

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.

Electronically Filed
Dec 04 2019 05:22 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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
VOLUME 5
PAGES 1001-1250**

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

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

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

Attorneys for Appellant

CHRONOLOGICAL TABLE OF CONTENTS TO APPENDIX

Tab	Document	Date	Vol.	Pages
1	Complaint with Jury Demand	05/25/17	1	1–16
2	Amended Complaint and Demand for Jury Trial	06/06/17	1	17–33
3	Reporter’s Transcript of Motion for Temporary Restraining Order	06/15/17	1	34–76
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
5	Defendants Michelangelo Leasing Inc. dba Ryan’s Express and Edward Hubbard’s Answer to Plaintiffs’ Amended Complaint	06/28/17	1	81–97
6	Demand for Jury Trial	06/28/17	1	98–100
7	Defendant Motor Coach Industries, Inc.’s Answer to Plaintiffs’ Amended Complaint	06/30/17	1	101–116
8	Defendant Sevenplus Bicycles, Inc. d/b/a Pro Cyclery’s Answer to Plaintiffs’ Amended Complaint	06/30/17	1	117–136
9	Defendant Sevenplus Bicycles, Inc. d/b/a Pro Cyclery’s Demand for Jury Trial	06/30/17	1	137–139
10	Defendant Bell Sports, Inc.’s Answer to Plaintiff’s Amended Complaint	07/03/17	1	140–153
11	Defendant Bell Sports, Inc.’s Demand for Jury Trial	07/03/17	1	154–157
12	Notice of Entry of Order	07/11/17	1	158–165
13	Notice of Entry of Order Granting Plaintiffs’ Motion for Preferential Trial Setting	07/20/17	1	166–171

14	Reporter's Transcription of Motion for Preferential Trial Setting	07/20/17	1	172–213
15	Notice of Entry of Order (CMO)	08/18/17	1	214–222
16	Notice of Entry of Order	08/23/17	1	223–227
17	Stipulated Protective Order	08/24/17	1	228–236
18	Reporter's Transcription of Motion of Status Check and Motion for Reconsideration with Joinder	09/21/17	1 2	237–250 251–312
19	Defendant SevenPlus Bicycles, Inc. d/b/a Pro Cyclery's Motion for Determination of Good Faith Settlement	09/22/17	2	313–323
20	Defendant's Notice of Filing Notice of Removal	10/17/17	2 3	324–500 501–586
21	Civil Order to Statistically Close Case	10/24/17	3	587–588
22	Motion for Summary Judgment on Foreseeability of Bus Interaction with Pedestrians or Bicyclists (Including Sudden Bicycle Movement)	10/27/17	3	589–597
23	Transcript of Proceedings	11/02/17	3	598–618
24	Second Amended Complaint and Demand for Jury Trial	11/17/17	3	619–637
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
26	Motion for Summary Judgment on Punitive Damages	12/01/17	3	642–664
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
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
31	Defendant’s Motion in Limine No. 7 to Exclude Any Claims That the Subject Motor Coach was Defective Based on Alleged Dangerous “Air Blasts”	12/07/17	7	1572–1583
32	Appendix of Exhibits to Defendant’s Motion in Limine No. 7 to Exclude Any Claims That the Subject Motor Coach was Defective Based on Alleged Dangerous “Air Blasts”	12/07/17	7 8	1584–1750 1751–1801
33	Defendants’ Motion in Limine No. 13 to Exclude Plaintiffs’ Expert Witness Robert Cunitz, Ph.d., or in the Alternative, to Limit His Testimony	12/07/17	8	1802–1816
34	Appendix of Exhibits to Defendants’ Motion in Limine No. 13 to Exclude Plaintiffs’ Expert Witness Robert Cunitz, Ph.D., or in the Alternative, to Limit His Testimony	12/07/17	8 9	1817–2000 2001–2100
35	Motion for Determination of Good Faith Settlement Transcript	12/07/17	9	2101–2105
36	Defendants’ Motion in Limine No. 17 to Exclude Claim of Lost Income, Including the August 28 Expert Report of Larry Stokes	12/08/17	9	2106–2128
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
38	Appendix of Exhibits to Plaintiffs’ Joint Opposition to MCI Motion for Summary Judgment on All Claims	12/21/17	9 10 11	2176–2250 2251–2500 2501–2523

	Alleging a Product Defect and to MCI Motion for Summary Judgment on Punitive Damages			
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
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
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
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
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
45	Plaintiffs’ Addendum to Reply to Opposition to Motion for Summary Judgment on Foreseeability of Bus	01/17/18	11	2654–2663

