-6001  
kjc@kempjones.com

1 55. As a direct and proximate cause of Defendants violations of NRS 484B.270, and each of  
 2 them, Plaintiffs have suffered general and special damages far in excess of Fifteen Thousand  
 3 Dollars (\$15,000.00), as outlined above.

4 56. Plaintiffs have been required to retain legal counsel to prosecute this action, and are  
 5 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

6 **FOURTH CLAIM FOR RELIEF**

7 **(NEGLIGENT TRAINING AGAINST DEFENDANT RYAN'S EXPRESS)**

8  
 9 57. Plaintiffs incorporate by this reference each and every allegation previously made in this  
 10 Complaint, as if fully set forth herein.

11 58. Defendant Ryan's Express owed a duty of care to Dr. Khiabani and Plaintiffs to  
 12 adequately train its drivers, including Defendant Edward Hubbard, to safely operate its  
 13 commercial tour busses, including the bus involved in the subject incident.

14 59. Defendant Ryan's Express was negligent and breached this duty of care by failing to  
 15 adequately train its drivers, including Edward Hubbard, to safely operate its commercial tour  
 16 busses, including the bus involved in the subject incident. Defendant Ryan's Express further  
 17 breached this duty of care by entrusting the subject tour bus to an inadequately trained person  
 18 (i.e., Defendant Hubbard).

19 60. These negligent acts and omissions, and each of them, were a legal cause of the incident  
 20 and Plaintiffs' resulting injuries.

21 61. As a direct and proximate result of these negligent acts and omissions, Plaintiffs have  
 22 suffered general and special damages far in excess of Fifteen Thousand Dollars (\$15,000.00), as  
 23 outlined above.

24 62. In carrying out its responsibility to adequately train its drivers, Defendant Ryan's  
 25 Express acted with fraud, malice, express or implied, oppression, and/or conscious disregard of  
 26 the safety of others. As a direct and proximate result of the conduct of Defendant Ryan's  
 27  
 28

KEMP, JONES & COULTHARD, LLP  
 3800 Howard Hughes Parkway  
 Seventeenth Floor  
 Las Vegas, Nevada 89169  
 (702) 385-6000 • Fax (702) 385-6001  
 kic@kempjones.com

Express, Plaintiffs are entitled to punitive damages in excess of Fifteen Thousand Dollars (\$15,000.00).

63. Plaintiffs have been required to retain legal counsel to prosecute this action, and are therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

**FIFTH CLAIM FOR RELIEF**

**(STRICT LIABILITY: DEFECTIVE CONDITION OR FAILURE  
TO WARN AGAINST DEFENDANTS GIRO AND PRO CYCLERY)**

64. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.

65. Defendant Giro, or its predecessors and/or affiliates, were responsible for the design, manufacture, construction, assembly, testing, labeling, distribution, marketing, and sale of the helmet that Dr. Khiabani was wearing at the time of the above-described accident.

66. Upon information and belief, Defendant Pro Cyclery, or its predecessors and/or affiliates, were part of the subject helmet's chain of distribution and sold to Dr. Khiabani at the retail level the helmet that Dr. Khiabani was wearing at the time of the above-described accident.

67. At the time of the subject accident, and at all other times material hereto, the helmet was being used in a manner foreseeable by Defendants Giro and Pro Cyclery.

68. As so used, the subject helmet was defective, unfit, and unreasonably dangerous for its foreseeable use in that there was inadequate protection of the head by the helmet, which caused or contributed to the death of Dr. Khiabani.

69. The subject helmet was further defective and unreasonably dangerous in that Defendants Giro and Pro Cyclery failed to provide adequate warnings about dangers that were either known or should have been known by Giro and Pro Cyclery and/or failed to provide adequate instructions regarding the helmet's safe and proper use.

70. The aforementioned death of Dr. Khiabani was a direct and proximate result of a defect or defects in the helmet and/or the failure of Defendants Giro and Pro Cyclery to warn of defects that were either known or should have been known or to instruct in the safe and proper use of the helmet. As a result, Defendants Giro and Pro Cyclery should be held strictly liable in tort to Plaintiffs.

71. As a direct and proximate result of the defective nature of the helmet and said deficiencies in warnings and/or instructions, Decedent Dr. Kayvan Khiabani suffered a catastrophic head injury and ultimately died.

72. As a direct and proximate result of the acts and omissions of Defendants Giro and Pro Cyclery, Decedent sustained past, present, and future lost wages, which would otherwise have been gained in his employment if not for his death, far in excess of Fifteen Thousand Dollars (\$15,000.00).

73. As a direct and proximate result of the acts and omissions of Defendants Giro and Pro Cyclery, the Plaintiff minors each have been deprived of their father's comfort, support, companionship, society, and consortium, and further, each has suffered great grief, sorrow, and extreme emotional distress as a result of the death of their father, to each for general damages far in excess of Fifteen Thousand Dollars (\$15,000.00) and economic damages far in excess of Fifteen Thousand Dollars (\$15,000.00). The minor children also seek to recover for the pain, suffering, and disfigurement of their father.

74. As a direct and proximate result of the acts and omissions of Defendants Giro and Pro Cyclery, prior to her death, Katy Barin was deprived of her husband's comfort, support, companionship, society, and consortium, and further, had suffered great grief, sorrow, and extreme emotional distress as a result of the death of her husband, for general damages far in excess of Fifteen Thousand Dollars (\$15,000.00) and economic damages far in excess of Fifteen Thousand Dollars (\$15,000.00).



75. As a direct and proximate result of the acts and omissions of Defendants Giro and Pro Cyclery, Decedent's Estate and/or Executor Siamak Barin has incurred medical, funeral, and burial expenses, and other expenses relating thereto, far in excess of Fifteen Thousand Dollars (\$15,000.00).

76. As a direct and proximate result of the acts and omissions of Defendants Giro and Pro Cyclery, Plaintiffs have suffered general and special damages in an amount far in excess of Fifteen Thousand Dollars (\$15,000.00).

77. In carrying out its responsibilities for the design, manufacture, construction, assembly, testing, labeling, distribution, marketing, and sale of the subject helmet, Defendant Giro acted with fraud, malice, express or implied, oppression, and/or conscious disregard of the safety of others. As a direct and proximate result of the conduct of Defendant Giro, Plaintiffs are entitled to punitive damages in excess of Fifteen Thousand Dollars (\$15,000.00).

78. Plaintiffs have been required to retain legal counsel to prosecute this action, and are therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

#### **SIXTH CLAIM FOR RELIEF**

#### **(BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AGAINST DEFENDANTS GIRO AND PRO CYCLERY)**

79. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.

80. Giro/Pro Cyclery and Decedent, Dr. Khiabani, entered into a contract for the sale of goods (i.e., the Giro helmet).

81. Defendants Giro/Pro Cyclery had reason to know of the particular purpose for which the helmet was required by Dr. Khiabani (i.e., to wear while riding his road bicycle).

82. Dr. Khiabani relied on the skill or judgment of Defendants Giro/Pro Cyclery to furnish suitable goods for this purpose.

1 83. The helmet sold by Defendants Giro/Pro Cyclery to Dr. Khiabani was not fit for said  
2 purpose and, as a direct and proximate result, Plaintiffs have suffered general and special  
3 damages far in excess of Fifteen Thousand Dollars (\$15,000.00), as outlined above.

4 84. In carrying out its responsibilities for the design, manufacture, construction, assembly,  
5 testing, labeling, distribution, marketing, and sale of the subject helmet, Defendant Giro acted  
6 with fraud, malice, express or implied, oppression, and/or conscious disregard of the safety of  
7 others. As a direct and proximate result of the conduct of Defendant Giro, Plaintiffs are entitled  
8 to punitive damages in excess of Fifteen Thousand Dollars (\$15,000.00).

9 85. Plaintiffs have been required to retain legal counsel to prosecute this action, and are  
10 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

11 **SEVENTH CLAIM FOR RELIEF**

12 **(WRONGFUL DEATH OF KAYVAN KHIABANI, MD**

13 **AGAINST ALL DEFENDANTS)**

14 86. Plaintiffs incorporate by this reference each and every allegation previously made in this  
15 Complaint, as if fully set forth herein.

16 87. Plaintiff minors are the heirs of Decedent and are entitled to maintain an action for  
17 damages against the Defendants for the wrongful death of Dr. Kayvan Khiabani.

18 88. Pursuant to NRS 41.085, Siamak Barin is the Executor of the Estate of the Decedent and  
19 may also maintain an action for damages against the Defendants for special damages and  
20 penalties, including but not limited to exemplary or punitive damages as set forth in NRS  
21 41.085(5).

22 89. As a result of the injuries to and death of Dr. Khiabani, Plaintiffs are entitled to  
23 damages, including, but not limited to: pecuniary damages for their grief and sorrow, loss of  
24

1 probable support, companionship, society, comfort and consortium, and damages for pain,  
 2 suffering and disfigurement of the Decedent.

3 90. As a direct and proximate result of the wrongful death of Dr. Khiabani, Plaintiffs have  
 4 been damaged in an amount far in excess of Fifteen Thousand Dollars (\$15,000.00).

5 91. Plaintiffs have been required to retain legal counsel to prosecute this action, and are  
 6 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.  
 7

8 **EIGHTH CLAIM FOR RELIEF**

9 **(WRONGFUL DEATH OF KATY BARIN, DDS**

10 **AGAINST ALL DEFENDANTS)**

11 92. Plaintiffs incorporate by this reference each and every allegation previously made in this  
 12 Complaint, as if fully set forth herein.

13 93. As a direct and proximate result of the stress caused by the wrongful death of her  
 14 husband, Dr. Kayvan Khiabani, Katy Barin lost her battle against cancer.

15 94. Plaintiff minors are the heirs of Decedent Katy Barin and are entitled to maintain an  
 16 action for damages against the Defendants for the wrongful death of their mother, Dr. Katy  
 17 Barin.  
 18

19 95. Pursuant to NRS 41.085, Siamak Barin is the Executor of the Estate of Katy Barin  
 20 (Decedent) and may also maintain an action for damages against the Defendants for special  
 21 damages and penalties, including but not limited to exemplary or punitive damages as set forth  
 22 in NRS 41.085(5).  
 23

24 96. As a result of the death of Dr. Barin, Plaintiffs are entitled to damages, including, but not  
 25 limited to: pecuniary damages for their grief and sorrow, loss of probable support,  
 26 companionship, society, comfort and consortium, and damages for pain, suffering and  
 27 disfigurement of the Decedent.  
 28

KEMP, JONES & COULTHARD, LLP  
 3800 Howard Hughes Parkway  
 Seventeenth Floor  
 Las Vegas, Nevada 89169  
 (702) 385-6000 • Fax (702) 385-6001  
 kic@kempjones.com

1 97. As a direct and proximate result of the wrongful death of Dr. Barin, Plaintiffs have been  
2 damaged in an amount far in excess of Fifteen Thousand Dollars (\$15,000.00).

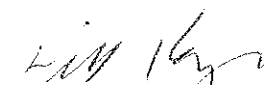
3 98. Plaintiffs have been required to retain legal counsel to prosecute this action, and are  
4 therefore entitled to reasonable attorney's fees and costs of suit incurred in this action.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs pray for judgment of this Court as follows:

- 7 1. Past and future general damages in an amount in excess of fifteen thousand dollars
- 8 (\$15,000.00);
- 9 2. Past and future special damages in an amount in excess of fifteen thousand dollars
- 10 (\$15,000.00);
- 11 3. Past and future damages for the wrongful death of Dr. Kayvan Khiabani, as set forth in
- 12 NRS 41.085, in an amount in excess of fifteen thousand dollars (\$15,000.00);
- 13 4. Past and future damages for the wrongful death of Dr. Katy Barin, as set forth in NRS
- 14 41.085, in an amount in excess of fifteen thousand dollars (\$15,000.00);
- 15 5. Punitive damages in an amount in excess of fifteen thousand dollars (\$15,000.00);
- 16 6. Prejudgment and post-judgment interest, as allowed by law;
- 17 7. Costs of suit and reasonable attorneys' fees, as allowed by law, in an amount to be
- 18 determined; and
- 19 8. For such other and further relief that the Court may deem just and proper.

20 DATED this 17<sup>th</sup> day of November, 2017.

21  
22   
23 WILL KEMP, ESQ. (#1205)  
24 ERIC PEPPERMAN, ESQ. (#11679)  
25 KEMP, JONES & COULTHARD, LLP  
26 3800 Howard Hughes Parkway, 17th Floor  
27 Las Vegas, Nevada 89169  
28 -and-  
PETER S. CHRISTIANSEN, ESQ. (#5254)  
KENDELEE L. WORKS, ESQ. (#9611)  
CHRISTIANSEN LAW OFFICES  
810 South Casino Center Blvd.  
Las Vegas, Nevada 89101  
*Attorneys for Plaintiffs*

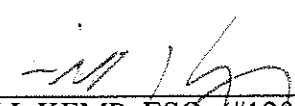
000635  
KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway  
Seventeenth Floor  
Las Vegas, Nevada 89169  
(702) 385-6000 • Fax (702) 385-6001  
kic@kempjones.com

**DEMAND FOR JURY TRIAL**

Plaintiffs by and through their attorneys of record, KEMP, JONES & COULTHARD, LLP and CHRISTIANSEN LAW OFFICES, hereby demand a jury trial of all of the issues in the above matter.

DATED this 17<sup>th</sup> day of November, 2017.

KEMP, JONES & COULTHARD, LLP

  
 WILL KEMP, ESQ. (#1205)  
 ERIC PEPPERMAN, ESQ. (#11679)  
 3800 Howard Hughes Parkway, 17th Floor  
 Las Vegas, Nevada 89169

-and-

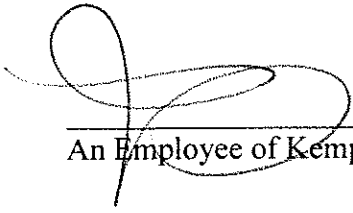
PETER S. CHRISTIANSEN, ESQ. (#5254)  
 KENDELEE L. WORKS, ESQ. (#9611)  
 CHRISTIANSEN LAW OFFICES  
 810 South Casino Center Blvd.  
 Las Vegas, Nevada 89101

*Attorneys for Plaintiffs*

KEMP, JONES & COULTHARD, LLP  
 3800 Howard Hughes Parkway  
 Seventeenth Floor  
 Las Vegas, Nevada 89169  
 (702) 385-6000 • Fax (702) 385-6001  
 kic@kempjones.com

**CERTIFICATE OF SERVICE**

I hereby certify that on the 17<sup>th</sup> day of November, 2017, the foregoing **SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL** was served on all parties currently on the electronic service list via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2.

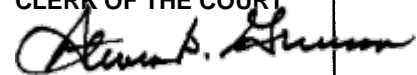


An Employee of Kemp, Jones & Coulthard

KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway  
Seventeenth Floor  
Las Vegas, Nevada 89169  
(702) 385-6000 • Fax (702) 385-6001  
kic@kempjones.com

25

25



**ORDR**

D. LEE ROBERTS, JR. (SBN 8877)  
HOWARD J. RUSSELL (SBN 8879)  
DAVID A. DIAL (*admitted pro hac vice*)  
MARISA RODRIGUEZ (SBN 13234)  
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC  
6385 S. Rainbow Blvd., Suite 400  
Las Vegas, Nevada 89118  
(702) 938-3838  
(702) 938-3864  
[LRoberts@WWHGD.com](mailto:LRoberts@WWHGD.com)

DANIEL F. POLSENBERG (SBN 2376)  
JOEL D. HENRIOD (SBN 8492)  
LEWIS ROCA ROTHGERBER CHRISTIE LLP  
3993 Howard Hughes Pkwy. Suite 600  
Las Vegas, Nevada 89169  
(702) 949-8200  
(702) 949-8398 (Fax)  
[DPolsenberg@LRRC.com](mailto:DPolsenberg@LRRC.com)  
[JHenriod@LRRC.com](mailto:JHenriod@LRRC.com)

*Attorneys for Motor Coach Industries, Inc,*

DISTRICT COURT  
CLARK COUNTY, NEVADA

KEON KHIABANI and Aria Khiabani,  
minors by and through their natural  
mother, KATAYOUN BARIN; KATAYOUN  
BARIN, individually; KATAYOUN BARIN  
as Executrix of the Estate of Kayvan  
Khiabani, M.D. (decedent), and the  
Estate of KAYVAN KHIABANI, M.D.  
(decedent),

Plaintiffs,

*vs.*  
MOTOR COACH INDUSTRIES, INC., a  
Delaware corporation; MICHELANGELO  
LEASING INC. d/b/a RYAN'S EXPRESS, an  
Arizona corporation; EDWARD  
HUBBARD, a Nevada resident; BELL  
SPORTS INC. d/b/a GIRO SPORT DESIGN,  
a Delaware corporation; SEVENPLUS  
CYCLES, INC. d/b/a PRO CYCLERY, a  
Nevada corporation; DOES 1 through  
20; and ROE CORPORATIONS 1 through  
20,

Defendants.

Case No. A-17-755977-C

Dept. No. 14

**ORDER REGARDING**

**"PLAINTIFFS' MOTION  
TO AMEND COMPLAINT TO  
SUBSTITUTE PARTIES"**

*and*

**"COUNTERMOTION TO SET A  
REASONABLE TRIAL DATE UPON  
CHANGED CIRCUMSTANCE THAT  
NULLIFIES THE REASON FOR  
PREFERENTIAL TRIAL SETTING"**

Hearing Date: November 2, 2017  
Hearing Time: 9:30 A.M.



1 On November 2, 2017, this Court heard plaintiffs' motion to amend the  
2 complaint and defendant Motor Coach Industries, Inc.'s countermotion to reset  
3 the trial date. Peter S. Christiansen, William S. Kemp, and Kendelea L. Works  
4 appeared for plaintiffs. D. Lee Roberts, Jr., Howard J. Russell, Daniel F.  
5 Polsenberg, and Joel D. Henriod appeared for defendants.

6 Having considered the briefs and arguments, this Court orders as follows:

7 ***Reset Trial Date***

8 This Court finds good cause to reset the trial date to February 12, 2018.  
9 Pursuant to NRS 16.025, this Court had set the trial for November 20, 2017,  
10 based on the prospect that plaintiff Katayoun Barin might succumb to her  
11 stage-IV cancer before a trial set in the ordinary course. At the time, plaintiffs'  
12 counsel acknowledged that the trial date and discovery schedule should be  
13 adaptable to a change in circumstances. With the passing of Katayoun Barin,  
14 the urgency necessitating the preferential trial setting no longer exists, and  
15 there is good cause under NRS 16.025(3)(b) to set the trial outside the 120-day  
16 window of plaintiffs' original request.

17 The new trial setting will allow the parties to complete discovery and  
18 their pretrial motions as well as finalize the settlements with the other  
19 defendants. Those outstanding issues would have prejudiced Motor Coach and  
20 impeded the orderly course of trial. This result also accords with basic fairness  
21 and the balance of equities. *See Owens v. Storehouse, Inc.*, 773 F. Supp. 416,  
22 417 (N.D. Ga. 1991) (if a party who moved for preferential trial setting is now  
23 deceased, the motion for an expedited trial setting becomes moot), *aff'd*, 984  
24 F.2d 394 (11th Cir. 1993); *see also Hernandez v. Superior Court*, 9 Cal. Rptr. 3d  
25 821, 825 (Cal. App. 2004) (request for a continuance supported by a showing of  
26 good cause ought to be granted).

27 ///

28 ///

1 ***Amended Complaint***

2 In light of the disposition of Motor Coach's counter motion, plaintiffs'  
3 request to amend the complaint is granted. With Katayoun Barin's death, the  
4 proper parties should be substituted.

5 **ORDER**


6 1. Plaintiffs' motion to amend the complaint is GRANTED. They are  
7 hereby permitted to file the complaint attached to their motion filed on October  
8 31, 2017.

