

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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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 **automatic brake disablement; correct?**

2 MR. RUSSELL: Objection. Foundation.
3 Incomplete hypothetical.

4 THE WITNESS: I don't know. Depends on the
5 kit and what it does.

6 BY MR. KEMP:

7 Q. Okay. The next item is -- do you want a
8 break?

9 MR. RUSSELL: Yeah. If you're moving on to
10 7.

11 MR. KEMP: Yeah. I want to move to
12 something else.

13 THE VIDEOGRAPHER: We're going off the
14 record. The time is 10:33.

15 (A break was taken.)

16 THE VIDEOGRAPHER: We are back on the
17 record. The time is 10:44.

18 BY MR. KEMP:

19 Q. Okay. Taking a look back at Exhibit 1,
20 Item Number 7, which discusses meetings between MCI
21 and its divisions, including but not limited to the
22 Universal Coach Parts and Mark Barron or salespeople
23 for S-1 Gards. Do you see that one?

24 A. Yes.

25 Q. And you know in general what an S-1 Gard

1 is?

2 A. I do now.

3 Q. Okay.

4 A. In general.

5 Q. Okay. In general. I've got one here if
6 you want to look at it.

7 Do you know whether or not there were any
8 meetings between MCI or any of its divisions,
9 including but not limited to, Universal Coach Parts
10 and S-1 Gard personnel?

11 MR. RUSSELL: Subject to the objections on
12 those two entities.

13 THE WITNESS: Not that I know of.

14 BY MR. KEMP:

15 Q. Okay. We took the deposition of a man
16 named Pablo Ferraros. Does that name sound familiar
17 to you?

18 A. Yeah. He ran the parts group for a little
19 while.

20 Q. And he indicated that he met with -- I take
21 so many depositions I can't remember what they say
22 sometimes. I think he indicated that he had a
23 meeting with Mr. Barron and/or some other gentleman
24 whose name's eluded me, but I can bring it in. Do
25 you have any information about that one way or the

1 other?

2 MR. RUSSELL: I object. It actually does
3 misstate his testimony.

4 THE WITNESS: No.

5 BY MR. KEMP:

6 Q. Okay. Have you talked to Pablo about
7 whether or not he knew about the S-1 Gard or had any
8 meetings about it?

9 A. No. I have not talked to Pablo.

10 Q. Okay. But as far as you know as the PMK --
11 again, that's 30(b)(6). As the 30(b)(6), you don't
12 think there was any contact between MCI and anyone
13 at S-1 Gard?

14 A. For what time period?

15 Q. Well, let's say '98 through -- let's go
16 back a little bit. Let's go '96 to 2016.

17 A. Not that I know of.

18 Q. Okay. Do you know of any investigation or
19 analysis that MCI did with regards to the S-1 Gard?

20 A. Not that I can find.

21 Q. Okay. And prior to April 18, 2017, had you
22 personally heard of an S-1 Gard?

23 A. I had not.

24 Q. And so your only knowledge of S-1 Gards
25 came in the course of this litigation?

1 A. That's where it started, yes.

2 Q. Okay. Have you seen the S-1 Gard video?

3 A. I pulled it. After this came about, I did
4 go on the website and saw the video.

5 Q. Okay. And that's the video where the stunt
6 guy goes under the bus and gets pushed out of the
7 way?

8 A. I don't know if it was a stunt guy or not,
9 but an individual went under the bus.

10 Q. Well, the video says "stuntman" on it.

11 A. I didn't recall that, but if you say so.

12 Q. Okay. All right. But that was the first
13 time you'd seen that video?

14 A. Yes.

15 Q. And the first time you'd heard of S-1 Gard?

16 A. That's the first time I heard of -- when I
17 heard about S-1 Gard was in relationship to this
18 case, and that's when I looked and pulled it up on
19 the internet.

20 Q. And did you see the -- whether it was a
21 stuntman or not, but he was dressed in stuntman
22 clothing; right?

23 A. That's correct.

24 Q. Okay. Did you see the portion of the video
25 where he's on -- he's simulating a bicyclist being

1 moved out of the way of the rear tires?

2 A. There was several scenes that they had put
3 together and I don't recall that one, but it could
4 have been there.

5 Q. Okay. Let me ask it a little differently.
6 Do you recognize that there's a theoretical
7 potential that pedestrians or bicyclists could
8 potentially be run over by rear tires of a bus under
9 some scenarios?

10 A. There may be a scenario where that could
11 occur.

12 Q. Okay. And generally -- you understand
13 generally that that could happen under some
14 scenarios?

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

16 Q. Okay. And basically bus manufacturers have
17 always known that?

18 MR. RUSSELL: Objection. Foundation.
19 Outside the scope.

20 THE WITNESS: Have always known what?

21 BY MR. KEMP:

22 Q. Well, let's put it differently. You knew
23 back in, let's say, 2000 that this was a potential
24 scenario?

25 A. There's a potential that a bus tire can

1 roll over something, that's correct.

2 Q. Okay. Including people?

3 A. Anything, yeah. Tires on all vehicles can
4 run over something.

5 Q. Okay. And you knew that back in 2000?

6 A. Yes.

7 Q. Probably before that time?

8 A. Probably before that time.

9 Q. Okay. What exploration, if any, did MCI do
10 that you're aware of with regards to some sort of
11 protective barrier, whether it's an S-1 Gard or some
12 other type of barrier, a protective barrier for the
13 rear tires?

14 A. What do you mean by "protective barrier"?

15 Q. Well, the S-1 Gard would be something that
16 would be a protective barrier; right?

17 A. I don't know that.

18 Q. Okay. You saw the video?

19 A. I saw the video.

20 Q. Looked like it worked pretty good in the
21 video?

22 A. As long as you're going 1 mile an hour, it
23 seemed to kind of work and the stuntman seemed to be
24 helping himself to move out of the way.

25 Q. Okay. But the video appeared to work

1 **pretty good; right?**

2 A. As I said previously, it looked like the
3 stuntman was helping himself move out of the way.
4 But at 1 mile an hour, it seemed to be okay.

5 Q. You think they were only going 1 mile an
6 hour in that video?

7 A. That's my guess. He wasn't going very
8 fast.

9 Q. All right. You remember the old trains
10 that had the cow catchers on them?

11 A. Yes.

12 Q. Okay. Has MCI given any consideration to
13 having a cow catcher, a diversionary device,
14 anything of the sort with regards to the rear tires?

15 A. I don't know of any cow catcher we've ever
16 looked at for the rear tires.

17 Q. Okay. Any type of protective device?

18 A. Protect for what?

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

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

24 Q. Okay.

25 A. I don't understand your question.

1 Q. Have you looked at designing any type of
2 device that could mitigate that potential hazard?

3 A. Well, you have to have clearance underneath
4 the vehicle for it to be able to operate on the
5 streets.

6 Q. True. But do you have to have the
7 clearance that the vehicle has now?

8 A. Yes. It's for the suspension.

9 Q. So the suspension now is the minimum height
10 you can operate the coach on on the streets in your
11 view?

12 A. In our opinion for its market, the
13 suspension on a coach travels more than suspension
14 on a transit bus.

15 Q. When you say "travels more," you mean going
16 up and down?

17 A. Correct.

18 Q. Okay.

19 A. And the reason for that is because the
20 market requires a better ride because you ride on a
21 coach much longer than you do on a transit bus.

22 Q. By "better ride," you're talking about a
23 more comfortable ride?

24 A. Correct. So the suspension travel, that
25 defines some of those clearances as well as tire

1 cooling, brake cooling. So some of those clearances
2 are defined by that.

3 Q. Okay. Is there a standard clearance
4 between the bottom of the suspension and the road?

5 A. No.

6 Q. Is there a specification that you try to
7 hit?

8 A. The suspension -- first off, the suspension
9 on a coach is above the bottom of the axle
10 components.

11 Q. Okay.

12 A. So the axle components are actually the
13 closest to the road. That's the components that you
14 mount the brakes and the tires and rims to.

15 Q. And the axle component is how high up from
16 the road?

17 A. It varies depending -- the drive axle is
18 more than the front axle. But the exact number I
19 don't know off the top of my head.

20 Q. Okay. And the axles are one, two, and
21 three?

22 A. Three-axle bus, correct.

23 Q. So assuming for the sake of argument that
24 the two and three axles were involved in this
25 accident, how high up is the axle from the road, the

1 two and three?

2 A. I don't know. Not as I sit here. I don't
3 keep that in my head.

4 Q. Okay. But the axle is the closest thing to
5 the road when you look at the axle, the suspension,
6 and the chassis; right?

7 A. Well, Motor Coach doesn't really have a
8 chassis, per se. We're a monocoque construction.
9 We really don't have a chassis. So you have an
10 axle, and then on this bus with the Meritor axle,
11 you have the suspension supports that mount to the
12 axle and the airbags above that, and that's your
13 suspension. And so the closest thing to the road is
14 the axle, which is -- I don't remember the distance
15 from the axle to the road. Off the axle are the
16 brakes, the rims, and the tires. And that defines
17 how high it is off the road.

18 Q. Okay.

19 A. And then the body frame is -- I mean,
20 you've got to have -- for its market, you have to --
21 what do you call it? It has to have clearance so
22 that as you go through various street conditions
23 that it can operate. You can't have zero ground
24 clearance.

25 Q. Okay. I called the body frame a chassis

1 and you're calling it a body frame?

2 A. If you're calling the frame between the
3 axles a chassis, then I'm calling it a body frame.

4 Q. Okay. And the body frame is higher up than
5 the axle? The bottom of the body frame?

6 A. I'm not sure that's true. They get fairly
7 close -- they could be. I don't remember.

8 Q. So earlier you told me the axle was the
9 closest thing to the road, and now you think the
10 axle and the body frame are the same?

11 A. I don't know that the body frame is higher
12 or about the same. I don't recall.

13 Q. Okay. Is there occasions where you'll have
14 a broken axle because it hits a rock or some other
15 obstruction in the road?

16 A. That can happen.

17 Q. Okay. And how do you mitigate against
18 that?

19 A. Mitigate a broken axle?

20 Q. No. Is there any effort made to mitigate
21 the axle striking whatever potentially could break
22 it?

23 A. That's -- basically the driver tries to
24 mitigate from hitting obstacles that could break the
25 axle.

1 Q. From a design engineering point of view,
2 have you attempted to design the body frame to
3 provide some sort of protection to the axle?

4 A. Well, the body supplies -- the axles are
5 mounted to the body with what we call radius rods.
6 If you strike something, the radius rods will bend
7 and the structure starts to bend the axle -- before
8 you actually snap off the axle. So you have bodies
9 deforming, components deforming, before the axle
10 actually breaks it if I understand your question
11 correctly.

12 Q. Okay. So snapping the axle was not
13 something you typically see. It comes off from the
14 part where it hooks up to the frame?

15 A. No. You don't see that either. What you
16 see is parts start to deform and eventually,
17 depending on the strike, how heavy it is, it's
18 possible a component will break.

19 Q. Okay. Well, let's get back to the S-1
20 Gard. I'm not an artist, but I've tried to place
21 the S-1 Gard before the two axles.

22 A. Okay.

23 Q. Is that your general understanding of how
24 the S-1 Gard is supposed to be installed?

25 A. Roughly.

1 Q. All right. Now, with regards to this
2 installation, is there a reason it could or couldn't
3 be done on the J4500 if you wanted to?

4 A. As I said previously, if we did install the
5 S-1 Gard, you have to take into account the more
6 suspension travel than it was designed originally
7 for a transit bus, which is much less suspension
8 travel. You would have to take that into account.

9 We also know that, as a result of the
10 suspension travel on a motor coach, that when you
11 strike something, there's a lot more movement in
12 suspension; that when that strikes, whatever it
13 strikes, that we don't create some other issue that
14 is more -- that doesn't have some other failure mode
15 that we're not aware of as we speak today.

16 Q. As we sit here today, do you know whether
17 or not an S-1 Gard could be placed on a J4500
18 without impacting the functionality or integrity of
19 other systems in the bus or coach -- excuse me.

20 A. I don't know that at this time.

21 Q. So you don't know one way or the other?

22 A. I do not know.

23 Q. Okay. So could be done, couldn't be done.
24 We just don't -- you just don't know?

25 A. I don't know. I don't know. If we tried

1 to do that, we would also have to look at what would
2 happen if it did get damaged.

3 Q. Okay. With regards to PMK Item Number 11,
4 could you look at that? See, I told you there was
5 some repetition here. I'm down to 11.

6 A. Okay.

7 Q. So the PMK or 30(b)(6) topic is, quote,
8 "Whether it is feasible to place an S-1 Gard on a
9 2008 MCI J4500," unquote. Did I read that right?

10 A. Yes.

11 Q. So if I understand you correctly, you don't
12 know one way or the other, as we sit here today,
13 whether it's feasible to put the S-1 Gard on the
14 2008 MCI J4500; is that correct?

15 A. I don't know if it's feasible or prudent.

16 Q. Okay.

17 A. Because if it fails in a manner where it
18 would cause problems with the tires and the brakes,
19 then it's causing an issue.

20 MR. KEMP: Why don't we mark that.

21 (Exhibit 4 marked.)

22 BY MR. KEMP:

23 Q. Have you seen Exhibit 4 before?

24 A. Recently.

25 Q. In connection with this litigation you saw

1 it?

2 A. Yes.

3 Q. Prior to the litigation, you didn't know
4 that someone at New Flyer had written a letter with
5 regards to the S-1 Gard?

6 A. That's correct.

7 Q. Okay. And, as I understand it, last year
8 sometime New Flyer purchased MCI?

9 A. I think it was --

10 Q. Or a year before rather?

11 A. I think it was the end of the year before
12 that.

13 Q. So sometime in November 2015?

14 A. November, December time frame someplace,
15 yeah.

16 Q. So in the fall of 2015, New Flyer purchased
17 MCI; correct?

18 A. That's my understanding.

19 Q. Okay. And do you know Mr. Ellis, the
20 New Flyer engineer that wrote the letter?

21 A. No.

22 Q. Okay. He says, quote, "By way of this
23 letter, New Flyer engineering maintains the position
24 that the installation of the S-1 Gard in New Flyer
25 facilities does not compromise the integrity of the

1 chassis or suspensions of the coach on which it is
2 installed, nor is it expected to impact the
3 functionality or integrity of other systems in the
4 coach," end quote. Did I read that right?

5 A. Yes.

6 Q. Do you have any reason to disagree with
7 him?

8 MR. RUSSELL: Objection. Foundation.

9 THE WITNESS: First off, New Flyer doesn't
10 make a coach.

11 BY MR. KEMP:

12 Q. Okay.

13 A. Number one.

14 Q. Well, his word is "coach" twice in this
15 sentence; right?

16 A. That's correct. But they don't make one.

17 Q. MCI does.

18 A. MCI does.

19 Q. Okay. All right.

20 A. And, secondly, as I said before, if the --
21 with our suspension travel and we damage the
22 S-1 Gard in normal operation and it comes -- where
23 it would come into the tire or the brake system, we
24 could create a serious issue. So I don't agree with
25 this letter because I don't know -- but I don't

1 disagree either because I don't know what studies
2 they did to come to this conclusion.

3 Q. Okay. As we sit here today, MCI hasn't
4 done any studies?

5 A. No, sir.

6 Q. Now, one option for protective barrier
7 would be an S-1 Gard. But another option would be
8 just to put a piece of metal on the chassis that is
9 at a -- let's see if I can get this right --
10 45-degree angle heading towards the back of the bus?
11 That would be an option?

12 A. I don't know. I mean, you could do that.

13 Q. Well, that's what I'm asking. In theory,
14 you could do that; right?

15 A. In theory you could put a piece of metal
16 underneath the bus.

17 Q. Okay. And if you did put a piece of metal
18 like that, if you had an object, it would
19 potentially divert the object?

20 MR. RUSSELL: Objection. Foundation.
21 Incomplete hypothetical.

22 THE WITNESS: I don't know that. It
23 potentially could. But I don't know that it would.

24 BY MR. KEMP:

25 Q. But it might?

1 A. I don't know that. I'm just saying I don't
2 know how stiff that object, piece, whatever you put
3 underneath that is, whether it would just go over
4 the whatever or if it was so stiff that it didn't do
5 that what it would then cause. I don't know.

6 Q. Has MCI given any consideration to a
7 protective device such as the one we have drawn on
8 this drawing?

9 A. Not that I'm aware of.

10 Q. Okay. And, as we sit here today, can you
11 see that there would be advantages potentially to
12 having this device because it would keep objects
13 from impacting the tires?

14 MR. RUSSELL: Objection. Foundation.
15 Incomplete hypothetical.

16 BY MR. KEMP:

17 Q. And the axle.

18 A. It could have more disadvantage than
19 advantages. I don't know that as we sit here today.

20 Q. The one potential advantage would be that
21 it would prevent, in some cases, objects from
22 impacting the tires and the axle; correct?

23 MR. RUSSELL: Same objections.

24 THE WITNESS: I don't know if it would have
25 done that or not. I mean, you would have to do

1 testing to find that out. I don't know. And then
2 under what conditions do you do the testing? So I
3 don't know if it would do that or not.

4 BY MR. KEMP:

5 Q. Okay. But no consideration has been given
6 at MCI that you know of to testing or designing or
7 installing a kind of barrier like we have depicted
8 on the drawing?

9 A. A fortified piece of something that you put
10 on what, I presume, is underneath the bus, we have
11 not done anything like that, stuck something
12 underneath it.

13 Q. Okay. Can you see how in some instances it
14 might be advantageous to have a device like this or
15 some sort of cow catcher to protect the rear tires
16 or rear axles?

17 MR. RUSSELL: Same objections. Asked and
18 answered.

19 THE WITNESS: I don't know that it would.

20 BY MR. KEMP:

21 Q. But you don't know that it wouldn't?

22 A. Again, it would be depending on the
23 situation what test you're running -- under one
24 scenario I don't know that it would.

25 Q. Okay. All right. Why don't we mark this

1 next in order just so we have a record of what we're
2 talking about.

3 What number is that?

4 THE COURT REPORTER: 5.

5 (Exhibit 5 marked.)

6 THE WITNESS: Are we done with 4?

7 BY MR. KEMP:

8 Q. The letter, yeah, we're done.

9 A. Are we done with 3?

10 Q. Is 3 the wind tunnel? Yeah, we're done
11 with 3. We try to keep them all kind of together so
12 the court reporter doesn't lose them.

13 MR. RUSSELL: Just for the record, Number 5
14 was a drawing by Mr. Kemp so it's not confusing
15 as --

16 MR. KEMP: That is true. This is going to
17 be great evidence in the patent fight 20 years from
18 now as to who originated this concept; right?

19 MR. RUSSELL: That's right.

20 BY MR. KEMP:

21 Q. Okay. 12 is customer requests. Do you
22 know of any customer requests to MCI for S-1 Gards
23 or any -- let's stick with S-1 Gards.

24 A. Just recently we found one oral request of
25 it. Just found that very, very recently in talking

1 to an individual who mentioned that one customer in
2 a preproduction meeting brought it up.

3 Q. Okay. And do you know who that customer
4 was?

5 A. Austin, Texas, Capital Metro.

6 Q. Capital Metro. What kind of buses or
7 coaches do they purchase?

8 A. D Coaches.

9 Q. And what'd they use those for?

10 A. They use them in the commuter market in
11 Austin, Texas, we presume.

12 Q. And so they asked about the S-1 Gard?

13 A. They asked, as I understand, orally.

14 Q. Is there another way to ask?

15 A. Well, it is a bid contract. It wasn't in
16 the bid contract.

17 Q. Okay. Is this what is sometimes referred
18 to as a pre-bid submittal meeting?

19 A. Well, there's pre-bid submittal meetings.
20 Transit authorities come out with a specification
21 for the vehicle in the bid contract, and it was not
22 in the specification of the vehicle. But it was
23 found that they made this comment in this
24 preproduction meeting, where they're buying six
25 buses, whether MCI had ever installed an S-1 Gard.

1 Q. Was an S-1 Gard subsequently put on these D
2 Coaches?

3 A. MCI -- no.

4 Q. Did MCI get the bid?

5 A. Yes.

6 Q. And sold them 60 D Coaches?

7 A. Six.

8 Q. Six?

9 A. Six.

10 Q. But there was no S-1 Gard put on the D
11 Coaches?

12 A. By MCI.

13 Q. And what was -- was it put on by someone
14 else?

15 A. We understand that to be the case.

16 Q. Okay. And what kind of MCI buses were
17 these? D Coaches?

18 A. Yes.

19 Q. Okay. And when did this happen, if you
20 know?

21 A. 2016 sometime. When they were installed?

22 Q. Uh-huh.

23 A. We don't know.

24 Q. Okay. But this is a coach as opposed to
25 what you would refer to as a transit bus?

1 A. It was what we call a commuter bus. It is
2 based on a coach.

3 Q. And I know it's been almost -- or only two
4 years, but are you aware of any problems that
5 they've had with the S-1 Gard on the D series
6 coaches purchased by the Austin transit authority?

7 A. The only information we have at this time
8 is that they've had a lot of damage with the
9 S-1 Gards.

10 Q. And what's your source of information for
11 that?

12 A. The service rep. I asked him, What's their
13 experience? He said they just have a lot of damage
14 problems.

15 Q. What's his name?

16 A. Carl Puncick.

17 Q. Can you spell the last name?

18 A. P-u-n-c -- that I recall. I'm not sure the
19 spelling is correct.

20 Q. Is he an MCI employee?

21 A. Yes.

22 Q. Is he stationed in Texas?

23 A. I think so.

24 Q. Do you know what part of Texas?

25 A. I do not.

1 Q. And do you know who made the oral request
2 to MCI other than just Austin transit?

3 A. That's all I know.

4 Q. Okay. So it would have to be someone
5 involved in Austin transit?

6 A. I believe they call it Capital Metro.

7 Q. Capital Metro. Yeah, you did say that.
8 Austin being the capital of Texas; right?

9 A. I don't know where the Capital Metro comes
10 from, but I presume so. Austin is the capital of
11 Texas.

12 Q. Okay. Was there a reason that someone
13 other than MCI installed the S-1 Gards on these six
14 coaches?

15 MR. RUSSELL: Objection. Foundation.

16 THE WITNESS: I have no idea. I mean, they
17 ask a question had we installed S-1 Gards. The
18 answer was no, and that was the end of it.

19 BY MR. KEMP:

20 Q. When we deposed Mr. Ellis, he said that
21 New Flyer had installed S-1 Gards in its factory
22 before delivering buses.

23 A. That may be true.

24 Q. Okay. Do you know whether or not MCI has
25 ever installed S-1 Gards in their factory before

1 delivering buses?

2 A. No, they have not.

3 Q. Okay. And how is it that you know that?

4 A. I asked. I asked anybody. And it's not an
5 option. It's not a special. It's nothing we've
6 ever done. We've never even had a request on a J
7 Coach.

8 Q. Okay. Moving over to Item 13, I think
9 you've said that there's no test that MCI has done
10 on S-1 Gards?

11 A. That's correct.

12 Q. Going to 14, I think we talked about
13 protective barriers. As we sit here today, you
14 don't know of any effort MCI has made to design or
15 engineer a protective barrier to protect human
16 beings from coming into contact with the rear tires
17 of a bus; is that correct?

18 A. Other than the shape of the vehicle and the
19 way the fenders are, that's what we have.

20 Q. Are there fenders on the rear tire of a
21 J --

22 A. We call them fenders.

23 Q. Are they fenders really?

24 A. Well, they're wheel housing closeouts. So
25 we call them fenders.

1 Q. Okay. Has there been any consideration
2 made to making a more extensive fender for the
3 J4500?

4 A. I don't know what that means.

5 Q. Have you seen buses that they have the wall
6 just cover the entire -- or coaches, excuse me,
7 cover the entire rear wheel section with surface
8 material?

9 A. Coaches?

10 Q. Yeah.

11 A. I've seen transit buses.

12 Q. Okay. You've seen transit buses like that.

13 A. I have not seen coaches.

14 Q. Okay. And what do you call a transit bus
15 when it does that?

16 A. I don't know.

17 Q. Have you heard the term "spat"?

18 A. You can call it that, I guess, if that's
19 what they call it.

20 Q. Have you heard that term?

21 A. I've heard the term "spat."

22 Q. Okay. And what does that mean to you?

23 A. It's just the decorative closeout over the
24 tires, tire area.

25 Q. And would I be correct that spats preclude

1 humans from coming into contact with the tires to a
2 greater extent than the fender on a J4500 would?

3 MR. RUSSELL: Objection. Foundation.

4 THE WITNESS: I don't know that. I don't
5 see why it would.

6 BY MR. KEMP:

7 Q. Okay. If you have a person next to a
8 J4500, there's basically no barrier between the
9 tires and the person; right?

10 A. Certainly the tires are exposed if that's
11 what you mean.

12 Q. Yeah, the tires are exposed. And in the
13 transit bus with spats, the tires are not exposed;
14 right?

15 A. Yeah, part of the tire is not exposed.

16 Q. Okay. And by -- basically there's 3 or
17 4 inches of the tire exposed. That's it; right?

18 A. I don't know the exact dimension. I know
19 part of the tires are exposed.

20 Q. Has there been any consideration given to
21 making the fender of the J4500 larger or more
22 encompassing so less of the tire's exposed?

23 A. In a motor coach, we can't do that.

24 Q. Why is that?

25 A. A motor coach has tremendous -- is used in

1 multiple applications at high speed. And as a
2 result, the tire heat -- you have to have exposure
3 to be able to cool the tires because at high speeds
4 the tires get extremely hot. And those have to be
5 able -- you have to allow cooling.

6 You also have to allow, because we know in
7 mountainous terrains and various terrains, brake
8 cooling so we cannot just close off the tire
9 compartment because of all the heat problems we have
10 in trying to maintain heat control.

11 Q. Okay. Are you telling me you can't close
12 it off entirely?

13 A. We cannot close it off entirely.

14 Q. But you could close off more than it's
15 currently closed off?

16 A. We don't think so because we already have
17 concerns on heat that we work with all the time
18 trying to keep the heat down.

19 Q. Have you done any testing to determine if
20 you could close it off more than it's closed off
21 now?

22 A. Not in recent years.

23 Q. When you say "not in recent years," that
24 implies that there was testing done at some point in
25 the past.

1 A. There may have been.

2 Q. Do you know of any?

3 A. Not that I was involved with or know of.

4 Q. Okay. So the direct answer to my question
5 is, as you sit here today, you don't know of any
6 testing done to determine whether or not you could
7 enclose the J4500 rear tire, the fender area, more
8 than it is now and still have a functional coach?

9 A. I'm telling you today that right now we
10 have a problem with heat problem already. To close
11 it off seems illogical that that would improve --
12 reduce the temperature in that area.

13 Q. Well, you could add a vent at the same time
14 you close it off; right?

15 A. Vent where?

16 Q. To vent air into the area you're concerned
17 being hot.

18 A. Venting from where?

19 Q. From the outside to the area that you're
20 concerned being hot.

21 A. You talking about blowing air in there?

22 Q. No. I'm just talking about designing the
23 fender with a vent in it.

24 A. Right now we have air moving, quite a bit
25 of air. Even a vent will reduce the airflow. I

1 don't see how we could design a vent with a small
2 area. I'm not sure I understand exactly what you're
3 saying, but that would maintain that much cooling --
4 because the brakes, you keep in mind, are toward the
5 inside of the tires.

6 Q. Okay. Basically what I've drawn is what we
7 have now with the J4500; right? Rear tires?

8 A. Well, you're showing two circles. One is a
9 dual and one's a single tire.

10 Q. Yeah. Now, one option here would be to
11 separate the axles a little bit to drop down -- drop
12 down part of the, I guess, fender is what you're
13 calling it?

14 A. You can't do that.

15 Q. Some companies do do that.

16 A. I know, but then we have to put -- some of
17 our markets may have to allow for chains. So you
18 can't just drop that down like you've drawn. Some
19 markets --

20 Q. Okay. Maybe you have to have a little more
21 space here. But some buses -- some coaches are made
22 exactly as I've drawn it; right?

23 A. Maybe for their markets that works for
24 them.

25 Q. Okay. In fact, I think the Prevost is like

1 **this?**

2 A. Not that much. You've got that piece
3 almost going to the ground.

4 Q. All right. Okay. Prevost is like this.
5 Is that better?

6 A. It's closer.

7 Q. Okay. Did MCI give any consideration to
8 doing an extension of the fender in the area between
9 the two rear tires at any time that you're aware of?

10 MR. RUSSELL: Objection. It's outside the
11 scope.

12 THE WITNESS: We have some, but not as much
13 as you've drawn.

14 BY MR. KEMP:

15 Q. Okay. You've given some to maybe that
16 extent?

17 A. To that little extent, yeah.

18 Q. And what is the purpose for doing that?

19 A. Styling, and to close off the area in the
20 suspension area.

21 Q. Would that also not give you better
22 aerodynamic or drag coefficient?

23 MR. RUSSELL: Objection. Foundation.

24 THE WITNESS: According to the test report
25 in there, it did not do that.

1 BY MR. KEMP:

2 Q. This was one of the items tested?

3 A. No. But they put in -- in the aerodynamic
4 test report, they just closed off that whole area to
5 see the effect and it didn't work out that it
6 improved the aerodynamics.

7 Q. That's completely closed off; that's not
8 partially closed off?

9 A. That's correct.

10 Q. Okay. And what is your understanding, if
11 any, with regards to whether or not rotating tires
12 in the rear of a bus creates some sort of a suction
13 effect?

14 MR. RUSSELL: Objection. Outside scope.
15 Foundation. Incomplete hypothetical.

16 THE WITNESS: Creates a suction effect?

17 BY MR. KEMP:

18 Q. Right.

19 A. Never noticed any suction effects.

20 Q. Have you ever heard of that as being a
21 potential hazard?

22 A. No.

23 Q. Okay. I only have one of these.

24 Why don't we mark that.

25 (Exhibit 6 marked.)

1 BY MR. KEMP:

2 Q. What number do you have on there?

3 A. 6.

4 Q. Exhibit 6 purports to be a publication in
5 an engineering journal by a man named Green
6 discussing potential rear tire suction. Have you
7 ever seen that article before?

8 MR. RUSSELL: Objection. Predicate.

9 THE WITNESS: I think I saw it here
10 recently.

11 BY MR. KEMP:

12 Q. Prior to the litigation, have you seen this
13 article before?

14 A. I have not.

15 Q. And so now that you have seen the article,
16 you are aware of Mr. Green's contention, I will call
17 it, that the rotating tires create some sort of
18 suction?

19 A. That's what he contends.

20 Q. In fact, if you flip over to "Conclusion,"
21 could you read me the first sentence? Do you see
22 his conclusion there?

23 A. In paragraph 1, yes.

24 Q. What does the first sentence say?

25 A. "As described in the Bernoulli" --

1 Q. Bernoulli; right?

2 A. Bernoulli.

3 Q. Okay.

4 A. Is that the Bernoulli analysis he did?

5 Q. I think he's referring to the Bernoulli
6 Principle. Do you know what that is, in general?

7 A. In general.

8 Q. Okay. Why don't I quote directly from
9 Bernoulli, 1738 publication, hydrodynamica. Quote,
10 "An increase in the speed of a fluid occurs
11 simultaneously with a decrease in pressure or
12 decrease in the fluid's potential energy," end
13 quote. Do you understand that being Bernoulli's
14 Principle?

15 MR. RUSSELL: Objection. Outside the
16 scope.

17 THE WITNESS: That's what I understand the
18 basis for it is.

19 BY MR. KEMP:

20 Q. Okay. Now, applying Bernoulli's Principle
21 to the rotating rear tires of an MCI J4500, would
22 you agree or disagree that that creates a negative
23 pressure zone that can act as a suction?

24 MR. RUSSELL: Same objection. Incomplete
25 hypothetical.

1 THE WITNESS: I don't know that.

2 BY MR. KEMP:

3 Q. Don't know one way or the other?

4 A. I don't know it creates a negative pressure
5 zone.

6 Q. And do you know one way or the other
7 whether it's a suction effect?

8 A. I don't know that.

9 Q. You do not know that?

10 A. I do not know that.

11 Q. Okay. But Mr. Green contends there is. Do
12 you see that?

13 A. He says that.

14 Q. Okay. Has MCI done any sort of testing or
15 analysis to determine whether or not what Mr. Green
16 claims is true?

17 A. Not that I'm aware of.

18 Q. Okay. And what's the date of Mr. Green's
19 paper?

20 A. 2001.

21 Q. What's the year that the J4500 came out?

22 A. 2000, 2001.

23 Q. Okay. And since you don't know whether or
24 not there is a suction from rotation of the rear
25 tires, can I assume that MCI did not do anything, in

1 terms of design engineering, to try to decrease the
2 amount of suction in the rear tires?

3 A. Since we don't know there is a suction in
4 the rear tires, no, we did not do any design work to
5 solve something we don't know occurs.

6 Q. And since you don't know whether or not
7 that occurs, you also didn't provide any sort of
8 warnings to purchasers with regards to that
9 potential hazard; correct?

10 A. I don't know that that's a potential
11 hazard. Therefore, if it's not a potential hazard,
12 we wouldn't give a warning.

13 Q. Do you think, if there is suction from the
14 rear tires, that that would be a potential hazard to
15 pedestrians or adjacent bicyclists?

16 MR. RUSSELL: Objection. Outside the
17 scope. Foundation. Incomplete hypothetical.

18 THE WITNESS: I don't know that it is.

19 BY MR. KEMP:

20 Q. I know you don't know it is a -- whether it
21 is a potential hazard. But assuming, for the sake
22 of argument, that Mr. Green is correct, would you
23 agree with me that it's a potential hazard?

24 MR. RUSSELL: Same objections.

25 THE WITNESS: No.

1 BY MR. KEMP:

2 Q. Why not?

3 A. Because I don't know how little that
4 suction is, if it is a suction.

5 Q. Okay. So it would have to reach a certain
6 threshold in terms of suction before you would
7 consider it a potential hazard. Is that what you're
8 saying?

9 A. I'm saying, if it's like a pound of
10 suction, I wouldn't consider that a potential hazard
11 if it is a suction.

12 Q. Okay. And when you say "a pound of
13 suction," are you referring to side forces, or what
14 are you referring to in terms of pound?

15 A. I'm just saying pounds force. If it was a
16 1 PSI of suction, if that's all it is, it's not a
17 potential hazard, if it is a suction.

18 Q. Okay. And let's make sure we're talking
19 about the same thing here. Pounds per square inch
20 is the reference you're giving me?

21 A. Yes.

22 Q. And so you think, if it's 1 pounds per
23 square inch of suction, it's not a potential hazard;
24 is that correct?

25 A. In my opinion, that would not be a hazard.

1 Q. Okay. Would 2 pounds --

2 A. I don't know what the threshold --

3 MR. RUSSELL: Just a second. Outside the
4 scope. Foundation. Incomplete hypothetical.

5 THE WITNESS: I don't know what the
6 threshold is. We'd have to determine that. But I
7 don't even know that we have a suction.

8 BY MR. KEMP:

9 Q. Okay. Why would, in your view, 1 pound of
10 PSI not be a potential hazard?

11 MR. RUSSELL: Same objections.

12 THE WITNESS: It's insignificant.

13 BY MR. KEMP:

14 Q. Okay. And when you say "insignificant,"
15 you mean what?

16 A. It will not cause anything.

17 Q. How much pounds per square inch -- can I
18 use the term side force or suction? What's a
19 term --

20 A. I don't know. As long as you tell me what
21 you're referring to.

22 Q. Okay. Assuming for the sake of argument
23 that there is a side force, wind going sideways, do
24 you think 1 pound per square inch of side force
25 would be a potential hazard?

1 MR. RUSSELL: Same objections.

2 THE WITNESS: I don't think so.

3 BY MR. KEMP:

4 Q. Okay. And how much pounds per square inch
5 of side force do you think you would need to cause a
6 bicyclist to wobble?

7 MR. RUSSELL: Same objections.

8 THE WITNESS: If he's riding his bicycle?

9 BY MR. KEMP:

10 Q. Right.

11 A. Between the inertia and the gyroscopic
12 effect of the wheels, I don't know.

13 Q. I'm not assuming he's under the wheels.
14 I'm assuming he's by the wheels.

15 A. I'm just saying, if a bicyclist is riding
16 his bicycle, has inertia going forward, some
17 gyroscope with respect to the tires rotating, how
18 much force it would take him to wobble, I wouldn't
19 know.

20 Q. Could it be 1 pound per square inch?

21 A. I find that highly unlikely because
22 that's -- a breeze could be more than that, I'm
23 sure.

24 Q. Okay. Do you ride bicycles?

25 A. Used to.

1 Q. Okay. And when you have a constant breeze,
2 you tend to lean into it; right?

3 A. Yes.

4 Q. And so you kind of operate the bicycle to
5 compensate for the potential breeze; right?

6 MR. RUSSELL: Objection. Incomplete
7 hypothetical. Outside the scope.

8 THE WITNESS: Depending on how much the
9 breeze is, yeah.

10 BY MR. KEMP:

11 Q. Do you think a bicyclist has sufficient
12 reaction time to compensate for a side force in the
13 amount of, say, 1 pound per square inch?

14 A. Yes.

15 MR. RUSSELL: Objection. Foundation.
16 Incomplete hypothetical. Outside the scope.

17 BY MR. KEMP:

18 Q. The answer is "yes"?

19 A. I think so.

20 Q. Okay. Would you agree with me that there's
21 a theoretical hazard if a bus generates a side
22 force -- whether it's 1 PSI or 2 or 3, there's a
23 theoretical hazard to bicyclists in terms that it
24 may cause them to wobble?

25 MR. RUSSELL: Same objections.

1 THE WITNESS: No.

2 BY MR. KEMP:

3 Q. How about if it was 10 PSI of side force
4 being generated?

5 MR. RUSSELL: Same objections.

6 THE WITNESS: I don't know.

7 BY MR. KEMP:

8 Q. That wouldn't be a theoretical hazard or it
9 would?

10 MR. RUSSELL: Same.

11 THE WITNESS: I don't know.

12 BY MR. KEMP:

13 Q. But you don't think 1 is?

14 A. I think 1 is so insignificant I'm sure it's
15 not an effect.

16 Q. 2, 3, 4, 5, do you have an answer for that?

17 A. No, I do not.

18 MR. RUSSELL: Same objections.

19 BY MR. KEMP:

20 Q. So anything over 1 you don't know whether
21 it could potentially be a significant hazard to a
22 bicyclist?

23 MR. RUSSELL: Same.

24 THE WITNESS: I don't know that because we
25 haven't run tests to determine that.

1 BY MR. KEMP:

2 Q. Okay. And to do that you'd have to do
3 what?

4 A. You'd have to determine what -- that would
5 vary so much by the bicyclist, the bicycle, the
6 distance from the vehicle. There's so many
7 variables you'd have to run some kind of test in
8 that regard. So many variables.

9 Q. Okay. Where were we on -- okay. Since you
10 didn't design or engineer protective barriers,
11 there's no patent applications, 15; is that correct?

12 A. That's correct.

13 Q. All right. 16, did the New Jersey Transit
14 Authority buy thousands of buses from MCI in 2015 or
15 2016?

16 A. They bought buses from MCI, yes. But
17 it's a --

18 Q. Continuing contract?

19 A. -- continuing contract. So I don't know if
20 it's thousands.

21 Q. 6,500 buses in that contract?

22 A. 6,500? I doubt that.

23 Q. How many do you think is in this contract?

24 A. Well, it's probably closer to a thousand.
25 But, I mean, every year it has to be approved, the

1 quantity, for us in the contract. So it's not all
2 one -- it's not an order for automatically that
3 number of buses.

4 Q. And it's a thousand over how many years?
5 Do you know?

6 A. No, I don't know.

7 Q. Okay. Is that a big contract?

8 A. For a bus market, that's a big contract.

9 Q. Okay. Is that the biggest contract MCI has
10 ever had?

11 A. Not that I'm aware of.

12 Q. Okay. And when the New Jersey Transit
13 Authority put that contract out for bid, was there a
14 presubmittal process?

15 A. Yes.

16 Q. Were you involved in the presubmittal
17 process?

18 A. No.

19 Q. But you're here to testify to the type and
20 nature of the buses sold to the New Jersey Transit
21 Authority; right?

22 A. Yes.

23 Q. What kind were they?

24 A. D Coaches. D4500s --

25 THE COURT REPORTER: ED?

1 THE WITNESS: No. They're D4505s.

2 BY MR. KEMP:

3 Q. If you need to take a break at any time,
4 just let me know. Okay. Would that be considered a
5 transit bus?

6 A. They were called commuter buses.

7 Q. But that would be considered a coach?

8 A. It was a coach in a commuter configuration.

9 Q. So it was a D Coach in a commuter
10 configuration. Yes?

11 A. Yes.

12 Q. Do you make J Coaches in commuter
13 configurations?

14 A. No.

15 Q. Okay. And with regards to the D Coach that
16 was sold to the New Jersey Transit Authority, what
17 protective barriers, if any, do they have to protect
18 human beings, including but not limited to
19 pedestrians or bicyclists, from coming into contact
20 with the tires of the bus?

21 MR. RUSSELL: Objection. Vague.

22 THE WITNESS: Beyond what is inherent in
23 the design of the bus, that's the protective
24 barriers.

25 ///

1 BY MR. KEMP:

2 Q. Okay. Does that have the same fender
3 configuration that we've discussed with regards to
4 the J4500 on the D Coaches sold to the New Jersey
5 Transit Authority?

6 A. It's a similar design, but it's not exactly
7 the same.

8 Q. Okay. It's similar in the sense that
9 there's tire exposure?

10 A. Yes.

11 Q. There's no -- there's no spat?

12 A. There's no spat as you defined it.

13 Q. Is there a spat in any other definition?

14 A. I just said -- you said this is called a
15 spat and it's a covering over the tire area. I
16 said, as you defined it, it is not on that bus.

17 Q. Is there any sort of covering over the area
18 of the buses sold to the New Jersey Transit
19 Authority?

20 A. Over what area?

21 Q. The rear tire area.

22 A. No, there's not, beyond what's in the
23 original design of the D Coach.

24 Q. And you're saying that's similar to the J
25 Coach in terms of the fender?

1 A. It's similar. It's not exactly the same.

2 Q. Okay. Was there a discussion with the
3 New Jersey Transit Authority with regards to
4 S-1 Gards?

5 A. Not that we can find.

6 Q. Okay. Who -- did you make some sort of
7 effort to discuss with the MCI employees what they
8 said and to whom of the New Jersey Transit
9 Authority?

10 A. Yes. In research for that, yes.

11 Q. Okay. And who, if you know, was the -- a
12 point person -- is that the right term? -- on this
13 contract?

14 A. In what area?

15 Q. Okay. Was there a bid team?

16 A. There was a guy in charge of the bid.

17 Q. Who was that?

18 A. Dale Majury.

19 Q. Could you spell that last name for me?

20 A. M-a-j-u-r-y.

21 Q. Okay. And have you talked to him?

22 A. Yes.

23 Q. With regards to this particular item?

24 A. Yes.

25 Q. Okay. And what did he say with regards to

1 his memory of the discussions with the New Jersey
2 Transit Authority?

3 A. In regard to --

4 Q. S-1 Gards or protective barriers.

5 A. They did not ask for S-1 Gards or any
6 protective barriers in that contract.

7 Q. Was there any discussion about potential
8 safety features that could protect human beings from
9 coming into contact with tires of a bus?

10 A. Not in that regard.

11 Q. And are the D series buses being sold to
12 the New Jersey Transit Authority equipped with the
13 Meritor side guard system?

14 MR. RUSSELL: Just objection --

15 BY MR. KEMP:

16 Q. Or WABCO. Excuse me.

17 MR. RUSSELL: Objection as laid out in the
18 letter as to any discovery on the D Coaches.

19 THE WITNESS: Could you repeat the
20 question, please?

21 BY MR. KEMP:

22 Q. As I understand it, the D series uses
23 Meritor brakes; right?

24 A. Correct.

25 Q. So if you were going to marry a proximity

1 sensor to it, you would have to use WABCO; right?

2 A. Are you talking about a side? What --

3 Q. Well, is it your understanding that the
4 buses sold to the New Jersey Transit Authority, the
5 D series, have some sort of proximity sensor?

6 A. Are you talking about -- what kind -- for
7 where?

8 Q. Let's just use the more expansive term to
9 include all of them, and then we'll try to get to
10 which one it is.

11 A. Well, it doesn't have collision mitigation.

12 Q. Okay.

13 A. It does not have adaptive cruise. It does
14 not have rear camera or anything like that. It does
15 have a wheelchair lift and, therefore, has what you
16 call a proximity sensor in the wheelchair area
17 because that's required by FMVSS.

18 Q. And that's the only proximity sensor on the
19 D series being sold to the New Jersey Transit
20 Authority?

21 A. Well, the C and Gs had the field door
22 sensor required by the NFPA. As I sit here today, I
23 cannot think of any other proximity sensor that's on
24 there. There may be some small proximity sensors in
25 the wheelchair lift operation. But it's -- but I

1 can't think of any others today.

2 Q. Did MCI offer the WABCO side proximity
3 sensor to New Jersey Transit Authority?

4 A. Not that I'm aware of.

5 Q. Is there a reason why you wouldn't offer
6 that?

7 A. We don't -- we -- first off, this is a
8 public sector procurement. You respond to the
9 procurement. They have -- the New Jersey Transit
10 has their own engineering group and we responded to
11 the procurement. It was not in the bid spec. Now,
12 New Jersey Transit has recently decided to put the
13 360-degree-camera system on. But they have not
14 elected to be interested in any other system.

15 Q. And would that 360 camera be on new buses,
16 retrofitted old buses, or what?

17 A. My understanding it's on new, and they were
18 even looking at retrofitting old.

19 Q. And how would the 360-degree-camera system,
20 if it would, assist in detecting objects or persons
21 on the side of the bus?

22 MR. RUSSELL: Objection. Incomplete
23 hypothetical.

24 THE WITNESS: Under what condition?

25 ///

1 BY MR. KEMP:

2 Q. Maybe you could just tell me how the
3 360-degree-camera system works in general.

4 A. In general, below 17 miles an hour, because
5 above is turned off -- below 17 miles an hour, you
6 get a screen that looks -- if you're turning to the
7 right, the camera comes on and it shows one-third of
8 the screen -- or two-thirds of the screen what that
9 camera is seeing. And the rest of what's on the
10 screen is all around the vehicle when you're turning
11 in that direction.

12 Q. But it only works at 17 miles and below?

13 A. Yes.

14 Q. Why was that chosen?

15 A. Otherwise, it's a nuisance. Considered by
16 NHTSA to be a nuisance to the driver and a driver
17 distraction.

18 Q. Who makes the 360-camera system?

19 A. Can't remember the name right now.

20 Q. Some supplier though?

21 A. A supplier.

22 Q. How long has that been available?

23 A. It became available in -- I believe it was
24 2016.

25 Q. Now, with regards to the other types of

1 WABCO proximity sensor side detection that's
2 available, you said that was not offered to the
3 New Jersey Transit Authority; is that correct?

4 A. We did not offer it. Suppliers I'm sure
5 did, but we did not offer it.

6 Q. Okay. So the next PMK or 30(b)(6) topic is
7 17. Do you see that? So would I be correct that
8 the MCI policy was not to offer or alert potential
9 purchasers of the need for S-1 Gards or other
10 protective barriers?

11 MR. RUSSELL: Objection. Compound.
12 Misstates prior testimony.

13 MR. KEMP: Let me try to get rid of the
14 compound part.

15 BY MR. KEMP:

16 Q. Did MCI, at any point, have a policy to
17 offer potential purchasers S-1 Gards or protective
18 barriers?

19 A. Assuming the S-1 Gard is a protective
20 barrier, we do not offer the S-1 Gard as an option.

21 Q. And that's the policy?

22 A. No, it's not a policy. We presently --
23 when we come across a feature that we think would be
24 assistance, we offer it.

25 Q. Okay. And obviously you think the

1 collision mitigation system for the J Coach is a
2 good feature because it's a standard feature now;
3 right?

4 A. We issued it as an option initially because
5 we thought it would be a driver-assistance feature.

6 Q. Did you offer a collision mitigation system
7 to the New Jersey Transit Authority?

8 A. New Jersey Transit would -- New Jersey
9 Transit is a very large agency with their own
10 engineering staff. They knew about collision
11 mitigation systems already, and they did not choose
12 to have it.

13 Q. But the direct answer to my question is,
14 no, MCI did not offer it?

15 A. I don't know that it did not offer it. But
16 this is not how buses in that public sector are
17 procured. Usually they will ask for it, if they
18 want it, because they already are aware of it.

19 Q. Okay. And in this case did you ask Majury
20 whether or not New Jersey Transit Authority was
21 aware of the potential of collision mitigation
22 systems?

23 A. They knew already about collision
24 mitigation systems.

25 Q. Did you ask Mr. Majury that?

1 A. He told me they already knew about it.
2 This is a -- in this industry, the vendors go to our
3 customers many times to discuss various features.
4 So they are very aware of the stuff in that market.

5 Q. Okay. So New Jersey Transit Authority is
6 what you would consider to be a sophisticated
7 purchaser of buses?

8 A. Yes.

9 Q. Okay. Are there other people that purchase
10 MCI J4500s that are not as sophisticated as the
11 New Jersey Transit Authority?

12 MR. RUSSELL: Objection. Incomplete
13 hypothetical. Vague.

14 THE WITNESS: I don't know what you mean by
15 "sophisticated." But, I mean, there is smaller
16 operators that do not have direct contact with
17 vendors.

18 BY MR. KEMP:

19 Q. And smaller operators like tour companies,
20 for example; right?

21 A. Some of them are small.

22 Q. Okay. Like the tour company in this case,
23 relatively small?

24 MR. RUSSELL: Objection. Foundation.

25 THE WITNESS: I don't know that much about

1 this tour company. I'm just saying there are small
2 tour companies that do not have direct vendor
3 contact.

4 BY MR. KEMP:

5 Q. Okay. And you know that as -- MCI knows
6 that; right?

7 A. We know we have small customers.

8 Q. Okay. And with regards to those small
9 customers, does MCI advise them that there are
10 collision mitigation systems available that can be
11 put on the buses?

12 A. Obviously we released it in 2014, so
13 obviously we did that.

14 Q. Okay. And prior to that time did you?

15 A. No, because it wasn't available.

16 Q. That system wasn't available?

17 A. That system was not available.

18 Q. We've already gone through that there were
19 other potential add-ons that could provide warnings
20 that were available?

21 MR. RUSSELL: Objection. Misstates
22 testimony.

23 THE WITNESS: There may have been, but we
24 did not -- we considered the collision mitigation
25 needed to have braking.

1 BY MR. KEMP:

2 Q. And then 19 I think we pretty much talked
3 about, so let's skip 19.

4 Okay. 20. Is there a process used to
5 identify hazards when you design a bus?

6 A. That's part of the engineering process.

7 Q. And what's that called?

8 A. Engineering process.

9 Q. I know, but is there a formal name for that
10 process?

11 A. No.

12 Q. There's not a formal name for the hazard
13 identification process?

14 A. No. We review -- when we have design
15 reviews if there's a hazard. And if there is a
16 hazard, that gets brought up at that time.

17 Q. Okay. And I think -- you did not identify
18 what we've talked about as air blasts or side force
19 as a hazard; is that correct?

20 A. We do not believe that's a hazard, that's
21 correct.

22 Q. And so you also do not believe that the
23 rear tire suction is a hazard; is that correct?

24 A. We don't even know that there is a suction
25 on the rear tires.

1 Q. And so for that reason you don't believe
2 it's a hazard?

3 A. We don't think the rear tire situation is a
4 hazard.

5 Q. Okay. And we've already talked about
6 right-side visibility obstructions; right?

7 A. We said -- I said the mirror can be an
8 obstruction that the driver has to look around, as
9 well as an A post can be an obstruction, but it's
10 not a problem.

11 Q. So you would agree that that is a potential
12 hazard?

13 A. No.

14 Q. Well, right-side visibility, in general, is
15 a potential hazard that you have either mitigated or
16 attempted to mitigate?

17 A. We try to mitigate it as best as possible
18 any blind spot so it does not become a problem.

19 Q. But you would agree it's a potential hazard
20 in theory?

21 A. I agree that the driver has to take actions
22 sometimes to move in his seat to be able to look
23 around the A post and the mirror. You're right, if
24 that's what you mean.

25 Q. Okay. All right. And 22 is "Prior

1 incidents in which pedestrians or bicyclists came
2 into contact or were involved in accidents with a
3 bus provided by MCI or any of its past and present
4 divisions, sectors, subsidiaries, or testing
5 facilities, including but not limited to Universal
6 Coach Parts and Transportation Manufacturing
7 Corporation." Did I read that right?

8 A. Yes.

9 Q. And are you aware of any prior accidents in
10 which, first, pedestrians came in contact with an
11 MCI bus?

12 MR. RUSSELL: And we'll assert our
13 objection as noted in the letter. It would be
14 limited to E or J models within that defined scope.

15 THE WITNESS: In my research on the E and J
16 model that's been in production for 20 years, with
17 thousands out there, I did not find one with contact
18 with a bicyclist.

19 BY MR. KEMP:

20 Q. How about pedestrians?

21 A. I found three.

22 Q. Was that the E or J or combination?

23 A. I did not separate them. It was one or the
24 other.

25 Q. Okay. And with regards to these three

1 pedestrian accidents, can you tell me in general
2 what happened?

3 A. One occurred in Hawaii. Passenger ran out
4 in the street and got hit by the bus.

5 Q. By what part of the bus?

6 A. I believe it was toward the front.

7 Q. Okay. Was he run over by the tires?

8 A. Not that I recall.

9 Q. Okay. Next one -- before we leave Hawaii,
10 do you remember when this occurred approximately?

11 A. No.

12 Q. Okay. Was there a lawsuit if you know?

13 A. Not that I'm aware of.

14 Q. Okay. What about the other two?

15 A. The other two, one was, I think, in
16 New Jersey and, again, it was somebody was crossing
17 the street and got hit in the front of the bus.

18 Q. This was a passenger or not a passenger?

19 A. It was not a passenger. It was just an
20 individual. The other one was an individual that
21 was not a passenger. Both of them were crossing the
22 street.

23 Q. Okay. The New Jersey one, do you remember
24 when that was?

25 A. No.

1 Q. Okay.

2 A. And the third one, again, was individual
3 that -- when the bus was turning, hit the passenger.
4 I presume on the street.

5 Q. Are you aware if it was a left-hand turn or
6 a right-hand turn?

7 A. I don't remember.

8 Q. And the third one, do you remember the date
9 of that?

10 A. No, I do not.

11 Q. You don't remember the date of the
12 New Jersey one either?

13 A. No, I do not.

14 Q. Do you know whether or not right-side or
15 even left-side visibility was an issue in any of
16 these three instances?

17 A. Not that I'm aware of. There may have
18 been, but I don't recall any right-side visibility
19 complaint.

20 Q. And were lawsuits filed in the second and
21 third case?

22 A. There may have been. Not that I found at
23 this time.

24 Q. And how did you research whether or not
25 there were prior incidents involving pedestrians or

1 **bicyclists?**

2 A. We have a reporting system that comes in
3 that is -- it comes from various methods. It comes
4 in through the service organization. It comes
5 through the sales organization. It comes through
6 Google alerts. It comes through -- customers will
7 call in when they have an issue. These kind of
8 incidents, they're all accumulated within the legal
9 department.

10 Q. Would -- do you take trade publications?
11 **Subscribe?**

12 A. Some.

13 Q. And is there one called Motor Coach or
14 something like that? Which ones do you take? Why
15 don't we start with that.

16 A. Well, there's one that's called Motor Coach
17 News or something like that. And there's one that's
18 ABA something. That's the ones I get.