9 2. Motor Coach's counter motion for a new trial setting is GRANTED.  
10 The trial date is CONTINUED to February 12, 2018, and the other pretrial  
11 deadlines are amended as follows:

- 12 a. Discovery closes on December 21, 2018  
13 b. Motions *in limine* are due December 8, 2017; oppositions due  
14 January 8, 2018; replies due January 17, 2018. This briefing schedule  
15 applies to the motions *in limine* already filed by plaintiffs.  
16 c. Dispositive motions are due December 1, 2017; oppositions  
17 due December 21, 2017; replies due January 17, 2018. This briefing  
18 schedule applies to the dispositive motion already filed by plaintiffs.  
19 d. Pretrial disclosures are due January 22, 2018  
20 e. Calendar call is January 18 at 9:30 A.M.

21 SO ORDERED.

22 Dated this 15 day of November, 2017.

23  
24   
25 \_\_\_\_\_  
26 DISTRICT JUDGE  
27  
28

Submitted by:

LEWIS ROCA ROTHGERBER CHRISTIE, LLP

By: 

DANIEL F. POLSENBERG (SBN 2376)  
 JOEL D. HENRIOD (SBN 8492)  
 ABRAHAM G. SMITH (SBN 13,250)  
 3993 Howard Hughes Pkwy, Suite 600  
 Las Vegas, NV 89169-5996

D. LEE ROBERTS, JR. (SBN 8877)  
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 DAVID A. DIAL (*admitted pro hac vice*)  
 MARISA RODRIGUEZ (SBN 13234)  
 WEINBERG, WHEELER, HUDGINS,  
 GUNN & DIAL, LLC  
 6385 S. Rainbow Blvd., Suite 400  
 Las Vegas, Nevada 89118  
*Attorneys for Defendant*  
*Motor Coach Industries. Inc.*

Approved as to form and content by:

KEMP, JONES & COULTHARD, LLP

By: 

WILLIAM KEMP (SBN 1205)  
 ERIC PEPPERMAN (SBN 11679)  
 3800 Howard Hughes Parkway,  
 17th Floor  
 Las Vegas, Nevada 89169

PETER S. CHRISTIANSEN (SBN 5254)  
 KENDELEE L. WORKS (SBN 9611)  
 CHRISTIANSEN LAW OFFICES  
 810 South Casino Center Blvd.  
 Las Vegas, NV 89101

*Attorneys for Plaintiffs*

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**MSJD**

D. Lee Roberts, Jr., Esq.

Nevada Bar No. 8877

[lroberts@wwhgd.com](mailto:lroberts@wwhgd.com)

Howard J. Russell, Esq.

Nevada Bar No. 8879

[hrussell@wwhgd.com](mailto:hrussell@wwhgd.com)

David A. Dial, Esq.

*Admitted Pro Hac Vice*

[ddial@wwhgd.com](mailto:ddial@wwhgd.com)

Marisa Rodriguez, Esq.

Nevada Bar No. 13234

[mrodriguez@wwhgd.com](mailto:mrodriguez@wwhgd.com)

WEINBERG, WHEELER, HUDGINS,

GUNN & DIAL, LLC

6385 S. Rainbow Blvd., Suite 400

Las Vegas, Nevada 89118

Telephone: (702) 938-3838

Facsimile: (702) 938-3864

*Attorneys for Defendant*

*Motor Coach Industries, Inc.*

Darrell L. Barger, Esq.

*Admitted Pro Hac Vice*

[dbarger@hdbdlaw.com](mailto:dbarger@hdbdlaw.com)

Michael G. Terry, Esq.

*Admitted Pro Hac Vice*

[mterry@hdbdlaw.com](mailto:mterry@hdbdlaw.com)

HARTLINE DACUS BARGER DREYER LLP

800 N. Shoreline Blvd.

Suite 2000, N Tower

Corpus Christi, TX 78401

Telephone: (361) 866-8000

John C. Dacus, Esq.

*Admitted Pro Hac Vice*

[jdacus@hdbdlaw.com](mailto:jdacus@hdbdlaw.com)

Brian Rawson, Esq.

*Admitted Pro Hac Vice*

[brawson@hdbdlaw.com](mailto:brawson@hdbdlaw.com)

HARTLINE DACUS BARGER DREYER LLP

8750 N. Central Expressway, Suite 1600

Dallas, TX 75231

Telephone: (214) 369-2100

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KEON KHIABANI and ARIA KHIABANI,  
minors by and through their Guardian, MARIE-  
CLAUDE RIGAUD; SIAMAK BARIN, as  
Executor of the Estate of Kayvan Khiabani, M.D.  
(Decedent); the Estate of Kayvan Khiabani, M.D.  
(Decedent); SIAMAK BARIN, as Executor of  
the Estate of Katayoun Barin, DDS (Decedent);  
and the Estate of Katayoun Barin, DDS  
(Decedent);

Plaintiffs,

v.

MOTOR COACH INDUSTRIES, INC., a  
Delaware corporation; MICHELANGELO  
LEASING INC. d/b/a RYAN'S EXPRESS, an  
Arizona corporation; EDWARD HUBBARD, a  
Nevada resident; BELL SPORTS, INC. d/b/a  
GIRO SPORT DESIGN, a Delaware corporation;  
SEVENPLUS BICYCLES, INC. d/v/a PRO  
CYCLERY, a Nevada corporation, DOES 1  
through 20; and ROE CORPORATIONS 1  
through 20,

Defendants.

Case No.: A-17-755977-C

Dept. No.: XIV

**MOTION FOR SUMMARY  
JUDGMENT ON PUNITIVE DAMAGES**

Hearing Date: \_\_\_\_\_

Hearing Time: \_\_\_\_\_

Defendant Motor Coach Industries, Inc. ("MCI"), by and through its attorneys of record, hereby submits the following Motion for Summary Judgment on Punitive Damages pursuant to Rule 56 of the Nevada Rules of Civil Procedure. This Motion is supported by the accompanying Memorandum of Points and Authorities, all pleadings and filings of records, the exhibits attached hereto, and any oral argument the Court may allow.

### NOTICE OF MOTION

PLEASE TAKE NOTICE that **DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ON PUNITIVE DAMAGES** will come on for hearing in the above-entitled Court on the **18** day of **Jan. 2018** ~~2017~~, at **9:30** a.m./p.m. before Dept. XIV of the above-entitled Court.

DATED this 1st day of December, 2017.



D. Lee Roberts, Jr., Esq.  
Howard J. Russell, Esq.  
David A. Dial, Esq.  
Marisa Rodriguez, Esq.  
WEINBERG, WHEELER, HUDGINS,  
GUNN & DIAL, LLC  
6385 S. Rainbow Blvd., Suite 400  
Las Vegas, NV 89118

Darrell L. Barger, Esq.  
Michael G. Terry, Esq.  
HARTLINE DACUS BARGER DREYER LLP  
800 N. Shoreline Blvd.  
Suite 2000, N Tower  
Corpus Christi, TX 78401

John C. Dacus, Esq.  
Brian Rawson, Esq.  
HARTLINE DACUS BARGER DREYER LLP  
8750 N. Central Expressway  
Suite 1600  
Dallas, TX 75231

*Attorneys for Defendant  
Motor Coach Industries, Inc.*

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC  
6385 S. Rainbow Boulevard, Suite 400  
Las Vegas, Nevada 89118  
(702) 938-3838

## MEMORANDUM OF POINTS AND AUTHORITIES

### Introduction

In a classic case of playing Monday morning quarterback, Plaintiffs seek to have a jury assess punitive damages against MCI for alleged design “defects” that MCI was not aware of prior to this lawsuit being filed and that did not violate a single law, regulation or industry standard.<sup>1</sup> Punitive damages may only be assessed if Plaintiffs can show by “clear and convincing” evidence that MCI “consciously” disregarded the safety of the public when MCI sold the motor coach at issue. Since Plaintiffs lack evidence showing that MCI was aware of any of the alleged defects Plaintiffs identify at the time the coach was sold and left MCI’s hands, this Court must dismiss the punitive damages claim.<sup>2</sup>

Plaintiffs claim that punitive damages should be assessed against MCI for the following alleged defects:

- (1) The coach was defectively designed such that the aerodynamics of the coach created an “air blast” that first destabilized Dr. Khiabani as the coach passed him, and then created suction to pull him toward the coach;
- (2) The coach lacked proximity sensors (i.e. blind spot monitoring, forward collision warning, etc.) that would have alerted the coach driver to Dr. Khiabani’s location;
- (3) The coach lacked an S-1 Gard that would have been mounted just before the coach’s rear tires and would have prevented Dr. Khiabani from going under the rear tires; and
- (4) The coach had a blind spot on the right front side of the coach that prevented the coach driver from seeing Dr. Khiabani and thereby avoiding the accident.

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<sup>1</sup> MCI vehemently disputes that any alleged defects exist in the motor coach it sold. The Court need not, however, determine whether the alleged defects in fact exist to grant this Motion. The only issue is whether MCI had knowledge of the alleged defects and then acted with conscious disregard for the public’s safety.

<sup>2</sup> MCI is filing a parallel motion which explains why Plaintiffs cannot carry their burden of proof to sustain a strict products liability claim. The failure of Plaintiffs to sustain that claim makes the derivative claim of punitive damages moot, and MCI maintains that Plaintiffs’ claims of defect fail as a matter of law.

1 In regard to the “air blast” defect, Plaintiffs lack any evidence showing that MCI was or is  
 2 aware of any danger created by this so-called “defect”. Wind tunnel testing was conducted prior to  
 3 production of the MCI “E” Coach, a predecessor of the “J” Coach which was the subject coach  
 4 here,<sup>3</sup> and MCI was not aware of an “air blast” issue presenting any hazard. Further, there is no  
 5 evidence that MCI was ever made aware of any “suction” effect—certainly none sufficient to pull an  
 6 adult male cyclist into the side of the coach. Thus, it is impossible for Plaintiffs to show that MCI  
 7 “consciously” disregarded the public’s safety when it placed the bus on the market.

8 In regard to the “proximity sensors” defect, it is entirely unclear whether Plaintiffs are  
 9 alleging the need for some forward facing sensor, or some collision avoidance system, or some sort  
 10 of device to alert a driver of a cyclist along the side of the vehicle. Plaintiffs have been content to  
 11 simply throw the term “proximity sensor” around loosely in depositions and through their experts.  
 12 In any event, MCI’s witnesses testified that proximity sensors were not, to their knowledge,  
 13 available for its coaches in 2007, when the subject coach was sold. Alternatively, even if some sort  
 14 of proximity sensors were available in 2007, Plaintiffs lack any evidence showing that MCI was  
 15 aware that any such sensors, as Plaintiffs imagine them to be, were available or appropriate for the  
 16 subject coach.

17 In regard to the alleged S-1 Gard “defect”, it is undisputed that MCI had never heard of the  
 18 S-1 Gard prior to its sale of the subject coach, has never installed one on its coaches, and had never  
 19 been requested to place one on a “J” Model coach (the type involved here).<sup>4</sup> Moreover, prior to the  
 20 incident with Dr. Khiabani, coaches designed similar to the subject coach (the “E” and “J” models)  
 21 had only been involved in 3 pedestrian accidents in the last 20 years and none of these accidents  
 22 involved a bicyclist going under the coach’s rear tires. Thus, MCI had no reason to investigate a  
 23

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24 <sup>3</sup> The specific coach at issue is a 2008 model year J4500, sold in late-2007.

25 <sup>4</sup> As discussed herein, any argument that MCI became “aware” of an S-1 Gard through an  
 26 individual named Pablo Fierros is misguided, as Mr. Fierros was not an MCI employee and there is  
 27 no evidence he was presented with any data, studies, or specifications about the S-1 Gard or its  
 effectiveness.



1 device like the S-1 Gard that is solely focused on rear tire safety.

2 In regard to the alleged blind spot defect, it is undisputed that MCI conducted significant  
3 line of sight testing on its coaches to maximize driver visibility. Plaintiffs' dissatisfaction with  
4 what they and their experts believe to be blind spot issues does not translate into *clear and*  
5 *convincing evidence* of a conscious *disregard* for safety.

6 Finally, whatever the merits of the "optimum" and "ideal" coach designs that Plaintiffs'  
7 experts have concocted out of thin air for purposes of this litigation, none of Plaintiffs' experts  
8 allege that MCI's coach violated any laws or regulations. Given Plaintiffs' complete lack of  
9 evidence showing that MCI was aware of the alleged defects with its coach prior to this lawsuit,  
10 summary judgment on Plaintiffs' punitive damages claim is appropriate.

11 **Plaintiffs' Allegations in Relation to Punitive Damages**

12 In their First Claim for Relief against MCI for Strict Liability for a Defective Condition,  
13 Plaintiffs allege as follows:

14 In carrying out its responsibilities for the design, manufacture, construction,  
15 assembly, testing, labeling, distribution, marketing, and sale of the subject bus,  
16 Defendant MCI acted with fraud, malice, express or implied, oppression  
17 and/or conscious disregard of the safety of others. As a direct and proximate  
result of the conduct of Defendant MCI, Plaintiffs are entitled to punitive  
damages in excess of Fifteen Thousand Dollars (\$15,000.00).

18 Second Amended Complaint at ¶ 39. Prior to a claim for punitive damages being presented to the  
19 jury, "[i]t is the responsibility of the trial court to determine whether, as a matter of law, the  
20 plaintiff has offered substantial evidence of malice in fact to support a punitive damages  
21 instruction." *Dillard Dep't Stores, Inc. v. Beckwith*, 115 Nev. 372, 380, 989 P.2d 882, 887 (1999).  
22 It is clear that Plaintiffs do not possess any evidence (much less "substantial evidence") even  
23 tending to show "fraud," "malice," "oppression," or "conscious disregard for the safety of others"  
24 by MCI. As such, MCI is entitled to summary judgment in its favor on Plaintiffs' punitive damages  
25 claim.

26 ///

27 ///

**Statement of Undisputed Facts**

**I. There is No Evidence that MCI was Aware that the Design of the Motor Coach it Sold Could Create an “Air Blast” or “Suction”<sup>5</sup>**

Plaintiffs contend that, even though the subject coach was only going 25 MPH at the time of the accident involving Dr. Khiabani, the aerodynamics of the coach were such that an “air blast” was created that somehow caused Dr. Khiabani to lose control of his bicycle, which was then followed by a “suction” effect by which a bicyclist could be pulled toward the coach. Plaintiffs **speculate** that after the coach created a destabilizing wind effect as it overtook Dr. Khiabani, which pushed him away from the coach, there was a suction effect powerful enough to pull Dr. Khiabani (a 190 lb. male, himself traveling at roughly 10 MPH) into the side of the coach.<sup>6</sup>

Assuming, *arguendo*, that Plaintiffs’ aerodynamics analysis is correct, Plaintiffs lack any evidence showing that MCI had any knowledge of these alleged defects prior to Dr. Khiabani’s accident. This lack of prior knowledge is fatal to Plaintiffs’ punitive damages claim. MCI’s Rule 30(b)(6) designee testified that he had never even heard of an “air blast” prior to this suit. Exhibit 1 at 35:14-15. Prior to this lawsuit, MCI had also never heard of the allegation that the rear tires of a coach can create suction sufficient to have any effect on a cyclist. *Id.* at 135:22-136:4.

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<sup>5</sup> Again, MCI disputes that an “air blast” even in fact did/could occur and disputes the allegations that its coach was defectively designed. However, for purposes of this Motion the only relevant fact is whether MCI was aware that its coaches were likely to produce dangerous “air blasts” that could pull cyclists under the rear tires.

<sup>6</sup> The phrase “speculation” is not simply argumentative here: It is precisely what Plaintiffs intend to ask the jury to do vis-à-vis the “air blast” theory. This will be the subject of a later motion in limine, but the reality is that **no one** (not Plaintiffs, not their experts, not the police) has any idea why Dr. Khiabani’s bicycle entered the bus’s travel lane (which all experts and the police agree occurred). Plaintiffs have tried to avoid that problem by arguing that the “air blast” and “suction” theory is the only one that could be true, but Plaintiffs and their experts cannot exclude other possibilities such as lack of attention on Dr. Khiabani’s part, improper operation of his bicycle, or a failure to properly estimate his own distance away from the coach. In addition to the “air blast” / “suction” theory being a wholly inadequate basis on which to sustain a punitive damage claim, it is in fact a theory wholly devoid of evidentiary support to even be considered as part of Plaintiffs’ underlying product liability claim.

Moreover, aerodynamic testing on models was performed in the design stage of the “E” Model coach, which was the predecessor to the “J” Model, before the “E” Model was placed on the market. Exhibit 2 at 48:13-19. Drag coefficients were also considered in that process, with a goal of improving the drag coefficient in the “E” Model. *Id.* at 34:18-35:9. When the “J” Model was developed, further efforts were taken to reduce the drag coefficient. *Id.* at 35:22-36:6. There is no evidence that MCI was ever made aware that a coach could create such a dangerous “air blast” sufficient to destabilize a 190 lb. cyclist several feet away, or that there would be some concomitant “suction” that would pull the cyclist (himself traveling 10 MPH) toward the coach. Rather, the evidence is that the very issue which Plaintiffs claim as the crux of their air blast / suction theory— aerodynamics—was considered as part of the design of the “E” Model and “J” Model.

## **II. To MCI’s Knowledge, Proximity Sensors Were Not Available for Coaches in 2007**

Plaintiffs also claim that MCI’s coach should have been equipped with “proximity sensors” that allegedly would have prevented the accident. Plaintiffs never clearly identify what type of proximity sensors they believe should have been installed (forward collision warning systems, adaptive cruise control, etc.), and are content to vaguely claim that MCI consciously disregarded some unidentified “proximity sensor”. Regardless of any dispute the parties may have over the relative merits of proximity sensors, however, there is no dispute that MCI was unaware of proximity sensors being commercially available and technologically appropriate for the subject coach in 2007. Exhibit 1 at 69:14-25 – 70:1-16. In 2007, the manufacturer MCI used for its brake system did not even offer proximity sensors for coaches.<sup>7</sup> *Id.* Further, MCI did not have the relevant expertise to design its own proximity sensors. *Id.* at 76:7-18. When collision mitigation

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<sup>7</sup> In their Opposition to this Motion, Plaintiffs will no doubt contend that MCI was not bound to use the same manufacturer for both brakes and “proximity sensors”. However, as MCI’s Rule 30(b)(6) designee explained, to the extent the broad term “proximity sensor” is used in connection with a collision mitigation system, it is critical to use the same manufacturer for both the brakes and the proximity sensors otherwise it will be impossible for the sensors to communicate with the brakes during automatic emergency braking situations. Exhibit 1 at 66:16-25 – 67:1-3. Plaintiffs lack any evidence to the contrary, and would rather argue baldly about “proximity sensors” generally than actually present evidence that there was a specific system available when MCI sold the coach in 2007.

1 systems became available to MCI, MCI promptly adopted the new technology. *Id.* at pp. 64-65.<sup>8</sup>

2 While there is a dispute between the parties regarding whether or not proximity sensors  
3 were, in fact, available to manufacturers and sellers of coaches in 2007, there is no dispute  
4 regarding MCI's good faith understanding that such sensors were not available in 2007 for the  
5 subject coach. In addition to never identifying precisely which vague "proximity sensor" MCI  
6 should have been aware of, Plaintiffs have failed to produce any proof that MCI was aware of the  
7 alleged availability of said proximity sensors for its coaches in 2007. Moreover, other than broad  
8 and unqualified statements by an expert, Plaintiffs have produced no proof that other manufacturers  
9 of similar coaches were equipping similar coaches in North America with what Plaintiffs claim  
10 were appropriate "proximity sensors" in 2007.

11 **III. Plaintiffs Lack Evidence that MCI Should Have Known that It Was Creating a**  
12 **Defective Condition by Not Installing the S-1 Gard on its Coaches**

13 An S-1 Gard Dangerzone Deflector ("S-1 Gard") is a polyurethane device that can be  
14 mounted just before the rear tires of a bus. Exhibit 3. The stated purpose of the S-1 Gard is to  
15 deflect a person's body away from the tires so as to minimize injury. Plaintiffs contend that if MCI  
16 had installed an S-1 Gard on the coach at issue, Dr. Khiabani would have only suffered minor  
17 injuries. However, even assuming, *arguendo*, that Plaintiffs are correct,<sup>9</sup> MCI's failure to install the  
18 S-1 Gard cannot serve as a basis for punitive damages.

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19  
20 <sup>8</sup> It is also important to note that Plaintiffs' theme of "proximity sensors" does not logically  
21 connect with the facts of this case. Since there is no evidence, or claim, that any "proximity sensor"  
22 would have altered the coach operator's conduct, it is impossible to understand how this alleged  
23 defect caused or contributed to the subject accident. Again, Plaintiffs' experts do not identify what  
24 type of "proximity sensor" would have made any difference here, and in fact, the coach operator  
25 testified that if he had some sort of sensor that had alerted him that Dr. Khiabani was near him, he  
26 did not know if it would have changed the situation because of the maneuver Dr. Khiabani made.  
27 Exhibit 4. In fact, in response to a question whether he would have heeded some warning light, Mr.  
Hubbard said he did not know he would. *Id.* at 149:14-19. If the coach operator cannot provide  
clear and convincing evidence that he would have changed his conduct given a theoretical  
proximity sensor, then Plaintiffs plainly do not have clear and convincing evidence to establish a  
punitive damage claim based on the alleged defect of a lack of a "proximity sensor".

<sup>9</sup> Defendant's expert James Funk has opined that the S-1 Gard would not have altered the  
outcome of the accident.

1           **A.       MCI Had Not Heard of the S-1 Gard Prior to 2007**

2           At the time it sold the subject coach, MCI was unaware of the existence of the S-1 Gard and  
3 had never even had an opportunity to investigate whether the S-1 Gard could be effectively and  
4 safely used on MCI buses. Exhibit 1 at 83:18-25 – 84:1. MCI has never had any meetings with S-1  
5 Gard employees. *Id.* at 82:1-25 -83:1-17. Finally, MCI never received a request from a customer  
6 to install an S-1 Gard on a “J” Model coach (the type of coach involved in the accident). *Id.* at  
7 105:4-7. Plaintiffs lack any evidence rebutting these facts.

8           **B.       MCI Had No Reason to Investigate Devices Like the S-1 Gard**

9           Plaintiffs will likely respond to the above by accusing MCI of burying its head in the sand  
10 (i.e. arguing MCI should have taken additional steps to seek out and test the S-1 Gard). However, it  
11 is undisputed that this is the first instance involving an MCI “E” Model or “J” Model where a  
12 bicyclist went under the rear tires. Consider the below testimony by MCI’s Rule 30(b)(6) designee:

13           Q. And are you aware of any prior accidents in which, first, pedestrians came  
14 in contact with an MCI bus?

15           A. In my research on the E and J model that’s been in production for 20 years,  
16 with thousands out there, I did not find one with contact with a bicyclist.

17 Exhibit 1 at 137:9-18. In regard to pedestrian accidents, there have only been 3 incidents with  
18 similar “E” or “J” Model coaches in the last 20 years. *Id.* at pp. 137-39 & 142:15-18. In light of  
19 these undisputed facts, MCI could not have consciously disregarded a risk by selling a coach  
20 without an S-1 Gard.

21           **C.       The S-1 Gard is Not an Industry Standard Safety Device. No Coaches in**  
22           **Nevada Use the S-1 Gard and Very Few Coaches Nationally Use the S-1**

23           While the S-1 Gard has been used on some transit buses, it is undisputed that the vast  
24 majority of private coach manufacturers do not use it. Exhibit 5 at 38:8-12. Indeed, Plaintiffs do  
25 not dispute that **no buses** in Nevada use the S-1. The S-1 Gard is primarily used on public transit  
26 buses (i.e. buses that make many stops around town and operate near curbs and bus stops) rather  
27 than long haul motor coaches like MCI’s coach. The S-1 Gard’s inventor admits that even among

1 public transit agencies only fifty percent actually use the S-1 Gard. *Id.* at 112:11-12. The fifty  
 2 percent number is even more surprising given that the federal government will pay public transit  
 3 agencies to purchase the S-1 Gard. *Id.* at 90:21-25 - 91:1-4. Thus, the S-1 Gard is far from an  
 4 industry standard safety device for over the road motor coaches.

5 In addition, despite Plaintiffs' attempt to rewrite industry standards through their expert  
 6 reports, there was no motor coach industry literature prior to Dr. Khiabani's accident indicating that  
 7 coach manufacturers should add the S-1 Gard to their coaches. For example, a 2008 Transit  
 8 Cooperative Research Program study rated bus curb lights (little round lights by the rear door) as  
 9 being very effective in preventing pedestrians from falling under the bus, but rated the S-1 Gard's  
 10 effectiveness as "unknown." *See* Exhibit 6 at p. 38; *see also* Exhibit 5 at 114:14-25-115:1-20.  
 11 Prior to Dr. Khiabani's accident, no tests had even been done to determine whether or not an  
 12 individual struck by the S-1 Gard mounted on a coach traveling at 25 MPH would survive. *Id.* at  
 13 94:6-10. In light of these undisputed facts, Plaintiffs cannot be permitted to ask a jury to award  
 14 punitive damages against MCI for failing to install the S-1 Gard.

15 **D. The Fact that Pablo Fierros May Have Been Exposed to the S-1 Gard's**  
 16 **Existence at Some Point in Time is Irrelevant**

17 Pablo Fierros was the vice president and manager of Universal Coach Parts ("Universal"), a  
 18 motor coach parts distributor involved with MCI. Exhibit 7 at 9:5-10. While at a trade show during  
 19 the 1997-2000 time period, Mr. Fierros allegedly had a conversation with Mark Barron (owner of  
 20 the company that produces the S-1 Gard), wherein Mr. Barron asked whether Mr. Fierros' company  
 21 would distribute the S-1 Gard.<sup>10</sup> Exhibit 5 at pp. 59-61.

22 Even though such an argument would be baseless, MCI anticipates that Plaintiffs may argue  
 23 that Mr. Fierros's alleged declination to distribute the S-1 Gard shows that MCI is subject to

24 \_\_\_\_\_  
 25 <sup>10</sup> The facts surrounding these allegations are quite hazy. Mr. Barron testified that he is not  
 26 sure where the alleged meeting with Mr. Fierros occurred or when it occurred. Exhibit 5 at pp. 59-  
 27 61. Likewise, while Mr. Fierros vaguely recalled a conversation about the S-1 Gard at a trade  
 show, he could not remember who the conversation was with, when it occurred or where it  
 occurred. Exhibit 7 at 13:22-25 – 14:1-9.

1 punitive damages because MCI (via Mr. Fierros) acted with conscious disregard for the public's  
 2 safety. However, Mr. Fierros' actions cannot subject MCI to punitive damages as he worked for a  
 3 separate company and was not an officer, director or agent of MCI. Exhibit 7 at 9:5-10. While Mr.  
 4 Fierros occasionally interacted with employees of MCI, his job duties while at Universal did not  
 5 include discussing safety features on buses manufactured by MCI. *Id.* at 20:19-25 – 21:1-5.  
 6 Indeed, even Mr. Barron states that he believed Mr. Fierros was only a parts distributor for MCI and  
 7 had no involvement with manufacturing the motor coaches. Exhibit 5 at 118:3-7.

8 Finally, in regard to Mr. Fierros' response to not distribute the S-1 Gard—which Mr. Barron  
 9 acknowledges was a decision based on the item not being one within Universal's format and one it  
 10 did not have the ability to sell—Plaintiffs lack any evidence that this decision was made with express  
 11 or implied malice. Mr. Barron admits that he does not even know why Mr. Fierros declined to  
 12 distribute the S-1 or why MCI does not install the S-1 on its motor coaches. *Id.* at 62:14-20 &  
 13 111:12-17.

14 **IV. Plaintiffs Lack Evidence that MCI was Aware of Blind Spots on its Coach and then**  
 15 **Maliciously Failed to Remedy the Lack of Visibility**

16 Plaintiffs contend that MCI's coach was defective because there was an unusually large  
 17 blind spot on the right front side of MCI's coach created by an "A" pillar and the rear view mirror.  
 18 However, even if this were true, which it is not, this allegation would not subject MCI to punitive  
 19 damages as Plaintiffs lack evidence of express or implied malice by MCI. Line of sight testing was  
 20 performed on MCI coaches before MCI put them on the market, and MCI never became aware of  
 21 any alleged blind spot issues on the subject coach until this lawsuit. Exhibit 1 at 49:4-10 & 54:3-4  
 22 (multiple tests were conducted for drivers in the 5th, 50th, and 90th percentile for height in order to  
 23 "try to enhance, improve [the driver's] visibility as much as you can.").

24 Moreover, the evidence indicates that MCI took its blind spot testing seriously. In one  
 25 instance, MCI was testing a prototype bus with European style mirrors, but MCI's drivers  
 26 complained that the European mirrors created a greater blind spot. Due to this criticism, MCI did  
 27 not put the prototype bus into production and kept its American style mirrors. *Id.* at 58:1-11. The

1 above undisputed facts show that MCI did not consciously disregard the safety of others vis-à-vis  
 2 the visibility on its buses, but rather acted in good faith at all times. Plaintiffs lack any evidence of  
 3 visibility problems being brought to MCI's attention and not being remedied and thus should not be  
 4 permitted to present a punitive damages claim to the jury.

5 **V. None of the Plaintiffs' Experts Have Opined that MCI's Coach Violated a Government**  
 6 **or Industry Standard**

7 While Plaintiffs' 15 experts repeatedly speak of theoretical "optimum" and "ideal" motor  
 8 coaches that are designed for maximum visibility and outfitted with numerous safety devices, they  
 9 are unable to point to a single law, regulation, or industry standard that MCI's coach design  
 10 violated. Plaintiffs lack any evidence that (1) the aerodynamic design of MCI's coach violated a  
 11 law, regulation or industry standard, (2) that the lack of "proximity sensors" was a violation of a  
 12 law, regulation or industry standard, (3) that MCI's design of the "A" pillar and rear view mirror on  
 13 the coach violated any law, regulation or industry standard, and (4) that the lack of an S-1 Gard  
 14 was a violation of a law, regulation or industry standard. Indeed, even the creator of the S-1 Gard  
 15 admits that, unlike a seat belt, the S-1 Gard is not industry mandated. Exhibit 5 at 105:19-24 &  
 16 108:19-23. In light of Plaintiffs' utter lack of evidence supporting punitive damages, their claim  
 17 against MCI must be dismissed.

18 **Argument and Citation of Authority**

19 Summary judgment must be granted "if the pleadings, depositions, answers to  
 20 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no  
 21 genuine issue as to any material fact and that the moving party is entitled to judgment as a matter  
 22 of law." NRCP 56(c); *see Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).  
 23 An issue of material fact is genuine only when the evidence is such that a rational jury could return  
 24 a verdict in favor of the nonmoving party. *Id.* at 731, 121 P.3d at 1031. When a defendant files a  
 25 motion for summary judgment that identifies the absence of facts sufficient to establish a claim for  
 26 relief, the claimant must come forward with facts that are both admissible and sufficient to support  
 27 the asserted claims. *Id.*



If the nonmoving party bears the burden of persuasion at trial, as Plaintiffs do here, “the party moving for summary judgment may satisfy the burden of production by either (1) submitting evidence that negates an essential element of the nonmoving party’s claim, or (2) pointing out . . . that there is an absence of evidence to support the nonmoving party’s case.” *Cuzze vs. University Cmty. Coll. Sys. of Nev.*, 123 Nev. 578, 602–03, 172 P.3d 131, 134 (2007) (internal quotation omitted).

After the moving party demonstrates no genuine issue of material fact exists, to defeat summary judgment the nonmoving party must show the existence of a genuine issue of material fact. *Id.* at 602, 172 P.3d at 134. The party opposing summary judgment is not entitled to build a case on the “threads of whimsy, speculation and conjecture.” *Collins v. Union Fed. Sav. & Loan Ass’n*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983) (affirming summary judgment because plaintiff’s affidavit was insufficient to “produce the requisite quantum of evidence to enable him to reach the jury with his claims”). Further, speculative arguments about what the facts might be at the time of trial do not suffice to withstand a motion for summary judgment. *Wood*, 121 Nev. 731–32, 121 P.3d at 1031. The nonmoving party must present genuine issues of material fact to avoid summary judgment. *Id.* at 732, 121 P.3d at 1031 (The non-moving party “bears the burden to do more than simply show that there is some metaphysical doubt as to the operative facts in order to avoid summary judgment being entered in the moving party’s favor.”).

“The admissibility of evidence on a motion for summary judgment is subject to NRCPP 43(a), and evidence that would be inadmissible at the trial of the case is inadmissible on a motion for summary judgment.” *Adamson v. Bowker*, 85 Nev. 115, 119, 450 P.2d 796, 799 (1969). Thus, “[t]he trial court may not consider hearsay or other inadmissible evidence.” *Id.*; NRCPP 56(e) (summary judgment papers “shall set forth such facts as would be admissible in evidence”).

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II. MCI is Entitled to Summary Judgment Due to the Absence of Any Evidence That MCI Consciously Disregarded Public Safety When it Sold the Coach

A. Legal Standard for Punitive Damages

Punitive damages are not designed to compensate a plaintiff but, instead, to “punish and deter the defendant’s culpable conduct.” *Bongiovi v. Sullivan*, 122 Nev. 556, 580, 138 P.3d 433, 450 (2006). “Punitive damages provide a means by which the community can express community outrage or distaste for the misconduct of an oppressive, fraudulent or malicious defendant and by which others may be deterred and warned that such conduct will not be tolerated.” *Id.*

NRS 42.005 provides that in an action “not arising from contract, where it is proven by clear and convincing evidence”<sup>11</sup> that the defendant has been guilty of oppression, fraud or malice, express or implied, the plaintiff, in addition to the compensatory damages, may recover damages for the sake of example and by way of punishing the defendant.” NRS 42.005(1) (emphasis added). The trial court makes the initial determination, as a matter of law, as to whether the plaintiff has offered substantial evidence of oppression, fraud, or malice to support a punitive damages instruction. *Dillard Dept Stores, Inc. v. Beckwith*, 115 Nev. 372, 380, 989 P.2d 882, 887 (1999).

NRS 42.001 defines conduct that is considered to be oppression, fraud, and malice. Specifically, “oppression” is defined as “despicable conduct that subjects a person to cruel and unjust hardship with conscious disregard of the rights of the person.” NRS 42.001(4). “Fraud” is “an intentional misrepresentation, deception or concealment of a material fact known to the person with the intent to deprive another person of his rights or property or to otherwise injure another person.” NRS 42.001(2). Malice, express or implied, is defined as “conduct which is intended to injure a person or despicable conduct which is engaged in with a **conscious disregard** of the rights or safety of others.” NRS 42.001(3) (emphasis added). Prior to the enactment of the definitions

<sup>11</sup> The “clear and convincing evidence” standard “requires a finding of high probability.” *Shade Foods, Inc. v. Innovative Products Sales & Marketing, Inc.*, 93 Cal. Rptr. 2d 364, 394 (2000). The evidence must be “so clear as to leave no substantial doubt” and “sufficiently strong to command the unhesitating assent of every reasonable mind.” *Id.* at 394 (quoting *In re Angelia P.*, 171 Cal. Rptr. 637 (1981)).

statute, there was discord in the caselaw as to how implied malice should be applied to cases. *See Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 192 P.3d 243 (2008).

The Court in *Thitchener*, stated that both the definitions of malice and oppression utilize conscious disregard of a person's right as a common mental element. *Thitchener*, 124 Nev. at 739, 192 P.3d at 252. Conscious disregard is statutorily defined as "the knowledge of the probable harmful consequences of a wrongful act **and** a willful and deliberate failure to act to avoid those consequences." *Id.* (quoting NRS 42.001(1)) (emphasis added).

The *Thitchener* Court went on to state, "in defining what conduct would amount to conscious disregard, we look no further than the statute's language." *Id.*, 124 Nev. at 743, 192 P.3d at 255. The language found in NRS 42.001 plainly requires evidence that a defendant acted with a culpable state of mind regardless of whether the alleged malice is express or implied. Therefore to justify punitive damages, the defendant's conduct must have exceeded "mere recklessness or gross negligence." *Id.* at 742-43, 192 P.3d at 254-55.

In this case, Plaintiffs vaguely allege that MCI acted with fraud, malice, and/or oppression. Second Amended Complaint at ¶ 39. As should be readily apparent, Plaintiffs lack any evidence that MCI made the "intentional misrepresentations" necessary to permit punitive damages for fraud. To prevail under the "oppression" or "malice" facets of the punitive damages statute, Plaintiffs must present "substantial evidence" that MCI acted with "conscious disregard" for the safety of others and that MCI's conduct was beyond reckless. In the absence of such evidence, Plaintiffs' punitive damages claim fails as a matter of law.

**B. Plaintiffs Lack Evidence that MCI Consciously Disregarded the Danger of an "Air Blast" or "Suction" Being Created by its Coach**

In strict products liability, "constructive knowledge," "substantial knowledge" or "should have known" is not enough to meet the knowledge requirement. *Owens-Illinois, Inc. v. Zenobia*, 601 A.2d 633, 653 (Md. 1992); *Sch. Dist. v. U.S. Gypsum*, 750 S.W.2d 442, 446 (Mo. App. 1988) (mere suggestions from which the defendant might deduce the existence of a dangerous defect are not enough). The plaintiff must show that, armed with actual knowledge, the defendant consciously

or deliberately disregarded foreseeable harm resulting from a defect. *Owens-Illinois*, 601 A.2d at 653; *see also* NRS 42.001(1) (conscious disregard requires “a willful and deliberate failure to act to avoid [the probable harmful] consequences”). *Thitchener* is not to the contrary. There, the Nevada Supreme Court found the defendants **intentionally ignored** an obvious likelihood of all-but-certain harm. *See Thitchener*, 192 P.3d at 247, 255.

Here, there is no evidence (much less obvious evidence) that MCI had access to—and then ignored—information that its coach would create an “air blast” sufficient to affect a cyclist like Dr. Khiabani, or create concomitant “suction” from the rear tires that would pull the cyclist toward the coach. It is undisputed that MCI did not, and still does not, believe that Plaintiffs’ theoretical “air blast” or “suction” create any significant hazards. Further, wind tunnel testing leading to the design of the “E” Coach, which is the predecessor of the subject coach, was performed, and MCI never became aware that a so called “air blast” could cause a bicyclist to lose control, and then be pulled toward the coach by some suction effect by the rear tires.

Finally, Plaintiffs’ experts have not pointed to a single law, regulation or industry standard that was violated by the aerodynamic design of MCI’s coach. In light of this dearth of evidence, Plaintiffs cannot show that MCI consciously disregarded the danger of either a dangerous “air blast” or rear tire “suction” being created by its coach.

**C. Plaintiffs Lack Evidence that MCI Consciously Disregarded the Danger of not Having Proximity Sensors on the Coach**

“Determining whether an act or omission involves extreme risk or peril requires an examination of the events and circumstances from the viewpoint of the defendant at the time the events occurred, without viewing the matter in hindsight.” *KPH Consolidation, Inc. v. Romero*, 102 S.W.3d 135, 144 (Tex. App. 2003) (internal quotations omitted); *Owens-Corning Fiberglas Corp. v. Garrett*, 682 A.2d 1143, 1166-67 (Md. App. 1996) (reversing an award of punitive damages because evidence that defendant kept a product containing asbestos on the market in the 1960s despite having some knowledge that the product might be harmful was insufficient).

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Here, it is undisputed that when the coach was placed on the market by MCI in 2007, MCI was unaware of appropriate proximity sensors available for coaches.<sup>12</sup> Plaintiffs have not presented any evidence contradicting these allegations. Plaintiffs have repeatedly claimed that the absence of “proximity sensors” rendered the motor coach defective, yet have not identified which proximity sensors they believe MCI should have implemented and how, if at all, such sensors would have changed the outcome here. Plaintiffs can no longer stand on vague allegations of “proximity sensors”; rather they must provide clear and convincing evidence that MCI consciously disregarded safety by not installing a proximity sensor that could have avoided the outcome here. They have not done so.