19 Q. And the Motor Coach News, that comes twice
20 a month?

21 A. Well, it comes -- they send it out
22 electronically now. It seems to show up more often
23 than that now.

24 Q. Okay. MCI advertises in that publication?

25 A. Yes.

1 Q. Okay. And would I also be correct that the
2 U.S. Department of Transportation has statistics on
3 accidents involving buses and pedestrians and
4 bicyclists?

5 A. The DOT does have, if you're referring to
6 the FARS data -- or what data are you referring to?

7 Q. There is data from the DOT?

8 A. There's a lot of data in DOT. I'm just not
9 sure which data you're referring to.

10 Q. If you go back to Mr. Green's paper, he
11 indicates that there's some data that indicates that
12 bicyclists, pedestrians, and buses have accidents
13 frequently and that it typically occurs at the rear
14 axle. Did you see that part in his article?

15 A. I saw that in his article.

16 Q. Okay. Do you agree or disagree that that's
17 the spot where these accidents usually occur?

18 A. I have no position to argue that because I
19 don't know where he got his data from.

20 Q. So you --

21 A. I can't disagree or agree.

22 Q. Assuming, for the sake of argument, that a
23 number of accidents occurred in one specific
24 location of a bus, would you agree with me that's a
25 potential hazard that should be investigated?

1 MR. RUSSELL: Objection. Foundation.

2 THE WITNESS: I certainly would look at it.

3 Again, I don't know if that's where that information
4 came from. As you noted in the article, it seems to
5 be centered around transit buses, so I don't know.

6 BY MR. KEMP:

7 Q. Okay. But as we sit here today, MCI hasn't
8 investigated whether or not the rear tires are more
9 frequently involved in accidents, not frequently
10 involved in accidents, or whether there's a
11 potential hazard involved with that particular area
12 of the bus; is that correct?

13 A. On each E Coach we just went through the
14 accidents we've had, so we don't know of any major
15 issue in that regard. These buses have millions of
16 miles on them and have been out for 20 years and all
17 we have is three incidents. So we don't have -- we
18 have not investigated it.

19 Q. Okay. Let me go through my notes real
20 quick.

21 (Exhibit 7 marked.)

22 BY MR. KEMP:

23 Q. Have you seen Exhibit 7 before?

24 A. Yes.

25 Q. What is Exhibit 7?

1 A. That's a Bendix Blindspotter Side Detective
2 System.

3 Q. Is that the same system that's currently
4 being used by MCI?

5 A. No.

6 Q. Is this a system that MCI looked at?

7 A. It's a system that we got inform- -- well,
8 I saw the predecessor to this in 2013 and it had
9 very serious problems with false positives.
10 Predominantly it had a -- had some problems. And
11 they have done an upgrade as we understand it. And,
12 in fact, this is the 2013 one that they had the
13 issue with.

14 Q. Okay. There's an upgrade to this that
15 works better?

16 A. It's coming out.

17 Q. Okay.

18 A. We don't know that it works better, but
19 they say they have an upgrade coming.

20 Q. Okay. All right. Turning to page 2970,
21 the one I've got --

22 A. Yes.

23 Q. So this system is designed to detect things
24 on the side of, in this case, a truck; right?

25 A. That's what it depicts, yeah.

1 Q. Is there a reason it's good to have safety
2 features in trucks to detect things to the side of
3 you?

4 A. Trucks have -- especially Class A trucks
5 with trailers turning right, they have a higher
6 incidence of striking things than other vehicles
7 apparently, according to NHTSA.

8 Q. Okay. And would those statistics be before
9 or after NAFTA?

10 A. Before what?

11 Q. NAFTA. Has it increased after NAFTA?

12 A. I don't know that to be a fact.

13 Q. Okay. You know why some people think it's
14 increased after NAFTA; right?

15 A. Well, there's a lot of rumors out there.
16 And I don't go by rumors.

17 Q. Okay. All right.

18 A. I presume we're done with this?

19 Q. Yeah, we're done with that.

20 A. Would you mind if we take a break?

21 Q. No, not at all.

22 THE VIDEOGRAPHER: We're going off the
23 record. The time is 11:58.

24 (A break was taken.)

25 THE VIDEOGRAPHER: We are back on the

1 record. The time is 12:04.

2 (Exhibit 8 marked.)

3 BY MR. KEMP:

4 Q. With regards to Number 8, this is an
5 article by someone named Sherlock that says, quote,
6 "Many buses have built-in blind spots that make
7 driving them dangerous," end quote.

8 Okay. First of all, have you ever seen
9 this article before?

10 A. I believe I have.

11 Q. Outside the context of this litigation,
12 have you seen it?

13 A. I don't think so.

14 Q. In the context of litigation you've seen
15 it?

16 A. I've seen it.

17 Q. Okay. All right. On the first page --
18 second page of Exhibit 8, it says, quote,
19 "Essentially all transit buses in the United States
20 are built as cheaply as possible with mirrors and
21 pillars that create blind spots that are over a foot
22 wide." Do you see that statement?

23 A. Yes, I do.

24 Q. Do you agree or disagree?

25 A. Disagree.

1 Q. Okay. Do you agree that they're built as
2 cheaply as possible?

3 A. I disagree with that.

4 Q. Okay. And you disagree, I assume, that
5 there's blind spots over a foot wide?

6 A. Well, he's referring to transit buses --

7 Q. Right.

8 A. -- we don't build. But if you're using it
9 in the context of a coach, I disagree.

10 Q. Okay. All right. But you would agree that
11 there's some blind spot less than a foot; right?
12 We've already talked about that.

13 MR. RUSSELL: Objection. Foundation.

14 THE WITNESS: I already discussed the fact
15 that a mirror by itself is a blind spot, the A
16 pillar can be a blind spot, and the driver has to
17 move in his seat or whatever is necessary to look
18 around.

19 BY MR. KEMP:

20 Q. That's the rock-and-roll technique?

21 A. It can -- some people refer to it that way.

22 Q. Do you have a CDL? I forgot to ask.

23 A. Not anymore.

24 Q. You did for a while?

25 A. Yes, I did.

1 Q. For how long?

2 A. Until about 2006.

3 Q. Okay. All right. The fourth paragraph on
4 the second page he says, quote, "In the case of
5 these blind spots, policymakers have failed at the
6 highest level: Engineering. If we want to end
7 fatalities, safe street engineering must not end at
8 the curb," end quote. Did I read that right?

9 A. Yes.

10 Q. I assume you'll agree that the highest
11 level is engineering?

12 MR. RUSSELL: Objection. Foundation.

13 THE WITNESS: Highest level of what?

14 BY MR. KEMP:

15 Q. Does it matter? The highest level of
16 anything should be engineering; right?

17 A. Well, certainly engineering people would
18 think that, but I'm not sure everybody else would.

19 Q. Okay. I thought you were an engineer.

20 A. Huh?

21 Q. You're an engineer?

22 A. Yes.

23 Q. I was making a joke.

24 You recognize that there's a hierarchy of
25 safety here, that design, and things you can't

1 design around and rely upon human beings to do the
2 right thing? Generally you know what I'm saying?

3 A. There's a guideline of that nature,
4 correct.

5 Q. And the best thing to do, if you can do it,
6 is to design around it because you don't want to
7 rely upon humans; right?

8 MR. RUSSELL: Objection. Incomplete
9 hypothetical. Outside the scope.

10 THE WITNESS: You try, if you have a
11 hazard, to try to design it out. That's the first
12 step.

13 BY MR. KEMP:

14 Q. That's a fail-safe design? You've heard
15 that term?

16 MR. RUSSELL: Same objection.

17 THE WITNESS: That's another potential way
18 of addressing it.

19 BY MR. KEMP:

20 Q. Okay. All right. Do you think that MCI
21 has done everything it possibly can to design out
22 the right-side blind spot issue?

23 A. In my opinion, based on what technology we
24 have today and complying with the regulations we
25 have today, we've done everything we can.

1 Q. Okay. Would you agree or disagree that
2 there's buses other than MCI buses that have less
3 visibility obstruction with regards to the right
4 side?

5 MR. RUSSELL: Objection. Outside the
6 scope. Foundation.

7 THE WITNESS: I don't know if that's true
8 or not.

9 BY MR. KEMP:

10 Q. Don't know one way or the other?

11 A. I don't know.

12 Q. Do you know who Mr. Hanley is on the next
13 page?

14 A. Mr. Hanley?

15 Q. Uh-huh. He's the president of ATU.

16 A. I'm not sure. I'm not sure the largest --
17 I'm not sure.

18 Q. Do you know what the ATU is?

19 A. It's the union for the transit union.

20 Q. That's the Amalgamated Transit Union?

21 A. Okay.

22 Q. Yes?

23 A. I've heard of it. That's all I know about
24 it.

25 Q. Okay. So the president of the largest

1 transit union reportedly describes, quote, "Safety
2 and engineering failures that have transformed buses
3 into," quote, "'mobile manslaughter machines,'"
4 unquote. Do you see that statement?

5 A. What page are you on?

6 Q. (Indicating.)

7 A. Okay. I see that statement.

8 Q. It's pretty colorful?

9 A. I would say that's a colorful statement.

10 Q. Have you heard that statement before
11 outside the context of this litigation that buses or
12 coaches are, quote, "mobile manslaughter machines"?

13 A. No, I have not.

14 Q. Okay. All right. Page 5 of 11. I'm not
15 trying to cherry-pick here. If you want to take
16 some time to read it --

17 A. Go ahead.

18 Q. Under the title "Changing Buses Means
19 Changing Laws and Culture." Do you see that?

20 A. Yes.

21 Q. And he says, quote, "Currently neither the
22 bus designers nor agency decision makers are being
23 held legally responsible," unquote. Do you see that
24 statement?

25 A. Yes.

1 Q. Do you agree with that?

2 A. No.

3 MR. RUSSELL: Objection. Foundation.

4 BY MR. KEMP:

5 Q. How many cases are you aware of where MCI
6 has been held legally responsible for design
7 engineering problems with buses?

8 MR. RUSSELL: Objection. It's outside the
9 scope.

10 THE WITNESS: Meaning lawsuits? We have a
11 number of lawsuits.

12 BY MR. KEMP:

13 Q. Have you been held responsible in some of
14 them?

15 MR. RUSSELL: Objection. Calls for a legal
16 conclusion. Outside the scope. Foundation.
17 Argumentative. And calls for a legal conclusion.

18 THE WITNESS: I'm not a lawyer, and I don't
19 get involved. I don't know if we're held legally
20 responsible or not.

21 MR. KEMP: Okay. All right. We'll mark
22 that.

23 (Exhibit 9 marked.)

24 BY MR. KEMP:

25 Q. Okay. I'm handing you Exhibit 9, which is

1 a portion of the Answer to Plaintiffs' Complaint by
2 Defendant Motor Coach Industries. And specifically
3 I'd ask you to look at page 2, lines 19 through 20.
4 You understand in this case we're talking about a
5 2008 model J4500 that was sold in 2007; right? Do
6 you understand that?

7 A. Yes. But I'm confused by you saying 19
8 through 20.

9 Q. No. Lines 19 through 20.

10 A. Oh, lines. Okay. I'm sorry.

11 Q. Okay. This says, quote, "Defendant" --
12 referring to Motor Coach Industries -- quote,
13 "Defendant did not design or manufacture the motor
14 coach referenced in the amended complaint and denies
15 such allegations," unquote. Do you see that
16 statement?

17 A. Yes.

18 Q. Did you, in fact, assist in the design of
19 the J4500?

20 A. Personally?

21 Q. Yeah.

22 A. No, not really.

23 Q. I thought you told me you were part of the
24 design team?

25 A. No. I helped assign people to design.

1 Q. Okay. Do you know whether or not MCI,
2 referring to MCI U.S., was involved in the design of
3 the motor coach?

4 A. The MCI U.S. did a little drafting. That's
5 it. But it was under the direction of somebody in
6 Winnipeg.

7 Q. Mr. Couch?

8 A. Yeah.

9 Q. Okay.

10 A. But we --

11 Q. So would it be more correct to say that MCI
12 Limited, the Canadian company, and MCI U.S. jointly
13 designed the motor coach? Would that be more
14 correct?

15 A. No, it would not.

16 Q. Okay. Why not?

17 A. Because the engineering concept and the
18 engineering direction came out of Winnipeg. Just
19 because they drew a few parts in New Mexico, we also
20 had contract people doing parts as standard
21 engineering practice.

22 Q. So it was MCI Limited contract people and
23 the people in New Mexico?

24 A. I'm just saying -- maybe I stated it
25 wrong -- that -- in order to get enough people

1 working on a project, sometimes you source some of
2 the work to various entities, but the engineering
3 requirements and responsibility was in MCI Limited.

4 Q. Okay. All right. And we talked about drag
5 coefficient a little bit. As we sit here today, do
6 you know what the drag coefficient of a J4500 is?

7 A. I do not.

8 Q. Can you give me any kind of range like .35
9 to .55? Anything?

10 A. No.

11 Q. Okay. Same question for the E series. Do
12 you know what the drag coefficient of that is?

13 A. No, I do not.

14 Q. All right. Did I ask you what kind of car
15 you drive?

16 A. No, you did not.

17 Q. What kind of car do you drive?

18 A. My wife drives a Honda, 2006.

19 Q. Does that have a proximity sensor?

20 A. Nope.

21 Q. Okay. You're a one-car family?

22 A. No.

23 Q. What do you drive?

24 A. A pickup.

25 Q. What kind?

1 A. 2013 GMC.

2 Q. Does it have a proximity sensor?

3 A. No.

4 Q. Okay. Have you ever driven a car with a
5 proximity sensor?

6 A. Yes.

7 Q. What kind?

8 A. I have no idea. It was a rental.

9 Q. Side proximity sensor?

10 A. Not that I recall.

11 MR. KEMP: Okay. No further questions.

12 MR. RUSSELL: Thank you.

13 THE VIDEOGRAPHER: We're going off the
14 record. The time is 12:16.

15 (Proceedings concluded at 12:16 p.m.)

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VIRGIL HOOGESTRAAT - 10/13/2017

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1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)
)SS
3 COUNTY OF CLARK)

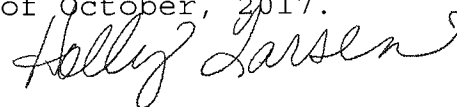
4 I, Holly Larsen, a duly commissioned and
5 licensed Court Reporter, Clark County, State of
6 Nevada, do hereby certify: That I reported the
7 taking of the deposition of the witness, Virgil
8 Hoogestraat, commencing on Friday, October 13, 2017,
9 at 9:09 a.m.

10 That prior to being examined, the witness was,
11 by me, duly sworn to testify to the truth. That I
12 thereafter transcribed my said shorthand notes into
13 typewriting and that the typewritten transcript of
14 said deposition is a complete, true, and accurate
15 transcription of said shorthand notes.

16 I further certify that I am not a relative or
17 employee of an attorney or counsel of any of the
18 parties, nor a relative or employee of an attorney
19 or counsel involved in said action, nor a person
20 financially interested in the action.

21 IN WITNESS HEREOF, I have hereunto set my hand,
22 in my office, in the County of Clark, State of
23 Nevada, this 18th day of October, 2017.

24



25

HOLLY LARSEN, CCR NO. 680

ERRATA SHEET

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I declare under penalty of perjury that I have read
the foregoing _____ pages of my testimony, taken on
_____ (date) at _____ (city),
_____ (state),

and that the same is a true record of the testimony
given by me at the time and place herein above set
forth, with the following exceptions:

Page	Line	Should read:	Reason for change:
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ERRATA SHEET (Continued)				Page 158
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In the Matter Of:

Khiabani, et al. vs. Motor Coach Industries, et al.

MARK B. BARRON*September 26, 2017**Job Number: 418647*

EXHIBIT 2

000830

EXHIBIT 2

000830

000830

000830

In the Matter Of:

Khiabani, et al. vs. Motor Coach Industries, et al.

BRYAN COUCH*October 12, 2017**Job Number: 425415*

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3 KEON KHIABANI and ARIA)
4 KHIABANI, minors by and)
5 through their natural) CASE NO.:
6 mother, KATAYOUN BARIN;) A-17-755977-C
7 KATAYOUN BARIN,)
8 individually; KATAYOUN)
9 BARIN as Executrix of)
10 the Estate of Kayvan)
11 Khiabani M.D.)
12 (Decedent), and the)
13 Estate of Kayvan)
14 Khiabani,)
15 M.D. (Decedent),)
16 Plaintiffs,)
17 vs.)
18 MOTOR COACH INDUSTRIES,)
19 INC. A Delaware)
20 corporation;)
21 MICHELANGELO LEASING)
22 INC. D/b/a RYAN'S)
23 EXPRESS, an Arizona)
24 corporation; EDWARD)
25 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.)
22
23 VIDEOTAPED DEPOSITION OF BRYAN COUCH
24 LAS VEGAS, NEVADA
25 THURSDAY, OCTOBER 12, 2017
REPORTED BY: KAREN L. JONES, CCR NO. 694
JOB NO.: 425415

000832

BRYAN COUCH - 10/12/2017

Page 2

1 DEPOSITION OF BRYAN COUCH, taken at Kemp,
2 Jones & Coulthard, located at 3800 Howard Hughes
3 Parkway, 17th Floor, Las Vegas, Nevada, on Thursday,
4 October 12, 2017, at 10:05 a.m., before Karen L.
5 Jones, Certified Court Reporter, in and for the
6 State of Nevada.

7

8 APPEARANCES:

9 For the Plaintiffs:

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26 Also Present: J.P. Marretta, Videographer

27 Timothy Nalepka

28

1	I N D E X		
2	WITNESS: BRYAN COUCH		
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5	BY: Mr. Christiansen		142
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BRYAN COUCH - 10/12/2017

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1 LAS VEGAS, NEVADA; THURSDAY, OCTOBER 12, 2017

2 10:05 A.M.

3 -oOo-

4 THE VIDEOGRAPHER: This is the beginning
5 of Media Number 1 in the deposition of Bryan Couch
6 in the matter of Khiabani versus Motor Coach
7 Industries held at Kemp Jones & Coulthard on
8 October 12th, 2017, at 10:05 a.m.

9 The court reporter is Karen Jones. I am
10 J.P. Marretta, videographer, an employee of
11 Litigation Services.

12 This deposition is being videotaped at
13 all times unless specified to go off of the video
14 record.

15 Would all present please identify
16 themselves, beginning with the witness.

17 THE WITNESS: Bryan Couch.

18 MR. KEMP: Will Kemp for plaintiffs.

19 MR. CHRISTIANSEN: Pete Christiansen for
20 plaintiffs.

21 MR. RUSSELL: Howard Russell for MCI.

22 MR. NALEPKA: Timothy Nalepka for MCI.

23 THE VIDEOGRAPHER: Will the court
24 reporter please swear in the witness.

25 ///

BRYAN COUCH - 10/12/2017

Page 5

1 Whereupon,

2 BRYAN COUCH,

3 having been first duly sworn to testify to the
4 truth, the whole truth and nothing but the truth,
5 was examined and testified as follows:

6

7 EXAMINATION

8 BY MR. KEMP:

9 Q. State your name and spell it for the
10 court reporter.

11 A. Bryan Couch. B-r-y-a-n, C-o-u-c-h.

12 Q. And Mr. Couch, have you ever had your
13 deposition taken before?

14 A. I have.

15 Q. On how many different occasions?

16 A. I think three.

17 Q. Can you tell me the circumstances of the
18 prior three depositions, as best you can recall.

19 A. One was an employee. One was a seat
20 belt -- it was an accident. And another one was an
21 accident. From what I remember.

22 Q. A bus accident?

23 A. Yeah.

24 Q. And the seat belt, was that also a bus
25 accident?

1 A. Yeah.

2 Q. And did those involve suits against MCI?

3 A. Yes.

4 Q. And was it MCI U.S. as opposed to

5 MCI Canada --

6 A. I don't remember.

7 Q. -- if you know? Okay.

8 And with regards to the third one, do
9 you remember approximately when that was?

10 A. I don't remember the date, sorry.

11 Q. Or the year even?

12 A. I don't.

13 Q. Decade?

14 A. Yeah, I think they were in -- there
15 was -- they were probably in both, I think. So like
16 in -- after 2010 and before 2010. So in the last
17 20 years, 17 years.

18 Q. All three of these?

19 A. They were -- I think the first one was
20 the employee, and that would have been before 2010.

21 Q. Okay. And that was an employee
22 termination suit of some sort, or something
23 like that?

24 A. Yeah.

25 Q. Okay. And then the seat belt one, that

1 was some kind of allegation that the bus should or
2 shouldn't have a seat belt or it didn't work right
3 or something like that?

4 A. It was an accident.

5 Q. And why was the seat belt an issue?

6 A. That's -- was -- what was -- MCI was --
7 one of the reasons MCI was sued, was --

8 Q. Is it because there was not a seat
9 belt --

10 A. Correct.

11 Q. -- or because -- because there was not a
12 seat belt?

13 A. (Nods head in the affirmative.)

14 Q. And you nodded your head. You have to
15 answer "yes" or "no" for the record.

16 A. Okay, sorry.

17 Q. Okay. So the reason MCI was sued in the
18 seat belt case was because there was no seat belt on
19 the bus?

20 A. Right.

21 Q. Okay. And then what particular
22 knowledge, if anything, do you have on that issue?
23 Were you involved in seat belt design?

24 A. Yes, I was.

25 Q. We'll get back to seat belts in a

1 second.

2 The third one, you said it was a bus
3 accident. Was that also a suit alleging some kind
4 of design problem?

5 A. I'm trying to think.

6 It was.

7 Q. And what was the design problem being
8 alleged in that case?

9 A. It was about thermal incidence in the
10 vehicle.

11 Q. What does that mean?

12 A. Fire. There was a fire.

13 Q. So there was a fire on the bus?

14 A. (Nods head in the affirmative.)

15 Q. You have to say "yes" or "no."

16 A. Yes.

17 Q. And so they were arguing that the
18 material in the bus was not fireproof, or what?

19 A. That the fire shouldn't have happened.

20 Q. What part of the bus did the fire
21 occur in?

22 A. The wheel bearing.

23 Q. And do you remember what the ultimate
24 outcome of, first of all, the bus fire case was?

25 A. I do not.

1 Q. And how about the seat belt case?

2 A. I do not.

3 Q. Okay. All right. Let me go through the
4 deposition process, just because it's been a while
5 since you've done it.

6 The purpose of a deposition is to
7 discover facts relevant in a lawsuit. In this case
8 it's a lawsuit arising out of an accident that
9 occurred here in Las Vegas on April 18th, 2017,
10 involving an MCI bus and a bicyclist.

11 I'm going to be asking you questions
12 focused on -- primarily on bus design, and hopefully
13 you'll be able to answer those questions.

14 In any event, my answer -- my questions
15 and your answers are typed up by the court reporter.
16 She gives you a booklet that's called a deposition
17 transcript. That will probably come in three or
18 four weeks, or since you're going to be on vacation,
19 probably more like -- well, sooner or later you'll
20 get the booklet.

21 When you get the booklet, you'll have
22 the opportunity to review it and see if your answers
23 as you've given them today are correct. If they're
24 not correct, you can make changes.

25 So -- and you should make changes if

1 something's not right. However, if you do make
2 changes, everybody has the right to comment upon the
3 fact you made a change. So, for example, counsel
4 can say: Oh, he said A originally and then
5 Mr. Couch changed it to B.

6 So there's a little bit of premium here
7 on accuracy, and I ask that you give me the best
8 answer you can.

9 Yesterday I noticed -- we did
10 Mr. Lamothe's deposition, and we didn't really seem
11 to get into a lot of technical terms, but there were
12 a couple of areas there where he was talking about a
13 process that was used or something and used an
14 acronym or a phrase that seemed to be kind of a
15 vernacular for MCI that people wouldn't necessarily
16 know. So if you see that I'm not understanding your
17 question [sic], ask me to stop and rephrase it.
18 I'll be more than happy to do so.

19 Finally, the oath you've taken is the
20 same oath administered in a court of law and has the
21 same force and effect.

22 Do you understand all that before we get
23 started?

24 A. Yes.

25 Q. Where are you currently employed?

1 A. I'm retired.

2 Q. Can you tell me the extent of your
3 education? Give me the history.

4 A. I have an engineering technology diploma
5 in electrical and one in electronic.

6 Q. And when did you get that?

7 A. Exact years, I don't know. It was like
8 30-some years ago.

9 Q. What school was that from?

10 A. Red River College.

11 Q. In Winnipeg?

12 A. Yeah.

13 Q. And did you get a bachelor's, master's,
14 or what?

15 A. No. It's an engineering diploma.
16 Engineering technology diploma.

17 Q. And after getting that diploma, what, if
18 anything, did you do?

19 A. For education?

20 Q. Did you get a job?

21 A. Oh, sorry. Yes.

22 Q. Where at?

23 A. First job was at -- with the federal
24 government as a weights and measures inspector.

25 Q. And by "federal government" are we

1 talking the Canadian federal --

2 A. Canadian.

3 Q. And what does a weights and measures
4 inspector do?

5 A. Inspects scales and fuel pumps and
6 things like that, make sure they're accurate.

7 Q. Okay. Gasoline pumps?

8 A. Yeah.

9 Q. And how long did you do that?

10 A. Just about a year.

11 Q. Okay. And roughly what time was that?

12 A. I don't recall the exact year. It
13 was -- so I went to school, got my electrical
14 diploma. Then I did that for a year. Then I went
15 back to school. Got my electronic diploma. And
16 then I got another job as a -- working for an
17 agriculture equipment manufacturer in the testing
18 department.

19 And then --

20 Q. Again in Canada?

21 A. Yes. All in Canada.

22 Q. And then when you said you went back to
23 school, you went back to Red River?

24 A. Correct.

25 Q. Okay, go ahead.

1 A. And then I worked at a company that made
2 fiber optic cable.

3 Q. For how long?

4 A. Again about a year.

5 Q. Then where did you go?

6 A. Then I went to MCI after that.

7 Q. And approximately when was that?

8 A. 30 years ago.

9 Q. Okay. Does MCI have some kind of
10 program where you can retire after 20, 25, 30 years?

11 A. They have a 30-years plus an age.

12 Q. Okay. And did you hit the
13 30 years or --

14 A. I did, yeah.

15 Q. So you were there 30 years?

16 A. Yeah.

17 Q. So when did you retire?

18 A. In September.

19 Q. Of this year?

20 A. Yeah.

21 Q. So you were there approximately 9/'87
22 through 9/'17?

23 A. Roughly, yeah.

24 Q. Okay. All right. And when you first
25 got there in approximately '87, what was your job

1 title, if any?

2 A. I was the lead in electrical
3 engineering, in sustaining engineering, in Winnipeg.

4 Q. Sustaining would be ongoing --

5 A. Right.

6 Q. -- for buses that were already in the
7 field, right?

8 A. Well, or small changes to orders.

9 Q. Okay. That would be existing buses as
10 opposed to new buses?

11 A. Correct.

12 Q. Okay. How long did you keep that job?

13 A. I don't remember exactly.

14 Q. Okay. And what was your next job,
15 if any?

16 A. Then I worked in the -- there was a
17 program for the E Coach, and I was the head of the
18 systems area.

19 Q. Okay. Was the E Coach an existing
20 product at that time?

21 A. No. It was new.

22 Q. Okay. So you were designing a new bus,
23 basically?

24 A. Right.

25 Q. And when I say "you," I mean MCI.

1 A. The whole team.

2 Q. Okay. All right. And when you say
3 "team," there were people in Winnipeg that were on
4 that team?

5 A. Correct.

6 Q. And they were employed by MCI Limited?

7 A. Yes.

8 Q. Were you employed by MCI Limited?

9 A. Yes.

10 Q. Okay. As opposed to MCI, Inc.?

11 A. Right.

12 Q. Okay. All right. Was there anyone on
13 the team that was employed by MCI, Inc.?

14 A. Yes.

15 Q. And would that have been the people in
16 Roswell, New Mexico?

17 A. No.

18 Q. Okay. Who was employed by
19 MCI, Inc. that was on the design team for the
20 E Coach?

21 A. There was one or two people from our
22 plant in Pembina, North Dakota.

23 Q. And that's P-e-m-b-e-r-t-o-n?

24 A. It's Pembina, P-e-m-b-i-n-a. Pembina.

25 Q. P-e-m-b-i-n-a. Okay. Got it.

1 Have you been to that plant?

2 A. I have, yeah.

3 Q. Okay. So there were one or two people
4 on the E Coach design team from MCI, Inc. that came
5 from the Pembina plant; is that correct?