Moreover, Plaintiffs’ experts have not claimed that MCI’s failure to install proximity sensors on the coach back in 2007 violated any law, regulation or industry standard. Plaintiffs have also not asserted that most 2008 model year coaches made by other manufacturers came equipped with proximity sensors. As such, Plaintiffs cannot even come close to showing the extreme “recklessness” and conscious disregard necessary for a punitive damages award on this issue.<sup>13</sup>

**D. Plaintiffs Lack Evidence that MCI Acted with Conscious Disregard by not Installing the S-1 Gard on its Coach**

It is undisputed that MCI had never heard of the S-1 Gard prior to placing the subject coach on the market and had no reason to investigate such a device. Again, MCI’s “E” Model and “J” Model coaches have only been involved in 3 pedestrian accidents over the last 20 years and none of

<sup>12</sup> MCI disputes that proximity sensors were available for coaches in 2007. However, the Court need not reach that factual issue to grant this Motion. Regardless of whether the sensors were available, there is no dispute that MCI was not aware of their availability or suitability for the subject coach.

<sup>13</sup> Notably, the only “proximity sensors” Plaintiffs’ expert mentions are “front proximity sensors” and “forward collision warning” systems and “active cruise control” systems. Exhibit 8. In addition to the fact that this collision occurred on the *side* of the subject motor coach, Plaintiffs’ experts have not identified what proximity sensor would have been installed on the subject coach that would have alerted the driver to Dr. Khiabani’s presence any different than the driver’s own eyes. The Court should not forget which party has the burden of proof here: Plaintiffs must establish which proximity sensor was available and appropriate for the subject coach, and how its installation would have had a causal impact here. They have patently failed to show either.

1 those accidents involved a cyclist, let alone one going under the coach's rear tires.

2 In addition, Plaintiffs lack any evidence indicating that a failure to install an S-1 Gard is a  
3 violation of a law, regulation or industry standard. Indeed, no coaches in Nevada have ever used  
4 the S-1 Gard and very few coaches nationally do so. While the S-1 may be used by transit agencies  
5 (i.e. short haul city buses, not coaches like the one at issue here), at least half of transit agencies  
6 choose not to use the S-1 Gard despite being able to purchase the S-1 with federal funds.

7 In light of the above, Plaintiffs lack any evidence, much less "substantial evidence"  
8 demonstrating that MCI knew that its failure to install the S-1 Gard would likely harm the public.

9 **E. Pablo Fierros Was Not an Employee or Managing Agent of MCI. Thus, Even**  
10 **Assuming Mr. Fierros Engaged in Punitive Conduct, Said Conduct Cannot be**  
11 **Imputed to MCI**

12 Plaintiffs will likely argue that even if MCI did not have actual knowledge of the alleged  
13 benefits of the S-1 Gard, it still engaged in conscious disregard for the public's safety because  
14 Pablo Fierros, an employee of a wholly separate company, was made aware of the S-1 Gard and  
15 declined to distribute it. This argument has no merit because Mr. Fierros was not an employee of  
16 MCI when this allegedly punitive conduct took place.

17 In the context of a punitive damages claim against a corporate defendant, the punitive  
18 conduct must have been committed by an "officer, director, or managing agent" or have been  
19 otherwise ratified by the corporation. NRS 42.007(1). The Nevada Supreme Court has set forth the  
20 following test for determining if an employee is a "managing agent:"

21 The fact that an employee described herself as a 'manager' is not evidence of  
22 the type of managerial capacity that the law requires to charge an employer  
23 punitively with the conduct of a managerial agent. For such to occur, the  
24 managerial agent must be of sufficient stature and authority to have some  
25 control and discretion and independent judgment over a certain area of the  
26 business with some power to set policy for the company.

27 *Nittinger v. Holman*, 119 Nev. 192, 197, 69 P.3d 688, 691 (2003). Where an employee does not  
have discretion to deviate from established policy, that employee is not a managing agent. *Id.* at  
198, 69 P.3d at 691; *see also Terrell v. Cent. Washington Asphalt, Inc.*, 168 F. Supp. 3d 1302, 1319  
(D. Nev. 2016). For example, in *Terrell*, the defendant's truck manager was deemed a managing

1 agent because he had authority to enforce safety regulations but in *Nittinger* a security supervisor  
 2 was not a managing agent because he had no authority to independently establish company policy.  
 3 *Id.*

4 As an initial matter, the fact that Mr. Fierros was an employee of separate company ends the  
 5 inquiry and prevents MCI from being held responsible for his allegedly punitive conduct.  
 6 However, even assuming Mr. Fierros was deemed an “employee” of MCI, he was not a “managing  
 7 agent” because he had no say over changing MCI’s established safety policies. Mr. Fierros was  
 8 merely an employee of a separate parts distributor who happened to have one unremarkable  
 9 conversation with the inventor of the S-1 Gard at a trade show. These facts are hardly sufficient to  
 10 show extreme “recklessness” and conscious disregard by MCI.

11 **F. Plaintiffs Lack Evidence that MCI Acted with Conscious Disregard by Selling a**  
 12 **Coach with Blind Spots**

13 As with the other alleged defects, Plaintiffs have no evidence showing that MCI had actual  
 14 knowledge of a blind spot on the coach prior to the April 18, 2017 accident. Line of sight testing  
 15 was performed before the coach was placed on the market and MCI never became aware of a blind  
 16 spot issue with the “A” pillar and the rear view mirror. Moreover, Plaintiffs do not contend that the  
 17 alleged visibility issues on MCI’s coach violated any law, regulation or industry standard. Thus,  
 18 even assuming that MCI’s coach was defectively designed, which is vehemently denied, such  
 19 defective design cannot subject MCI to punitive damages as MCI was not (and is not) aware of the  
 20 supposed defect and had taken many steps to sell a safe coach.

21 **G. This Case is in Stark Contrast to Cases in Which Punitive Damages Are Upheld**

22 Merely because evidence gives rise to liability for compensatory damages (which in this  
 23 case, it does not) is insufficient to demonstrate conscious disregard. More is required—typically,  
 24 active concealment or downplaying of a known danger. Conversely, so long as a defendant has not  
 25 attempted to conceal or downplay the risks associated with its product, courts have consistently  
 26 refused to find conscious disregard. A 2009 Eighth Circuit case provides a particularly illustrative  
 27 example. In *In re Prempro Products Liability Litigation*, the court considered whether the evidence

presented at trial was sufficient to support a punitive damages award with respect to two defendants – Wyeth and Upjohn. 586 F.3d 547 (8th Cir. 2009). While the court affirmed both defendants’ liability as to compensatory damages, because Upjohn did not conceal or restrict the dissemination of information concerning its product, only Wyeth could be subject to punitive damages. *Id.* at 571-72. Importantly, the court reached this conclusion even though Upjohn: (i) failed to conduct any breast cancer studies for over forty years, despite knowing as early as 1963 that its product might exacerbate existing breast cancer; (ii) refused to conduct follow up studies or research on its products’ breast cancer risk, even after the Degge Group published a report that specifically identified and recommended areas for further research; and (iii) in advertising its product, repeatedly violated federal regulations, even going so far as to market it as the “other half” of Wyeth’s products. The Eighth Circuit nevertheless concluded that the evidence presented did not show conscious indifference sufficient to support an inference of malice on Upjohn’s part.

[Plaintiff] contends that a jury could infer malice because Upjohn failed to conduct an in-house study of the breast cancer risk after the Degge Group found that further study was needed. Upjohn, however, did not conceal or restrict the dissemination of the information. It allowed the Degge Group to publish its findings, thus informing the scientific community of the current state of the science. On this record, then, there was not substantial evidence showing that Upjohn acted with “such a conscious indifference to the consequences that malice may be inferred.”

*Id.* at 572 (quoting *D’Arbonne Constr. Co. v. Foster*, 123 S.W.3d 894, 898 (Ark. 2003)). Thus, so long as a defendant does not conceal or downplay the risks associated with its product, courts have consistently refused to find conscious disregard.

Here, there is a complete lack of evidence indicating that MCI knew anything prior to the sale of its coach regarding (1) air blasts or rear tire suction effects, (2) available or appropriate proximity sensors, (3) the S-1 Gard and (4) blind spots on the right side of the coach. Nor is there any evidence that MCI disseminated false information about the safety of its coaches. MCI is not accused of violating any law, regulation or industry standard. Even assuming, *arguendo*, that Plaintiffs’ compensatory damages claims against MCI have merit, which they do not, there is no precedent for punitive damages being assessed in a case where the seller does not identify that any



1 potential defect exists, sells a product that underwent testing to remedy the very issues Plaintiffs  
 2 complain of, and has not violated any government or industry standard.

### 3 Conclusion

4 It is this Court's duty to serve as a gatekeeper and not permit a punitive damages claim to be  
 5 presented to the jury unless Plaintiffs can show "substantial evidence" of MCI consciously and  
 6 callously disregarding the safety of the public when it sold the coach at issue. Since Plaintiffs lack  
 7 any evidence showing that MCI had prior actual knowledge of the purported design defects that  
 8 Plaintiffs allege played a role in Dr. Khiabani's death, punitive damages are not permitted here.  
 9 MCI requests that the Court GRANT the within Motion and dismiss Plaintiffs' punitive damage  
 10 claim with prejudice.

11  
 12 DATED this 1st day of December, 2017.

13 WEINBERG, WHEELER, HUDGINS,  
 14 GUNN & DIAL, LLC



15 D. Lee Roberts, Jr., Esq.  
 16 Howard J. Russell, Esq.  
 17 David A. Dial, Esq.  
 18 Marisa Rodriguez, Esq.  
 19 Weinberg, Wheeler, Hudgins,  
 20 Gunn & Dial, LLC  
 21 6385 S. Rainbow Blvd., Suite 400  
 22 Las Vegas, NV 89118

23 Darrell L. Barger, Esq.  
 24 Michael G. Terry, Esq.  
 25 Hartline Dacus Barger Dreyer LLP  
 26 800 N. Shoreline Blvd.  
 27 Suite 2000, N Tower  
 Corpus Christi, TX 78401

John C. Dacus, Esq.  
 Brian Rawson, Esq.  
 Hartline Dacus Barger Dreyer LLP  
 8750 N. Central Expressway, Suite 1600  
 Dallas, TX 75231

*Attorneys for Defendant  
 Motor Coach Industries, Inc.*

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC  
 6385 S. Rainbow Boulevard, Suite 400  
 Las Vegas, Nevada 89118  
 (702) 938-3838

**CERTIFICATE OF SERVICE**

I hereby certify that on the 1st day of December, 2017, a true and correct copy of the foregoing **MOTOR COACH INDUSTRIES, INC.'S MOTION FOR SUMMARY JUDGMENT ON PUNITIVE DAMAGES** was served by e-service, in accordance with the Electronic Filing Procedures of the Eight Judicial District Court.

Will Kemp, Esq.  
Eric Pepperman, Esq.  
KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Pkwy., 17<sup>th</sup> Floor  
Las Vegas, NV 89169  
[e.pepperman@kempjones.com](mailto:e.pepperman@kempjones.com)

***Attorneys for Plaintiffs***

Keith Gibson, Esq.  
James C. Ughetta, Esq.  
LITTLETON JOYCE UGHETTA PARK & KELLY  
LLP  
The Centre at Purchase  
4 Manhattanville Rd., Suite 202  
Purchase, NY 10577  
[Keith.Gibson@LittletonJoyce.com](mailto:Keith.Gibson@LittletonJoyce.com)  
[James.Ughetta@LittletonJoyce.com](mailto:James.Ughetta@LittletonJoyce.com)

***Attorneys for Defendant Bell Sports, Inc.  
d/b/a Giro Sport Design***

Michael E. Stoberski, Esq.  
Joslyn Shapiro, Esq.  
OLSON CANNON GORMLEY ANGULO &  
STOBERSKI  
9950 W. Cheyenne Ave.  
Las Vegas, NV 89129  
[mstoberski@ocgas.com](mailto:mstoberski@ocgas.com)  
[jshapiro@ocgas.com](mailto:jshapiro@ocgas.com)

***Attorneys for Defendant Bell Sports, Inc.  
d/b/a Giro Sport Design***

Peter S. Christiansen, Esq.  
Kendele L. Works, Esq.  
CHRISTIANSSEN LAW OFFICES  
810 S. Casino Center Blvd.  
Las Vegas, NV 89101  
[pete@christiansenlaw.com](mailto:pete@christiansenlaw.com)  
[kworks@christiansenlaw.com](mailto:kworks@christiansenlaw.com)

***Attorneys for Plaintiffs***

C. Scott Toomey, Esq.  
LITTLETON JOYCE UGHETTA PARK & KELLY  
LLP  
201 King of Prussia Rd., Suite 220  
Radnor, PA 19087  
[Scott.toomey@littletonjoyce.com](mailto:Scott.toomey@littletonjoyce.com)

***Attorney for Defendant Bell Sports, Inc. d/b/a  
Giro Sport Design***

Eric O. Freeman, Esq.  
SELMAN BREITMAN LLP  
3993 Howard Hughes Pkwy., Suite 200  
Las Vegas, NV 89169  
[efreeman@selmanlaw.com](mailto:efreeman@selmanlaw.com)

***Attorney for Defendants Michelangelo  
Leasing Inc. d/b/a Ryan's Express and  
Edward Hubbard***

///

///

///

///

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC  
 6385 S. Rainbow Boulevard, Suite 400  
 Las Vegas, Nevada 89118  
 (702) 938-3838

Michael J. Nunez, Esq.  
 MURCHISON & CUMMING, LLP  
 350 S. Rampart Blvd., Suite 320  
 Las Vegas, NV 89145  
[mnunez@murchisonlaw.com](mailto:mnunez@murchisonlaw.com)

*Attorney for Defendant SevenPlus Bicycles,  
 Inc. d/b/a Pro Cyclery*

Paul E. Stephan, Esq.  
 Jerry C. Popovich, Esq.  
 William J. Mall, Esq.  
 SELMAN BREITMAN LLP  
 6 Hutton Centre Dr., Suite 1100  
 Santa Ana, CA 92707  
[pstephan@selmanlaw.com](mailto:pstephan@selmanlaw.com)  
[jpopovich@selmanlaw.com](mailto:jpopovich@selmanlaw.com)  
[wmall@selmanlaw.com](mailto:wmall@selmanlaw.com)

*Attorney for Defendants Michelangelo  
 Leasing Inc. d/b/a Ryan's Express and  
 Edward Hubbard*



An Employee of WEINBERG, WHEELER,  
 HUDGINS, GUNN & DIAL, LLC

*27*

*27*

**APEN**

D. Lee Roberts, Jr., Esq.

Nevada Bar No. 8877

[lroberts@wwhgd.com](mailto:lroberts@wwhgd.com)

Howard J. Russell, Esq.

Nevada Bar No. 8879

[hrussell@wwhgd.com](mailto:hrussell@wwhgd.com)

David A. Dial, Esq.

*Admitted Pro Hac Vice*

[ddial@wwhgd.com](mailto:ddial@wwhgd.com)

Marisa Rodriguez, Esq.

Nevada Bar No. 13234

[mrodriguez@wwhgd.com](mailto:mrodriguez@wwhgd.com)

WEINBERG, WHEELER, HUDGINS,

GUNN & DIAL, LLC

6385 S. Rainbow Blvd., Suite 400

Las Vegas, Nevada 89118

Telephone: (702) 938-3838

Facsimile: (702) 938-3864

*Attorneys for Defendant*

*Motor Coach Industries, Inc.*

Darrell L. Barger, Esq.

*Admitted Pro Hac Vice*

[dbarger@hdbdlaw.com](mailto:dbarger@hdbdlaw.com)

Michael G. Terry, Esq.

*Admitted Pro Hac Vice*

[mterry@hdbdlaw.com](mailto:mterry@hdbdlaw.com)

HARTLINE DACUS BARGER DREYER LLP

800 N. Shoreline Blvd.

Suite 2000, N Tower

Corpus Christi, TX 78401

Telephone: (361) 866-8000

John C. Dacus, Esq.

*Admitted Pro Hac Vice*

[jdacus@hdbdlaw.com](mailto:jdacus@hdbdlaw.com)

Brian Rawson, Esq.

*Admitted Pro Hac Vice*

[brawson@hdbdlaw.com](mailto:brawson@hdbdlaw.com)

HARTLINE DACUS BARGER DREYER LLP

8750 N. Central Expressway, Suite 1600

Dallas, TX 75231

Telephone: (214) 369-2100

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KEON KHIABANI and ARIA KHIABANI,  
minors by and through their Guardian, MARIE-  
CLAUDE RIGAUD; SIAMAK BARIN, as  
Executor of the Estate of Kayvan Khiabani, M.D.  
(Decedent); the Estate of Kayvan Khiabani, M.D.  
(Decedent); SIAMAK BARIN, as Executor of  
the Estate of Katayoun Barin, DDS (Decedent);  
and the Estate of Katayoun Barin, DDS  
(Decedent);

Plaintiffs,

v.

MOTOR COACH INDUSTRIES, INC., a  
Delaware corporation; MICHELANGELO  
LEASING INC. d/b/a RYAN'S EXPRESS, an  
Arizona corporation; EDWARD HUBBARD, a  
Nevada resident; BELL SPORTS, INC. d/b/a  
GIRO SPORT DESIGN, a Delaware corporation;  
SEVENPLUS BICYCLES, INC. d/v/a PRO  
CYCLERY, a Nevada corporation, DOES 1  
through 20; and ROE CORPORATIONS 1  
through 20,

Defendants.

Case No.: A-17-755977-C

Dept. No.: XIV

**VOLUME I: APPENDIX OF EXHIBITS  
TO MOTION FOR SUMMARY  
JUDGMENT ON PUNITIVE DAMAGES**

Howard J. Russell, Esq., a resident of the State of Nevada, declares as follows:

I am a licensed attorney currently in good standing to practice law in the state of Nevada and before this Court.

I am an attorney in the law firm of WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC, 6385 South Rainbow Boulevard, Suite 400, Las Vegas, Nevada 89118, and am counsel representing Defendant Motor Coach Industries, Inc., in this action.

I have personal knowledge of the matters contained in this declaration and am competent to testify regarding them.

The exhibits below are true and correct copies as noted:

VOLUME I	
<u>Exhibit</u>	<u>Description</u>
1	Deposition of Virgil Hoogestraat, 10/13/2017
2	Deposition of Bryan Couch, 10/12/2017
3	S1 Gard Product Information
VOLUME II	
<u>Exhibit</u>	<u>Description</u>
4	Deposition of Edward Hubbard, 09/20/2017
VOLUME III	
<u>Exhibit</u>	<u>Description</u>
5	Deposition of Mark Barron, 09/26/2017
6	Transit Cooperative Research Program, Report 125
7	Deposition of Pablo Fierros, 10/08/2017
8	Report of Thomas P. Flanagan dated 10/05/2017

1 I declare under penalty of perjury that the foregoing is true and correct.

2 DATED this 1st day of December, 2017.

3 WEINBERG, WHEELER, HUDGINS,  
4 GUNN & DIAL, LLC

5 

6 D. Lee Roberts, Jr., Esq.  
7 Howard J. Russell, Esq.  
8 David A. Dial, Esq.  
9 Marisa Rodriguez, Esq.  
10 Weinberg, Wheeler, Hudgins,  
11 Gunn & Dial, LLC  
12 6385 S. Rainbow Blvd., Suite 400  
13 Las Vegas, NV 89118

14 Darrell L. Barger, Esq.  
15 Michael G. Terry, Esq.  
16 Hartline Dacus Barger Dreyer LLP  
17 800 N. Shoreline Blvd.  
18 Suite 2000, N Tower  
19 Corpus Christi, TX 78401  
20 John C. Dacus, Esq.  
21 Brian Rawson, Esq.  
22 Hartline Dacus Barger Dreyer LLP  
23 8750 N. Central Expressway, Suite 1600  
24 Dallas, TX 75231

25 *Attorneys for Defendant*  
26 *Motor Coach Industries, Inc.*  
27

7990000  
Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC  
6385 S. Rainbow Boulevard, Suite 400  
Las Vegas, Nevada 89118  
(702) 938-3838

000667

**CERTIFICATE OF SERVICE**

I hereby certify that on the 1st day of December, 2017, a true and correct copy of the foregoing **APPENDIX OF EXHIBITS TO MOTION FOR SUMMARY JUDGMENT ON PUNITIVE DAMAGES** was served by e-service, in accordance with the Electronic Filing Procedures of the Eight Judicial District Court.