6 A. Correct.

7 Q. Okay. Do you remember what their
8 names were?

9 A. One was Steve Kiner. I don't remember
10 the other one.

11 Q. Kiner would be K-i-n-e-r?

12 A. Yeah.

13 Q. And what were their job positions on the
14 design team for the E Coach, in general?

15 A. Looking after -- looking out for
16 manufacturability. Their input -- that was
17 their input.

18 Q. Okay. They were the people that made
19 sure that whatever's being designed was
20 manufacturerable?

21 A. Correct.

22 Q. That's like an architect's
23 designability, they are all round, and then when the
24 contractor comes in they're all square. Right?
25 Kind of similar to that? Is that the concept here?

1 A. Yeah. It was to make sure that the
2 designs fit our manufacturing systems.

3 Q. What time period was the E Coach
4 designed?

5 A. From '92, is probably the earliest,
6 until '97.

7 Q. And that's pretty much all you did
8 during that time period?

9 A. Correct.

10 Q. Okay. Now, we've been told that there
11 was some involvement from some people down in
12 Roswell, New Mexico, in the design of the E Coach.
13 Does that ring any bells with you?

14 A. I know Virgil was involved near the end.

15 Q. And Virgil's last name is ...?

16 A. Virgil Hoogestraat.

17 Q. Can you spell that for the court
18 reporter?

19 A. H-o-g-g- -- no.

20 Q. H-o-g-e-n-s-t-r-a-t?

21 A. Could be. I'd have to write it down.

22 Q. Okay. We have him coming up tomorrow.
23 So he was involved at the end of the
24 E Coach project?

25 A. Yeah.

1 Q. And what was Virgil's role?

2 A. And Harold Zuschlag.

3 Q. How do you spell that one?

4 A. I don't know. Last name, I can't ...

5 Q. "Douchelag"?

6 A. Zusch. Zed. Z.

7 Q. Z?

8 A. Zed-U.

9 Q. Z-what?

10 MR. NALEPKA: Do you want me to give you
11 the spelling?

12 MR. KEMP: Yeah.

13 MR. NALEPKA: Z-u-s-c-h-l-a-g.

14 MR. KEMP: I knew that.

15 MR. NALEPKA: And Hoogestraat is
16 H-o-o-g-e-s-t-r-a-a-t.

17 MR. KEMP: Two A's?

18 MR. NALEPKA: Yeah.

19 MR. KEMP: Okay. I was close. I was
20 close.

21 BY MR. KEMP:

22 Q. All right. And Mr. Zuschlag -- is that
23 how you pronounce it?

24 A. Yeah.

25 Q. Mr. Zuschlag was from the New Mexico

1 area, too, was your understanding?

2 A. Yeah.

3 Q. Now we have two people. It's been
4 suggested to us that there were as many as 20 people
5 from New Mexico involved. Does that ring any bells?

6 A. On the E Coach?

7 Q. Yeah.

8 A. (Shakes head in the negative.)

9 Q. Just those two are the ones?

10 A. That's my -- that's what I recall, yeah.

11 Q. And what was your understanding, if any,
12 as to where Mr. Hoogestraat and Mr. Zuschlag were
13 employed? Who was their employer?

14 A. Who was their employer?

15 Q. Uh-huh.

16 A. MCI, Inc.

17 Q. Inc.? Okay.

18 Was there a subdivision of MCI at or
19 near this time that was TRW or TCS or something
20 like that?

21 A. I don't know.

22 Q. You don't know? Okay.

23 And did you interact with
24 Mr. Hoogestraat and Mr. Zuschlag in the design of
25 the E Coach?

1 A. Yes.

2 Q. Did they actually come to Canada?

3 A. They did.

4 Q. So -- and when they came to Canada, were
5 they there for weeks, months, at a time?

6 A. They would come back and forth.

7 Q. Back and forth. Okay.

8 Did you guys have some sort of sharing
9 program where the design was on CAD or something and
10 it could be shared back and forth between Canada and
11 New Mexico?

12 A. I don't -- we did have the ability to
13 share. I don't recall whether we did or not.

14 Q. And what was Mr. Hoogestraat's primary
15 involvement in the E Coach design?

16 A. He came in near the end and was just
17 helping out with getting it into production.

18 Q. Okay. And when you say "helping out,"
19 was there a particular issue or problem that he was
20 there to help out with?

21 A. No.

22 Q. Okay. And why was he needed in
23 that role?

24 A. He was just a senior technical guy for
25 the company, and so he -- it was an important launch

1 and he was there for help.

2 Q. And what was Mr. Zuschlag? What was
3 his role?

4 A. Same. Same thing. He was there at the
5 end to get it into production.

6 Q. Okay. When you designed the
7 E Coach, was there someone that was in charge of
8 product safety, someone specifically in charge of
9 product safety?

10 A. Well, everybody was.

11 Q. Okay.

12 A. All the -- there was probably about a
13 hundred people, and so everybody had responsibility
14 for safety for their area.

15 Q. Okay. A hundred people on the design
16 team?

17 A. Yeah, roughly.

18 Q. And that would include everybody in
19 Canada, everybody from North Dakota, everybody from
20 New Mexico? That's the whole group?

21 A. Yeah, it was just about all in
22 Canada, yeah.

23 Q. Okay. But the hundred number is the
24 whole group?

25 A. Right.

1 Q. Okay. Was there an overall person in
2 charge of the product?

3 A. Mark Sealy for quite a bit of it.

4 Q. And how do you spell that last name?

5 A. S-e-a-l-y.

6 Q. And then did someone else take over
7 his --

8 A. That would have been Harold at the --
9 after -- when we were getting it into production.

10 Q. So Sealy was there for most of the
11 project and then Zuschlag took over when you put it
12 into production?

13 A. Right. Sealy wasn't an MCI employee.
14 He was a consultant.

15 Q. And do you know where he was located at?

16 A. He's from England.

17 Q. Was he living in England at the time the
18 bus was being designed?

19 A. He was living in Canada.

20 Q. Is he back in England now, if you know?

21 A. He is. As far as I know.

22 Q. Is he retired?

23 A. Don't know.

24 Q. Was the E Coach a successful bus series?

25 MR. RUSSELL: Objection. Vague.

1 THE WITNESS: I don't know what
2 you mean.

3 BY MR. KEMP:

4 Q. Did you sell a lot of them?

5 A. Yeah.

6 Q. Was it the number-one seller in
7 North America for a time period?

8 A. I don't believe it was number-one,
9 but ...

10 Q. Top three?

11 A. Yeah.

12 Q. Okay. And did there come a time that
13 the E Coach was used as a platform to design the
14 J Coach?

15 A. Yeah.

16 Q. When was that?

17 A. The J Coach happened in '99 to 2000,
18 roughly.

19 Q. And were you also involved in that?

20 A. I was.

21 Q. And what was your role in that?

22 A. Well, I was in product planning then, so
23 I was more on the concept and how it fit into the --
24 MCI's product offering.

25 Q. Why is it it took five years to

1 design the E Coach and only two years to design the
2 J Coach?

3 A. The J Coach is just a facelift of
4 the E, really.

5 Q. Okay. So basically the J Coach is an
6 E Coach updated a little bit?

7 A. Well, it has -- it was changed, so a
8 different look and a -- different look and different
9 features.

10 Q. Okay. Could you tell me the three
11 primary changes?

12 A. So the look, the styling, was changed;
13 the electrical was changed; and the tag axle was
14 changed.

15 Q. The tag axle?

16 A. Yeah.

17 Q. Okay. Anything else?

18 A. Those are the ...

19 Q. Top three?

20 A. (Nods head in the affirmative.)

21 Q. Okay. And when you say the look was
22 "changed," what does that mean to a layperson?

23 A. So the E was designed as a -- to look
24 and be a very high-end tour coach, and the J Coach
25 was designed to be not so high-end.

1 So we had a D coach, a J Coach and an
2 E Coach. So it's kind of a more -- I guess it would
3 be attractive to more of the customer base, whereas
4 the E was just a very high-end. That's how it was
5 styled and designed.

6 Q. And by "high-end," would that be
7 pricier?

8 A. Yes.

9 Q. So the E Coach cost more than the
10 J Coach?

11 A. Yes.

12 Q. And just in general, what would an
13 E Coach cost, in U.S. dollars?

14 A. Price?

15 Q. Yeah. In the 2000 time period.

16 A. Probably \$400,000, 450.

17 Q. And how about the J Coach?

18 A. Probably \$20,000 less.

19 Q. And the D coach?

20 A. The D coach would depend a lot on the
21 spec. Because we -- so it would depend on how it
22 was specified.

23 Q. Okay. But would that be less than the
24 E and J?

25 A. Sometimes it would be more.

1 Q. Okay. So basically the idea here was
2 that the J Coach would be slightly cheaper than the
3 E Coach, to attract a different market segment?

4 A. It would have a lower price, with not as
5 much technology.

6 Q. What is on the E Coach in terms of
7 technology that's not on the J Coach?

8 A. A steerable tag axle. It has a -- it
9 had an electronic dash instead of individual gauges.
10 It had a multiplexed electrical system. Those are
11 some of the main.

12 Q. These are all things the E had that the
13 J didn't have?

14 A. Correct.

15 Q. Okay. All right. Did the E have seat
16 belts in 2000?

17 A. It did not.

18 Q. How about the J?

19 A. No.

20 Q. Okay. When -- if you know, when did
21 seat belts first become standard equipment for the
22 J series?

23 A. Standard?

24 Q. Right. Are they standard now?

25 A. They are.

1 Q. Okay. When did that happen?

2 A. I don't remember the exact date.

3 Q. Can you give me a year?

4 A. No. It was -- it was around the time
5 that the rule came in effect.

6 Q. Are you talking about the FMSV [sic]
7 rule?

8 A. FMVSS rule.

9 Q. So shortly before that time?

10 A. That's what I recall.

11 Q. So if we get the effective date of that
12 rule, it's sometime before that for both the E Coach
13 and the J Coach?

14 A. Yes. And the D Coach.

15 Q. Why weren't they put on before that rule
16 came into effect?

17 MR. RUSSELL: Objection; foundation.

18 BY MR. KEMP:

19 Q. Referring to seat belts.

20 A. Sorry?

21 Q. Referring to seat belts, why weren't
22 they added to the E Coach or J Coach before the rule
23 came into effect?

24 MR. RUSSELL: Same objection.

25 THE WITNESS: They were added before the

1 rule came into effect.

2 BY MR. KEMP:

3 Q. Okay. Why weren't they added, say, five
4 years before the rule came into effect?

5 A. They were -- if memory serves me
6 correct, I believe we first put them on in 2005.

7 Q. At that time they were optional?

8 A. Correct.

9 Q. And so from 2005 until whenever the
10 federal regulation came into effect, they were
11 optional?

12 A. Correct.

13 Q. Okay. Why weren't they standard, if
14 you know?

15 A. Some customers didn't want them.

16 Q. And you do know that passenger vehicles
17 in the United States were required to have -- all of
18 them were required to have seat belts from 1968
19 forward? You know that?

20 MR. RUSSELL: Objection; foundation.

21 THE WITNESS: I know that seat belts
22 were on cars before they were on coaches, yeah.

23 BY MR. KEMP:

24 Q. Does that seem odd to you, that seat
25 belts were required to be on cars in 1968 and yet

1 they weren't put on buses until 2005 and after?

2 MR. RUSSELL: Objection; foundation.

3 Speculation.

4 BY MR. KEMP:

5 Q. It doesn't seem odd?

6 A. No.

7 Q. Okay. Would there be a reason why
8 seat belts would be needed more in automobiles than
9 in buses?

10 MR. RUSSELL: Objection; incomplete
11 hypothetical.

12 BY MR. KEMP:

13 Q. In terms of, you know, protecting people
14 from injuries in accidents?

15 MR. RUSSELL: And foundation.

16 THE WITNESS: Sorry. Could you repeat
17 that?

18 BY MR. KEMP:

19 Q. Is there a reason why seat belts would
20 be used in automobiles, in terms of a safety device
21 to protect people from injuries in accidents, that
22 doesn't apply to buses?

23 A. I don't know that I'm qualified to
24 answer that.

25 Q. Okay. As we sit here today, do you know

1 of any reason?

2 MR. RUSSELL: Same objections.

3 THE WITNESS: Any objections to --

4 sorry. I don't --

5 BY MR. KEMP:

6 Q. Do you know of any reason why a seat
7 belt would not be a good safety feature for a bus as
8 it is for an automobile?

9 A. The main thing is the vehicle size. So
10 a coach is a very safe vehicle. It's very high. It
11 has a very high interior. And it was a very safe
12 means of travel. It is a very safe means of travel.

13 Q. Am I not correct that a car and a coach
14 or a bus would -- either one of them runs into a
15 wall, they're both going to stop, right?

16 MR. RUSSELL: Objection; foundation.
17 Incomplete hypothetical.

18 THE WITNESS: Depends.

19 BY MR. KEMP:

20 Q. Okay. And you know airbags are required
21 now for cars, right?

22 A. Yeah.

23 Q. Was any consideration given to putting
24 airbags in buses?

25 A. I don't know.

1 Q. Okay. How about the driver seats?

2 A. What about them?

3 Q. Were seat belts standard equipment in
4 the driver seats prior to 2005?

5 A. I believe so, yes.

6 Q. So the driver had a seat belt as a
7 standard piece of safety equipment, but the
8 passengers did not; is that correct?

9 A. Seat belts were in for the driver long
10 before they were for the passengers.

11 Q. And what's the rationale for that?

12 A. I believe it's to keep the driver in his
13 seat so he can maneuver, in the event of -- he has
14 to make an evasive maneuver.

15 Q. Okay. But what is the rationale for
16 keeping the driver in the seat with a standard seat
17 belt but not keeping the passengers in their seat
18 with a standard seat belt?

19 MR. RUSSELL: Objection; foundation.

20 THE WITNESS: The seating in a -- in a
21 vehicle -- in a bus provides some
22 compartmentalization. So the passengers --

23 BY MR. KEMP:

24 Q. Okay. Let's go back to airbags.

25 Are airbags a standard safety feature

1 for the driver seat in buses now, in the J4500?

2 A. Not to my knowledge.

3 Q. Has any consideration, that you know
4 of, been given to putting airbags in driver seat
5 of buses?

6 A. I am not sure whether MCI has looked at
7 it or not.

8 Q. Okay. As part of bus design, do the
9 designers do what's sometimes referred to as a
10 general hazard assessment or potential hazard
11 assessment?

12 A. We do a failure mode and
13 effect analysis.

14 Q. And as part of that you look at
15 potential accidents and safety issues?

16 A. We would look at a whole range of things
17 that could happen.

18 Q. Okay. And that was done for the
19 E Series?

20 A. There would have been some done on
21 certain high-risk systems.

22 Q. Was there an overall -- is that FMEA?

23 A. Yeah.

24 Q. Was there an overall FMEA for the
25 E Series in general?

1 A. I don't recall.

2 Q. And same question for the J Series: Was
3 there an overall FMEA?

4 A. Again, I don't recall if there was.

5 Q. But you recall that there was some FMEA
6 on the E Series for what you referred to as
7 high-risk systems; is that right?

8 A. Right.

9 Q. And would the same be true for the
10 J Series?

11 A. Yes.

12 Q. And what would the high-risk systems be?

13 A. I don't -- so the -- probably the
14 electrical system.

15 Q. Anything else?

16 A. Steering. Brakes.

17 Q. Do you have an understanding that a
18 rectangular object moving through air will
19 displace air?

20 A. A rectangular object will, yeah.

21 Q. Okay. And what do you call that?

22 A. What do I call what, sir?

23 Q. The air displacement.

24 Let's make it a little more specific.

25 Do you have an understanding that if a

1 bus is moving, say, 25 miles an hour, it will
2 displace -- the front of the bus will displace air?

3 A. A coach will displace air, yeah.

4 Q. And what do you call that?

5 A. It would be part of drag.

6 Q. Okay. Have you heard the term "side
7 force"?

8 A. No.

9 Q. Okay. Ever heard the term "air blast"?

10 A. No.

11 Q. Okay. But what you would call it would
12 be "drag"?

13 A. Right.

14 Q. Okay. Are there different ways to
15 minimize the amount of air that a coach will
16 displace when it's moving?

17 A. This isn't my area of expertise, so ...

18 Q. Okay. Was there an aerodynamic engineer
19 involved in the development of the E Series?

20 A. There were engineers that would be
21 looking at that.

22 Q. Okay. And who were they?

23 A. I don't recall.

24 Q. Okay. And when you said there were
25 engineers that were looking at that, how do you

1 know that?

2 A. There was a -- a design goal to try to
3 improve the drag coefficient of the E Coach compared
4 to the D Coach.

5 Q. Okay. That was one of the goals going
6 into the E Series project, to --

7 A. Correct.

8 Q. -- to -- to improve the drag --

9 A. To reduce the drag.

10 Q. And the drag coefficient is expressed in
11 terms of .4, .8, something like that?

12 A. I don't know that.

13 Q. You don't know that, okay.

14 And that's why you think that there were
15 some aerodynamics engineers involved, because that
16 was one of the goals?

17 A. Right.

18 Q. Other than that, do you have any
19 knowledge as to aero -- aerodynamic engineers
20 specifically being involved?

21 A. No.

22 Q. Okay. And since the E Series ultimately
23 was converted into the J Series, was there another
24 design goal to try to improve the drag coefficient
25 measurement for the J Series?

1 A. There was.

2 Q. So --

3 A. And it was further improved. There
4 was some work done on the -- on the back shape, to
5 make it rounder on the J, and also on the front, to
6 improve the drag.

7 Q. Okay. And you do recognize that
8 rounding the edges of a flat object is one way to
9 potentially improve the drag coefficient
10 measurement?

11 MR. RUSSELL: Objection; foundation.

12 THE WITNESS: All I know is we were
13 working on the back end as part of the styling, to
14 increase the radiuses on the corners.

15 BY MR. KEMP:

16 Q. And it was your understanding that was
17 done to attempt to improve the drag coefficient
18 measurement?

19 A. Correct.

20 Q. Do you know whether or not it did
21 improve the drag coefficient measurement?

22 A. I don't know.

23 Q. And you said the design goal was to
24 improve the drag coefficient measurement. Do
25 you know if there was a specific drag coefficient

1 measurement that there was -- was the goal, like,
2 .3, .4, .5?

3 A. I remember seeing it on a chart. It
4 was .4 or something was the design goal for the E.

5 Q. So you were trying to get to .4 or
6 better?

7 A. Right.

8 Q. And what was the goal for the J?

9 A. I don't know that we had a number. We
10 just thought that there was an opportunity on the
11 back, because the E Coach rear corners were -- the
12 radiuses were fairly tight.

13 Q. And does that mean they were more of a
14 box than a circle, when you say "tight"?

15 A. Correct.

16 Q. Okay. Tight would be a 90-degree angle,
17 is that what you're saying?

18 A. Yes. It would be 90, yeah.

19 Q. Yeah. All right.

20 Okay. What was the motivating factor
21 for the design goal of trying to improve the drag
22 coefficient measurement?

23 MR. RUSSEL: Objection; foundation.

24 THE WITNESS: Sorry. Could you repeat
25 that?

1 BY MR. KEMP:

2 Q. What was the reason that MCI was trying
3 to improve the drag coefficient measurement for the
4 E Series?

5 A. So the vehicle would move through the
6 air with -- easier. Less disturbance.

7 Q. Was fuel economy one of the reasons?

8 A. Fuel, dust.

9 Q. Any other reason that you know of?

10 A. Those would be the main ones.

11 Q. And basically, if it moves with less of
12 a drag coefficient, it uses less fuel; is that
13 basically it?

14 A. It -- that depends.

15 Q. Okay. But in general, if the drag
16 coefficient is lower it's going to be better fuel
17 economy?

18 A. Again, that depends.

19 Q. Depends on what?

20 A. On the speed that the vehicle's used at.

21 Q. Oh, okay.

22 All things being equal, if you have less
23 drag coefficient, you will use less fuel?

24 A. Not necessarily. It -- I believe it has
25 to be -- because weight and rolling resistance plays

1 a big factor in fuel economy for these vehicles, and
2 drag doesn't come into effect until, I believe it's
3 over 55 miles per hour.

4 Q. And how does dust factor into drag
5 coefficient?

6 A. Well, so you're not -- when the vehicle
7 goes down the road, it's not disturbing the air so
8 much so that it ...

9 Q. Okay. And why would you not want to
10 have the vehicle disturbing the air?

11 A. Well, it's used in cities and open
12 country, passing by people.

13 Q. Is the concern about safety to passersby
14 or is there a concern about exposing them to dust?

15 A. I'm not sure.

16 Q. All right.

17 And by the way, Mr. Couch, this is not a
18 contest to see how long we can go before a break, so
19 if you need a break at any time, just let me know.

20 A. All right.

21 (Exhibit 1 marked.)

22 BY MR. KEMP:

23 Q. Mr. Couch, I'm handing you a
24 document that's on a stationery of an entity known
25 as A D R Systems.

1 A. Mm-hmm.

2 Q. Do you see that they're in Winnipeg?

3 A. Yep.

4 Q. And this was written by, if you look
5 at page 3, a man named George Fleming. Do you
6 see that?

7 A. Yep.

8 Q. Do you know George Fleming?

9 A. I do not.

10 Q. Okay. All right. Flipping over a
11 little bit, there's an attachment here, after the
12 patent -- do you see the United States patent?

13 A. Yeah.

14 Q. After that, we have an article by a man
15 named Kevin Cooper entitled, quote, "The Effect of
16 Front-Edge Rounding and Rear-Edge Shaping on the
17 Aerodynamic Drag of Bluff Vehicles in Ground
18 Proximity," unquote.

19 Do you see that? Are you with me?

20 A. No, not yet. Yep.

21 Q. Okay. First of all, do you know
22 Kevin Cooper?

23 A. I do not.

24 Q. And prior to today did you know of this
25 article?

1 A. I do not.

2 Q. And apparently this article was produced
3 to us from some sort of box that MCI keeps with
4 regards to the design of its --

5 A. Okay.

6 Q. Do you know how that works? Is there
7 some sort of file for the design of buses or
8 something?

9 MR. RUSSELL: And just to clarify the
10 record. The box wasn't necessarily an MCI box.
11 These were documents that we pulled, so I don't
12 want to mislead you to think it was a single box
13 that we got.

14 BY MR. KEMP:

15 Q. Do you know where -- is there a process
16 at MCI where, if you're designing something and you
17 have an article of interest, you file it somewhere?
18 Is there a design file or something like that?

19 A. There are files that the engineer --
20 engineers keep, and there's -- yeah.

21 Q. Okay. Let's start with you. When you
22 were helping design the E Series, did you have your
23 own file system or something?

24 A. I did not. There was a central file
25 system.

1 Q. There was a project file?

2 A. Yeah.

3 Q. Is that what it was called, a project
4 file?

5 A. No. I don't remember what it was called
6 exactly.

7 Q. Okay. But in essence, it was a
8 project file?

9 A. There was a file system kept for the
10 E Coach, yeah.

11 Q. Okay. Same for the J Coach?

12 A. I don't know that.

13 Q. Okay. And the file system for the
14 E Coach, what are we talking about? Are we talking
15 ten boxes, a thousand boxes, what?

16 A. I don't know, no.

17 Q. Who's in charge of that?

18 A. Don't know.

19 Q. Okay. How is it you know there was a
20 file system?

21 A. I was on the team, and there was a
22 central area where we all sat and there was a
23 file system in there. But that's been gone for a
24 long time.

25 Q. Okay. Back to Mr. Cooper here.

1 Did I ask you if you've seen this
2 article before?

3 A. I don't remember. I haven't.

4 Q. Okay. And the article says that, quote,
5 "Commonly, aerodynamic drag is reduced on such
6 bodies by modifying the shapes of the front and rear
7 edges to reduce the average front-face pressure and
8 to increase the average base pressure,
9 respectively."

10 Did I read that right?

11 A. I don't know what bodies they're
12 referring to.

13 Q. They're referring to bluff vehicles.

14 A. What is a bluff vehicle?

15 Q. Well, one thing that's a bluff vehicle
16 would be a bus.

17 A. How about a coach?

18 Q. Okay. A coach.

19 A. I don't know. It talks about something
20 that's very -- with 90-degree corners, it looks
21 like, like a semi-trailer. So I'm not sure what the
22 definition of bluff is or what the bodies is.

23 Q. Okay. Did the E Series have 90-degree
24 corners at the front?

25 A. No.

1 Q. What were they?

2 A. I don't remember, but they were --
3 there was quite a bit of work done on the styling of
4 the E and J to make it slope back so the front
5 wasn't vertical. So it was sloped back, and the
6 edges were -- we had -- we did a lot of work with
7 windshields, trying to make -- put contours in the
8 windshields, both side to side and top to bottom, so
9 they were quite a complex windshield to make -- in
10 order to reduce the drag.

11 Q. The drag coefficient?

12 A. Yeah.

13 Q. Okay. All right. Well, let's try to
14 get a continuum here that we can talk about.

15 You're familiar with the Japanese bullet
16 train that came out in 1964?

17 A. I'm familiar with what bullet trains
18 look like, but specifically that one, no.

19 Q. Okay. Bullet trains generally have more
20 rounded corners than buses, would you agree?

21 MR. RUSSELL: Objection; foundation.

22 THE WITNESS: I don't know.

23 BY MR. KEMP:

24 Q. Okay.

25 A. It would depend, I think, on the

1 comparison.

2 Q. Okay. How about -- it would depend on
3 the comparison. What's that mean?

4 A. What bullet train with what bus and what
5 coach.

6 Q. Why don't we start with the E Series
7 bus, okay, and compare it to the 1964 bullet train.

8 You would agree with me that the bullet
9 train is more aerodynamically efficient?

10 MR. RUSSELL: Objection; foundation.

11 THE WITNESS: I don't know.

12 BY MR. KEMP:

13 Q. You think the bullet train has a higher
14 drag coefficient measurement than the E Series bus?

15 MR. RUSSELL: Objection.

16 THE WITNESS: Again, I don't know.

17 I can't visualize what that looks like, so I
18 don't know.

19 BY MR. KEMP:

20 Q. Okay. Are you familiar with any objects
21 that would have a higher drag coefficient
22 measurement than the E Series bus that are
23 fast-moving, like 200-miles-or-above, trains?

24 MR. RUSSELL: Objection; foundation.

25 THE WITNESS: Higher, or ...?

1 BY MR. KEMP:

2 Q. Higher. They all have lower, right?

3 A. Again, it would -- I would think they
4 would have -- be more aerodynamic, but I don't know
5 for sure.

6 The problem -- the thing on a --

7 Q. If they are more aerodynamic --

8 MR. RUSSELL: Let him finish.

9 BY MR. KEMP:

10 Q. I'll let you expand. But by "more
11 aerodynamic," you mean a lower drag coefficient.
12 Correct?

13 A. Right.

14 Q. Go ahead.

15 A. A coach has certain requirements for
16 ceiling height inside and passenger capacity and
17 driver position that some of these other vehicles
18 you're talking about do not have.

19 And the E Coach, all of those envelopes
20 were considered and pushed to their limit to make it
21 as aerodynamically -- to make it as aerodynamic as
22 possible at the time when we did the design, is what
23 I remember the goals were. Because there was a lot
24 of work on keeping the high driver position so the
25 driver has very good visibility.

1 Whereas, in a bullet train, a bullet
2 train the driver just doesn't have to steer it.
3 It's on a set of tracks and he doesn't have to
4 really see what's coming.

5 Whereas, a coach driver is sitting up
6 high, right at the front, and so it's as aero -- the
7 E Coach was as aerodynamic as we could make it for
8 the -- considering all those variables.

9 Q. Does MCI distribute the Setra 417?

10 A. We do now.

11 Q. And does MCI also distribute the
12 Setra 500?

13 A. We do not.

14 Q. Do not?

15 A. MCI does not.

16 Q. Okay. Let's talk about the Setra 417
17 then.

18 Would I be correct that the Setra 417
19 has a lower drag coefficient measurement than either
20 the E Series or the J Series?

21 MR. RUSSELL: Objection. Foundation.

22 THE WITNESS: In my opinion, it does
23 not. The E or J would be -- have a lower drag
24 coefficient, in my opinion.

25 BY MR. KEMP:

1 Q. Okay. Do we really need opinions here?

2 Don't they test for this kind of thing?

3 A. I'm not aware of a test. But in my
4 opinion.

5 Q. Okay. You are aware that they put buses
6 in wind tunnel tests?

7 A. Who does?

8 Q. They have facilities, like there's
9 facilities in Ohio, Atlanta, other places, where
10 they have big wind tunnels and you can put buses or
11 other kind of vehicles in?

12 A. Correct.

13 Q. Okay. Was this done with regards to the
14 E Series, first of all?

15 A. My recollection is there was a wind
16 tunnel testing on scale models done, is what I
17 recall.

18 Q. For the E Series?

19 A. Correct.

20 Q. How about the J Series?

21 A. No.

22 Q. Okay. And on the E Series, by
23 "scale model," they would build a smaller version of
24 the bus?

25 A. Right.

1 Q. And what was the scale, if you can
2 recall?

3 A. I don't recall. Like -- I don't know.
4 I don't recall what size. It could be a tenth or
5 something like that.

6 Q. So if the bus is -- what? -- 48 feet
7 long?

8 A. 45.

9 Q. 45. So you think that maybe the
10 wind tunnel test was done on a 4.5-foot bus?

11 A. Yeah.

12 Q. Okay. Were you involved in that in any
13 way, shape or form?

14 A. I wasn't.

15 Q. You just heard about the results?

16 A. I just heard that -- I recall that it
17 was done a long time ago.

18 Q. And was that done on various prototypes
19 that you were considering or was it just done on the
20 final proto -- model of the E Series?

21 MR. RUSSELL: Objection; foundation.

22 THE WITNESS: I don't recall that.

23 BY MR. KEMP:

24 Q. But you do recall some sort of
25 wind tunnel test being done on an approximately

1 4-foot-5-feet model -- 4.5-foot model?

2 A. As I said, I believe there was one done
3 on a scale model. I don't remember the exact size.

4 Q. Okay. And where was that done, if you
5 recall?

6 A. I don't recall.

7 Q. Was it done in Canada as opposed to the
8 United States?

9 A. I don't recall.

10 Q. Does MCI Limited have its own wind
11 tunnel facility for scale models?

12 A. MCI Limited? No, we do not.

13 Q. Okay.

14 A. It does not.

15 Q. So they had to sub it out to somebody?

16 A. Correct.

17 Q. Do you know who they subbed it out to?

18 A. I don't.

19 Q. Do you know who was involved in the
20 subbing out?

21 A. I don't. As I said, it wasn't my area
22 of expertise. I was on the systems at that time.

23 Q. Whose area of expertise was it?

24 A. I believe it would have been in the
25 structural zone.

1 Q. And who was in charge of that?

2 A. Ron Bittner.

3 Q. Can you spell his last name for me?

4 A. B-i-t-t-n-e-r.

5 Q. Now, you said the E Coach was designed
6 sometime in '92 through '97?

7 A. Correct.

8 Q. All right. Do you know when the wind
9 tunnel test was done in that frame of time?

10 A. It would have been earlier on. So
11 like --

12 Q. Earlier on, before 1992?

13 A. No, it would have been like in -- so in
14 '93, '94 time frame, I think.

15 Q. And is this wind tunnel test the basis
16 for your belief that you had a .4 drag coefficient?

17 A. No. As I said, that was on a -- on a --
18 that was a design goal.

19 Q. Okay. How did you determine whether or
20 not the design goal was achieved?

21 A. I don't know whether we did or not.

22 Q. Okay. Would I be correct that to
23 determine -- to really determine whether the design
24 goal had been achieved you would have to take a bus
25 and put it in -- a full-scale bus and put it in a

1 wind tunnel, right?

2 MR. RUSSELL: Objection; foundation.

3 THE WITNESS: Or there would be some
4 type of simulation that could be done or -- on a
5 scale model.

6 BY MR. KEMP:

7 Q. Or a computer simulation?

8 A. Yeah.

9 Q. Do you know if computer simulations
10 were done?

11 A. I don't.

12 Q. And more specifically, do you know if
13 computer simulations for drag coefficient with
14 regards to the E Series were done?

15 A. I don't.

16 Q. Who do you think would be the person who
17 would know the most about that?

18 A. I don't know right now.

19 Q. Mr. Bittner maybe?

20 A. I don't know. He's been out of that --
21 he doesn't work at MCI anymore, and he --

22 Q. Where -- where does he work at now?

23 A. I'm not sure.

24 Q. Now, you said that the two reasons that
25 you attempted to improve the drag coefficient were

1 fuel and dust, right?

2 A. Yeah, uh-huh.

3 Q. Was one of the reasons to attempt to
4 reduce air displacement that a bystander or bicycle
5 would see?

6 A. Well, that would be the effect.

7 Q. Okay. Was that a safety concern?

8 MR. RUSSELL: Objection; foundation.

9 THE WITNESS: I don't know.

10 BY MR. KEMP:

11 Q. Okay. In other words, was there any
12 sort of concern that if you had a higher amount of
13 air displacement, it would potentially cause a
14 bicyclist to wobble or pedestrians to, you know, be
15 disrupted in some way?

16 MR. RUSSELL: Same objection.

17 THE WITNESS: Not to my knowledge.

18 We -- I mean, the drivers, there's -- you have to be
19 a licensed professional driver to drive our
20 vehicles, and they're trained in obstacles on the
21 road and how to drive.

22 BY MR. KEMP:

23 Q. So you think a licensed professional
24 driver -- would be a CDL license; is that right?

25 A. Correct.

1 Q. So you think someone with a CDL would
2 understand that there's this air-displacement
3 potential from driving the bus?

4 MR. RUSSELL: Objection; foundation.
5 Speculation.

6 THE WITNESS: A CDL is -- when you get
7 your CDL you're trained on hazards on the road, and
8 hazards on the road are pedestrians, bicyclists.
9 Those are all hazards that you're trained on how to
10 behave when driving -- operate the vehicle in their
11 presence.

12 BY MR. KEMP:

13 Q. Okay. Well, let's stick with the air
14 displacement. Do you think a licensed driver with a
15 CDL would understand that there's a potential for
16 air displacement from a J4500?

17 MR. RUSSELL: Objection; foundation.
18 Speculation.

19 THE WITNESS: I believe that somebody
20 with a CDL understands that they -- it's a big
21 vehicle, and when you are driving at a high rate of
22 speed, that there's a possibility that the air going
23 around the vehicle would kick up dust or get in
24 people's eyes or -- that's what I believe somebody
25 with a CDL understands.

1 That's why they're trained to consider a
2 pedestrian or a bicyclist as a hazard and to operate
3 the vehicle in such a way as to reduce any
4 accidents.

5 BY MR. KEMP:

6 Q. Okay. We're kind of dancing around it,
7 but let me be a little more specific.

8 Do you think that someone with a CDL
9 would know, have the knowledge, that there would be
10 air displacement from the front of a J4500 if it's
11 traveling down the road?

12 MR. RUSSELL: Same objections and asked
13 and answered.

14 THE WITNESS: I don't know for sure.

15 BY MR. KEMP:

16 Q. Okay. Then why did we start down
17 this road by you saying that you think a licensed
18 driver would realize that there was some air
19 displacement?

20 A. Well, because he's trained to -- he --
21 he would see that there's dust and whatever is
22 picked up if he drives by somewhere at a high rate
23 of speed. So he would understand that there's air
24 going out from the side of the vehicle, from the
25 front of the vehicle. And that's why he's trained

1 and why a licensed driver's required to drive our
2 vehicles. And unless he's traveling at a very high
3 rate of speed, he would also understand that it
4 doesn't have a great effect, I believe.

5 Q. So let's try to quantify this "high rate
6 of speed" term that you're using.

7 Would you consider 25 miles an hour a
8 high rate of speed?

9 MR. RUSSELL: Objection; foundation.
10 Incomplete hypothetical.

11 THE WITNESS: It would depend. Like, I
12 don't understand what you're -- what "high rate of
13 speed" means.

14 BY MR. KEMP:

15 Q. You're the one that used the term "high
16 rate of speed" initially. What did you mean by it?

17 A. As I said earlier, the drag coefficient
18 doesn't really come into effect, as I understand it,
19 anything I've read, for fuel economy, unless you're
20 above 55 miles an hour.

21 And so we're talking about a coach that
22 is built for highway speed, highway driving, and
23 that's what I consider -- above that -- to be a high
24 rate of speed.

25 Q. Okay. If you were below 55 miles, what

1 is your understanding, if any, as to whether or not
2 you would have air displacement?

3 MR. RUSSELL: Objection; foundation.

4 THE WITNESS: It would just -- the air
5 displacement would diminish with the speed, and I'm
6 not sure how much force it has at what speed.

7 BY MR. KEMP:

8 Q. Okay. And force is referred to as
9 side level?

10 A. It's going -- it's going to be going --
11 there's obviously a side factor to it, but there's
12 also a swirling vector.

13 Q. And by "swirling vector" are you talking
14 about the phenomena where the initial side force
15 creates a negative pressure zone --

16 MR. RUSSELL: Objection.

17 BY MR. KEMP:

18 Q. -- and then the air entrains back into
19 the bus? Is that what you are talking about?

20 MR. RUSSELL: Objection; foundation.
21 Incomplete hypothetical.

22 THE WITNESS: So what I'm talking about
23 is when it comes out and then at the ends it kind of
24 swirls out like that (indicating). That's what I
25 understand.

1 BY MR. KEMP:

2 Q. Swirls out of -- at the end of the bus
3 or the side of the bus?

4 A. No -- well, if the bus is going down the
5 road, at the front it goes out and then it curves
6 around and continues to go out. (Indicating.)

7 Q. It's not your understanding that it
8 comes back into the bus?

9 MR. RUSSELL: Same objections.

10 THE WITNESS: Not -- again, that's not
11 my area of expertise, but it's not significant.

12 BY MR. KEMP:

13 Q. Okay. Why do you think it's not
14 significant?

15 MR. RUSSELL: Same objections.

16 THE WITNESS: The air also is compressed
17 underneath the bus.

18 BY MR. KEMP:

19 Q. Uh-huh.

20 A. And so that air's trying to get out.

21 Q. Do you have a commercial driver's
22 license?

23 A. I do.

24 Q. You do?

25 A. I do. Well, I have a Canadian version,

1 so I have my Class 2 with air endorsement.

2 Q. Does that allow you to drive a J4500?

3 A. It does.

4 Q. And also allows you to drive the
5 E Series?

6 A. It does.

7 Q. Now back to air displacement.

8 Okay. So assuming the bus is going
9 25 miles an hour, what is your belief as to whether
10 or not there is air displacement enough to, say,
11 kick up dust, as you've said?

12 MR. RUSSELL: Objection. Foundation.
13 Incomplete hypothetical.

14 THE WITNESS: Again, at 25 miles an hour
15 it would be, in my opinion, would be quite minimal.

16 BY MR. KEMP:

17 Q. And by "quite minimal," would it be
18 enough to cause a bicycle to wobble?

19 MR. RUSSELL: Same objections;
20 speculation.

21 THE WITNESS: I'm not qualified to
22 answer that.

23 BY MR. KEMP:

24 Q. Okay. And how about 45 miles an hour,
25 do you think it's still quite minimal?

1 MR. RUSSELL: Same objections.

2 THE WITNESS: Again, I don't know
3 whether it would have enough force to affect
4 somebody on a bicycle. And again, it depends how
5 close they are to the vehicle.

6 BY MR. KEMP:

7 Q. The closer they are the more impact it
8 would have?

9 MR. RUSSELL: Same objections.

10 THE WITNESS: I don't know. Yeah, I
11 think so.

12 BY MR. KEMP:

13 Q. Okay. All right. Getting back to the
14 air displacement.

15 When the air is displaced by the front
16 of the bus, immediately behind the front of the bus
17 air's coming out this way. Is there not a negative
18 pressure zone?

19 MR. RUSSELL: Objection. Asked and
20 answered. Foundation.

21 THE WITNESS: There's -- it's my
22 understanding, it's very, very close to the bus,
23 though, like inches.

24 BY MR. KEMP:

25 Q. Okay. And would not the negative

1 pressure zone cause air to be entrained back into
2 the bus?

3 MR. RUSSELL: Same objections. Calls
4 for expert opinion.

5 THE WITNESS: There may be some. But
6 again, it's not my area of expertise, so ...

7 BY MR. KEMP:

8 Q. Okay. Do you recognize that -- you,
9 as -- with your commercial driver's license, do you
10 recognize that as a potential hazard when you're
11 driving a bus, that there -- there's air
12 displacement that may have air entrainment back to
13 the side of the bus?

14 A. Not so much as that the -- a pedestrian
15 or a bicyclist doesn't see you coming, and that's
16 why they're a hazard, because they're in front of
17 you, they're in front of you and you're going to
18 overtake them.

19 And so you should either pull over into
20 another lane or somehow communicate to them that
21 you're coming up or stay behind them. That's how --
22 that's how you're taught with a CDL, when you
23 encounter a hazard like a bicyclist.

24 Q. So you do not think that air
25 displacement and potential air entrainment back into

1 the side of the bus is a potential hazard when
2 you're passing a bicyclist, or you do think that's a
3 potential hazard?

4 A. Again, it depends how fast you're going
5 and how close the bicyclist is to you. So there's a
6 lot of factors.

7 Q. So in some instances you recognize that
8 air displacement and potential air entrainment is a
9 potential hazard to a bicyclist? In some instances.

10 MR. RUSSELL: Objection; foundation.
11 Incomplete hypothetical.

12 THE WITNESS: Again, it would depend.

13 BY MR. KEMP:

14 Q. Well, when you say it depends, you are
15 in effect saying that there are some cases where it
16 would be a potential hazard, correct?

17 MR. RUSSELL: Same objections.

18 THE WITNESS: It's my understanding, in
19 the event we're talking about here, that the
20 speed --

21 BY MR. KEMP:

22 Q. I don't want you to analyze the event
23 we're talking about here. My question is: You do
24 recognize that in some circumstances this is a
25 potential hazard, correct?

1 MR. RUSSELL: Objection; foundation.

2 Speculation. Incomplete hypothetical.

3 THE WITNESS: Again, it depends on how
4 fast you're going and where the vehicle -- and how
5 close the bicycle is to the vehicle.

6 BY MR. KEMP:

7 Q. So if you're going fast, like 55 miles
8 an hour, and the bicycle's two feet away, in that
9 event you would agree with me that air displacement
10 and potential entrainment back into the side of the
11 bus is a potential hazard, correct?

12 MR. RUSSELL: Same objections.

13 THE WITNESS: Again, it depends on the
14 direction of the wind at the time and if the
15 bicyclist -- how good a bike rider he is. It may
16 not affect the bicycle at all.

17 BY MR. KEMP:

18 Q. I said potential hazard, not an actual
19 hazard.

20 MR. RUSSELL: It's not a question.

21 BY MR. KEMP:

22 Q. Let's try one more time.

23 Assuming a bus was going 55 miles an
24 hour, the bicyclist is within two feet, would you
25 agree with me that air displacement and entrainment

1 back into the side of the bus is a potential hazard
2 to the bike rider?

3 MR. RUSSELL: Same objections.

4 THE WITNESS: No, I can't agree with
5 that.

6 BY MR. KEMP:

7 Q. Why not?

8 A. Well, the air blast would push the
9 bicyclist away from the vehicle.

10 Q. So you think that if a bus is
11 traveling 55 miles an hour and a bicyclist is
12 within two feet, that the air blast will simply
13 push the bicyclist away as opposed to making the
14 bike wobble; is that correct?

15 MR. RUSSELL: Objection; foundation.
16 Speculation. Assumes facts not in evidence.

17 THE WITNESS: Again, I don't know. I'm
18 not an expert in this, and so --

19 BY MR. KEMP:

20 Q. I'm just asking what you think as a
21 commercial CDL holder.

22 A. And again, it's -- I don't know.

23 Q. But you just told me like ten minutes
24 ago that CDL drivers were trained to --

25 A. To make sure that situation doesn't

1 occur and that the bus stays away from the
2 bicyclist.

3 Q. All right. You said that the air
4 blast will make the bicyclist and the bus move away.
5 Can you tell me what mechanism you think that will
6 occur by?

7 MR. RUSSELL: Objection; incomplete
8 hypothetical. Speculation. Foundation.

9 THE WITNESS: It would be the air coming
10 from the front of the bus.

11 BY MR. KEMP:

12 Q. So you think the air is going to
13 just move the bicyclist and the bicycle away from
14 the bus?

15 A. That's -- would be my -- with your
16 situation that you're putting forth here, that's
17 what I would say would happen. It's not pertinent
18 to this situation, though. But in your case that
19 you're providing.

20 Q. Okay. And how do you know -- well, tell
21 me the facts, as you understand, of, quote, "this
22 situation" is, unquote, as you're referencing?

23 A. Well, it's my understanding this was at
24 low speed and the bicyclist was in his own separate
25 bike lane, a ways from the side of the vehicle.

1 Q. And low speed would be how fast?

2 A. My understanding is it's around 25 miles
3 an hour.

4 MR. RUSSELL: Whenever you're at your
5 next break.

6 MR. KEMP: You need a break?

7 MR. RUSSELL: Yeah. An hour and 15.

8 MR. KEMP: Any time.

9 THE VIDEOGRAPHER: We're going off the
10 record. The time is 11:11.

11 (A recess was taken.)

12 THE VIDEOGRAPHER: We're back on the
13 record. The time is 11:18.

14 BY MR. KEMP:

15 Q. Mr. Couch, you said, I think, that the
16 commercial -- the CDL holder, the driver of the bus,
17 should recognize that pedestrians and bicyclists are
18 a potential hazard --

19 A. Right.

20 Q. -- correct? Okay.

21 And that would especially be true when
22 he's passing a pedestrian or bicyclist, right,
23 that's a potential hazard?

24 A. Yeah. Well, they are a potential --
25 anything -- any slow-moving object on the road is

1 considered a hazard.

2 Q. Okay. And since the CDL holder
3 recognizes bicyclists and pedestrians as a potential
4 hazard, you, as the bus manufacturer, also recognize
5 pedestrians and bicyclists as a potential hazard,
6 right?

7 A. We don't specialize in the driving of
8 the vehicles. We require that a licensed
9 professional person drive the vehicle. So we
10 consider that in -- as part of the --

11 Q. Okay. I'm not talking about how we deal
12 with a potential hazard. I'm saying you recognized
13 that buses passing bicyclists and pedestrians were
14 potential hazards?

15 A. No. Because we leave that up to the --
16 to the driver.

17 Q. So the bus driver should know that
18 bicyclists and pedestrians are potential hazards,
19 but the bus manufacturer does not know they're
20 potential hazards; is that where you want to
21 leave it?

22 A. The bus driver --

23 MR. RUSSELL: Hang on.

24 Objection; argumentative. Foundation.

25 THE WITNESS: The bus manufacturer's

1 responsibility is to make sure that that driver
2 can -- has good visibility and can do his job
3 properly.

4 BY MR. KEMP:

5 Q. Okay. Before we get to the bus
6 manufacturer's responsibility, you have a CDL
7 license, correct?

8 A. I do.

9 Q. So when you drive a bus, you recognize
10 that when you're passing a bicyclist or a pedestrian
11 that's a potential hazard, right?

12 A. Uh-huh.

13 Q. "Yes"?

14 A. As a CDL holder, yes, I do.

15 Q. Okay. And why does that knowledge
16 not translate to you when you put on your hat as a
17 bus designer?

18 A. Well, as a bus designer, you want to
19 make sure that the driver has good visibility of
20 where he's driving the vehicle. That's our focus,
21 on -- it could be any number of hazards on the road.

22 Q. Okay. Are you saying that you recognize
23 bicyclists and pedestrians as a potential hazard as
24 a bus manufacturer and your solution to that is good
25 visibility?

1 A. One of them.

2 Q. Is that what you're saying? Is that
3 what you're saying?

4 A. One of the solutions.

5 Q. Okay. So first starting out, you
6 recognize bicyclists and pedestrians that the bus
7 may pass as a potential hazard, correct?

8 A. We recognize that any -- that any
9 slow-moving, stationary, difficult roads. There's a
10 whole range of things that we consider hazards.

11 Q. Including bicyclists that you're
12 passing, right? A potential hazard?

13 A. Yeah, I can't say that specifically we
14 have that. It would be lumped in with any
15 slow-moving object on the road.

16 Q. Okay. And now let's move to the second
17 part. What does the bus manufacturer do to
18 potentially eliminate potential hazards such as some
19 slow-moving object on the right of the bus?

20 MR. RUSSELL: Objection; foundation.
21 Incomplete hypothetical.

22 THE WITNESS: We -- we can't eliminate
23 hazards.

24 BY MR. KEMP:

25 Q. Reduce risk?

1 A. Sorry?

2 Q. You can reduce the risk, right?

3 MR. RUSSELL: Same objections.

4 THE WITNESS: Of what?

5 BY MR. KEMP:

6 Q. You said that one of the things you try
7 to do is provide the bus driver with good
8 visibility?

9 A. Right.

10 Q. Okay? That is one of the things
11 you as a bus manufacturer do to attempt to
12 reduce or eliminate the potential hazard of a
13 slow-moving object on the right side of the bus;
14 is that correct?

15 A. Sorry I'm getting stuck on this, but
16 the -- we cannot reduce the hazard. The hazards are
17 there, and so we give the driver the ability to
18 minimize the risk that that hazard poses.

19 Q. Okay, that's fair.

20 And one of the things you do to
21 minimize the risk of a bus passing a bicyclist is
22 attempt to provide the driver with good visibility;
23 is that correct?

24 A. We do provide good visibility, yes.

25 Q. Okay. But you do that to attempt to

1 minimize the risk of the potential hazard of a bus
2 passing a bicyclist, correct?

3 A. We do that to give the driver the
4 opportunity to react to a hazard.

5 Q. Okay. And other than providing good
6 visibility, what other things does the bus
7 manufacturer do to attempt to minimize the risk of
8 the potential hazard of passing a bicycle?

9 A. We provide very good brakes. We provide
10 very good mirrors. We have a forward seating
11 position. We have very smooth body surfaces.

12 Q. Anything else?

13 A. Those are the main ones.

14 Q. And do you recognize that A frame
15 placement --

16 A. Sorry?

17 Q. -- A frame placement -- A frame. Do you
18 know what an A frame is?

19 A. No.

20 Q. What is the pillar on the right-hand
21 side of the bus called?

22 A. Sorry?

23 Q. The bus has a pillar on the right-hand
24 corner; yes?

25 A. Which corner?

1 Q. The right-hand corner.

2 A. Front?

3 Q. Front, yeah.

4 A. Right-hand front corner is the A post.

5 Q. Okay. Do you recognize that the way you
6 design the A post, whether it's smaller, two or
7 three inches, or larger, two or three feet, can
8 potentially affect visibility?

9 A. It depends on the -- what you're trying
10 to see, but typically we design for as small an
11 A pillar as possible.

12 Q. Now, I called it an A pillar. Then you
13 called it an A post. Which is the correct term?

14 MR. RUSSELL: You called it an A frame.

15 THE WITNESS: You called it an A frame.

16 BY MR. KEMP:

17 Q. Okay. Sorry.

18 A. It's pillar or post.

19 Q. Okay. Was the A pillar changed in any
20 way when you designed the E Series?

21 A. Yes.

22 Q. And in general, what was done?

23 A. It was raked back, so curved to rake
24 back, so that the front came back more, to make it
25 more aerodynamic, was one change.

1 Q. When you say "curved to rake back," does
2 that mean that the top of the A pillar would be
3 closer to the back of the bus than the bottom of the
4 A pillar?

5 A. Correct.

6 Q. Okay.

7 A. And the A pillar was -- the size of it
8 was minimized.

9 Q. And generally from what to what?

10 A. I don't remember the dimensions. I --

11 Q. But it went from a larger dimension to a
12 smaller dimension in terms of width?

13 A. Correct.

14 Q. And was there any change made when you
15 went from the E Series to the J Series, in terms of
16 the width of the A pillar?

17 A. No. I believe they're the same.

18 Q. Okay. Is this something you worked on?

19 A. I was involved in the styling.

20 Q. And what about sill placement? Is there
21 something called a sill between the window and the
22 body of the right-hand side of the bus?

23 A. So the -- a big change on the E Coach
24 and that carried over into the J Coach was the first
25 window behind the B post, so the first window, had a

1 significant drop to it, we call it a pentangular
2 window, so it gives the driver better visibility of
3 the side, as well as the entrance door has two
4 windows, has an upper window and a lower window.

5 Q. A lower window pane?

6 A. It has an upper window and a lower
7 window.

8 Q. Okay.

9 A. They're separated.

10 Q. And those changes were made when you
11 designed the E Series?

12 A. Yeah.

13 Q. And the reasons for those changes was so
14 that drivers would have better visibility in the
15 right corner of the bus?

16 A. Yeah. Yes.

17 Q. Did you -- okay. Now back to my
18 question about the sill.

19 Was the sill raised or lowered on the
20 right side of the bus?

21 A. Can you help me understand what you mean
22 by "sill"? It's not a term I am --

23 Q. Yesterday Mr. Lamothe used the term
24 "sill" to describe the line between the window and
25 the bottom of the bus on the right side.

1 A. Okay.

2 Q. Does that help?

3 A. Sidewall? Between the bottom of the

4 window and the sidewall?

5 Q. Yeah. He called that the "sill."

6 A. Okay.

7 Q. What would you call that?

8 A. The bottom of the windows, or the

9 threshold.

10 Q. Okay. Was the location of the bottom of

11 the windows moved up or down when you designed the

12 E Series?

13 A. As I said, the front one was dropped --

14 brought significantly down.

15 Q. What about the side one?

16 A. That is the side one.

17 Q. Okay. And by "significantly down," are

18 we talking inches, feet, what?

19 A. I think it would be over a foot at the

20 front edge.

21 Q. And was there any consideration given

22 to dropping it even further, another five or

23 seven inches?

24 A. I don't recall that.

25 Q. Okay. Do you understand that some buses

1 have lower sills than the J4500?

2 MR. RUSSELL: Objection; foundation.

3 THE WITNESS: No.

4 BY MR. KEMP:

5 Q. Not buses made by MCI.

6 A. Relative to what?

7 Q. Relative to the bottom of the bus.

8 Relative to the ground.

9 A. Why is that important?

10 Q. It's important because you can have
11 better visibility. Right?

12 A. It depends on your driver position,
13 I think.

14 Q. Okay. First of all, do you recognize
15 that some buses have lower sills than the J4500?

16 MR. RUSSELL: Foundation.

17 THE WITNESS: The coaches that we
18 compete against -- I'm not sure that we would be
19 higher. I don't know exactly. But the main
20 competitor would be a Prevost H. The J, it would be
21 higher. It's a taller vehicle. So that line, I
22 think the bottom of the side windows is higher, and
23 it doesn't have a curve down at the front. And --
24 sorry.

25 BY MR. KEMP:

1 Q. No. Were you done?

2 A. And -- yeah, so I don't know that that's
3 true with the coaches that we compete against.

4 Q. Okay. All right. You don't know one
5 way or the other?

6 A. Well, I know for sure we're better than
7 the Prevost.

8 Q. And better is a term that is
9 referring to the height of the sill; your sill being
10 lower is better?

11 A. That's what I meant.

12 Q. And the reason it's better is because
13 you have more visibility potentially, right?

14 MR. RUSSELL: Objection.

15 THE WITNESS: I was answering --

16 MR. RUSSELL: Incomplete hypothetical.

17 THE WITNESS: -- your question.

18 BY MR. KEMP:

19 Q. I didn't use the term "better."

20 A. You said "lower," so, yeah.

21 Q. Lower is better?

22 A. Could be.

23 Q. Okay. All right. Now, you said, I
24 think, that the reason you changed the A pillar to
25 make it rake more, I think was the term you used --

1 A. Uh-huh.

2 Q. -- and the reason that you put these
3 additional windows or -- in the right-hand corner
4 was to improve visibility, right?