Will Kemp, Esq.  
Eric Pepperman, Esq.  
KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Pkwy., 17<sup>th</sup> Floor  
Las Vegas, NV 89169  
[e.pepperman@kempjones.com](mailto:e.pepperman@kempjones.com)

***Attorneys for Plaintiffs***

Keith Gibson, Esq.  
James C. Ughetta, Esq.  
LITTLETON JOYCE UGHETTA PARK & KELLY  
LLP  
The Centre at Purchase  
4 Manhattanville Rd., Suite 202  
Purchase, NY 10577  
[Keith.Gibson@LittletonJoyce.com](mailto:Keith.Gibson@LittletonJoyce.com)  
[James.Ughetta@LittletonJoyce.com](mailto:James.Ughetta@LittletonJoyce.com)

***Attorneys for Defendant Bell Sports, Inc.  
d/b/a Giro Sport Design***

Michael E. Stoberski, Esq.  
Joslyn Shapiro, Esq.  
OLSON CANNON GORMLEY ANGULO &  
STOBERSKI  
9950 W. Cheyenne Ave.  
Las Vegas, NV 89129  
[mstoberski@ocgas.com](mailto:mstoberski@ocgas.com)  
[jshapiro@ocgas.com](mailto:jshapiro@ocgas.com)

***Attorneys for Defendant Bell Sports, Inc.  
d/b/a Giro Sport Design***

///

///

///

///

Peter S. Christiansen, Esq.  
Kendele L. Works, Esq.  
CHRISTIANSSEN LAW OFFICES  
810 S. Casino Center Blvd.  
Las Vegas, NV 89101  
[pete@christianssenlaw.com](mailto:pete@christianssenlaw.com)  
[kworks@christianssenlaw.com](mailto:kworks@christianssenlaw.com)

***Attorneys for Plaintiffs***

C. Scott Toomey, Esq.  
LITTLETON JOYCE UGHETTA PARK & KELLY  
LLP  
201 King of Prussia Rd., Suite 220  
Radnor, PA 19087  
[Scott.toomey@littletonjoyce.com](mailto:Scott.toomey@littletonjoyce.com)

***Attorney for Defendant Bell Sports, Inc. d/b/a  
Giro Sport Design***

Eric O. Freeman, Esq.  
SELMAN BREITMAN LLP  
3993 Howard Hughes Pkwy., Suite 200  
Las Vegas, NV 89169  
[efreeman@selmanlaw.com](mailto:efreeman@selmanlaw.com)

***Attorney for Defendants Michelangelo  
Leasing Inc. d/b/a Ryan's Express and  
Edward Hubbard***



1 Michael J. Nunez, Esq.  
 2 MURCHISON & CUMMING, LLP  
 3 350 S. Rampart Blvd., Suite 320  
 4 Las Vegas, NV 89145  
 5 [mnunez@murchisonlaw.com](mailto:mnunez@murchisonlaw.com)

6 *Attorney for Defendant SevenPlus Bicycles,*  
 7 *Inc. d/b/a Pro Cyclery*

Paul E. Stephan, Esq.  
 Jerry C. Popovich, Esq.  
 William J. Mall, Esq.  
 SELMAN BREITMAN LLP  
 6 Hutton Centre Dr., Suite 1100  
 Santa Ana, CA 92707  
[pstephan@selmanlaw.com](mailto:pstephan@selmanlaw.com)  
[jpopovich@selmanlaw.com](mailto:jpopovich@selmanlaw.com)  
[wmall@selmanlaw.com](mailto:wmall@selmanlaw.com)

*Attorney for Defendants Michelangelo*  
*Leasing Inc. d/b/a Ryan's Express and*  
*Edward Hubbard*



An Employee of WEINBERG, WHEELER,  
 HUDGINS, GUNN & DIAL, LLC

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC  
 6385 S. Rainbow Boulevard, Suite 400  
 Las Vegas, Nevada 89118  
 (702) 938-3838

**EXHIBIT 1**

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**EXHIBIT 1**

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1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA  
3

4 KEON KHIABANI and ARIA KHIABANI, )  
minors by and through their natural )  
5 mother, KATAYOUN BARIN; KATAYOUN )  
BARIN, individually; KATAYOUN BARIN )  
6 as Executrix of the Estate of )  
Kayvan Khiabani, M.D. (Decedent), )  
7 and the Estate of Kayvan Khiabani, )  
M.D. (Decedent), )  
8 )

Plaintiffs, )

9 vs.  
10

MOTOR COACH INDUSTRIES, INC., a )  
11 Delaware corporation; MICHELANGELO )  
LEASING, INC. d/b/a RYAN'S EXPRESS, )  
12 an Arizona corporation; EDWARD )  
HUBBARD, a Nevada resident; BELL )  
13 SPORTS, INC. d/b/a GIRO SPORT )  
DESIGN, a California corporation; )  
14 SEVENPLUS BICYCLES, INC. d/b/a )  
PRO CYCLERY, a Nevada corporation; )  
15 DOES 1 through 20; and ROE )  
CORPORATIONS 1 through 20, )  
16 )

Defendants. )  
17

) Case No.  
) A-17-755977-C  
) Dept. No.  
) XIV

18  
19 VIDEOTAPED DEPOSITION OF VIRGIL HOOGESTRAAT  
20  
21

LAS VEGAS, NEVADA

FRIDAY, OCTOBER 13, 2017  
22  
23

24 REPORTED BY: HOLLY LARSEN, CCR NO. 680, CA CSR 12170  
JOB NO.: 425410  
25

000671

1 VIDEOTAPED DEPOSITION OF VIRGIL HOOGESTRAAT,  
2 taken at 3800 Howard Hughes Parkway, 17th Floor,  
3 Las Vegas, Nevada, on Friday, October 13, 2017, at  
4 9:09 a.m., before Holly Larsen, Certified Court  
5 Reporter, in and for the State of Nevada.

6

7 APPEARANCES:

8 For the Plaintiffs:

9 KEMP, JONES & COULTHARD  
10 BY: WILL KEMP, ESQ.  
11 3800 Howard Hughes Parkway  
12 Seventeenth Floor  
13 Las Vegas, Nevada 89169  
14 702.385.6000

13 CHRISTIANSEN LAW OFFICES  
14 BY: PETER S. CHRISTIANSEN, ESQ.  
15 810 South Casino Center Boulevard  
16 Suite 104  
17 Las Vegas, Nevada 89101  
18 702.240.7979

17 For Motor Coach Industries, Inc.:

18 WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC  
19 BY: HOWARD RUSSELL, ESQ.  
20 6385 South Rainbow Boulevard  
21 Suite 400  
22 Las Vegas, Nevada 89118  
23 702.938.3838  
24 hrussell@wwhgd.com  
25

1 APPEARANCES (Continued):

2 Also Present:

3 TIMOTHY NALEPKA

4 JP MARRETTA, Videographer  
Litigation Services  
5 3770 Howard Hughes Parkway  
Suite 300  
6 Las Vegas, Nevada 89169  
7 702.314.7200  
8  
9  
10  
11  
12  
13  
14  
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VIRGIL HOOGESTRAAT - 10/13/2017

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1 LAS VEGAS, NEVADA; FRIDAY, OCTOBER 13, 2017

2 9:09 a.m.

3 -oOo-

4

5 THE VIDEOGRAPHER: This is the beginning of  
6 Media Number 1 in the deposition of Virgil  
7 Hoogestraat in the matter of Khiabani versus Motor  
8 Coach Industries held at Kemp, Jones & Coulthard on  
9 October 13, 2017, at 9:09 a.m.

10 The court reporter is Holly Larsen. I am  
11 JP Marretta, the videographer, an employee of  
12 Litigation Services. This deposition is being  
13 videotaped at all times unless specified to go off  
14 the video record.

15 Would all present please identify  
16 themselves beginning with the witness.

17 THE WITNESS: Virgil Hoogestraat, MCI.

18 MR. KEMP: Will Kemp, plaintiffs.

19 MR. CHRISTIANSEN: Pete Christiansen,  
20 plaintiffs.

21 MR. RUSSELL: Howard Russell for MCI.

22 MR. NALEPKA: Tim Nalepka for MCI.

23 THE VIDEOGRAPHER: Will the court reporter  
24 please swear in the witness.

25 ///

1 Whereupon,

2 VIRGIL HOOGESTRAAT,

3 having been first duly sworn to testify to the  
4 truth, was examined, and testified as follows:

5

6 EXAMINATION

7 BY MR. KEMP:

8 Q. Would you state your name again and spell  
9 it for the court reporter?

10 A. Virgil Hoogestraat. First name is  
11 V-i-r-g-i-l. Last name is Hoogestraat,  
12 H-o-o-g-e-s-t-r-a-a-t.

13 Q. -- a-a-t, and it's pronounced Hoogestraat?

14 A. Generally it's pronounced Hoogestraat.

15 Q. Hoogestraat. Okay. Hoogestraat. Is that  
16 Dutch?

17 A. That's Dutch. Double vowels is Dutch.

18 Q. Okay. All right. Have you ever had your  
19 deposition taken before?

20 A. Yes.

21 Q. How many different occasions?

22 A. I don't have an exact count.

23 Q. Dozens?

24 A. At least a dozen.

25 Q. Okay. Why don't I just go through the



1 preliminaries real quick. The purpose of a  
2 deposition is to discover facts relevant in a  
3 lawsuit. In this case it's a lawsuit arising out of  
4 a bus accident that occurred on April 18, 2017, here  
5 in Las Vegas.

6 I'm going to be asking you questions.  
7 Hopefully you'll be able to answer them, especially  
8 hopefully since you're designated as the PMK.

9 But in any event, my questions and your  
10 answers will be typed up by the court reporter here  
11 into a little booklet that you'll be given at a  
12 later point in time. At that time you'll have a  
13 chance to review your answers. If you think  
14 anything is wrong, you have the right to change it  
15 and you should change it.

16 But if you do make a change, everybody has  
17 the right to comment upon that at a later point.  
18 For example, they can say, Well, you know,  
19 originally he said A, and now it's B. So there's a  
20 little bit of a premium here on accuracy. And I'd  
21 ask that you give me the best possible answer you  
22 can.

23 I don't think we're going to get really too  
24 technical. You know, we did Mr. Couch and  
25 Mr. Lamothe, and there didn't seem to be a lot of

1 technical terms, but there were a couple. So if you  
2 see that I'm, you know, using a term differently  
3 than you understand it to be used or that there's  
4 some sort of acronym that I'm misunderstanding or  
5 that you're using and I don't understand, please  
6 stop me and ask me to either rephrase the question  
7 or let's try to find some common ground. That way  
8 we don't have to run down a rabbit hole for  
9 30 minutes and then circle back and find out we were  
10 talking about something else.

11 The oath that's been administered to you is  
12 the same oath that's administered in a court of law.  
13 It has the same force and effect. Do you understand  
14 all that before we get started?

15 A. I have one question.

16 Q. Go ahead.

17 A. What's a PMK?

18 Q. A PMK is a person most knowledgeable.

19 A. Okay.

20 Q. So they've designated you -- I suppose  
21 that's a compliment in a way. They've designated  
22 you as the person most knowledgeable on a number of  
23 the subjects that we're going to get into here.  
24 It's also referred to as a 30(b)(6) deposition. You  
25 may have heard that term before.

1 A. Yeah.

2 Q. Okay. All right. Can you give me the  
3 extent of your educational background?

4 A. I have a bachelor's in mechanical  
5 engineering.

6 Q. And where did you get that?

7 A. South Dakota State University.

8 Q. Where is South Dakota State at?

9 A. Brookings, South Dakota.

10 Q. Okay. All right. Were you born in South  
11 Dakota?

12 A. Yes.

13 Q. What city?

14 A. Lennox, South Dakota.

15 Q. Okay. Yeah, our family is from Pierre.

16 And what year did you get the bachelor in mechanical  
17 engineering?

18 A. 1972.

19 Q. Okay. What did you do after that?

20 A. After that I worked for a company called  
21 Chamberlain.

22 Q. What did they do?

23 A. Military ordinance.

24 Q. Anything to do with automobiles?

25 A. No.

1 Q. Okay. Was that up in South Dakota too?

2 A. No. That was in Iowa.

3 Q. Okay. And generally how long did that

4 last?

5 A. Year and a half.

6 Q. Then where'd you go?

7 A. Company called Trane, T-r-a-n-e.

8 Q. Where were they at?

9 A. La Crosse, Wisconsin, although they moved

10 me multiple times.

11 Q. Okay. And what was your job there?

12 A. I was a senior development engineer.

13 Q. For air-conditioning units?

14 A. Yeah. Mostly for buses, rail cars.

15 Q. They made a bus?

16 A. No, they did not.

17 Q. So you made air-conditioning units for

18 buses?

19 A. Yes.

20 Q. Okay. Great. How long did that last?

21 A. Eight years.

22 Q. So '73 to about '81?

23 A. Approximately.

24 Q. Okay. And where did you go in '81?

25 A. '81 for six months I was working for

1 Kelvinator. They had what they called ultra-cold  
2 systems.

3 Q. Is that K or a C?

4 A. Yeah, with a K.

5 Q. K-a-l-v-i-n-a-t-o-r [sic]?

6 A. Yes.

7 Q. And what was your job title there?

8 A. I was chief engineer.

9 Q. Okay. And, again, that's air-conditioning?

10 A. It was refrigeration. Basically the same  
11 thing.

12 Q. Yeah, okay. And how long were you in that  
13 position?

14 A. Only about six months.

15 Q. So '81-'82 time frame?

16 A. Yes.

17 Q. Okay. Then where did you go after that?

18 A. Volvo of North America.

19 Q. Volvo?

20 A. Volvo, V-o-l-v-o.

21 Q. Okay. What was your job position with  
22 them?

23 A. My last job position was chief engineer.

24 Q. For?

25 A. They built a transit bus.

1 Q. Okay. And did that have a number or  
2 something?

3 A. Excuse me?

4 Q. Was that designated by number or model or  
5 something?

6 A. If it did, I don't remember it. It was  
7 just a Volvo transit bus. It may have had a number.

8 Q. Okay. So you were the chief engineer from  
9 what time period?

10 A. '85.

11 Q. '82 to '85?

12 A. Yes.

13 Q. Now, Volvo is centered in Sweden; correct?

14 A. Volvo is located in Sweden.

15 Q. Did they also have a chief engineer in  
16 Sweden?

17 A. Oh, I'm sure. They had -- we imported the  
18 chassis, and we built the body in Chesapeake,  
19 Virginia. So definitely they had a chief engineer  
20 there.

21 Q. Where were you located at?

22 A. Chesapeake, Virginia.

23 Q. All right. And Volvo sold the transit bus  
24 here in the North American market?

25 A. Correct.

1 Q. In terms of volume, how --

2 A. The volume was probably low. It was  
3 probably -- I would think it's certainly less than  
4 500 buses. Maybe less than 300. I don't remember  
5 exactly.

6 Q. Okay. Then what happened?

7 A. Volvo was leaving the North American  
8 market, and I went to work for a company called TMC  
9 which was part of -- TMC and MCI was part of  
10 Greyhound Corp. at that time.

11 Q. And Greyhound owned MCI and TMC, or how did  
12 that work if you know?

13 A. Well, as far as I know, and, again, I'm not  
14 a corporate structure person, I understood they  
15 owned MCI and TMC and at that time, when I went  
16 there, Greyhound Lines. They also owned Dial soap  
17 and a lot of other things. They were kind of a  
18 multi-conglomerate.

19 Q. Okay. So what was your job position at  
20 that point?

21 A. When I joined them, I was supervisor of  
22 engineering.

23 Q. And you were located where?

24 A. Roswell, New Mexico.

25 Q. And that's where Greyhound was located?

1 A. No. Greyhound was -- well, Greyhound Corp.  
2 was located in Phoenix, Arizona.

3 Q. Okay.

4 A. And then MCI was owned -- was in Winnipeg,  
5 Manitoba, and the group at Roswell was called TMC.

6 Q. Was that an existing group at the time you  
7 came?

8 A. Yes.

9 Q. And when you say you were the supervisor of  
10 engineering, was there a particular product that you  
11 were involved with?

12 A. Intercity coaches.

13 Q. And is intercity coaches a different type  
14 of animal than a transit bus?

15 A. Yes.

16 Q. What's the difference between an intercity  
17 coach and a transit bus?

18 A. Well, transit buses are generally what you  
19 see in town here operated on the city streets,  
20 relatively low-speed operation predominantly,  
21 although they have suburbans which can go higher  
22 speed. But predominantly it's for stopping, go  
23 corner to corner if that's where the bus stop is.

24 Intercity coach was more like a  
25 Greyhound-style bus that goes over the road. It's



1 used to tour charter, in addition to what we call  
2 line haul, which is hauling passengers point to  
3 point, say from Phoenix to Tucson or Phoenix to  
4 Las Vegas. That's more of an intercity coach. It  
5 required baggage compartments for baggage, parcel  
6 racks. More of a higher-speed operation.

7 Q. Okay. Was this the first time you worked  
8 on intercity coaches?

9 A. Yes.

10 Q. So this was approximately?

11 A. 1985.

12 Q. '85. And then how long did you keep that  
13 position?

14 A. For a year and a half. Then I was -- TMC  
15 bought the RTS transit group from General Motors.

16 Q. Could you spell that?

17 A. General Motors?

18 Q. No, no. R --

19 A. RTS. It stood for Rapid Transit System.  
20 General Motors, that's how they call that model.

21 Q. Okay. Was that a specific bus or a coach?

22 A. It was a transit bus. It was a -- there  
23 was various model designations underneath that  
24 mostly referencing the width and length of the bus.

25 Q. So at that time were you working both on

1      coaches and the transit buses?

2            A.    No.

3            Q.    Just coaches still?

4            A.    No.

5            Q.    Just transit buses?

6            A.    Transit buses. I was the director of  
7      engineering for TMC, the transit bus group.

8            Q.    And how long did you have that position?

9            A.    Had that till --

10          Q.    We're about '87 I think now; right?

11          A.    No. That was in '85. I was with Volvo  
12      from '82 to '85 if I recall correctly.

13          Q.    '85 to '86 and a half, year and a half, I  
14      had you down as being the supervisor of engineering  
15      for TMC for coaches.

16          A.    Correct. Then the transit bus came around  
17      mid-'86. And then I was on that to -- '92, if I  
18      recall correctly, they sold this to Nova Bus.

19          Q.    They sold the transit bus?

20          A.    Yes.

21          Q.    So TMC sold the transit bus operation to  
22      Nova Bus?

23          A.    Correct.

24          Q.    Okay. And then what happened in 1992?

25          A.    Then I was on a group for a period of time

1 basically the -- when you sell a product and you  
2 have warranties outstanding or any issues, I was in  
3 that group for a period of time until around --

4 Q. Still working for TMC?

5 A. Well, they had a different name for it.  
6 Because they sold the TMC name, I believe it was  
7 called TBBI at that time. Basically it was an  
8 organization, small group, to clean up any issues  
9 with the customers of products we had shipped them.

10 Q. That you had shipped them prior to the  
11 time -- prior to 1992?

12 A. Correct.

13 Q. Okay. So from '92 through -- how long did  
14 you work for this TBBI with regards to the warranty  
15 issues?

16 A. About a year and a half roughly.

17 Q. Okay.

18 A. And then I was moved underneath MCI, and we  
19 had a small group in Roswell that was --

20 Q. Whoa, let's stop right here. Right at this  
21 point in time, '93 and a half or '93-'94, you  
22 started working for MCI?

23 A. Yeah. It was the same company. Just TMC  
24 and MCI were under the same corporate ownership.

25 Q. Right. But you were technically working

1 for TMC, then TBBI, and now in '94 you started  
2 working for MCI?

3 A. Correct.

4 Q. So when you got a paycheck, it said MCI on  
5 it?

6 A. That's what I remember.

7 Q. Okay. And there's an MCI Limited in Canada  
8 and an MCI in the United States. Which were you  
9 working for if you know?

10 A. I don't know. I didn't -- I just remember  
11 it was MCI.

12 Q. Okay. So from '93-'94 forward, what was  
13 your job position with MCI?

14 A. Well, we had a small group in Roswell that  
15 was still working on intercity coaches. Then around  
16 '95 I was sent to Winnipeg until around '96 sometime  
17 to assist in the launch of the E Coach.