5 A. Well, no. You asked me what changes we
6 made to the A pillar. So as I was explaining, we
7 did two things, mainly. One, we put a radius to
8 them, so they raked back, so the front of the
9 vehicle was not as vertical. And that was more
10 for drag.

11 And then we also moved the A post back
12 slightly, and that's -- the windshields were a lot
13 more rounded, and that's to improve visibility.

14 And we made the A post smaller, and the
15 coverings on it smaller, to again improve
16 visibility.

17 And then the windows in the doors -- in
18 the entrance door was changed to improve visibility.

19 And the front side window was -- the
20 front of it curves down, to, again, improve
21 visibility.

22 And then we did a lot of work with
23 mirrors also, that attached to the A post.

24 Q. To improve visibility?

25 A. Yeah.

1 Q. And why did you want to improve
2 visibility?

3 A. As I said earlier, to help the driver do
4 his job.

5 Q. Did you recognize that the previous
6 edition of the bus had a right-side blind-spot
7 problem?

8 A. No.

9 Q. You thought the previous version of the
10 bus was fine?

11 A. All our vehicles are safe, and if --

12 Q. So the previous version was fine, but
13 you did all these things we described to improve
14 visibility just for the heck of it?

15 A. Not just for the heck of it. We always
16 try to improve.

17 Q. Because there's a potential for a
18 right-side blind-spot problem, correct?

19 A. No. It makes the driver's job easier.

20 Q. Is that a recognized hazard for a bus
21 manufacturer, right-side blind spots?

22 A. I don't believe so.

23 Q. So when you were designing the E Series
24 or the J Series, you didn't do anything to attempt
25 to alleviate or minimize right-side blind spots; is

1 that correct?

2 A. We make -- always try to improve, to
3 make the driver's job easier. That's what we'd try
4 to do.

5 Q. Let's go back to where we started,
6 which was your understanding or your belief as to
7 what drivers know or don't know about air
8 displacement from the J4500. Okay? Do you remember
9 where we were?

10 A. Uh-huh.

11 Q. Okay. "Yes"?

12 A. Yes.

13 Q. And I think you said that you think a
14 driver would know that there -- in general, that
15 there's air displacement from the J4500, right?

16 MR. RUSSELL: Objection; foundation.

17 BY MR. KEMP:

18 Q. That's what you said?

19 A. I said the driver would know that at
20 high speeds, that there's air coming off from the
21 front of the vehicle to the side.

22 Q. Do you know David Dorr?

23 A. Dave Dorr. Yup.

24 Q. You do know Dave Dorr.

25 And you understand he has a commercial

1 driver's license, right?

2 A. Right.

3 Q. And you know he's been selling J4500's
4 for 20 years?

5 A. Yeah.

6 Q. So you think Dave Dorr would know, if
7 anyone would, about the air displacement coming off
8 the front of the bus, right?

9 MR. RUSSELL: Objection; foundation.

10 BY MR. KEMP:

11 Q. You would expect he would know that?

12 A. I don't know. He would know that if you
13 drove past something that would move quickly, that
14 that would -- it would -- like leaves on a tree or
15 something like that, that it would move.

16 MR. KEMP: Could you mark that, please.

17 (Exhibit 2 marked.)

18 BY MR. KEMP:

19 Q. This is Mr. Dorr's deposition. And I
20 refer you to -- a little more than is probably
21 needed here, but I would refer you to line 26 -- or
22 page 26, line 11 -- or lines 4 through 13.

23 Question, line 4:

24 "What is your understanding, if you have
25 an understanding, as to whether or not when a

1 2007 vintage J4500 is traveling 35 to 40 miles
2 an hour, what is your understanding as to
3 whether or not it causes air blasts or air
4 displacement from the bus?

5 "Answer: I don't know.

6 "Question: Okay. You don't know one
7 way or another whether it would cause air
8 blasts or air displacement?

9 "Answer: No, I don't."

10 Okay. Does that surprise you?

11 MR. RUSSELL: Objection; foundation.
12 Speculation.

13 THE WITNESS: I don't know.

14 BY MR. KEMP:

15 Q. You just told me Mr. Dorr would know
16 this, and he says here he doesn't know this.

17 A. I didn't tell you that Mr. Dorr would
18 know this.

19 Q. You just did. You told me that
20 Mr. Dorr, since he had a CDL license and sold this
21 bus for 20 years, would know about the air
22 displacement coming off the front of the bus.

23 And he just says in this testimony that
24 he doesn't know.

25 MR. RUSSELL: Objection; misstates prior

1 testimony.

2 THE WITNESS: He responded to these
3 questions. I think if you asked Mr. Dorr if he
4 drives by something like a flag or some leaves at
5 that rate of speed, that it would move when he drove
6 the bus by that, I think he would know that.

7 BY MR. KEMP:

8 Q. Oh, okay. So --

9 A. Probably the question about air blasts
10 or displacements, he may not understand that.

11 Q. So you think Mr. Dorr, when we were
12 asking about air blasts and air displacements,
13 didn't understand what we were talking about,
14 and that's why he said he didn't know whether a
15 bus would cause that? That's what you're telling
16 me today?

17 MR. RUSSELL: Objection; foundation.
18 Speculation.

19 THE WITNESS: Again, that's -- I don't
20 know. I think he would be able to tell you that --
21 if you asked him if he drove by something that's
22 easily movable, at that rate of speed, he'd be able
23 to tell you that it would move. That it would move
24 if you were close.

25 BY MR. KEMP:

1 Q. Well, I asked him, quote:

2 "What is your understanding as to
3 whether or not it causes air blasts or air
4 displacements from the bus?"

5 And his answer was, quote, "I don't
6 know," unquote. Right?

7 A. Yeah. Yes.

8 Q. Okay. But you said you thought he would
9 know, and you still think he really does know; he's
10 just for some reason answering the question wrong?

11 A. Well, I don't know.

12 MR. RUSSELL: Objection -- Bryan.

13 Objection; misstates prior testimony.
14 Speculation. Foundation.

15 BY MR. KEMP:

16 Q. Go ahead. Do you think it would be a
17 good idea to tell people like Mr. Dorr that there is
18 some air displacement when the bus is traveling, air
19 blasts, so they do know that for sure; that there's
20 no uncertainty here as to what he knows, what he
21 doesn't know?

22 A. I think Mr. Dorr knows as a commercial
23 driver how to avoid hazards that are on the road.

24 Q. Okay. We weren't talking about road
25 hazards. We were talking about air blasts and air

1 displacement that he just said he didn't know
2 anything about. Okay?

3 Do you think it would be a good idea for
4 the bus manufacturer to inform people like Mr. Dorr
5 with the CDL license that the bus causes air blasts
6 or air displacements?

7 A. I think the training that is given to
8 commercial drivers is done in a way that people can
9 understand how to interact with hazards that they
10 will come -- that they will meet on the road.

11 Q. Okay. Let me show you Mr. Bartlett's
12 deposition, who is the safety director of the bus
13 company, and we'll see what he knows about air
14 blasts and air displacement.

15 MR. KEMP: Mark that, please.

16 (Exhibit 3 marked.)

17 BY MR. KEMP:

18 Q. All right. Mr. Bartlett --

19 MR. RUSSELL: What page, Will?

20 MR. KEMP: Let me just find it real
21 quick.

22 BY MR. KEMP:

23 Q. Let's start with 137, line 11.

24 "So as we sit here today, you don't know
25 whether or not, if a large bus is traveling,

1 say, 30 to 35 miles an hour, that would create
2 air turbulence that could potentially affect a
3 bicycle?

4 "Answer: I don't know, but I would say
5 it happens, you know, a lot during the day.

6 "Question: Okay. But you don't know
7 one way or the other whether there's air
8 turbulence?

9 "Answer: Whether it would cause a
10 problem to a bike? No.

11 "Question: Do you think if a
12 manufacturer knew that there was a potential
13 hazard, that they should alert the motor coach
14 operators of that air turbulence?

15 "Answer: I've never heard of that, no."

16 MR. RUSSELL: And just for the record,
17 there were objections, and the witness asked a
18 question as well in there. So it's not an exact
19 reading. But go ahead. Ask your question.

20 MR. KEMP: All right.

21 BY MR. KEMP:

22 Q. Let's read the whole thing then.

23 "Mr. Roberts: Objection. Foundation.

24 "The Witness: What's the potential
25 hazard?

1 "Answer: The air turbulence.

2 The Witness -- "Answer: I've never
3 heard of that, no?"

4 Okay? So we have a second commercial
5 driver's license holder, that in this case is a
6 safety director for a bus company, that also says he
7 doesn't know about the potential for air turbulence
8 from a moving bus. Right?

9 A. Well, what he says is --

10 MR. RUSSELL: Objection; foundation.

11 BY MR. KEMP:

12 Q. Go ahead. Do you think he didn't
13 understand the question either and he really knew
14 about it and was just telling me he didn't know one
15 way or the other?

16 MR. RUSSELL: Objection; foundation.
17 Speculation.

18 BY MR. KEMP:

19 Q. That's what you think? Is that what
20 you think?

21 A. As I said, drivers are taught how to
22 deal with hazards on the road.

23 Q. I've shown you the testimony of
24 Mr. Dorr, the MCI employee for over 20 years, and
25 the testimony of the safety director of the bus

1 company, both of whom said that they don't know one
2 way or the other about the potential air blasts or
3 air turbulence. I've shown you that testimony. And
4 you're still telling me that they are trained to do
5 that? That's what you're telling me?

6 MR. RUSSELL: Objection; misstates prior
7 testimony. Foundation. Speculation.

8 THE WITNESS: So what I'm telling you is
9 that they are trained to -- how to deal with the
10 hazards on the road, which are slow-moving vehicles,
11 including pedestrians, bicycles. That's what
12 they're -- how they're trained.

13 BY MR. KEMP:

14 Q. Okay. But they're not trained or told
15 about air blasts or air turbulence, correct?

16 MR. RUSSELL: Same objection.

17 THE WITNESS: They're taught how to
18 avoid the hazards they find on the road.

19 BY MR. KEMP:

20 Q. Do you think the manufacturer should at
21 least share the information that the manufacturer
22 has about the air blasts or air turbulence with
23 people like its salesman, Mr. Dorr, and safety
24 analysts like Mr. Bartlett? Do you think that would
25 be a good idea?

1 MR. RUSSELL: Objection; incomplete
2 hypothetical.

3 THE WITNESS: I don't know. I'm not an
4 expert in training commercial -- how to best train
5 people for commercial drivers.

6 BY MR. KEMP:

7 Q. Okay. You would agree with me that MCI
8 did not provide information to its purchasers about
9 air blasts or air turbulence, correct?

10 MR. RUSSELL: Objection; foundation.

11 BY MR. KEMP:

12 Q. Would you agree with that?

13 MR. RUSSELL: Objection; foundation.

14 THE WITNESS: What I would agree is that
15 MCI counts on the bodies that train drivers on how
16 to best avoid hazards on the road, whatever they
17 may be.

18 BY MR. KEMP:

19 Q. Including -- including air blasts or air
20 turbulence? That's someone else's problem, to train
21 the drivers about that, right?

22 MR. RUSSELL: Objection; incomplete
23 hypothetical.

24 THE WITNESS: Well, they are trained in
25 a way -- they're trained in a way, I guess, that

1 the -- they can best avoid any hazards they find on
2 the road.

3 BY MR. KEMP:

4 Q. Okay. Earlier you used the term "bus
5 manufacturer's responsibility." Do you remember
6 that?

7 A. Yeah.

8 Q. Do you think the bus manufacturer has a
9 responsibility to alert purchasers of the potential
10 for air blasts or air turbulence that may arise from
11 the front of the bus?

12 MR. RUSSELL: Objection; foundation.
13 Calls for expert opinion.

14 THE WITNESS: Again, I said that the --
15 MCI is not the expert in how to train the drivers,
16 and that there's a whole government organization
17 that does that.

18 BY MR. KEMP:

19 Q. Is that a "no" answer to my question?
20 No, you do not think MCI has a responsibility to
21 train its -- or to inform its purchasers about air
22 blasts or air turbulence? Or is that a "yes," you
23 do think they should inform purchasers about the
24 potential for air blasts or air turbulence?

25 MR. RUSSELL: Same objections.

1 THE WITNESS: I think no, because we are
2 not the experts on how to train drivers.

3 BY MR. KEMP:

4 Q. Okay. I'm not talking about training.
5 I'm talking about alerting them to a potential
6 hazard.

7 You don't think that air blasts and air
8 turbulence coming from the front of the bus is a
9 potential hazard that the manufacturer should inform
10 purchasers of; is that correct?

11 MR. RUSSELL: Objection; incomplete
12 hypothetical. Calls for improper opinion.

13 You can answer.

14 THE WITNESS: So again, no. MCI is not
15 the expert in how to train drivers on operating our
16 vehicles safely on the road.

17 BY MR. KEMP:

18 Q. I'm not talking about operating the
19 vehicle. I'm talking about knowledge of a potential
20 air blast or air turbulence hazard. Okay? I'm
21 talking about telling them about the potential
22 hazard. Do you think MCI should do that?

23 MR. RUSSELL: Same objections and
24 predicate.

25 THE WITNESS: No. Again, it's up to --

1 there's a licensed professional that has to drive
2 our vehicles, and they know best -- the body that
3 regulates them knows best how to -- what to
4 communicate to the drivers or not.

5 BY MR. KEMP:

6 Q. Okay. So you would agree with me that
7 this potential for air blasts or air turbulence is a
8 risk or hazard that arises from the use of the bus?
9 You would agree with that, right?

10 MR. RUSSELL: Objection; incomplete
11 hypothetical. Improper opinion. Misstates prior
12 testimony.

13 THE WITNESS: The hazard is the
14 slow-moving vehicle or the pedestrian on the road,
15 not the vehicle.

16 BY MR. KEMP:

17 Q. No, the hazard is the air blast or air
18 turbulence. That's the hazard.

19 A. Again, it -- it depends.

20 Q. You don't think that's a hazard?

21 A. No.

22 Q. And since you didn't think it was a
23 hazard, you didn't do anything to design the vehicle
24 to eliminate that hazard, correct?

25 A. Again, I communicated that we did a

1 lot of work to reduce the drag coefficient of
2 the vehicle.

3 Q. That was to save gas; you already told
4 me that was the primary reason.

5 A. And prevent dust, and make it easier to
6 move through the -- for the vehicle to move through
7 the air.

8 Q. Honestly, Mr. Couch, you -- you honestly
9 believe that Mr. Dorr and Mr. Bartlett and other
10 drivers out there should understand from some
11 training from someone that you can't identify that
12 there's air blasts and air turbulence coming off the
13 side of these buses? That's what you're telling me?

14 MR. RUSSELL: Objection; misstates prior
15 testimony. Argumentative. And foundation.

16 THE WITNESS: What I said was that the
17 drivers with a CDL are trained on how to deal with
18 hazards that they come upon on the road.

19 BY MR. KEMP:

20 Q. Do you think the drivers with a CDL are
21 trained about air blasts or air turbulence?

22 MR. RUSSELL: Same objections.

23 THE WITNESS: They're trained how to
24 deal with the hazards on the road.

25 BY MR. KEMP:

1 Q. Okay. Well, I appreciate your answer.

2 Are they trained to deal with air blast
3 or air turbulence hazards?

4 MR. RUSSELL: Objection. Asked and
5 answered. Foundation.

6 THE WITNESS: Can you ask me that again?
7 BY MR. KEMP:

8 Q. Are they trained to appreciate air
9 blasts or air turbulence hazards?

10 MR. RUSSELL: Same objections.

11 THE WITNESS: I'm not sure what the
12 people that put together the training for drivers
13 take into consideration when they teach them how to
14 properly drive a vehicle, test them, and give them
15 a license.

16 BY MR. KEMP:

17 Q. So you don't know one way or the
18 other whether or not drivers are trained to
19 appreciate the air blasts or air turbulence hazard;
20 is that correct?

21 A. I don't know that.

22 Q. Okay. And since you don't know whether
23 or not they're trained for that, why don't you think
24 the manufacturer should simply tell them of this
25 potential hazard?

1 MR. RUSSELL: Objection. Predicate.

2 THE WITNESS: Because, as I said
3 earlier, MCI's not the expert in how to train
4 people, to train drivers that operate our vehicles.
5 So what information they should get and shouldn't
6 get is -- we leave it up to the government body that
7 does that.

8 BY MR. KEMP:

9 Q. Okay. And in this case the government
10 body is the State of Nevada, right?

11 A. It's the commercial -- whoever governs
12 the commercial vehicle licensing.

13 Q. The Nevada Department of Motor Vehicles?

14 A. Okay.

15 Q. So you think the Nevada Department of
16 Motor Vehicles knows as much or more about air
17 blasts or air turbulence arising from the operation
18 of a J4500 as MCI does?

19 MR. RUSSELL: Objection; foundation.
20 Speculation.

21 THE WITNESS: I don't -- I don't know
22 that.

23 BY MR. KEMP:

24 Q. You don't know one way or the other
25 whether or not the Nevada Department of Motor

1 Vehicles knows anything about air blasts or air
2 turbulence arising from bus operation, correct?

3 MR. RUSSELL: Same objections.

4 THE WITNESS: I don't know that. I
5 don't know what they take into consideration when
6 they come up with their driver training.

7 BY MR. KEMP:

8 Q. So you don't know if the regulator knows
9 about it. You don't know if the drivers are trained
10 about it. I've shown you that the drivers don't
11 know about it. But you think that MCI shouldn't
12 alert anybody of this potential risk?

13 MR. RUSSELL: Objection.

14 BY MR. KEMP:

15 Q. Is that right?

16 MR. RUSSELL: Objection; predicate.
17 Counsel testifying. Foundation.

18 THE WITNESS: As I said, we count -- MCI
19 counts on the people that govern the people that
20 drive our -- licensed professional drivers. We
21 count on them to properly train the drivers.

22 BY MR. KEMP:

23 Q. Okay. What kind of car do you drive?

24 A. I have Chevy half-ton.

25 Q. Does that have a proximity sensor?

1 A. What do you mean by "proximity sensor"?

2 Q. A sensor that shoots out and either
3 disables the cruise control or detects objects in
4 the back or detects on the side. A proximity
5 sensor.

6 A. It has a rear sensor that detects at
7 the back.

8 Q. So it has a rear proximity sensor?

9 A. Correct.

10 Q. And in general how does that work? If
11 you're backing up into something, it goes, "beep,"
12 "beep"?

13 A. Yeah. Yes.

14 Q. And do you think that's a good
15 safety feature?

16 A. I'm not sure it's a safety feature.
17 It's a -- probably a cost avoidance feature, in that
18 it would reduce the number of objects that you would
19 run into.

20 Q. Okay. You'd rather have your vehicle
21 with that safety feature than have a vehicle without
22 that safety feature, correct?

23 MR. RUSSELL: Objection; predicate.

24 THE WITNESS: I don't consider it a
25 safety feature. I consider it an assist, so that I

1 don't hit objects when I back up. And actually, it
2 causes problems at times, because it doesn't work
3 some of the time and it makes you lazy, in my
4 opinion, when you're backing up.

5 BY MR. KEMP:

6 Q. Okay. What consideration, if any, did
7 MCI give to putting a proximity sensor of any sort
8 in the E Series?

9 A. I'm not -- I don't know for sure.
10 I -- we -- the first time, my recollection, that we
11 looked at it was about -- we looked at a rear
12 proximity sensor in around 2006 or '7, as a backup
13 sensor.

14 But what I recall is at that time that
15 the technology wasn't capable of being reliable
16 enough; it wouldn't work at cool temperatures, it
17 wouldn't work if it got ice on it, things like that.

18 Q. That's what you recall about the
19 technology surrounding proximity sensors in 2006,
20 that it wasn't reliable enough; is that what you're
21 telling me?

22 A. 2006, 2007.

23 Q. Why, then, did the Setra 417 that was
24 made in 2005 have proximity sensors?

25 MR. RUSSELL: Objection; foundation.

1 THE WITNESS: I don't know. I don't
2 know that it did. And if it did, I don't know where
3 they were located.

4 BY MR. KEMP:

5 Q. Okay. You do know the Setra's made by
6 Mercedes, correct?

7 A. I do, yeah.

8 Q. And that's one of MCI's partners, right?

9 A. Not then.

10 Q. I thought MCI formed a partnership with
11 Mercedes in approximately 2005, 2006, to attempt to
12 utilize safety features for vehicles that Mercedes
13 could provide?

14 A. Not to my knowledge.

15 Q. What was your understanding of the
16 arrangement?

17 A. We didn't have a partnership with them
18 until 2012.

19 Q. Okay. And what was the purpose of that
20 partnership?

21 A. For MCI to be able to sell and service
22 the 417 and 407 in North America, the U.S. and
23 Canada.

24 Q. So MCI and Mercedes became partners to
25 sell the Setra 417 in North America, correct?

1 A. I don't think we were partners. We
2 didn't have a partnership. We had a license
3 agreement to be able to sell and service a couple of
4 models in the U.S. and Canada.

5 (Exhibit 4 marked.)

6 BY MR. KEMP:

7 Q. Directing your attention to Exhibit 4,
8 if you would take a look at page 15, the bottom. Do
9 you see in 2005 it says that for the Setra 417 they
10 have launched a new proximity-controlled cruise
11 control?

12 Do you see that statement?

13 A. Where is it?

14 Q. On the bottom.

15 A. Oh, yeah, okay. Yes.

16 Q. Do you have any reason to disagree that
17 Mercedes was using a proximity sensor in 2005 with
18 the Setra 417?

19 A. I don't have anything that would say
20 that they didn't have what they -- what is described
21 here, which is cruise control.

22 Q. Now, you -- you said that MCI didn't use
23 it in 2006, the year afterwards, because you thought
24 proximity sensors couldn't be utilized for heat
25 reasons or coolness or something to that effect?

1 A. What I said was we tried to find a
2 proximity sensor to use as a backup sensor in that
3 time frame, and as I recall, the testing that we did
4 from the suppliers that were available to us in
5 North America, we couldn't find one that was
6 reliable enough, that met our test criteria.

7 Q. Okay. But Mercedes apparently found in
8 2005, the year before, a proximity sensor that at
9 least Mercedes considered reliable enough to use in
10 its buses, right?

11 A. In Europe.

12 Q. So proximity sensors work good in Europe
13 but they don't work good in the United States; is
14 that what you're telling me?

15 MR. RUSSELL: Objection; foundation.

16 THE WITNESS: I don't know that the
17 supplier of this would work in North America because
18 of our temperature extremes. It's a big challenge
19 for a lot of European vehicles to work properly in
20 North America because of our extreme climates that
21 we have here.

22 BY MR. KEMP:

23 Q. You don't think Europe, which has Sweden
24 and Finland, cold, and Italy, where you're going,
25 relatively warm, you don't think they have extreme

1 **temperatures just like North America does?**

2 MR. RUSSELL: Objection; foundation.
3 Speculation.

4 THE WITNESS: That's been my experience
5 in dealing with the suppliers; that they don't go
6 below minus 20, and we routinely have minus 20.

7 BY MR. KEMP:

8 Q. So you're telling me that the reason
9 that MCI did not further explore proximity sensors
10 in 2005 is because you thought there was a potential
11 that buses would be exposed to minus-20 degrees and
12 the proximity sensors would not work; is that
13 correct?

14 MR. RUSSELL: Objection; misstates
15 testimony.

16 THE WITNESS: No. What I said was MCI
17 never quit looking for a proximity sensor. We just
18 couldn't find one from the suppliers that were
19 available to us, to supply us product at our
20 volumes. We just -- we couldn't find a product that
21 met our requirements.

22 Because the problem with proximity
23 sensors, if they don't work properly and they give
24 you too many false positives or they're not reliable
25 and they don't work when they should, is drivers

1 rely on them and then it ends up causing more
2 problems than not.

3 (Exhibit 5 marked.)

4 BY MR. KEMP:

5 Q. Okay. I'm handing you another document,
6 which is Exhibit 5, and this is a chart of car
7 manufacturers that use proximity sensors in their
8 vehicles and the date they started.

9 So for example, we have the 1995
10 Diamante made by Mitsubishi with a proximity sensor.
11 A 1997 Celsior, C-e-l-s-i-o-r, made by Toyota --
12 1997, excuse me, with a proximity sensor. A 1990
13 Ome, O-M-E, made by Nissan, with a proximity sensor.
14 A 1999 Mercedes CL class made with a proximity
15 sensor. A 1999 S class Mercedes with a proximity
16 sensor. A 1999 Jaguar with a proximity sensor. A
17 2000 BMW with a proximity sensor. And a 2000 Lexus
18 made with a proximity sensor.

19 And if we continue on, there are about
20 140 cars with proximity sensors on this chart,
21 Exhibit 5. Okay?

22 A. Uh-huh.

23 Q. Now my question is: Why is it that
24 Mitsubishi, Toyota, Nissan, Mercedes, Jaguar, BMW,
25 Lexus and the others can put proximity sensors in

1 **their vehicles in 1995 through 2000 time frame and**
2 **not have this 20-degree problem, but MCI could not?**

3 MR. RUSSELL: Objection; foundation.
4 Predicate.

5 THE WITNESS: I guess a couple of these
6 you're making the assumption that they didn't have
7 the problem. And all I can tell you is when MCI
8 looked at it and tried to find a source that met our
9 testing requirements, we could not do that. We were
10 not able to do that at that time.

11 BY MR. KEMP:

12 **Q. Okay. Okay. But apparently Mitsubishi,**
13 **Toyota, Nissan, Mercedes, Jaguar, BMW, Lexus, and**
14 **the others, could find some source. Right?**

15 MR. RUSSELL: Objection; foundation.
16 Predicate.

17 THE WITNESS: Again, you're making the
18 assumption that they had the same test requirements
19 that we did.

20 BY MR. KEMP:

21 **Q. Okay. So you think Mercedes has a lower**
22 **test standard than MCI?**

23 MR. RUSSELL: Objection. Misstates
24 testimony.

25 THE WITNESS: That's quite possible as

1 far as the temperatures, yes.

2 BY MR. KEMP:

3 Q. Okay. All right. Why was it that MCI
4 wanted proximity sensors in 2005? Or 2006, I think
5 you said. I don't want to misstate the year.

6 A. It was about that time. As I --

7 Q. Why was it that MCI wanted proximity
8 sensors for its buses in 2005, 2006?

9 A. It was a request from customers to
10 reduce the body damage caused by drivers backing
11 into things.

12 Q. Okay. Were side sensors also requested?

13 A. Not at that time, that I'm aware of.

14 Q. But they were requested at some time?

15 A. We had a request -- it was about 2015,
16 2014 -- to come up with some way of warning a driver
17 when he was making a lane change or in a turning
18 maneuver to alert him to stationary objects that he
19 ran the side of the bus into.

20 Q. So there was a request from a customer,
21 and that's what motivated MCI to look for a side
22 proximity sensor?

23 A. Again, this is a proximity sensor that
24 helped the driver in a turning situation. Not
25 moving straight ahead, but in turning.

1 So as you can imagine, if you had a side
2 proximity sensor, it would be going off constantly
3 while you were driving in a straight line, warning
4 of stop signs, trash cans, pedestrians standing on
5 the side of the road, all kinds of -- cars in the
6 lane.

7 **Q. Bicyclists?**

8 A. It would be going off constantly.

9 **Q. Warning of bicyclists, too?**

10 A. And then the driver --

11 **Q. Yes, warning of the --**

12 MR. RUSSELL: Let him finish.

13 THE WITNESS: What's the driver supposed
14 to do about it? So any --

15 BY MR. KEMP:

16 **Q. Not run over the bicyclist, I think**
17 **would be one option.**

18 MR. RUSSELL: Objection; argumentative.
19 Please let him finish his answer.

20 THE WITNESS: So the problem with
21 side-facing proximity sensors that are active all
22 the time when you're traveling in a straight line is
23 that they would be going off constantly, and the
24 driver would soon put tape over them, ignore them,
25 because it would be going off constantly and it

1 would be a distraction to him.