18 And prior to -- the group in Roswell at  
19 that time was predominantly involved in -- A, we  
20 were owned by DINA Corp by that time. They were  
21 assisting the DINA in Mexico, as well as they were  
22 doing some power train work on an MC12 for prison  
23 coaches and that kind of work. They had a project  
24 assigned in that regard.

25 Q. When you say a small group in Roswell,

1 you're talking about a small group of engineers?

2 A. Yes.

3 Q. And small would be 10 to 20? What?

4 A. Roughly 20.

5 Q. 20, okay. And were they all housed in the  
6 same place?

7 A. Yes.

8 Q. In other words, there was one building for  
9 the 20 engineers?

10 A. Yes.

11 Q. Okay. And I think I'm a little confused  
12 here. You said you started working for DINA Corp --

13 A. DINA. DINA owned MCI at that period of  
14 time.

15 Q. DINA owned MCI, okay.

16 A. D-I-N-A if I recall correctly.

17 Q. Okay. All right. But you were working for  
18 MCI and DINA was just the parent?

19 A. They owned MCI at that time.

20 Q. But you were actually working for MCI as  
21 opposed to DINA?

22 A. Correct.

23 Q. Okay. So when you're designing the E  
24 Coach -- helping design the E Coach series, you were  
25 actually working for MCI, but it's owned by DINA.

1 Is that fair?

2 A. MCI owned -- yeah. It was towards the end  
3 of the development, mostly to assist in the launch  
4 of the product.

5 Q. Okay. And what was your job responsibility  
6 as a design engineer for the E Coach?

7 A. I was mostly helping them in certain areas,  
8 like finishing up a design before they launched a  
9 product into production. So it varied. We did some  
10 suspension work. We did some areas of the body.  
11 General -- just general work to assist them when  
12 they were going to launch the product.

13 Q. But at that time you were employed by MCI  
14 as opposed to TMC?

15 A. Correct.

16 Q. Okay. And then the E Coach was launched  
17 approximately when?

18 A. '97 if I recall correctly. In that time  
19 period '97-'98.

20 Q. Was there a principal designer or one or  
21 two principal designers for the E Coach?

22 A. Well, at the end. I mean, it changed some.  
23 There was a Mark Sealy at the early stages. Then at  
24 the end Bryan Couch was kind of over -- the design  
25 authority.

1 Q. So it was your understanding that towards  
2 the end, which would have been sometime '95, '96,  
3 '97, Mr. Couch was the overall head of design for  
4 the E Coach series?

5 A. Yeah. I was just there to assist them  
6 while they were launching it.

7 Q. All right. What happened after that in  
8 terms of your employment with MCI?

9 A. '96 I was working -- I was moved to help  
10 DINA. They were launching some products in Mexico  
11 as well as they were going to export a product into  
12 the U.S.

13 Q. When you say you were moved to help DINA,  
14 did you start getting paid by DINA?

15 A. No.

16 Q. But your services were assigned to DINA  
17 personnel or something?

18 A. Pretty much. I was sent down to DINA to  
19 assist them in that.

20 Q. Is DINA a town in Mexico?

21 A. No.

22 Q. Where is that?

23 A. I don't know where DINA Corp is at.

24 Q. Where did you go?

25 A. I went to Sahagun, Mexico.

1 Q. Can you spell that?

2 A. S-a-h-g-u-n [sic]. Sahagun.

3 Q. And roughly where is that at?

4 A. Outside of Mexico City. If I recall  
5 correctly, it's east and north of it.

6 Q. Is that an industrial town or something?

7 A. I wouldn't call it that, but it was a town  
8 in Mexico. That's where the DINA plant was at.

9 Q. Okay. So you said you were helping DINA  
10 develop a product. What product was that?

11 A. At that time they were looking to develop a  
12 product to export into the U.S., an intercity coach.

13 Q. Okay. All right. And then what happened?

14 A. Well, that went on until 2002 roughly.

15 Q. So you were stationed down in this town in  
16 Mexico from '96 to 2002?

17 A. Well, I worked down there quite a bit. I  
18 mean, I still had a home in Roswell, New Mexico.

19 Q. Were you going back and forth?

20 A. Yes.

21 Q. Is the 20-engineer design group still in  
22 Roswell?

23 A. Yes, roughly.

24 Q. And you're the head of that?

25 A. Yes.



1 Q. Okay. Go ahead.

2 A. Then in 2002 I was promoted to vice  
3 president of engineering and I was over at MCI. And  
4 DINA, if I recall correctly, sold the group to  
5 JLLL -- JLL.

6 Q. Is that a joint -- is that a private equity  
7 group?

8 A. Yes.

9 Q. Okay. And do you know what JLL stands for?

10 A. No.

11 Q. Okay. All right. So from 2002 to  
12 approximately when did JLL own MCI?

13 A. Approximately until 2008.

14 Q. Okay. And during that entire time period  
15 you were the vice president of engineering?

16 A. Yes.

17 Q. Was the J Coach developed before that time  
18 or after that time?

19 A. J Coach was started around 2000,  
20 late '99-2000, and was launched around 2001.

21 Q. Did you have anything to do with the design  
22 or development of the J Coach?

23 A. Yeah. I was up in Winnipeg part of the  
24 time. Part of the time I was in Sahagun, part of  
25 the time I was in Roswell, and another part of the

1 time I was in Winnipeg to assist in the launch of  
2 the J Coach.

3 Q. Sahagun to Winnipeg, that sounds like a  
4 tough trip to pack for.

5 A. It's a really tough trip in the wintertime  
6 when you're in Mexico when you fly directly to  
7 Winnipeg.

8 Q. Yeah, that doesn't sound -- okay. And with  
9 regards to the J Coach, we've been advised that  
10 that's basically a continuation of the E Coach.

11 A. It was a variant of the E Coach.

12 Q. Okay. And who was the head of the design  
13 team for the J Coach?

14 A. It was led out of Winnipeg. I don't  
15 recall.

16 Q. What was your role?

17 A. I was brought in to try to get people  
18 assigned to various areas of the bus so we could  
19 launch the J Coach. So I got Capstick to do, like,  
20 the fixed steering. Then the windows were done by a  
21 guy in Winnipeg who's no longer there. But I can't  
22 remember his name. We did some of the surface work.

23 The styling was done by a firm, Design  
24 Works, down in California that Winnipeg approved.  
25 And then the surface work was split. We had some of

1 the surface work done by people in Winnipeg, and  
2 some of it was done by people in Roswell. And then  
3 the electrical, I think I contracted it out to get a  
4 contract to do that because the manpower shortage in  
5 Winnipeg to do electrical. So it was -- basically  
6 the work was distributed to get it done.

7 Q. So it sounds like you were kind of the  
8 overall person that decided who did what? Is that  
9 fair to say?

10 A. No. I was the person that said, Who can we  
11 find to do these various areas? And I'm the person  
12 that suggested certain ways we could do this.

13 Q. Okay. And at that time you're employed by  
14 MCI?

15 A. Yes.

16 Q. And is it MCI Limited or MCI U.S. at that  
17 time?

18 A. Well, it wasn't MCI Limited. So it would  
19 be MCI in the U.S. someplace according to my  
20 paycheck.

21 Q. All right. And then what happened after  
22 that?

23 A. After?

24 Q. I think we're at about 2008 now.

25 A. Oh, 2008. 2008 MCI went through

1 bankruptcy. And then from 2008 to 2009, I was still  
2 vice president of engineering. And then Bryan Couch  
3 was put in charge of engineering.

4 Q. He was the president of engineering?

5 A. No. He was put in charge of engineering.

6 Q. Okay. If you're the vice president of  
7 engineering, does that mean he's above or below you  
8 on an organizational chart?

9 A. Well, he was lateral because I was based  
10 out of Chicago at the time.

11 Q. Okay. Let's back up. When did you move to  
12 Chicago?

13 A. I never moved to Chicago. I was based out  
14 of Chicago.

15 Q. So you didn't live in Chicago but you were  
16 based out of Chicago?

17 A. That's correct.

18 Q. How does that work?

19 A. It means you commute a lot.

20 Q. Where do you stay at when you're in  
21 Chicago? Hotels?

22 A. Hotels.

23 Q. Okay. All right. So we're at 2008-2009.  
24 You're the vice president of engineering. Mr. Couch  
25 is overall in charge of engineering; right?

1 A. Yeah. In Winnipeg, yeah.

2 Q. Okay. And what project were you working on  
3 at that time?

4 A. At that time we were doing some work out of  
5 Chicago on suspension work, looking at different  
6 suspension systems for motor coaches.

7 Q. Including the J series or --

8 A. Including the J series.

9 Q. Okay.

10 A. We were also looking at different  
11 multiplexing systems, different entertainment  
12 systems. That was mostly being done out of Chicago  
13 at the time.

14 Q. All right. And then what happened?

15 A. And then 2010 I was put underneath Bryan  
16 Couch. He was over product planning and engineering  
17 if I recall correctly.

18 Q. Okay. And what was your job?

19 A. I -- mostly at that time, I was mostly  
20 doing regulatory support, regulatory, those kind of  
21 issues.

22 Q. Were you still the vice president of  
23 engineering at that time?

24 A. Yeah. The title was still there.

25 Q. Okay. Any particular project you were

1 working on?

2 A. Mostly it was just regulatory and then  
3 there was -- at that time we started doing some more  
4 work on suspension, vehicle suspension.

5 Q. Okay. And then after 2010 what, if  
6 anything, did you work on?

7 A. Predominantly then we did some regulatory  
8 work. Then back in that period of time, we also  
9 around 2012 decided to go ahead with the independent  
10 suspension systems and I worked on a suspension  
11 update to the J Coach.

12 Q. And when did that come on the market?

13 A. 2014.

14 Q. And when you say "independent suspension,"  
15 is that basically the foundation of the coach on  
16 down, or is that just the wheels?

17 A. It affects the foundation of the coach  
18 because you attach the suspension to the structure.  
19 So you make the necessary changes to the structure  
20 to accommodate the suspension.

21 Q. Okay. Were changes made to the J Coach  
22 structure at that time?

23 A. Only to the point of where the suspension  
24 attached to it and what necessary changes were  
25 required to accommodate that.

1 Q. Okay. And what happened after that?

2 A. That was done in 2014. Since then I've  
3 been mostly doing regulatory work.

4 Q. Okay. All right. Let's try to go through  
5 Exhibit 1.

6 (Exhibit 1 marked.)

7 (Exhibit 2 marked.)

8 BY MR. KEMP:

9 Q. Do you have that there?

10 A. Yes.

11 Q. We probably should take Exhibit 2 and keep  
12 it close by.

13 This is not really directed to a specific  
14 topic though?

15 MR. RUSSELL: It does. It tracks the  
16 Topics 1 through 22.

17 MR. KEMP: Okay. Got it.

18 MR. RUSSELL: Assuming this notice you just  
19 gave us this morning is the same. I don't have the  
20 draft one that you sent to Lee a while ago. So if  
21 that tracks, then it should match up, yeah.

22 BY MR. KEMP:

23 Q. Okay. Item 1 -- do you have Item 1  
24 there? -- is wind tunnel tests performed for buses  
25 from the time period 1997 to 2016 including but not

1 limited to tests for the MCI J4500?

2 A. Yes.

3 Q. Let's just focus on -- the letter just  
4 wants us to talk about the E and J series. Are you  
5 aware of any wind tunnel tests performed during that  
6 time period?

7 A. I have not found any records showing that  
8 we did any.

9 Q. Okay. Now, they gave me a wind tunnel test  
10 yesterday, which I think was '94 or something. Are  
11 you aware of any wind tunnel tests that were  
12 performed prior to 1997?

13 A. I found a record of something that we had  
14 done in 1993 -- that our records showed was 1993.

15 Q. Okay. And that was the wind tunnel test  
16 that was done by someone named Cooper?

17 A. I don't recall that. I just remember the  
18 name of the organization -- it's in Ottawa,  
19 Canada -- that ran the wind tunnel test.

20 Q. Okay. But that was not specific to the E  
21 or the J series; right?

22 A. It was -- it was a -- no, it was not  
23 specific. It was a study.

24 MR. KEMP: Can you ask Pat where -- maybe  
25 this is it. Of course. It's the one I didn't look



1 in.

2 BY MR. KEMP:

3 Q. Are we heading the right way?

4 A. You found the wind tunnel test if that's  
5 what you're asking.

6 Q. Yeah.

7 (Exhibit 3 marked.)

8 BY MR. KEMP:

9 Q. Handing you a document that's marked for  
10 identification as Exhibit 3. Is that the wind  
11 tunnel test you referred to just a second ago?

12 A. Yes.

13 Q. And the date of it is August 1993; correct?

14 A. Yes.

15 Q. And what is the entity that did it for you?

16 A. It was a firm -- Institute of Aerospace  
17 Research.

18 Q. Okay. And were you involved personally in  
19 any way, shape, or form in preparing this or  
20 contracting for this wind --

21 A. No, I was not.

22 Q. So any knowledge you have is just from  
23 reading it?

24 A. That's correct.

25 Q. Okay. Do you know if this was used or

1     relied upon in any way, shape, or form for the  
2     design of the E series or the J series?

3           A.     I would -- I don't know personally because  
4     I was not involved in that part.

5           Q.     Okay.

6           A.     This is a general study of what you should  
7     consider if you're designing a bus for aerodynamic  
8     effects.

9           Q.     Okay. And without getting too simplistic,  
10    basically, if you make the corners round, it will be  
11    more aerodynamically efficient than if they're just  
12    a 90-degree angle; right?

13          A.     In general in a very broad sense, that's  
14    correct.

15          Q.     So round is better than tight angles. Is  
16    that fair to say?

17          A.     In a broad reference, that's true.

18          Q.     All right. Is this your area,  
19    aerodynamics?

20          A.     No.

21          Q.     Okay. And do you have an understanding as  
22    to what the values on some of these wind tunnel test  
23    runs mean?

24          A.     If you're looking at -- what values are you  
25    referring to?

1 Q. I'm referring to the drag coefficients I  
2 think?

3 A. Oh, that's the coefficient of drag.

4 Q. Yes.

5 A. Yeah, I know roughly what that means.

6 Q. Okay. With regards to the coefficient of  
7 drag, let's see what your understanding is. So  
8 Run 13 results in a drag coefficient -- is it drag  
9 coefficient or coefficient of drag?

10 A. I say coefficient of drag, but okay.

11 Q. Is that technically the way you should say  
12 it?

13 A. I've heard it both ways. I can't tell you  
14 which ways technically. They're the same number.

15 Q. So the drag coefficient in whatever Run 13  
16 is is what?

17 A. .376.

18 Q. And what does that mean?

19 A. That's the coefficient of the drag. That's  
20 the resistance of a body going through a fluid.

21 Q. And fluid would include air in your --

22 A. Air is fluid.

23 Q. Okay. All right. And then we go down to  
24 Test 19. I see a .584; right?

25 A. Yeah.

1 Q. So would I be correct that a .36 is more  
2 aerodynamically efficient than a .584?

3 MR. RUSSELL: Objection. Foundation.

4 THE WITNESS: Well, yeah, the drag  
5 coefficient is lower, so its resistance is lower if  
6 that's what you mean.

7 BY MR. KEMP:

8 Q. Okay. So would you expect a lower drag  
9 coefficient to displace less air when the vehicle is  
10 traveling through or traveling, all things being  
11 equal?

12 MR. RUSSELL: Same objection and incomplete  
13 hypothetical.

14 THE WITNESS: No.

15 BY MR. KEMP:

16 Q. No?

17 A. No.

18 Q. Why not?

19 A. It's still the vehicle, you're still  
20 displacing air. The fact that you're allowing the  
21 air to travel around the vehicle is less resistance.  
22 But you're still displacing air.

23 Q. Okay. Have you heard of things called side  
24 forces from the front of buses? Is that a term  
25 you've used?

1 A. What does side forces mean to you? Can  
2 you -- there's a lot of side forces.

3 Q. Okay. Let's just get real simple here.  
4 The bus is traveling and the front of the bus is  
5 confronting air.

6 A. Right.

7 Q. So the air has got to go somewhere; right?

8 A. Right.

9 Q. So some of the air goes to the side?

10 A. Right.

11 Q. What do you call that?

12 A. I don't call it side forces. That's just  
13 displacement of the air moving around the vehicle.

14 Q. Okay. Have you heard the term "air blast"?

15 A. No. I don't know what air blast is.

16 Q. Okay. With regards to the displacement of  
17 air from the front of the vehicle, do you have an  
18 understanding as to where that goes?

19 A. On the front of the vehicle, quite a bit of  
20 it goes across the top because of the slanted  
21 windshields, some comes around the corners of the  
22 vehicle.

23 Q. And some protrudes out from the vehicle?

24 A. It can.

25 Q. Okay. Depending on how fast you're going?

1           A.     Depends how fast and it's a relative term.  
2     It can -- it's -- it comes out -- it comes around  
3     the vehicle. How much it goes out depends on a lot  
4     of factors.

5           Q.     Let's assume you had a J4500 Vintage 2000  
6     and it's traveling 60 miles an hour and we don't  
7     have any crosswinds or any wind at all. All right?  
8     Do you have an understanding as to how far the air  
9     is displaced?

10           MR. RUSSELL: Objection. Foundation.  
11     Outside the scope.

12           THE WITNESS: About -- I don't know what  
13     you mean by how far the air displaced.

14     BY MR. KEMP:

15           Q.     Okay. You've said that the air will go  
16     from the front to the side of the bus. Yes?

17           A.     It goes over the top and some comes around  
18     the side.

19           Q.     Okay. And when it comes around the side,  
20     it does not just stay an inch or 2 from the side  
21     from the vehicle; is that correct?

22           MR. RUSSELL: Objection. Incomplete  
23     hypothetical.

24           THE WITNESS: That would depend on the  
25     speed but if you're --

1 MR. KEMP: Wait a second. You've got to  
2 let Mr. Howard get his objections in.

3 MR. RUSSELL: Objection. Foundation.  
4 Incomplete hypothetical. Outside the scope.  
5 Go ahead.

6 THE WITNESS: That would depend on the  
7 speed. At 60 miles an hour, it would not always  
8 stay tight to the edge of the vehicle. But I don't  
9 know how much it will go out.

10 BY MR. KEMP:

11 Q. Okay. And when you say it wouldn't stay  
12 tight, in my example I said 2 inches, so it would  
13 probably go out more than 2 inches? Do you know  
14 that one way or the other?

15 MR. RUSSELL: Same objections.

16 THE WITNESS: I do not know.

17 BY MR. KEMP:

18 Q. Okay. Does anyone know at MCI?

19 MR. RUSSELL: Objection. Foundation.

20 THE WITNESS: Not that I'm aware of.

21 BY MR. KEMP:

22 Q. Okay. Do you have any expectation as to  
23 how far it could potentially go at 60 miles an hour?

24 A. No, because -- well, I've had buses pass me  
25 while I'm standing at 60 miles an hour and you feel

1 the air moving.

2 Q. How far away are you in those instances?

3 Hopefully more than 2 inches.

4 A. More than 2 inches. But, I mean, maybe a  
5 foot or 2 off the side. You can feel the wind. It  
6 feels like wind. It's basically air being  
7 displaced.

8 Q. Okay. So basically you do have an  
9 understanding that it will come out at least a foot  
10 or 2?

11 MR. RUSSELL: Objection. Foundation.  
12 Incomplete hypothetical.

13 THE WITNESS: It may. It depends on the  
14 speed.

15 BY MR. KEMP:

16 Q. Okay. Now, when the air comes out the  
17 front, let's say a foot or 2, do you have an  
18 understanding as to whether there's a negative  
19 pressure zone being created?

20 A. It's possible. I don't know if that's true  
21 or not.

22 Q. Okay. If there is a negative pressure zone  
23 being created, will that attract air back into the  
24 side of the bus?

25 MR. RUSSELL: Objection. Foundation.



1 Incomplete hypothetical. Outside the scope.

2 THE WITNESS: The air eventually -- it gets  
3 alongside of the vehicle. It comes back in.

4 BY MR. KEMP:

5 Q. So the air hits the front of the bus, goes  
6 out 1 or 2 feet, whatever, and then somehow or  
7 another it comes back in, it's entrained back in?

8 A. I don't know if it goes out 1 or 2 feet. I  
9 just know at some point in time it's along the side  
10 of the vehicle.

11 Q. Okay. Fair. But it comes back in because  
12 of the negative pressure zone?

13 MR. RUSSELL: Same objections.

14 THE WITNESS: Well, if there is a negative  
15 pressure, it's very small.

16 BY MR. KEMP:

17 Q. Well, wouldn't it be proportionate to the  
18 amount of the air that's going out as the side  
19 force?

20 MR. RUSSELL: Same objections.

21 THE WITNESS: I don't think so because if  
22 it's --

23 BY MR. KEMP:

24 Q. Well, wouldn't it be directly proportional?  
25 I mean, of course it would; right?

1 A. I don't know that to be a fact because you  
2 also have air from underneath the vehicle.

3 Q. Okay.

4 A. So I don't know that to be a fact.

5 Q. You think that might be some makeup air for  
6 the negative pressure zone?

7 MR. RUSSELL: Same objections.

8 THE WITNESS: You asked me when we started  
9 this, I am not an aerodynamics expert. You're  
10 asking me things I'm not familiar with.

11 BY MR. KEMP:

12 Q. I know, but you're the PMK for wind tunnel  
13 tests, aerodynamic studies, aerodynamic studies, you  
14 know --

15 A. What I said was I read this report. I was  
16 not part of it. And what it states in this report,  
17 I did read the report.

18 Q. Okay. Fair enough. Back to the drag  
19 coefficient. Would the side force -- and I'm using  
20 side force to refer to the air that hits the front  
21 of the bus that comes out the side that we've been  
22 talking about, the 1 or 2 feet.

23 A. You used the term 1 or 2 feet. I said I  
24 don't know.

25 Q. Okay. I thought you said that you felt air

1 coming out of buses and you were 1 or 2 feet away.

2 A. I did. That was roughly at 60 miles an  
3 hour.

4 Q. Okay. So you don't disagree that you will  
5 have some air displacement that a human being will  
6 be affected by at 60 miles an hour at 1 or 2 feet?

7 MR. RUSSELL: Objection. Incomplete  
8 hypothetical. Foundation. Outside the scope.

9 THE WITNESS: I said I felt some air  
10 movement. I don't agree with your affect, it will  
11 be affected by.

12 BY MR. KEMP:

13 Q. Well, if you felt it, you were affected by  
14 it.

15 A. I disagree. If you feel air movement -- I  
16 mean, I feel wind when I'm outside. I'm not  
17 affected by it. I just feel it.

18 Q. All right. I don't want to argue about  
19 semantics.

20 Using the situation again where you feel  
21 air at 1 or 2 feet with a 60-mile-an-hour bus, would  
22 the amount of force of that air change depending on  
23 the drag coefficient of this particular bus?

24 MR. RUSSELL: Same objections.

25 THE WITNESS: I don't know.

1 BY MR. KEMP:

2 Q. So, in other words, if Bus A had a .36 drag  
3 coefficient and Bus B had a .584 drag coefficient,  
4 do you know whether or not the intensity of what  
5 I've called the side force changes one way or the  
6 other?

7 MR. RUSSELL: Same objections.

8 THE WITNESS: No, I don't.

9 BY MR. KEMP:

10 Q. Do you have any expectation as an engineer?

11 MR. RUSSELL: Same objections.

12 THE WITNESS: No. Because the drag  
13 force -- drag, like I said, is resistance going  
14 through a fluid. Most of the drag on a bus is in  
15 the back end. So I don't know. I don't know.

16 BY MR. KEMP:

17 Q. Okay. All right. Now, with regards to the  
18 rest of the report, this does not deal with a  
19 predecessor of the E series; is that correct?

20 A. Predecessor of -- excuse me?

21 Q. We've been told that the D series served as  
22 sort of a model for the E series. Do you agree or  
23 disagree with that proposition?

24 MR. RUSSELL: Object to the extent it  
25 misstates prior testimony that the D series was a

1 model for the E series.

2 MR. KEMP: Mr. Couch I thought said the D  
3 series was the predecessor of the E series. They  
4 took some of the features of it and made it into the  
5 E series.

6 MR. RUSSELL: I don't believe he testified  
7 to that, but you can ask Mr. Couch [sic] what his  
8 understanding is.

9 THE WITNESS: Well, we built the D series  
10 before the E series, but there are very few parts  
11 that are common between the E series and the D  
12 series.

13 BY MR. KEMP:

14 Q. Okay. Let me ask it differently.

15 Would any portion of this wind tunnel test  
16 that I see as Exhibit 3 be directly applicable to  
17 either the E series or the J series?

18 A. I -- as I stated previously, I believe they  
19 used some of this as a guideline to the styling for  
20 the E series at that time. But I wasn't involved.  
21 So exactly what they used I don't know. But the  
22 effect of certain shape changes and stuff, I'm sure  
23 it was a guideline on what you should look at.

24 Q. Okay. Do you know Mr. Care Cooper, the  
25 author of this study?

1 A. No, I do not.

2 Q. Okay. And do you know who Dr. Alias is?

3 A. No, I do not.

4 Q. Is there a reason this report is in English  
5 and French?

6 A. It was done in Ottawa, Canada. So they  
7 speak both English and French. A lot of things in  
8 Canada are English and French.

9 Q. Okay. All right. What is the reason that  
10 a drag coefficient is important to a bus  
11 manufacturer?

12 A. Fuel economy.

13 Q. Any other reason?

14 A. Not that I'm aware of.

15 Q. So the better the aerodynamics in general,  
16 the better the fuel economy?

17 A. Generally.

18 Q. And is fuel economy a selling point when  
19 you sell the buses?

20 A. Can be an item of discussion, but I don't  
21 know that it sells buses -- helps sell buses.

22 Q. Okay. Directing your attention to the back  
23 of the report, specifically do you see the MCI  
24 numbers on the bottom?

25 A. Yes.

1 Q. So page 896, for example, there's some sort  
2 of model in here.

3 A. 896. Figure 18A?

4 Q. Right. Do you know whether or not that  
5 model is like the E series? The J series? What was  
6 the reason that the model was put in this particular  
7 shape? Do you have any idea?

8 A. Well, if you look in the previous part of  
9 the report, they had various front ends and various  
10 rear ends. Two rear ends that I recall and one rear  
11 end and various front ends, even competitors' front  
12 ends they kind of tried to simulate.

13 As I said previously, this is, in my  
14 opinion, an overall study of changes that you could  
15 consider to improve -- reduce drag.

16 Q. More of a general study?

17 A. In my opinion it's a general study.

18 Q. Okay. All right. And I think you've  
19 already said this is the only study you're aware of,  
20 period, not just the only study from 2007 to 2016?

21 A. No. I said I found this study. I have not  
22 found any other studies. Whether they exist or not,  
23 I have not found them.

24 Q. Okay. And whether they exist or not, still  
25 are you aware of any that were done?

1           A.    Like I said, I have not found any other  
2   studies.  And I searched as much as I can and  
3   finally found this one a very short time ago.

4           Q.    Where did you search at?  Roswell?  
5   Winnipeg?

6           A.    Winnipeg.  All the records we have in  
7   Winnipeg.  Roswell has no records.

8           Q.    Okay.  And how are the Winnipeg records  
9   maintained?

10          A.    We have a database for all our test  
11   reports.

12          Q.    So there's like a computer list of all the  
13   test reports, and then you go to some file and find  
14   them, or how does that work?

15          A.    Well, you search the files.  You go through  
16   the files and then, based on whoever put it in, what  
17   name they put it in, basically you end up pulling up  
18   almost every file.

19          Q.    Okay.  Item number -- do you still have  
20   Exhibit 1?

21          A.    This is Exhibit 1.

22          Q.    Item Number 2 is aerodynamic studies  
23   performed for buses including but not limited to  
24   aerodynamic studies for the J4500.  Do you know of  
25   any aerodynamic studies other than this wind tunnel



1 test that we've talked about as Exhibit 3?

2 A. Not that I've been able to find.

3 Q. So, as far as you know, there would be no  
4 aerodynamic study specifically for the E series;  
5 correct?

6 A. I did not find any aerodynamic studies  
7 specific to the E Coach.

8 Q. And you didn't find any aerodynamic studies  
9 specific to the J Coach either; correct?

10 A. That's correct.

11 Q. All right. And then the last one -- excuse  
12 me. The third one is aerodynamic studies for the  
13 rear wheels of the -- I guess we're limited to the E  
14 series and the J series. Did you find anything like  
15 that?

16 A. The only thing I did see is there was some  
17 looking into the spray pattern coming off the wheels  
18 as far as it affected the radiator intake or the  
19 alternator intake, but it's really not an  
20 aerodynamic study.

21 Q. And by "spray pattern," are we talking  
22 about water? Debris? What being sprayed?

23 A. Whatever gets sprayed off the tires.

24 Q. Would include water and debris?

25 A. Yes.

1 Q. And by "spray pattern," you're just  
2 basically looking at where that goes?

3 A. Correct.

4 Q. Okay. Does that really have anything to do  
5 with aerodynamics?

6 A. I didn't think so. But, I mean --

7 Q. Okay. All right. Now, Item Number 4 asked  
8 for the general parameters of the design or  
9 engineering for right-side visibility for the time  
10 period 1997 to 2016. Do you see that one?

11 A. Yes.

12 Q. Okay. What were the general parameters  
13 limited to the E series and the J series?

14 A. At that time, we did a computer model that  
15 we'd look and we'd locate the eye in the driver's  
16 seat. And from that eye, get the view that the  
17 driver would see. There was studies done in that  
18 regard. There's no records of those studies because  
19 they were studies.

20 Q. Okay. Are those called line of sight or  
21 visibility optimization studies or something like  
22 that?

23 A. Well, we called them line of sight. It  
24 would show you what you could see from the driver's  
25 seat. You would locate the driver's eye and you

1 would look out as far as what the -- particularly  
2 the windshield and the wiped area and the defrost  
3 area and those kind of things are clear.

4 Q. When you do the line-of-sight study, how do  
5 you account for the fact that drivers are different  
6 sizes and they put their seats in different  
7 adjustment --

8 A. There's SEE guides on the 5 percentile, the  
9 50 percentile, to 90 percentile. You try to move  
10 the eye relative to those.

11 Q. So you think there was computer modeling  
12 done for the E series and the J series?

13 A. It was not done for the J series. I think  
14 it was done for the E series because that would be  
15 common practice.

16 Q. Okay. And so the computer modeling in  
17 general was done to try to see what the driver would  
18 see with regards to, in this case we're talking  
19 about right-side visibility?

20 A. In this particular case, what he would see  
21 looking through the windshield to the mirror and  
22 down to the right-side visibility.

23 Q. And you said you don't think the computer  
24 modeling exists as we sit here today?

25 A. I have found no records of it. But back

1 then and still today, when we do computer modeling,  
2 we do not do a record of it because it's an  
3 engineering study.

4 Q. There's no printout made at some point?

5 A. No. Because it's done on a computer.

6 Q. Right.

7 A. It's done by engineers. Drawings are  
8 intended for communication of design intent. And  
9 this is not a communication of design intent, so we  
10 don't do a computer printout.

11 Q. Okay. Hypothetically, if we built the bus  
12 out of glass or a clear substance, if that could be  
13 done, hypothetically, okay, would you agree with me  
14 that the visibility under that hypothetical would be  
15 greater than the visibility of the actual J4500?

16 A. If the whole bus was built out of glass?

17 Q. Right.

18 A. With no structure?

19 Q. The glass is the structure.

20 A. The glass is the structure? I -- I don't  
21 know how you hypothetically design a vehicle with  
22 glass as the structure.

23 Q. Let's assume it could be glass or acrylic  
24 or something you could see through. Okay? That  
25 would have no visibility obstruction whatsoever;

1 right?

2 A. I disagree.

3 Q. You think if it's glass you would still  
4 have a problem seeing through?

5 A. No. I'm saying if you mount a mirror on a  
6 bus -- because you have to have mirrors to see along  
7 the side. A mirror by itself is a blockage of  
8 visibility of whatever is behind the mirror.

9 Q. Okay. So what you're saying is you always  
10 have some visibility obstruction with a bus no  
11 matter what you make it out of. Is that pretty much  
12 what you're saying?

13 A. I'm saying that there is, like the mirror,  
14 whatever is behind that mirror, when you're looking  
15 out there. So the driver on a commercial vehicle  
16 has to move sometimes in his seat to be able to see  
17 what's on the other side of that mirror.

18 Q. Let's -- so the mirror would block  
19 visibility in some cases. Yes?

20 A. Mirror -- what's behind that mirror would  
21 block his visibility --

22 Q. In some cases?

23 A. In some cases.

24 Q. And the same would be true of the A pillar?

25 A. The A pillar, if it's -- not in your

1 scenario where it's all glass.

2 Q. Let's go to a real J4500.

3 A. Let's go real world.

4 Q. Okay.

5 A. If that's all right. And, yeah, it will --  
6 it is a blind spot. Although because the driver is  
7 quite a ways away from it, the angle is very narrow  
8 for the right-hand A pillar. But an A pillar in all  
9 vehicles creates somewhat of a blind spot.

10 Q. Okay. And what about -- between the window  
11 and the bottom of the side of the bus there's  
12 something called a sill we've heard it referred to?  
13 The sill divides the window on the right side from  
14 the bottom. What do you call that?

15 A. You can call it anything you want. It can  
16 be called a sill.

17 Q. Okay. So the solid structure, if it is  
18 solid, of the bus, under the window from the sill on  
19 down, that would also be a right-side obstruction?

20 A. No.

21 Q. Why not?

22 A. Because when the driver is driving the bus,  
23 his number one thing is to look out the windshield  
24 to see where he's going.

25 Q. Okay.

1           A.    You don't want him looking back behind him  
2   while he's driving forward.

3           **Q.    You don't want him looking sideways?**

4           A.    Well, he uses his mirrors to look along the  
5   side.  And he has to -- on a turn, he may look to  
6   the side, but not to the back of it.

7           **Q.    The back of the bus?**

8           A.    You don't want him looking backwards when  
9   he's driving forward.

10          **Q.    Do you want him looking sideways?**

11          A.    If he's turning that direction, he may turn  
12   sideways to see if there's an obstruction or  
13   something -- and a danger for him that he should  
14   take into account.

15          **Q.    If he's driving straight though, you  
16   wouldn't want him to look to the right side?**

17          A.    No.  I'm saying I don't want him to look  
18   back.

19          **Q.    I know.  We're past that.**

20          A.    Okay.

21          **Q.    You want him to look to the right side?**

22          A.    He can.  If he sees -- if he's checking  
23   around, that's part of his function.

24          **Q.    Okay.  But anyway, the reason you do the  
25   line-of-sight study is to attempt to minimize the**

1 right-side blind spots from the mirror, A pillar,  
2 and other --

3 A. You try to enhance, improve his visibility  
4 as much as you can.

5 Q. That's the reason you do the line-of-sight  
6 study?

7 A. That's correct.

8 Q. Now, earlier we looked at a wind tunnel  
9 test that compared -- I don't know -- ten different  
10 types of bus designs, whatever it was, multiple  
11 types of bus designs?

12 A. Yeah. Multiple front ends, two rear ends,  
13 and various mirrors.

14 Q. Are line-of-sight studies also done to  
15 compare different types of buses or different  
16 options? You said there was computer modeling. Is  
17 there line-of-sight studies that compare different  
18 options here?

19 A. I don't -- which option are you referring  
20 to?

21 Q. Well, using mirrors for example. You're  
22 familiar with European mirrors?

23 A. Yes.

24 Q. Okay. So the line-of-sight study would be  
25 different for a European mirror than a mirror that's



1 mounted on the right-hand side of the bus; right?

2 A. Are you talking about what we refer to as  
3 rabbit ears where they hang down like in Europe? We  
4 refer to them as rabbit ears. The driver -- you  
5 would do a line-of-sight study. Have to do that if  
6 you change your mirrors to those type of mirrors.

7 Q. I thought in Exhibit 3 they were referred  
8 to as European mirrors.

9 A. Typically European mirrors, sometimes  
10 referred to that way. But I can't tell you in 1993  
11 what they meant by European mirrors.

12 Q. Would I be correct that there would be a  
13 difference in a line-of-sight study for a European  
14 mirror that you called rabbit ears and a mirror  
15 mounted such as the J4500 to the right side of the  
16 vehicle?

17 A. It wouldn't be a different line -- it would  
18 be the same line. You would do a line-of-sight  
19 study. I'm not sure what you mean by different.

20 Q. Well, the mirrors are in different  
21 locations geographically vis-a-vis the driver;  
22 right?

23 A. Correct.

24 Q. So the line of sight --

25 A. Would be different.

1 Q. That's my point. There's different  
2 line-of-sight results for a European mirror versus a  
3 right-side mirror. Yes?

4 A. No, not necessarily. You do the  
5 line-of-sight study, but what he sees in the line of  
6 sight may be the same.

7 Q. And generally do you think there's more or  
8 less right-side obstruction with a European mirror  
9 than a right-side mounted mirror?

10 MR. RUSSELL: Objection. Foundation.

11 BY MR. KEMP:

12 Q. Or the same?

13 A. They have different. But I think it's  
14 about the same.

15 Q. And do you have any data, any studies, that  
16 support that proposition?

17 A. No.

18 Q. So that's a gut opinion, or what is that?

19 A. That's just my opinion.

20 Q. Okay. Is there any way we could test that  
21 opinion?

22 MR. RUSSELL: Objection. Foundation.  
23 Incomplete hypothetical.

24 THE WITNESS: Well, you could do a  
25 line-of-sight study with the European mirror and

1 compare it to the line-of-sight study we do in the  
2 U.S.

3 BY MR. KEMP:

4 Q. Okay. But as far as you know, that hasn't  
5 been done?

6 A. I disagree.

7 Q. That has been done?

8 A. I'm saying at one time we had what we call  
9 the hang-down mirrors we did on a bus to -- and that  
10 was done in 2000. And at that time it looked about  
11 the same. The problem is the drivers insist we --  
12 they won't accept it.

13 Q. Okay. When you say "we" had, you mean MCI  
14 was making a bus with the European-style mirrors?

15 A. We made a prototype, but that's all we ever  
16 did.

17 Q. And were you involved in that project?

18 A. Yes.

19 Q. What was -- was there a name for the  
20 project?

21 A. No. That was in the initial G model that  
22 was done out of Mexico.

23 Q. And was that done for the DINA group we  
24 talked about earlier?

25 A. Yes.

1           Q.    So basically there was some sort of  
2   line-of-sight comparison studies between that  
3   prototype bus's hang-down mirrors and the mirrors  
4   such as the J4500 has?

5           A.    We didn't do a comparison. We did a -- we  
6   did a typical line of sight and we did the mirrors.  
7   We showed it to a customer. And the drivers would  
8   not accept it. They said it was more -- created  
9   more of a blind spot than what we normally had. So  
10   we had to scrap it and go back to what we had been  
11   doing previously.

12          Q.    And the blind spot you normally had, you're  
13   just referring to the type of blind spot we've  
14   already discussed for J4500 for the mirrors, the A  
15   pillar --

16          A.    Correct. It was a blind spot -- the mirror  
17   blind spot they thought was greater than the typical  
18   mirrors we installed on the bus. So that's why we  
19   had to scrap it.

20          Q.    In Volvo, who you used to work for, they  
21   make their buses with European-style mirrors?

22          A.    Today.

23          Q.    Yes?

24          A.    Didn't back then, but today.

25          Q.    Today they do. And do you think those have

1 blind spot problems --

2 MR. RUSSELL: Objection.

3 BY MR. KEMP:

4 Q. -- or line-of-sight problems?

5 MR. RUSSELL: Foundation. Incomplete  
6 hypothetical. Outside the scope.

7 THE WITNESS: I don't know.

8 BY MR. KEMP:

9 Q. And if I ask you whether or not the  
10 right-side obstruction was more or less between a  
11 J4500 and a Volvo bus that's made today, would you  
12 have any opinion or answer to that?

13 MR. RUSSELL: Same objections.

14 THE WITNESS: I have no answer to that. I  
15 don't know.

16 BY MR. KEMP:

17 Q. And by the way, this isn't an endurance  
18 contest. If you need a break, I mean, Howard takes  
19 breaks pretty frequently, more than I do. But if  
20 you need a break, let me know.