2 BY MR. KEMP:

3 Q. So you don't think buses like the J4500
4 should have side-facing proximity sensors; is that
5 correct?

6 MR. RUSSELL: Objection; misstates
7 testimony.

8 THE WITNESS: My opinion is that a
9 side -- if there's a side-sensing device that
10 detects objects on the side, it would only be active
11 in a turning situation, activated by a turn signal,
12 not driving in a straight line, because it would be
13 ignored.

14 BY MR. KEMP:

15 Q. Okay. So in your opinion -- these are
16 opinions now -- MCI should not put side sensors on
17 buses unless they're activated by a turn somehow,
18 because of these potential distractions to the
19 driver you've outlined?

20 MR. RUSSELL: Objection; misstates
21 testimony.

22 THE WITNESS: Again, I said that if a
23 side sensor could be found that would work, it would
24 have to be controlled in such a way that it wouldn't
25 distract the driver and give him false positives.

1 BY MR. KEMP:

2 Q. So you don't think side sensors should
3 be put on buses; is that correct?

4 MR. RUSSELL: Same objection.

5 THE WITNESS: That's not what I said.

6 What I said was that if a reliable side
7 sensor could be found, it would have to be designed
8 into the vehicle in a way that it wouldn't distract
9 the driver and give him false positives.

10 BY MR. KEMP:

11 Q. Mm-hmm. And did you look for that kind
12 of side sensor when you were with MCI, back in the
13 2005, 2006 time frame?

14 A. It wasn't available, that I'm aware of.

15 Q. So you did look for it?

16 A. I don't know. Just wasn't available.

17 The one I recall that we looked for was
18 the rear one.

19 Q. Okay.

20 A. And, again, all it does is --

21 Q. Do you recall any efforts to find a side
22 sensor at MCI?

23 A. Well, as I said, that there was a -- in
24 the 2014, '15 time frame, there was a initiative to
25 look at something on the side.

1 Q. What is your understanding as to whether
2 or not J4500s made from January 2017 forward have
3 side proximity sensors?

4 A. I don't believe they have side proximity
5 sensors. I don't know for sure. But they do have a
6 360-degree camera system.

7 Q. So as we sit here today, you don't think
8 the J4500 from January 2017 forward has proximity
9 sensors on the side; is that correct?

10 MR. RUSSELL: Objection; predicate.

11 THE WITNESS: Proximity sensors that do
12 what?

13 BY MR. KEMP:

14 Q. That have side detection.

15 A. In what -- in what circumstance?

16 Q. Why don't we just start with any type of
17 side proximity sensor in any circumstance. What is
18 your understanding as to whether or not the J4500
19 has those, with regards to buses made after
20 January 2017?

21 A. As I said, the only aid that I'm aware
22 of is the 360-degree camera.

23 Q. So as we sit here today, it's your
24 understanding that J4500s made in January 2017
25 forward do not have side proximity sensors; is that

1 correct?

2 A. As I said, I don't know. The only thing
3 I'm aware of is the 360-degree camera.

4 Q. Have you heard of a Wingman proximity
5 sensor made by Bendix?

6 A. The Wingman radar unit --

7 Q. Yeah.

8 A. -- that controls cruise, yeah.

9 Q. And it also controls braking?

10 A. It can, I think, yeah.

11 Q. Okay. And -- and is it your
12 understanding one way or the other whether that can
13 also be a side sensor?

14 A. Not that I'm aware of. It was only
15 forward-facing, is the one that I'm aware of.

16 MR. KEMP: Why don't we mark 6.

17 (Exhibit 6 marked.)

18 BY MR. KEMP:

19 Q. All right. Directing your attention to
20 Exhibit 6, which appears to be some sort of
21 installation guide for a Bendix BlindSpotter
22 side-object detection system.

23 A. Uh-huh.

24 Q. Okay? Are you familiar with this
25 potential product from Bendix?

1 A. I'm not.

2 Q. And did you know that apparently in
3 April -- do you see the date, April 2013 there?

4 A. Uh-huh.

5 Q. "Yes"?

6 A. Yes.

7 Q. Did you know that in or around
8 April 2013 Bendix was offering a side object
9 detection system?

10 A. I did not.

11 Q. And flip over to page 19. Do you see
12 that there appears to be some sort of radar going
13 out of the side of this truck to detect objects on
14 the side?

15 A. I see that.

16 Q. And you see the six feet and ten feet,
17 zero feet center, six feet?

18 A. Mm-hmm.

19 Q. "Yes"?

20 A. Yes.

21 Q. Any reason why this system couldn't be
22 used for a bus?

23 A. I don't know.

24 Q. Okay. Okay. As we sit here today, do
25 you know whether or not MCI in fact is using the

1 Bendix side-object detection system on J4500s?

2 A. I do not know that.

3 Q. Okay. Assuming that they are using it
4 now, is there any reason that you can think of why
5 MCI did not have some sort of side detection
6 proximity sensor in 2007, 2006, 2005?

7 MR. RUSSELL: Objection; foundation.

8 THE WITNESS: I'm not sure it was
9 available and would work on the coach.

10 BY MR. KEMP:

11 Q. Well, the Setra 417 didn't rely on some
12 outside vendor to provide it with its proximity
13 sensor, right?

14 MR. RUSSELL: Objection; foundation.

15 THE WITNESS: I don't know what you
16 mean.

17 BY MR. KEMP:

18 Q. Mercedes developed their own proximity
19 sensor, correct?

20 MR. RUSSELL: Same objection.

21 THE WITNESS: Which one?

22 BY MR. KEMP:

23 Q. I'm talking about the one that was used
24 for the Setra 417.

25 A. The forward-facing one?

1 Q. Whichever one you want to focus on, the
2 Mercedes developed their own proximity sensor,
3 right?

4 MR. RUSSELL: Objection; foundation.

5 THE WITNESS: I don't know that.

6 BY MR. KEMP:

7 Q. You do know that some automobile and bus
8 manufacturers have developed their own proximity
9 sensors, right?

10 MR. RUSSELL: Same objection.

11 THE WITNESS: I'm not sure that the --
12 any bus/coach manufacturer developed their own
13 sensor.

14 BY MR. KEMP:

15 Q. MCI, if I'm not mistaken, in
16 2007 was the largest bus manufacturer in
17 North America, right?

18 MR. RUSSELL: Objection; foundation.

19 THE WITNESS: Coach manufacturer.

20 BY MR. KEMP:

21 Q. So in terms of the total number of
22 coaches sold in 2007, MCI was the largest coach
23 manufacturer in North America, correct?

24 MR. RUSSELL: Same objection.

25 THE WITNESS: In what year? 2007?

1 BY MR. KEMP:

2 Q. Right.

3 A. It would have been -- I believe in 2007
4 MCI did sell the most coaches of any North American
5 bus manufacturer. Not in the world.

6 Q. Is there a reason why the largest coach
7 manufacturer in North America could not develop its
8 own proximity sensor, as opposed to waiting for
9 someone like Bendix to sell it off-the-shelf parts?

10 MR. RUSSELL: Objection; foundation.
11 Speculation. Incomplete hypothetical.

12 THE WITNESS: MCI does not make or
13 design the electronic components. That's not our
14 expertise. MCI's expertise is integrating products
15 from other companies, and so that's not -- MCI does
16 not have that expertise.

17 BY MR. KEMP:

18 Q. Okay. So safety features like proximity
19 sensors, MCI doesn't use them until they're
20 available from other companies, even if
21 theoretically they could do it themselves?

22 MR. RUSSELL: Same objections.
23 Predicate.

24 THE WITNESS: Proximity sensors are
25 assists, assistants, they assist the driver.

1 BY MR. KEMP:

2 Q. Right.

3 A. The -- and MCI does not have the
4 resources to design and build them.

5 Q. So one of the reasons that MCI did not
6 put proximity sensors on the 2007 buses was because
7 MCI doesn't have the resources to design and build
8 proximity sensors; is that correct?

9 MR. RUSSELL: Same objections.

10 THE WITNESS: MCI could not find a
11 product that was available in 2007 to be a back-up
12 proximity sensor.

13 BY MR. KEMP:

14 Q. Okay. And the reason MCI didn't do it
15 itself, design a proximity sensor itself, is, you
16 said, it didn't have the resources to do so?

17 A. Well, even the experts that -- whose
18 expertise is building that type of component --

19 Q. I'm asking you what you said. You said
20 the reason MCI didn't do it in 2007 is because MCI
21 didn't have the resources to do it itself. Right?

22 A. No. What I said was we couldn't find a
23 product available in North America --

24 Q. Made by someone else?

25 A. -- made by anybody, that we could get

1 access to, that's correct.

2 Q. And the reason it didn't do it itself,
3 you said, is because MCI didn't have the resources.
4 Right?

5 A. And I don't think the technology was
6 available.

7 Q. Okay. Why is it the largest bus
8 manufacturer in North America in 2007, in your view,
9 didn't have the resources to design or build its own
10 proximity sensor?

11 MR. RUSSELL: Objection; foundation.
12 Predicate. Argumentative.

13 THE WITNESS: It's not the business that
14 MCI is in.

15 BY MR. KEMP:

16 Q. Well, that's not the business that all
17 these car companies are in either, right, building
18 proximity sensors? They're building cars.

19 MR. RUSSELL: Objection; foundation.

20 BY MR. KEMP:

21 Q. Right?

22 A. And as I said, the proximity sensors
23 that were available at the time, the actual sensors
24 themselves, that they wouldn't meet our test
25 requirements. Any that we could get hold of.

1 Q. Okay.

2 MR. KEMP: How are we doing time-wise
3 here? Do you want to just run it? We can stop for
4 lunch, but I think I will get done in 10, 20
5 minutes.

6 MR. RUSSELL: If you've only got 10 or
7 20 minutes.

8 MR. KEMP: I mean, if you're starving --

9 MR. RUSSELL: Bryan, are you okay?

10 THE WITNESS: I'm okay.

11 MR. RUSSELL: Are you doing okay?

12 THE REPORTER: Yes.

13 BY MR. KEMP:

14 Q. Did customers complain about blind spot
15 problems on the right side?

16 A. Can you be more specific?

17 Q. Did someone who purchased an MCI bus
18 register a complaint to you that they thought the
19 right side had blind spots?

20 MR. RUSSELL: Objection; foundation.

21 THE WITNESS: On a J Coach?

22 BY MR. KEMP:

23 Q. On any coach. E Coach, J Coach.

24 A. Not that I recall on a J Coach.

25 Q. On an E Coach, they did?

1 A. I don't know. I just --

2 Q. You do recall complaints about
3 right-side blind spots on some buses?

4 A. No. We don't have a blind-spot problem
5 that I'm aware of.

6 Q. Okay. Whether there's a problem or not,
7 do you recall people complaining about it?

8 A. Not on the -- not on the right-hand
9 side.

10 Q. On the left-hand side do you recall
11 complaints?

12 A. I recall that we moved a driver's window
13 bar and a mirror relative proximity to one another.

14 Q. Okay.

15 A. That was on the left-hand side.

16 Q. Were safety advocates in the bus
17 industry concerned about right-side blind-spot
18 problems?

19 MR. RUSSELL: Objection; foundation.
20 Predicate. Vague.

21 THE WITNESS: In the coach industry,
22 I'm -- not that I'm aware of.

23 BY MR. KEMP:

24 Q. When you say "the coach industry," are
25 you excluding the transit industry from that?

1 A. Yeah. They're significantly different,
2 a coach and a bus.

3 Q. So transit buses have right-side
4 blind spots, but you're not aware of coaches having
5 right-side blind spots?

6 A. I don't know. I can't comment on the
7 transit side, is my point.

8 (Exhibit 7 marked.)

9 BY MR. KEMP:

10 Q. Okay. This is an article entitled "Many
11 Buses Have Built-in Blind Spots That Make Driving
12 Them Dangerous," unquote, by Mr. Sherlock, that I've
13 marked as Exhibit 7.

14 First of all, have you ever seen this
15 article before?

16 A. I haven't, and it's dealing with buses,
17 not coaches, as far as I can tell from the first
18 page.

19 Q. Okay. So --

20 MR. RUSSELL: I didn't hear you, Bryan.
21 You have or you have not?

22 THE WITNESS: I have not.

23 BY MR. KEMP:

24 Q. Okay. So this article talks in detail
25 about the blind-spot problems. Do you see that?

1 A. I see it's talking about transit buses.

2 Q. Okay. Page 2 says, quote, "Essentially,
3 all transit buses in the United States are built as
4 cheaply as possible, with mirrors and pillars that
5 are over a foot wide," unquote.

6 Do you think that's a true statement?

7 MR. RUSSELL: Objection; foundation.

8 THE WITNESS: I don't know. And it's
9 dealing with transit buses, not coaches.

10 BY MR. KEMP:

11 Q. You're owned by New Flyer, MCI?

12 A. MCI is now, for just over a little more
13 than a year.

14 Q. And New Flyer is the number-one
15 manufacturer of transit buses in North America?

16 MR. RUSSELL: Objection; foundation.

17 THE WITNESS: That's correct.

18 BY MR. KEMP:

19 Q. Okay. So with regards to the transit
20 buses made by New Flyer, do you think they're built
21 as cheaply as possible, with mirrors and pillars
22 that create blind spots that are over a foot wide?

23 MR. RUSSELL: Objection; foundation.

24 THE WITNESS: I'm not qualified to
25 answer that.

1 BY MR. KEMP:

2 Q. Okay. Moving on to the fourth full
3 paragraph, it says, quote: "In the case of these
4 blind spots, policymakers have failed at the highest
5 level: engineering. If we want to end fatalities,
6 safe street engineering must not end at the curb,"
7 period, unquote.

8 Did I read that right?

9 A. Yeah. Yes.

10 Q. Do you agree with the general
11 proposition that you as a design engineer for
12 coaches has an obligation to eliminate blind spots,
13 if possible, through the design process?

14 MR. RUSSELL: Objection; foundation.
15 Predicate.

16 THE WITNESS: As I said, MCI's coaches
17 do not have a problem with blind spots.

18 BY MR. KEMP:

19 Q. Whether there's a problem or not, do you
20 agree that you as a design engineer have an
21 obligation to design the coaches to minimize or
22 eliminate blind spots?

23 MR. RUSSELL: Objection; predicate.

24 THE WITNESS: Me personally, I -- that's
25 not my area of the -- of the vehicle when I was

1 in -- in engineering. And it's one of the things
2 that, as I said before, that we've given -- MCI's
3 given consideration to, is the visibility of the
4 driver.

5 BY MR. KEMP:

6 Q. Okay. Why don't we talk about it not
7 being your job for a minute.

8 MR. KEMP: Could you get that marked
9 first.

10 (Exhibit 8 marked.)

11 BY MR. KEMP:

12 Q. So here's an organizational chart from
13 September 2009 that we've marked as Exhibit 8.

14 And who is that at the top?

15 A. Myself.

16 Q. And what's your title?

17 A. VP of design engineering and product
18 planning.

19 Q. Okay. And that was your title in
20 September 2009?

21 A. That's what that says, yeah. I don't
22 recall exactly.

23 Q. Okay. So you were the head person on
24 design engineering at this point in time, right?

25 MR. RUSSELL: Objection; predicate.

1 Misstates testimony.

2 THE WITNESS: No. I was the vice
3 president of the area. I wouldn't have been doing
4 any designing.

5 BY MR. KEMP:

6 Q. But you are overall responsible for the
7 design engineering at this point in time, referring
8 to September 2009, right?

9 MR. RUSSELL: Same objection.
10 Predicate.

11 THE WITNESS: Again, as I said, I was
12 head of the -- those departments.

13 BY MR. KEMP:

14 Q. Okay. So a couple questions ago you
15 told me it wasn't your job to design buses that
16 eliminate -- or excuse me, coaches that eliminate
17 blind spots.

18 You're the head guy.

19 A. You asked me now. As I said, I said
20 when -- I wasn't in engineering anymore, is what I
21 said. And when I was in engineering doing the
22 actual design, my area was electrical and
23 electronics, not --

24 Q. In 2007, you were the head guy, right,
25 for design engineering?

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1 A. No, I don't think so, not in 2007.

2 Q. In 2009 you were?

3 A. This -- I had this position in
4 2009, yeah.

5 Q. You're the top, top person?

6 A. Of that department, yep, in 2009.
7 That's what it says.

8 Q. And you're the top person of that
9 department, the design engineering department,
10 through January 2016, right?

11 A. If that's what that says. I don't
12 recall.

13 (Exhibit 9 marked.)

14 THE WITNESS: Well, no. This is a
15 different -- in 20 -- 2010, I was the vice president
16 and general manager of operations.

17 BY MR. KEMP:

18 Q. Okay. But on the organizational charts
19 I've given you as Exhibit 8 and 9 -- hang on, let me
20 catch Howard up here -- you're listed as the top
21 person in the design engineering department, right?

22 A. In 2009.

23 Q. And 2016 as well?

24 A. No.

25 Q. No? There's someone on top of you that

1 I'm missing?

2 A. This is in charge of operations, as the
3 general manager of the --

4 Q. So in 2000 -- how long were you the top
5 person in the design engineering department?

6 A. I don't recall. But in 2010, I had this
7 position (indicating).

8 Q. Referring to Exhibit 8?

9 A. Exhibit 9. So in 2010, that's when I
10 got the general manager of operations position.

11 Q. Okay. And prior to that you were head
12 of the design engineering department; yes?

13 A. Well, it says in 2009, and I don't
14 recall for how long that was, because as I recall,
15 in 2007 and maybe '8 I was in product planning and
16 technical support, is what I recall.

17 Q. So for some period of time in or
18 around 2009, you were the head design engineer at
19 MCI Limited, correct?

20 A. No.

21 Q. No?

22 A. No.

23 Q. You were head of the design engineering
24 department at MCI Limited?

25 A. Correct.

1 Q. And as head of the design engineering
2 department at MCI Limited in at least 2009, did you
3 have responsibility for design engineering to
4 eliminate or reduce right-side blind spots?

5 A. I had the responsibility to make sure
6 that the coach met a certain level of safety, along
7 with manufacturability and reliability and
8 functionality. That's what I had the
9 responsibility of.

10 Q. And is part of safety right-side
11 blind spots?

12 A. It would be a consideration.

13 Q. Okay. So what did you do as head of the
14 design engineering to eliminate, mitigate, reduce,
15 whatever term you want to use, right-side blind
16 spots for the J4500?

17 MR. RUSSELL: Objection. Vague as to
18 time.

19 THE WITNESS: I don't believe that we
20 had any active initiatives at that time because we
21 didn't have a problem.

22 BY MR. KEMP:

23 Q. So since you didn't believe there were
24 any right-side blind spot problems, you didn't do
25 anything to eliminate, reduce or mitigate them; is

1 that correct?

2 MR. RUSSELL: Objection; predicate.

3 THE WITNESS: We always are looking at
4 mirrors and making sure that the drivers has the
5 proper visibility of the vehicle.

6 BY MR. KEMP:

7 Q. Let's do it this way. From the time
8 period 2000 to 2009, can you tell me about any one
9 single thing you did to eliminate, reduce or
10 mitigate right-side blind spot problems?

11 A. As I said, we didn't have a blind spot
12 problem.

13 Q. So there was nothing you did during that
14 time frame to eliminate, reduce or mitigate blind
15 spots because you had no blind-spot problem?

16 MR. RUSSELL: Objection; predicate.

17 THE WITNESS: We -- MCI J Coach does not
18 have a blind-spot problem.

19 BY MR. KEMP:

20 Q. So you as the head of design engineering
21 didn't do anything to eliminate, reduce or mitigate
22 the problem because you didn't think there was a
23 problem; is that correct?

24 MR. RUSSELL: Same objection.

25 THE WITNESS: Again, as I said, we did

1 not have -- the J Coach does not have a blind-spot
2 problem.

3 BY MR. KEMP:

4 Q. Can you tell me anything you did during
5 the time period 2000 to 2009 to eliminate, reduce or
6 mitigate right-side blind-spot problems on the
7 J4500? Right-side blind spot problems, if any, on
8 the J4500.

9 MR. RUSSELL: Objection; predicate.

10 THE WITNESS: Like I said, we didn't
11 have any. We always look at mirrors, to make
12 sure our mirrors are optimized as best they can be.
13 But I don't recall whether there was anything
14 specific done.

15 The only thing I recall is that the --
16 that there wasn't the problem, and --

17 BY MR. KEMP:

18 Q. Okay. I don't want to argue with you
19 about whether it was a problem or not. I want to
20 know what, if anything, was done that would
21 eliminate a potential right-side blind spot problem
22 on the J4500 from 2000 to 2009. Can you identify
23 any specific action taken?

24 MR. RUSSELL: Objection; asked and
25 answered.

1 THE WITNESS: As I said, that's when we
2 did the J Coach design, would have been in 2000,
3 roughly, '99, 2000. And so we looked at the -- we
4 would have looked at to make sure the visibility of
5 the driver was to our requirements.

6 BY MR. KEMP:

7 Q. Is there some sort of standard for the
8 visibility of a driver through the right side of
9 the bus?

10 A. There's a guideline to check in SAE, as
11 I recall.

12 Q. And what's that called?

13 A. I don't know. I just know that there is
14 an SAE guideline for measuring visibility.

15 Q. And SAE means Society of Automobile
16 Engineers?

17 A. Correct.

18 Q. And you think there's some sort of
19 guideline for measuring visibility?

20 A. Right.

21 Q. For the driver?

22 A. Yeah.

23 Q. And is there a term we could use for
24 that guideline, or that you use?

25 A. Just -- no -- it would just be driver

1 visibility, I believe.

2 Q. Okay. All right. New area.

3 (Exhibit 10 marked.)

4 BY MR. KEMP:

5 Q. Mr. Couch, you probably want to look at
6 this one first, to put that one in context.

7 (Exhibit 11 marked.)

8 MR. RUSSELL: Counsel, do yo know how
9 much longer you will be?

10 MR. KEMP: Probably another five
11 minutes.

12 MR. RUSSELL: So you did the letters?

13 MR. KEMP: Yeah, I did it backwards.

14 BY MR. KEMP:

15 Q. So referring to Exhibit 11, Mr. Couch,
16 that is product literature for a device known as an
17 S-1 Gard, and if you take a look at the mark, PO 318
18 on the top right there, you'll see how it's
19 installed in a bus for the rear.

20 You kind of -- you get an idea of what
21 we're talking about here?

22 A. Yep.

23 Q. Prior to today, had you ever heard of an
24 S-1 Gard?

25 A. I heard about it in -- in relation to

1 this case.

2 Q. Okay. Prior to April 18th, 2017, had
3 you ever heard of an S-1 Gard?

4 A. No.

5 Q. Do you know Mr. Ellis?

6 A. I do not.

7 Q. Okay. So prior to April 18th, 2017, did
8 you know Mr. Ellis was an engineer in New Flyer and
9 had written a letter dated December 2nd --

10 A. No.

11 Q. Mr. Ellis says that there is nothing
12 about mounting the S-1 Gard to a New Flyer chassis
13 and suspension that would, quote, "impact the
14 functionality or integrity or other systems in the
15 coach," unquote.

16 Do you see that statement?

17 A. I do.

18 Q. Okay. And do you think there's
19 anything -- can you think of any reason, with
20 regards to functionality or integrity of systems
21 in the coach, why an S-1 Gard cannot be mounted on
22 the J4500?

23 MR. RUSSELL: Objection; foundation.

24 THE WITNESS: I haven't had a lot of
25 exposure to this, but just looking at it quickly,

1 and as I have -- as I've explained, there's a big
2 difference between a bus and a coach.

3 BY MR. KEMP:

4 Q. Excuse me. What is the word that
5 Mr. Ellis uses in the last sentence there?

6 A. Which word?

7 Q. On Exhibit 10.

8 A. Yeah, he says "coach." But --

9 Q. He says "coach."

10 A. Right.

11 Q. So he says that the S-1 Gard can be used
12 and it doesn't impact the functionality or integrity
13 or other systems "in the coach," unquote, right?

14 A. Yeah.

15 Q. So, okay. Go ahead.

16 A. I'm not sure that's accurate,
17 would be --

18 Q. So like Mr. Dorr and Mr. Bartlett,
19 Mr. Ellis's choice of words is inaccurate?

20 MR. RUSSELL: Objection; foundation.
21 Speculation.

22 THE WITNESS: I would just say in this
23 case Mr. Ellis is talking about a transit bus.

24 BY MR. KEMP:

25 Q. Okay. And how is it you know that?

1 A. Well, we had no relation with them at
2 that time, so I don't know why he would be
3 commenting on a coach. Flyer didn't make a coach.
4 They made transit buses. So --

5 Q. Okay. Go ahead. Is there a reason you
6 can think of why an S-1 Gard would not be functional
7 or harm the integrity of a J4500?

8 A. A couple things that come to mind would
9 be the ability to put on a tire chain. Coaches are
10 required -- snow chains. Coaches are required by
11 law in some states to have clearance for a snow
12 chain. And the snow chains whip out when you drive,
13 so it looks like it's very close to impinging on
14 that space.

15 And the other is --

16 Q. Okay, stop, stop.

17 What you're saying is that in some
18 colder states, like I guess North Dakota maybe --

19 A. Colorado.

20 Q. -- Colorado, they have a requirement
21 that coaches can be outfitted with snow chains?

22 A. Have to. Have to have them. Have to be
23 able to fit snow chains.

24 Q. And you think that potentially the snow
25 chain and the S-1 Gard would not interact

1 appropriately?

2 A. Correct.

3 Q. But you don't know one way or the other
4 because you don't know how far away the S-1 Gard is
5 from the tire?

6 A. Correct.

7 Q. And could you alleviate that concern by
8 moving the S-1 Gard an inch or two away?

9 MR. RUSSELL: Objection; foundation.

10 THE WITNESS: I don't know.

11 BY MR. KEMP:

12 Q. Okay. All right. Go ahead. What else?

13 A. And the other is clearance. Coaches are
14 required to go over rural railway tracks. Again,
15 they travel at very high rates of speed, and I'm not
16 sure how -- what happens if you run into an obstacle
17 at a highway speed with this device.

18 So those would be just my concern about
19 putting it on a coach.

20 Q. Mr. Lamothe -- Lamothe -- Lamothe --
21 told us that -- I think he told us that the coach
22 has about -- excuse me, a J4500 has approximately
23 eight inches of clearance.

24 MR. RUSSELL: Objection; misstates --

25 BY MR. KEMP:

1 Q. From this portion of the coach to the
2 street.

3 MR. RUSSELL: I believe that misstates
4 prior testimony.

5 THE WITNESS: I don't know the exact
6 dimension, but it's significant.

7 BY MR. KEMP:

8 Q. Okay. So as we sit here today, you
9 don't know whether or not this clearance concern
10 would preclude mounting an S-1 Gard on a J4500; is
11 that correct?

12 A. That wasn't my point. My point would be
13 that we try to -- the requirements of a coach are to
14 have clearance to make sure it can operate in the
15 environment that it's required to operate, which are
16 rural roads; Alaska Highway, which I've been on,
17 which has potholes that are a foot deep or deeper.

18 And the concern would be that this would
19 hang the vehicle up. That would be my biggest --
20 because we spend -- we go to significant efforts to
21 make sure we have a certain clearance in order to
22 meet our breakover angle specs and approach.

23 Q. To your knowledge, has MCI put on an
24 S-1 Gard on a coach?

25 A. Not to my knowledge.

1 Q. Do you know one way or the other?

2 A. As far as I know, we have not, and we've
3 never been asked for it, to my knowledge.

4 Q. Mr. Ellis said that New Flyer put them
5 on in the New Flyer factory. Do you know anything
6 one way or the other about that?