21 MR. RUSSELL: Tough crowd on a Friday.

22 THE WITNESS: Trust me. At my age you need  
23 breaks every once in a while.

24 BY MR. KEMP:

25 Q. Anytime you need a break, I'm good. All

1 right. Okay.

2 So back to 5. With regards to visibility  
3 studies, the one you've referred to for DINA that  
4 was done in Mexico with the hang-down mirrors, is  
5 that the only visibility study you're aware of that  
6 MCI has for a hang-down mirror?

7 MR. RUSSELL: Objection. Misstates  
8 testimony as to who it was for.

9 THE WITNESS: What I said previously is we  
10 did -- we would do the standard visibility study  
11 of -- when we installed that mirror, that if viewed  
12 along the side of the bus, it worked as we hoped it  
13 would to see what we could do. What you asked is  
14 did we do a comparison? We did not do a comparison.  
15 We did what we typically do.

16 BY MR. KEMP:

17 Q. Okay. You do what you typically do for the  
18 hang-down --

19 A. No. We typically do for mirrors is you  
20 do a visibility -- see if the line of sight, to see  
21 the mirrors, that the mirror is mounted in a  
22 proper -- it can be in a proper position to be able  
23 to look along the side of the bus.

24 Q. Okay. When you say you do a visibility  
25 study, is this just someone sitting in the bus, or

1 is this a computer model, or what is this?

2 A. Both.

3 Q. So computer models were done for the J  
4 series?

5 A. No. I said they were not.

6 Q. Were not. Yeah, that's what I thought you  
7 said.

8 A. Previously I said they were not.

9 Q. Okay. So the only computer model is the  
10 one for the E series that no records exist for?

11 A. I presume they were done because that's our  
12 standard practice.

13 Q. So when you said they were done, you  
14 think -- you don't know for an actual fact that they  
15 were done. You think they may have been done. Is  
16 that fair to say?

17 A. I cannot tell you that they were done  
18 because I have found no records of them because we  
19 don't keep records of study. I'm saying it's just  
20 their standard practice.

21 Q. When you say "their standard practice,"  
22 you're referring to MCI's standard practice or bus  
23 manufacturers in general or what?

24 A. Bus manufacturers in general would look --  
25 do look into that.

1 Q. Okay. All right. With regards to 6, the  
2 PMK topic is the general parameters of the design or  
3 engineering of any and all proximity sensors being  
4 designed or investigated from 1996 to 2016,  
5 including but not limited, for the MCI J4500 in  
6 general and for the 2008 MCI J4500. Did I read that  
7 right?

8 A. Yes.

9 Q. And do you know of any proximity sensors  
10 that were designed and investigated during the '97  
11 through 2016 time frame for the J or E series?

12 A. What do you mean by "proximity sensors"?

13 Q. Okay.

14 A. There's a lot of proximity sensors in the  
15 market for various functions, so what are you  
16 referring to?

17 Q. You can have a proximity sensor that would  
18 disable cruise control, for example; right? That's  
19 called adaptive cruise control?

20 A. That's adaptive cruise control. That's  
21 typically a radar system.

22 Q. But that's referred to by some as a  
23 proximity sensor?

24 A. Yes.

25 Q. Okay. And you could also have a proximity



1 sensor that's intended to do something with  
2 right-side objects or left side objects; right?  
3 Correct?

4 A. You can have a device like that, yes.

5 Q. Okay. So can we call that a side proximity  
6 sensor and you'll --

7 A. If you'd like.

8 Q. Okay. All right. And then you can also  
9 have a proximity sensor that's directed at the back  
10 so the bus doesn't back into a wall or run over a  
11 baby carriage or something like that; right?

12 A. Yeah. There are some out there. Certainly  
13 in automotive they have some.

14 Q. Okay. So other than the cruise control,  
15 the side proximity sensor, and the back proximity  
16 sensor, is there any other type of proximity sensor  
17 that you're aware of?

18 A. There's tons of them for various functions.  
19 I mean, you use a proximity --

20 Q. For buses?

21 A. Yeah.

22 Q. Okay. What are the other ones?

23 A. Well, we have proximity sensors in the  
24 wheelchair door area.

25 Q. Okay.

1           A.    And we have proximity sensors -- we have  
2    had proximity sensors we use on fuel doors for C and  
3    G to sense if the fuel door is shut.  I mean,  
4    there's tons of proximity sensors for various  
5    things.  So that's a broad phrasing.  That's why I  
6    asked you to define what you're asking about.

7           Q.    Okay.  So why don't we start with the  
8    automatic cruise control.  Okay?

9           A.    Okay.

10          Q.    Did you investigate -- do you have any  
11    knowledge of proximity sensors being designed or  
12    investigated during this time period for adaptive  
13    cruise control?

14          A.    Not in that time -- 2016 -- we came out  
15    with an adaptive cruise control in 2014.

16          Q.    And was that put on the J4500?

17          A.    Yes.

18          Q.    And without getting into a whole lot of  
19    detail, basically it does what?

20          A.    It's a radar-based system.  It's -- we  
21    introduced it as an option when we did the  
22    suspension change in combination with that.  It was  
23    an option to adapt the cruise on the vehicle for the  
24    vehicle in front of it.  Basically it sensed if the  
25    vehicle was running slower than the bus, that it

1 would adapt the cruise on the bus so it would not  
2 close the gap between the vehicles.

3 Q. Keeps a minimum distance?

4 A. Keeps a minimum distance between the  
5 vehicle. That was an option. We also at that time  
6 had another option that we released was collision  
7 mitigation.

8 Q. Okay. And how did that work?

9 A. Basically at that, and still be today, that  
10 was a system where it would give you warning of  
11 stationary objects that it sensed. And then it  
12 would do -- it was what they call a braking effect.  
13 If it sensed, first it gave you a warning. Then it  
14 would start into the process of decelerating the  
15 engine, and then taking -- and then it eventually  
16 would then start braking to try to reduce the impact  
17 to the object.

18 Q. Okay. I think it was Mr. Lamothe told us  
19 that it was some sort of system that went from  
20 yellow to orange to red?

21 A. That's in the warning system to the driver  
22 starts that.

23 Q. Is that part of this system you're telling  
24 me about now?

25 A. Collision mitigation, yes.

1 Q. Okay. And you call it collision  
2 mitigation?

3 A. Mitigation.

4 Q. Okay. Is that made by Bendix?

5 A. On the J Coach it's made by Bendix.

6 Q. And it's made -- on the E Coach, who is it  
7 made by?

8 A. E Coach doesn't have collision mitigation  
9 because we don't build it.

10 Q. Okay. Do you have another coach that has  
11 collision mitigation of some sort?

12 A. Today we have it on the D Coach, but that's  
13 a WABCO system.

14 Q. How do you spell WABCO?

15 A. W-A-B-C-O.

16 Q. The reason you use WABCO for the D Coach  
17 and Bendix for the J Coach is because the brake  
18 system's different on those coaches?

19 A. They are.

20 Q. One is provided by WABCO, and one is  
21 provided by Bendix?

22 A. Correct.

23 Q. So you marry the collision mitigation to  
24 the brakes, in essence?

25 A. Basically that's what you do. The whole

1 brake control system to do these systems has to be  
2 basically one supplier because you can't integrate  
3 multiple suppliers to get the communication to work.

4 Q. Well, if you're trying to have a braking  
5 feature, you can't, but if you don't want a breaking  
6 feature, you could?

7 A. Yeah. But if you don't want to -- if you  
8 just want to -- true. If you don't want it  
9 integrated in your braking system and you just want  
10 a stand-alone system that doesn't integrate to  
11 anything, you could put just a warning system and  
12 you wouldn't have to integrate.

13 Q. Right. If you just wanted a warning  
14 system, you could buy the \$399 system from Bendix  
15 and put it on the bus; right? That wouldn't have  
16 brake compatibility, but you could give a warning?

17 MR. RUSSELL: Objection. Foundation.  
18 Incomplete hypothetical.

19 THE WITNESS: Warning of what?

20 BY MR. KEMP:

21 Q. Side objects. Objects to the side of you.

22 A. You can buy systems that give little  
23 warnings if that's -- I guess.

24 Q. Okay. Okay. So what you came out with was  
25 a warning system integrated with an automatic

1 braking feature; correct?

2 A. For collision mitigation.

3 Q. Okay. Collision mitigation. All right.

4 And let's focus on the J Coach for a  
5 minute. You said that was available in 2014?

6 A. That's what I recall.

7 Q. Okay. And it's called collision  
8 mitigation?

9 A. Collision mitigation.

10 Q. Okay. Now, we've heard terms such as  
11 "Wingman." Have you heard that term?

12 A. Yes. That's the trade name by Bendix.

13 Q. For this system?

14 A. For that system. It's a part of that  
15 system. That's their trade name.

16 Q. So it was the Wingman system that was put  
17 in in 2014?

18 A. Yes.

19 Q. And when I say "put in," that was available  
20 as an option or that was standard?

21 A. It was an option.

22 Q. Okay. Is it standard today?

23 A. I don't believe so. I think it's still an  
24 option.

25 Q. Okay. There's been a suggestion -- and

1 maybe it's wrong because no one is right all the  
2 time. There's been a suggestion in January 2017  
3 that's a standard feature. Is that --

4 A. It may be today because it was launched as  
5 an option to see what customer interest was and it  
6 may evolve to standard because they're all taking it  
7 anyway.

8 Q. Okay. So would it be fair to say that  
9 customer interest in the Wingman collision  
10 mitigation system has been good?

11 A. It has been growing, yes. They can still,  
12 I'm sure, insist it be taken off if it is standard,  
13 but acceptance has been improving.

14 Q. All right. Prior to 2014, did Bendix  
15 supply the brakes for the J series?

16 A. No.

17 Q. Who supplied the brakes prior to 2014?

18 A. The brakes were supplied by Meritor.

19 Q. And was that true back to when the J series  
20 first came out?

21 A. Yes.

22 Q. Does Meritor also make a collision  
23 mitigation system?

24 A. They have a joint venture with WABCO.

25 Q. Okay. Is there a reason why the Meritor

1 system was not used prior to 2014 for the 2013,  
2 2012, and back models?

3 MR. RUSSELL: Objection. Foundation.

4 THE WITNESS: It wasn't available.

5 BY MR. KEMP:

6 Q. Okay.

7 A. For buses.

8 Q. Was it available for trucks?

9 A. I'm sure it was.

10 Q. But not for buses?

11 A. It's very common that they will make  
12 something available for trucks before they make it  
13 for buses.

14 Q. Why is that, if you know?

15 A. I just know that we are always behind  
16 trucks as far as getting products like that.

17 Q. Is there a reason for that?

18 A. I can guess.

19 MR. RUSSELL: Foundation.

20 BY MR. KEMP:

21 Q. Well, what's your conjecture?

22 A. Volume.

23 Q. So they sell more trucks than buses, so  
24 trucks is the target market for these safety  
25 upgrades?



1 MR. RUSSELL: Same objection and outside  
2 the scope.

3 THE WITNESS: Well, they certainly sell  
4 more trucks. The truck market is much, much larger  
5 than the bus market so ...

6 BY MR. KEMP:

7 Q. So what you think is, when they have a  
8 safety upgrade like this collision mitigation, they  
9 target the truck market because there's more  
10 customers, more orders potentially, than the bus  
11 market? That's what you think?

12 MR. RUSSELL: Same objection and predicate.

13 THE WITNESS: That's my guess.

14 BY MR. KEMP:

15 Q. Okay. Okay. Do you know when the -- let's  
16 start with the WABCO system -- when that was first  
17 available for trucks?

18 A. I do not know.

19 Q. And do you know when the Bendix system, the  
20 Wingman, was first available for trucks?

21 A. I do not know.

22 Q. Okay. But you think it's sometime before  
23 2014 when you started using it on the J4500?

24 MR. RUSSELL: Objection. Foundation.  
25 Outside the scope.

1 THE WITNESS: I believe so.

2 BY MR. KEMP:

3 Q. Okay. All right. Now, does Mercedes --  
4 strike that.

5 What is your understanding, if any, of the  
6 relationship between Mercedes and MCI?

7 A. Mercedes?

8 Q. Yeah.

9 A. None.

10 Q. Does Mercedes make the Setra?

11 A. No. Daimler makes the Setra.

12 Q. Okay.

13 A. Mercedes is a brand name.

14 Q. Daimler is the -- picky, picky, picky. All  
15 right.

16 MR. RUSSELL: You asked the question.

17 BY MR. KEMP:

18 Q. Picky, picky. Okay. What is your  
19 understanding of the relationship between Daimler  
20 and MCI?

21 A. Daimler --

22 Q. First of all, how do we spell that?  
23 D-a-i-m-l-e-r?

24 A. Yes.

25 Q. Okay. Go ahead.

1 A. Daimler has a division called EvoBus and we  
2 have --

3 Q. How do you spell that?

4 A. E-v-o -- E-v-o-Bus.

5 Q. Okay. Great.

6 A. And we have a -- basically a distributor  
7 agreement that started mid-2013 for the Setra  
8 product, which is a brand name of a bus that they  
9 distribute.

10 Q. Okay. And that would include the Setra 417  
11 and the Setra 500?

12 A. No.

13 Q. Setra 417?

14 A. That's all. And then I think there's a  
15 407.

16 Q. Okay. Have you heard of a Setra 500?

17 A. Yes.

18 Q. And MCI doesn't distribute that?

19 A. Yes.

20 Q. It does distribute that?

21 A. No.

22 Q. Why not?

23 MR. RUSSELL: Objection. Foundation.

24 THE WITNESS: It's illegal in the  
25 United States to sell the 500.

1 BY MR. KEMP:

2 Q. Okay. It's a European design?

3 A. Yes.

4 Q. Okay. So they distribute the Setra 417?

5 A. Yes.

6 Q. Okay. Now, do you have an understanding as  
7 to whether or not the Setra 417 uses proximity  
8 sensors?

9 A. For the U.S. market, I have not seen that.

10 Q. Okay. So you don't know one way or the  
11 other as we sit here today?

12 A. I do not know as I sit here today. Several  
13 years ago they did not have it. I do not know if  
14 they have it today.

15 Q. Okay. Was there any consideration given to  
16 approaching Daimler in attempting to integrate their  
17 proximity sensor system into either the J series or  
18 any other MCI coach?

19 A. Daimler the corporation or Daimler EvoBus?

20 Q. Daimler EvoBus.

21 A. Daimler EvoBus uses the WABCO system.

22 Q. Okay. So I assume they use Meritor brakes?

23 A. No.

24 Q. They marry the WABCO system to some other  
25 braking system?

1 A. Yes.

2 Q. What kind of brakes do they use?

3 A. I think they use Knorr.

4 Q. Can you spell that?

5 A. K-n-o-r-r.

6 Q. Okay. So it's not absolutely necessary to  
7 have the same braking system as the collision  
8 mitigation system?

9 A. In their opinion -- their opinion  
10 apparently is that.

11 Q. But your opinion is different?

12 A. Our opinion is we have our braking system  
13 control and the brakes all working together and that  
14 we need them to be together.

15 Q. Do you know, as we sit here, whether or not  
16 the Mercedes passenger vehicles have a WABCO system?

17 A. I do not know anything about their car  
18 group.

19 Q. Okay. You do know that they have proximity  
20 sensors, or do you not know that?

21 MR. RUSSELL: Objection. Foundation.

22 THE WITNESS: They certainly advertise how  
23 you define proximity sensors. They certainly  
24 advertise it.

25 ///

1 BY MR. KEMP:

2 Q. Okay. So prior to 2014 -- I'm back to  
3 Topic 6 -- was there any attempt to design a  
4 proximity sensor for collision avoidance made by  
5 MCI?

6 A. Not that -- I don't know of any.

7 Q. Okay. So you didn't try and make your own  
8 in effect?

9 A. No, we did not.

10 Q. Okay. Is there a reason for that?

11 A. Yes.

12 Q. What's that?

13 A. Technical expertise. We don't have the  
14 technical expertise to design that. We rely on  
15 suppliers to do that.

16 Q. Okay. And do you know of any effort to  
17 investigate collision avoidance proximity sensors  
18 prior to 2014?

19 A. Well, I was involved in looking into it  
20 prior to that, but that's when it became where we  
21 could then obtain it. And then we started the  
22 development to install it.

23 Q. Okay. Was there any consideration given to  
24 retrofitting buses that were made prior to 2014 with  
25 the collision avoidance system?

1 A. Can you repeat that question?

2 Q. Was there any consideration given to  
3 retrofitting buses made prior to 2014 with collision  
4 avoidance systems?

5 A. If I recall correctly, the question was  
6 explored and there was issues in the communication  
7 system with the engine, because we used braking,  
8 being able to do that. Communicate when you de-cel  
9 the engine and you actuate the brakes, and there  
10 were major issues in regards to accommodate that.

11 Q. Okay. So you looked at retrofitting. You  
12 decided it wasn't viable?

13 A. If I recall, we raised the question, Is  
14 that possible? And as it looked at that time, the  
15 types of engine communication systems we would have  
16 as well as the braking system communication, it was  
17 not practical to try to do that.

18 Q. Okay. So as I understand it, assuming  
19 we're going to marry one to the other with the brake  
20 system, the J series had Meritor prior to 2014.  
21 Yes?

22 A. Correct.

23 Q. So if you were going to retrofit something  
24 to a model that was pre-2014, you would have had to  
25 use the WABCO system; right?

1 A. That's what we would have looked at, yes.

2 Q. So are you saying that you looked at  
3 retrofitting the J series prior to 2014 with the  
4 WABCO collision avoidance system?

5 A. Not that I recall.

6 Q. Okay. Well, how did you explore  
7 retrofitting then if you didn't look at the one  
8 system that --

9 A. We looked at retrofitting with the Bendix.

10 Q. Well, I think you've already said that you  
11 could not retrofit the Bendix to the pre-2014 J  
12 series because they did not use Bendix brakes;  
13 right?

14 A. I'm saying, if we decided that we were  
15 going to accept to use Bendix brake control with a  
16 WABCO brake, then we'd have to take out the whole  
17 brake control system to put in the Bendix system --

18 Q. Okay.

19 A. -- and the engine communication would have  
20 to be to such that we could communicate to the  
21 engine.

22 Q. Wouldn't it be easier just to use the WABCO  
23 collision avoidance system -- or collision  
24 mitigation system I think you called it?

25 A. Maybe, but it then would require a major



1 retrofit on the whole brake control system. Again,  
2 you still have the engine communication system  
3 issue.

4 Q. Do you know, as we sit here, whether or not  
5 the WABCO system could be retrofitted to the  
6 pre-2014 J series?

7 A. I mean, if you replaced the engine,  
8 replaced the whole brake control system, and  
9 replaced the instrument panel and replaced all  
10 that --

11 Q. Why would you have to replace the brake  
12 system?

13 A. The brake control system.

14 Q. Okay.

15 A. If you replaced all -- the whole electrical  
16 system, the brake control -- I mean, it's a bus. If  
17 you took everything out of it down to the frame and  
18 started over, you could probably do it.

19 Q. Okay. That would be expensive I assume?

20 MR. RUSSELL: Objection. Foundation.

21 THE WITNESS: It would far exceed the value  
22 of the bus.

23 BY MR. KEMP:

24 Q. Okay. Was there any consideration to using  
25 a proximity sensor that did not include brake

1 involvement prior to 2014?

2 A. Not that I'm aware of.

3 Q. And are you aware that there are retrofit  
4 kits on the market for proximity sensors that will  
5 purportedly give you some sort of warning of side  
6 collisions?

7 A. There's a lot of aftermarket kits for  
8 various things out there.

9 Q. Okay. And do you know whether there's an  
10 aftermarket kit for proximity sensors that would  
11 serve as some sort of warning of side detection?

12 A. I'm sure there is. There's a lot of kits  
13 for various things out there.

14 Q. Okay. And has MCI investigated those?

15 A. Well, today MCI has a 360-camera system  
16 that it offers. It also offers a camera in the  
17 mirror.

18 Q. Okay. Before we get to that, let's talk  
19 about the off-market kits that we were talking  
20 about. Did MCI investigate whether or not to use  
21 any of those?

22 A. Not that I was involved in.

23 Q. Okay. And, in theory, that type of  
24 off-market kit could be retrofitted to a J series  
25 bus and at least have a warning feature if not an