7 A. No.

8 Q. Now, back to the S-1 Gard. Whether it's
9 an S-1 Gard or a barrier, say a triangular barrier
10 that you put on as part of the chassis manufacture
11 or after the chassis manufacture, would you agree
12 with me that if it wanted to, MCI could have put
13 some sort of deflector before the rear tires to
14 potentially deflect objects out of the way?

15 MR. RUSSELL: Objection; foundation.
16 Speculation.

17 THE WITNESS: I don't know. We -- I
18 don't know that. We go to great lengths to get to
19 the design we're at for the environment that a coach
20 has to operate in.

21 BY MR. KEMP:

22 Q. Okay. I think you're misunderstanding
23 me. When we were talking about proximity sensors,
24 we were talking about expertise and MCI didn't have
25 this type of expertise and things of that vein. Do

1 you recall that discussion?

2 A. Yep.

3 Q. Does MCI have sufficient expertise to
4 put on a mechanical object like an S-1 deflector or
5 something comparable of its own design?

6 MR. RUSSELL: Objection; foundation.
7 Speculation.

8 THE WITNESS: MCI has the expertise to
9 build structural components.

10 BY MR. KEMP:

11 Q. And did MCI, to your knowledge, give any
12 consideration to building a structural component
13 that would act as a deflector for the rear tires?

14 MR. RUSSELL: Same objections.

15 THE WITNESS: To my knowledge, we did
16 not look at something like that.

17 BY MR. KEMP:

18 Q. Do you think that's something that
19 should at least be explored?

20 MR. RUSSELL: Same objections.

21 THE WITNESS: As I said, a coach is not
22 operated in the same environment or have the same --
23 it's not built the same as a transit. We don't have
24 a rear door. We don't have people coming in and out
25 every 20 minutes. And quite frankly, although this

1 incident is tragic, I have never heard prior to this
2 of this type of accident in one of our coaches.

3 It's --

4 BY MR. KEMP:

5 Q. You've never heard of a bus running over
6 a bicyclist before?

7 A. A coach, I have not.

8 Q. Okay. In any fashion. The front of the
9 bus -- or excuse me, the coach hits the bicyclist.
10 You've never heard of a coach hitting a bicyclist
11 before?

12 A. Not to my knowledge.

13 Q. Okay. All right.

14 Go ahead. So I think you were going to
15 say something more about whether MCI could make a
16 barrier protector for the rear if it wanted to?

17 A. No. I just said that MCI has the
18 expertise to design a structural component.

19 Q. And now that you have heard about this
20 case, do you think it would be a good idea to at
21 least explore designing a structural component like
22 this deflector for MCI coaches?

23 MR. RUSSELL: Objection; foundation.
24 Incomplete hypothetical and improper opinion.

25 THE WITNESS: MCI looks at any and all

1 new features that come out, and so we will review
2 it. I'm not sure that we'll do it, but MCI will,
3 I'm sure, look at it.

4 BY MR. KEMP:

5 Q. And you think that's an appropriate
6 thing to do from a design engineering point of view?

7 MR. RUSSELL: Same objections.

8 THE WITNESS: I don't know.

9 BY MR. KEMP:

10 Q. Well, why would they look at it then, if
11 it's not an appropriate thing to do from a design
12 engineering point of view?

13 A. We will look at it because it's come up
14 in this lawsuit.

15 Q. And by "it" we're talking about
16 potentially designing a deflector similar to the
17 S-1 Gard? That's "it"?

18 A. I think what MCI will do is we'll review
19 the S-1 Gard to see if it's a feature that should be
20 offered or not.

21 Q. Or something similar to an S-1 Gard,
22 right?

23 A. I don't know.

24 Q. Okay. I mean, if there's a concern that
25 the S-1 Gard hangs too low -- which is what I think

1 you're saying. Right?

2 A. Uh-huh.

3 Q. "Yes"?

4 A. That's -- in my opinion, yeah, that
5 would be one of the concerns, is that it's --

6 Q. Okay. But you could make an S-1 Gard
7 that doesn't hang as low for a --

8 A. I don't know. I'm not the expert. From
9 what I saw of the video of how this S-1 Gard works,
10 it's pretty critical how the device hits the person.

11 The other thing to keep in mind is that
12 a coach has two axles. And so something hitting --
13 spinning a person around, the second axle is a
14 concern, I would think, with a -- on a coach, where
15 the transit bus doesn't have that.

16 Q. Okay. And by the video that you're
17 referencing, you're talking about the S-1 Gard
18 promo video?

19 A. I looked it up online.

20 Q. Okay. And that's the video where the
21 stunt guy goes under the bus?

22 A. Right.

23 Q. And do you recall that the stunt guy in
24 one case was on a bicycle and he went under the bus?

25 MR. RUSSELL: Objection; foundation.

1 THE WITNESS: I do. And actually in
2 that case what I recall is he adjusted himself
3 before the S-1 Gard struck him. So --

4 BY MR. KEMP:

5 Q. Okay. You would agree with me that at
6 the time the S-1 Gard video was made, at least the
7 S-1 Gard people foresaw the potential for a
8 bicyclist to go under the rear tires of a bus,
9 right?

10 A. I don't know. They were doing all kinds
11 of different things.

12 Q. But that was one scenario they showed in
13 their video?

14 A. They did show that.

15 Q. Okay. And is there a reason why they
16 could foresee that as a potential risk, a bicyclist
17 going under the rear tires of a bus, and MCI could
18 not foresee that as a potential risk?

19 A. As I said, they were dealing strictly
20 with transit buses, and MCI makes coaches. And the
21 interaction with people and the vehicles are quite
22 different.

23 MR. KEMP: I have no further questions.

24 MR. CHRISTIANSEN: I have a couple.

25 ///

1 EXAMINATION

2 BY MR. CHRISTIANSEN:

3 Q. Mr. Couch, my name's Pete Christiansen.

4 I also represent the plaintiffs in this case. I
5 just have some follow-up questions for you.

6 Have you read the driver, Mr. Hubbard's,
7 deposition in this case?

8 A. I have not.

9 Q. Did anybody tell you what he testified
10 to related to this accident?

11 A. Not -- not the whole thing.

12 Q. Without telling me what Mr. Russell or
13 any of your counsel told you, what -- do you have an
14 understanding, separate and aside from what your
15 lawyers have told you, about what the driver said
16 happened, or does it just come from your lawyers?

17 A. No. Just from lawyers.

18 Q. Did you know that Mr. Hubbard said he
19 passed the bicyclist some 400 feet north of the
20 intersection where he struck him? Did you know
21 that?

22 A. No.

23 Q. Did you know he said that he didn't see
24 the bicyclist for 400 feet, until the bicyclist just
25 appeared in the window on the door right prior to

1 him striking the cyclist?

2 MR. RUSSELL: Objection; foundation and
3 to the extent it misstates prior testimony.

4 BY MR. CHRISTIANSEN:

5 Q. Did you know that?

6 A. I don't know.

7 Q. So he drove some 400 feet next to a
8 cyclist not being able to see him. That's his
9 testimony. Were you aware of that?

10 MR. RUSSELL: Same objections.

11 THE WITNESS: No.

12 BY MR. CHRISTIANSEN:

13 Q. And in light of that testimony, assuming
14 he's under oath and telling the truth, it's still
15 your position there's no blind spot on these J4500s;
16 is that right?

17 MR. RUSSELL: Same objections.

18 THE WITNESS: It's my understanding
19 that --

20 BY MR. CHRISTIANSEN:

21 Q. No, that's not my -- I didn't ask you
22 for your understanding.

23 I asked you: Is it your position, as
24 you sit here today, knowing that this driver, on the
25 day in question, April the 18th, 2017, when he -- my

1 client, a 51-year old father of two, was run over
2 and killed, did you know that for 400 feet he
3 traveled southbound next to a bicyclist without
4 being able to see him? Did you know that?

5 MR. RUSSELL: Objection; foundation and
6 to the extent it misstates prior testimony.

7 THE WITNESS: I don't know that.

8 BY MR. CHRISTIANSEN:

9 Q. And assuming that that testimony of
10 Mr. Hubbard is true, and a driver paying attention
11 by all accounts, driving 400 feet next to a cyclist
12 unable to see him, wouldn't you agree with me there
13 must be some kind of blind spot on this bus?

14 MR. RUSSELL: Same objections.

15 THE WITNESS: I can't know one way or
16 the other.

17 BY MR. CHRISTIANSEN:

18 Q. What explanation do you have for his
19 inability to see a bicyclist traveling next to him
20 southbound on Pavilion Center?

21 MR. RUSSELL: Objection; foundation.
22 Calls for speculation.

23 THE WITNESS: I don't know, because I
24 don't know the situation of the accident. It was my
25 understanding that he just overtook the bicyclist.

1 BY MR. CHRISTIANSEN:

2 Q. No. His testimony unequivocally is that
3 for 400 feet after he passed the bicyclist, until
4 the second before he struck him, he couldn't see a
5 bicyclist. That's his testimony.

6 So in light of that testimony I want you
7 to tell me, tell the jury, is it still your position
8 that there's no blind spot on this J4500?

9 MR. RUSSELL: Same objections.

10 THE WITNESS: That's correct.

11 BY MR. CHRISTIANSEN:

12 Q. And because there's no blind spot, I
13 mean, all the things Mr. Kemp spoke to you about
14 this morning -- the placement of the mirrors, the
15 pillars, the size of the pillars, the windows -- do
16 you remember all that testimony --

17 A. Uh-huh.

18 Q. -- all of those items were modified
19 and/or looked at between the E Coach and the J Coach
20 to ensure visibility of the driver, correct?

21 MR. RUSSELL: Objection; misstates
22 testimony.

23 THE WITNESS: As I said, they were all
24 looked at to see if there were any areas where we
25 could improve visibility.

1 BY MR. CHRISTIANSEN:

2 Q. Visibility?

3 A. Of the driver.

4 Q. And that's because as a designer and
5 manufacturer and distributor of buses, you all
6 recognized the visibility of the driver on these
7 big, 45-foot vehicles is important, right?

8 A. Visibility is very important, yes.

9 Q. And so if a driver like Mr. Hubbard
10 couldn't see a bicyclist for 400 feet as he's
11 driving next to it because it's in a blind spot,
12 that would be a problem, right?

13 MR. RUSSELL: Objection; foundation.
14 Speculation.

15 THE WITNESS: I can't say one way or the
16 other whether that happened.

17 BY MR. CHRISTIANSEN:

18 Q. Do you have an explanation for why he
19 couldn't see the bicyclist for 400 feet?

20 MR. RUSSELL: Same objection. Asked and
21 answered.

22 THE WITNESS: Not sure that he couldn't
23 or that that's actually what happened.

24 BY MR. CHRISTIANSEN:

25 Q. That's his testimony.

1 A. I don't know.

2 Q. Do you have reason to doubt his
3 testimony.

4 A. I said, again, I don't know. I've
5 driven a coach, and you can -- it's quite easy to --
6 you have very good visibility, because you're at the
7 front, you're up high, and if you're driving down
8 the street, you can see a bicyclist or something.

9 Q. Why couldn't Mr. Hubbard see my client?

10 A. Not sure.

11 MR. RUSSELL: Objection; foundation.

12 BY MR. CHRISTIANSEN:

13 Q. Well, I would like an explanation from
14 you. Why couldn't he see my client?

15 A. I don't --

16 MR. RUSSELL: Asked and answered. He
17 doesn't know what Mr. Hubbard saw.

18 MR. CHRISTIANSEN: Don't testify for
19 him.

20 MR. RUSSELL: I am not testifying for
21 him.

22 MR. CHRISTIANSEN: Make your objection.

23 THE WITNESS: As I said, I don't know.

24 BY MR. CHRISTIANSEN:

25 Q. Did you have any reason to dispute

1 Mr. Hubbard's testimony as you sit here today?

2 MR. RUSSELL: Asked and answered.

3 Foundation. Speculation.

4 THE WITNESS: Again, I don't know.

5 BY MR. CHRISTIANSEN:

6 Q. Yes or no, you do or you don't have a
7 reason to dispute his testimony?

8 MR. RUSSELL: Same objections. Asked
9 and answered.

10 THE WITNESS: Can you ask that again?

11 BY MR. CHRISTIANSEN:

12 Q. Sure. I'm asking you: Do you have any
13 reason one way or another to dispute Mr. Hubbard's
14 testimony?

15 A. I would dispute that.

16 Q. What part of it?

17 A. That he drove beside him for 400 feet
18 and couldn't see a bicyclist.

19 Q. That's his testimony, is that he passed
20 him at a cutout 400 feet north and didn't see him
21 until the second before he ran him over.

22 Tell me your explanation for how he
23 couldn't see him for 400 feet traveling southbound
24 on Pavilion Center if there's not a blind spot on
25 this bus.

1 MR. RUSSELL: Objection; foundation.

2 Speculation. Asked and answered several times.

3 THE WITNESS: Again, I don't know. I'm

4 not that familiar with the whole situation.

5 MR. CHRISTIANSEN: Nothing else.

6 MR. RUSSELL: Will?

7 MR. KEMP: (Shakes head in the

8 negative.)

9 MR. RUSSELL: All right. Thank you.

10 THE VIDEOGRAPHER: We're going off the

11 record. The time is 12:53.

12

13 (The deposition concluded at 12:53)

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CERTIFICATE OF DEPONENT

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* * * * *

I, BRYAN COUCH, deponent herein, do hereby
certify and declare the within and foregoing
transcription to be my deposition in said action;
that I have read, corrected and do hereby affix my
signature to said deposition under penalty of
perjury.

BRYAN COUCH, Deponent

BRYAN COUCH - 10/12/2017

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1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)
)SS:
3 COUNTY OF CLARK)

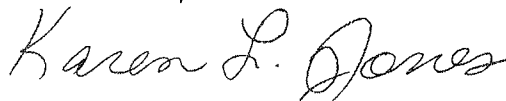
4 I, Karen L. Jones, a duly commissioned and
5 licensed Court Reporter, Clark County, State of
6 Nevada, do hereby certify: That I reported the
7 taking of the deposition of the witness, BRYAN
8 COUCH, commencing on Thursday, October 12, 2017, at
9 10:05 a.m.

10 That prior to being examined, the witness was,
11 by me, duly sworn to testify to the truth. That I
12 thereafter transcribed my said shorthand notes into
13 typewriting and that the typewritten transcript of
14 said deposition is a complete, true and accurate
15 transcription of said shorthand notes.

16 I further certify that I am not a relative or
17 employee of an attorney or counsel of any of the
18 parties, nor a relative or employee of an attorney
19 or counsel involved in said action, nor a person
20 financially interested in the action.

21 IN WITNESS HEREOF, I have hereunto set my
22 hand, in my office, in the County of Clark, State of
23 Nevada, this 25th day of October, 2017.

24



25

KAREN L. JONES, CCR NO. 694

EXHIBIT 3

000983

EXHIBIT 3

000983

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000983



DANGERZONE DEFLECTOR

Installed on over 30,000 buses worldwide since 1993

PRODUCT INFORMATION

S-1 GARD® DANGERZONE DEFLECTOR



The S-1 GARD Dangerzone Deflector is a securely mounted maintenance-free barrier installed in front of the right rear wheels of a transit bus or motor coach, designed to deflect a person out of the path of the wheels, preventing catastrophic injury or death.

Its patented new impact-resistant receiver design, guaranteed for the life of the bus, has improved energy absorption and is engineered to withstand poor road conditions and operator's abuse.

The S-1 GARD Dangerzone Deflector and S-1 GARD Dangerzone Barrier are cast using only the best BASF polyurethane available and will last for as long as any transit bus is in service. Each part is custom fit to accommodate any bus configuration.

S-1 GARD® DANGERZONE BARRIER

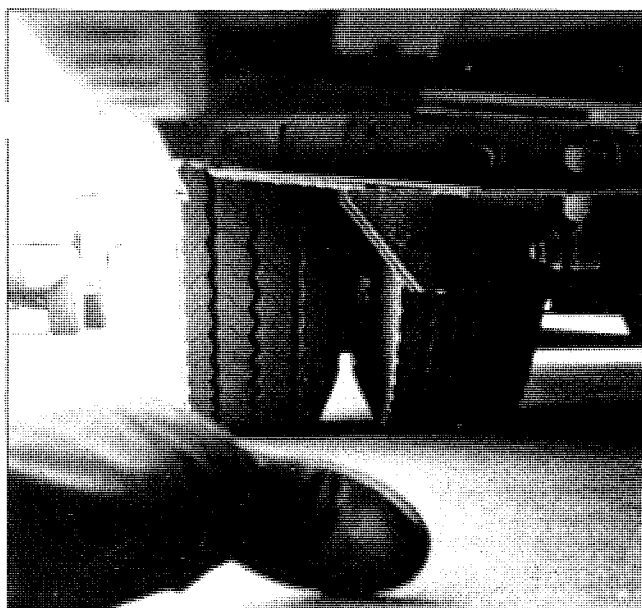


Ideal for low-floor buses, the S-1 GARD Dangerzone Barrier covers the entire gap between the front and rear wheels.

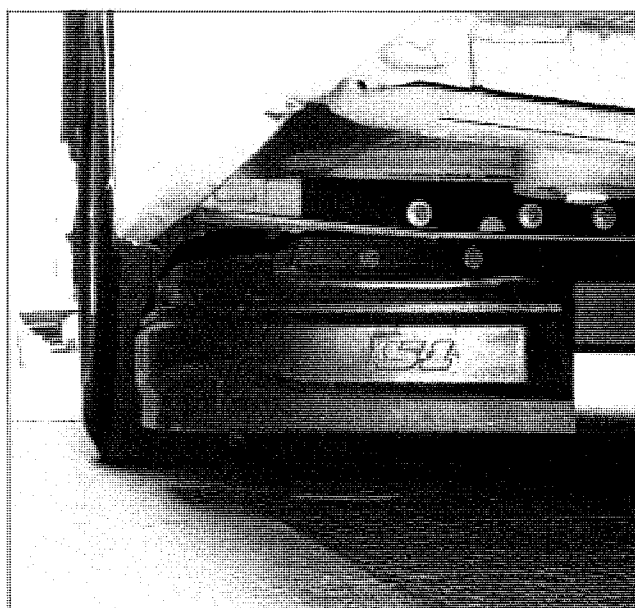
Cast from heavy-duty polyurethane, the Barrier is strong enough to deflect pedestrians and cyclists from the path of the wheels, yet flexible enough to withstand impact from road obstacles.

A patented energy absorption mounting receiver allows for barrier movement against impact for, is customizable to fit any compatible frame, and is guaranteed for the life of the bus.

www.s1gard.com



Danger Zone Exposed



Danger Zone Eliminated

THE S-1 GARD IS WORKING

"We seldom have a need to do any maintenance on the S-1 GARD."

- Tom Barrio, Vehicle Maintenance Manager, Montebello Bus Lines, Montebello, CA

...n pleased to report that since the complete installation of the product six years ago, we have not had a right rear tire fatality. In addition, one preventable variable we did not factor in was the efficacy of the guard to apparently warn pedestrians to stand clear of the rear tires."

- Fred Goodine, Assistant General Manager, Safety and Risk Management, WMATA, Washington, D.C.

Washington Metropolitan Transit Authority (WMATA) in Washington, D.C., installed the S-1 GARD in 2000. At the time, WMATA was averaging two severe accidents or fatalities per year; since installing the S-1 GARD, WMATA has reported zero right rear wheel incidents.

"In continuous service through our harsh winters for 12 years, the S-1 GARD is still in good condition firmly attached."

- Daniel G. Holter, General Manager, Rochester City Lines, Rochester, MN

Capital Metro Transit in Austin, TX, installed the S-1 GARD in 2005. Prior to installation, Capital Metro had been averaging one severe accident or fatality every two years. Since installing the S-1 GARD, Capital Metro has reported zero right rear wheel incidents.

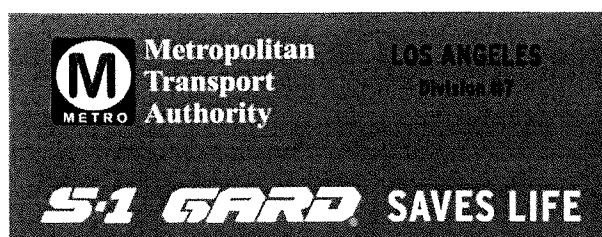
ENDORSED BY PEDESTRIAN AND CYCLIST ADVOCATES NATIONWIDE

CONTROL CASUALTY LOSSES: INSTALL A PRODUCT PROVEN TO SAVE LIVES

With the continued rise of fuel prices, transit properties all over North America have continued to see increased ridership, which will demand more emphasis on safety. Because of the increased safety risks, transit properties' exposure rate is increasing by the day.

In order to reduce mounting casualty losses to risk reserves and insurance pools, major transit properties have installed the S-1 GARD. The S-1 GARD has been a proven safety device for over two decades and your entire fleet can be retrofitted for less than the cost of one settlement. The S-1 GARD will:

- ▶ **Prevent Catastrophic Losses.** Fatalities, dismemberment, and degloving injuries can result in verdicts and settlements in excess of \$5 million.
- ▶ **Reduce Legal Costs.** Attorney costs in catastrophic cases can exceed \$250,000.
- ▶ **Avoid Adverse Publicity.** Press coverage of accidents and large settlements are damaging to the image of your transit system.
- ▶ **Improve Public Image.** Dedication ceremonies upon installation demonstrate the concern of your transit property for public safety.
- ▶ **Minimize Exposure of your Drivers.** Even non-fault accidents causing serious injuries have resulted in operators being unable to return to duty.
- ▶ **Improve Loss Experience.** For favorable underwriting and rating at time of renewal.

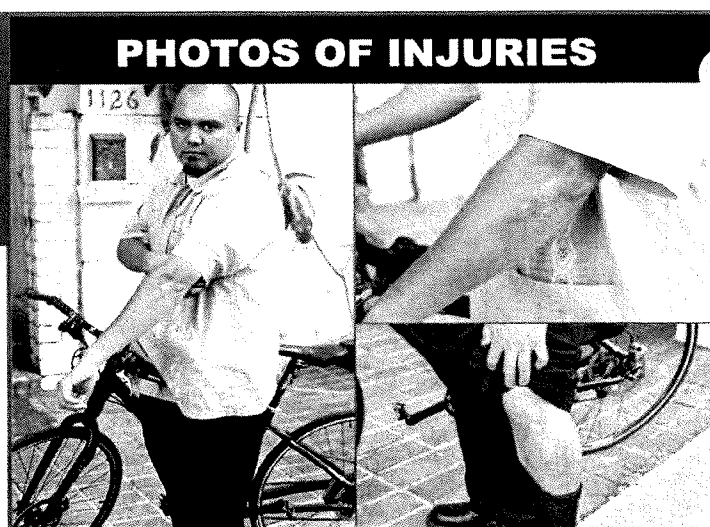


Date: April 9, 2003 4:30 p.m.

Location: Wilshire Blvd., West Los Angeles, California

Accident: Bicyclist caught under bus and saved by S-1 GARD

Result: Minor scrapes, abrasions, and bruises



Full LAPD report available upon request

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- SFMTA (San Francisco, CA)
- Keolis Sverige (Stockholm, Sweden)
- CapMetro (Austin, TX)
- WMATA (Washington, D.C.)
- MTA (Baltimore, MD)
- Riverside TA (Riverside, CA)
- Santa Clara Valley TA (San Jose, CA)
- Montebello Bus Lines (Montebello, CA)
- Big Blue Bus (Santa Monica, CA)
- Norwalk Transit System (Norwalk, CA)
- SDMTS (San Diego, CA)
- AC Transit (Oakland, CA)
- Glendale Beeline (Glendale, CA)
- Sun Tran (Tucson, AZ)
- OTS (Honolulu, Hawaii)

Bus OEMs including:

- New Flyer Industries
- Gillig Corp.
- Daimler Buses
- North American Bus Industries (NABI)
- Volvo Buses
- Veolia Transportation
- Fiba Canning
- Orion Bus
- ElDorado National
- MAN Bus (Sweden)

... As well as major theme parks and international airport shuttles.

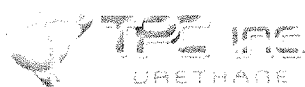


Dedication Ceremony, City of Santa Monica



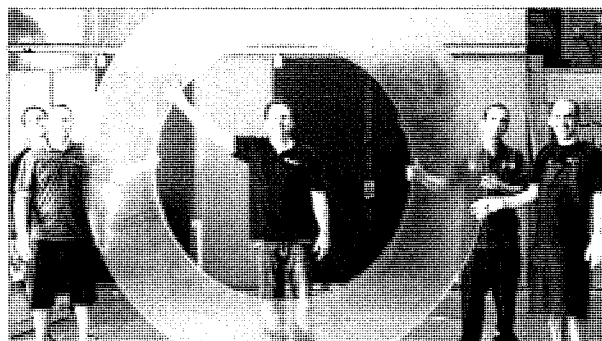
PTS representative inspecting installation on buses in Stockholm

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Public Transportation Safety International Corp.

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DISTRICT COURT

CLARK COUNTY, NEVADA

22 KEON KHIABANI and ARIA KHIABANI,
23 minors by and through their Guardian, MARIE-
24 CLAUDE RIGAUD; SIAMAK BARIN, as
25 Executor of the Estate of Kayvan Khiabani, M.D.
26 (Decedent); the Estate of Kayvan Khiabani, M.D.
27 (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.

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Case No.: A-17-755977-C

Dept. No.: XIV

**VOLUME II: 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 

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26 *Motor Coach Industries, Inc.*

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.

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EXHIBIT 4

000995

000995

EXHIBIT 4

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA

3 KEON KHIABANI and ARIA)
4 KHIABANI, minors by and)
5 through their natural) CASE NO.:
6 mother, KATAYOUN BARIN;) A-17-755977-C
7 KATAYOUN BARIN,)
8 individually; KATAYOUN)
9 BARIN as Executrix of)
10 the Estate of Kayvan)
11 Khiabani M.D.)
12 (Decedent), and the)
13 Estate of Kayvan)
14 Khiabani,)
15 M.D. (Decedent),)
16)
17 Plaintiffs,)
18)
19 vs.)
20)
21 MOTOR COACH INDUSTRIES,)
22 INC. A Delaware)
23 corporation;)
24 MICHELANGELO LEASING)
25 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.)
)

22 VIDEOTAPED DEPOSITION OF EDWARD HUBBARD
23 LAS VEGAS, NEVADA
24 WEDNESDAY, SEPTEMBER 20, 2017

25 REPORTED BY: KAREN L. JONES, CCR NO. 694
JOB NO.: 417421

EDWARD HUBBARD - 09/20/2017

Page 2

1 DEPOSITION OF EDWARD HUBBARD, taken at Kemp,
2 Jones & Coulthard, located at 3800 Howard Hughes
3 Parkway, 17th Floor, Las Vegas, Nevada, on
4 Wednesday, September 20, 2017, at 10:01 a.m., before
5 Karen L. Jones, Certified Court Reporter, in and for
6 the State of Nevada.

7

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EDWARD HUBBARD - 09/20/2017

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17 Also Present: JP Muritta, Videographer

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EDWARD HUBBARD - 09/20/2017

Page 4

1 I N D E X

2 WITNESS: EDWARD HUBBARD

3 EXAMINATION PAGE

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BY: Mr. Kemp 36

5 BY: Mr. Christiansen 193

6

E X H I B I T S

7

NUMBER DESCRIPTION PAGE

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Exhibit 2 State of New York Driving History 62

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Exhibit 3 Trimble Report 89

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Exhibit 4 Thermo Fisher Scientific: 2017 95

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CMD Americas Sales Meeting

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Exhibit 5 Copy of Photograph 129

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Exhibit 6 Copy of Photograph 131

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Exhibit 7 Copy of Photograph 135

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Exhibit 8A Copy of Photograph 189

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Exhibit 8B Copy of Photograph 189

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Exhibit 8C Copy of Photograph 189

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Exhibit 8D Copy of Photograph 189

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Exhibit 8E Copy of Photograph 189

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Exhibit 8F Copy of Photograph 189

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Exhibit 8G Copy of Photograph 189

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Exhibit 8H Copy of Photograph 189

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Exhibit 9 State of Nevada Traffic 199

Accident Report

25

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