	Interaction with Pedestrians or Bicyclists (Including Sudden Bicycle Movement)”			
46	Reply to Plaintiffs’ Opposition to Motion for Summary Judgment on Punitive Damages	01/17/18	11	2664–2704
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
48	Defendant Bell Sports, Inc.’s Motion for Determination of Good Faith Settlement on Order Shortening Time	01/17/18	11	2720–2734
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
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
51	Calendar Call Transcript	01/18/18	11 12	2748–2750 2751–2752
52	Motor Coach Industries, Inc.’s Pre-Trial Disclosure Pursuant to NRCP 16.1(a)(3)	01/19/18	12	2753–2777
53	Defendant’s Reply in Support of Motion in Limine No. 7 to Exclude Any Claims that the Subject Motor Coach was Defective Based on Alleged Dangerous “Air Blasts”	01/22/18	12	2778–2787
54	Defendants’ Reply in Support of Motion in Limine No. 13 to Exclude Plaintiffs’ Expert Witness Robert Cunitz, Ph.D., or in the Alternative to Limit His Testimony	01/22/18	12	2788–2793

55	Defendant's Reply in Support of Motion in Limine No. 17 to Exclude Claim of Lost Income, Including the August 28 Expert Report of Larry Stokes	01/22/18	12	2794–2814
56	Defendants Michelangelo Leasing Inc. dba Ryan's Express and Edward Hubbard's Joinder to Plaintiffs' Motion for Determination of Good Faith Settlement with Michelangelo Leasing Inc. dba Ryan's Express and Edward Hubbard	01/22/18	12	2815–2817
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
58	Motions in Limine Transcript	01/29/18	12 13	2998–3000 3001–3212
59	All Pending Motions Transcript	01/31/18	13 14	3213–3250 3251–3469
60	Supplemental Findings of Fact, Conclusions of Law, and Order	02/05/18	14	3470–3473
61	Motor Coach Industries, Inc.'s Answer to Second Amended Complaint	02/06/18	14	3474–3491
62	Status Check Transcript	02/09/18	14 15	3492–3500 3501–3510
63	Notice of Entry of Order	02/09/18	15	3511–3536
64	Jury Trial Transcript	02/12/18	15 16	3537–3750 3751–3817
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
67	Bench Brief on Contributory Negligence	02/15/18	18	4309–4314
68	Reporter's Transcription of Proceedings	02/15/18	18	4315–4500

69	Reporter's Transcription of Proceedings	02/16/18	19	4501–4727
70	Motor Coach Industries, Inc.'s Response to "Bench Brief on Contributory Negligence"	02/16/18	19	4728–4747
71	Defendant's Trial Brief in Support of Level Playing Field	02/20/18	19 20	4748–4750 4751–4808
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
75	Findings of Fact, Conclusions of Law, and Order	02/22/18	22	5315–5320
76	Bench Brief in Support of Preinstructing the Jury that Contributory Negligence is Not a Defense in a Product Liability Action	02/22/18	22	5321–5327
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
84	Addendum to Stipulated Protective Order	03/05/18	28	6879–6882
85	Jury Trial Transcript	03/06/18	28 29	6883–7000 7001–7044

86	Reporter's Transcription of Proceedings	03/07/18	29 30	7045–7250 7251–7265
87	Jury Trial Transcript	03/08/18	30	7266–7423
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
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
91	Plaintiffs' Trial Brief Regarding Admissibility of Taxation Issues and Gross Versus Net Loss Income	03/12/18	33	8018–8025
92	Jury Trial Transcript	03/13/18	33	8026–8170
93	Jury Trial Transcript	03/14/18	33 34	8171–8250 8251–8427
94	Jury Trial Transcript	03/15/18	34 35	8428–8500 8501–8636
95	Jury Trial Transcript	03/16/18	35 36	8637–8750 8751–8822
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
97	Notice of Entry of Order	03/19/18	36	8839–8841
98	Jury Trial Transcript	03/19/18	36 37	8842–9000 9001–9075
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
105	Proposed Jury Instructions Not Given	03/23/18	41	10207–10235
106	Amended Jury List	03/23/18	41	10236
107	Special Jury Verdict	03/23/18	41	10237–10241
108	Jury Instructions	03/23/18	41 42	10242–10250 10251–10297
109	Proposed Jury Verdict Form Not Used at Trial	03/26/18	42	10298–10302
110	Jury Instructions Reviewed with the Court on March 21, 2018	03/30/18	42	10303–10364
111	Notice of Entry of Judgment	04/18/18	42	10365–10371
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
113	Plaintiffs' Verified Memorandum of Costs and Disbursements Pursuant to NRS 18.005, 18.020, and 18.110	04/24/18	42	10375–10381
114	Appendix of Exhibits in Support of Plaintiffs' Verified Memorandum of Costs (Volume 1 of 2)	04/24/18	42 43 44 45 46	10382–10500 10501–10750 10751–11000 11001–11250 11251–11360
115	Appendix of Exhibits in Support of Plaintiffs' Verified Memorandum of Costs (Volume 2 of 2)	04/24/18	46 47	11361–11500 11501–11735
116	Amended Declaration of Peter S. Christiansen, Esq. in Support of Plaintiffs' 4/24/18 Verified Memorandum of Costs and Disbursements Pursuant to NRS 18.005, 18.020, and 18.110	04/25/18	47	11736–11742
117	Motion to Retax Costs	04/30/18	47 48	11743–11750 11751–11760

118	Opposition to Motion for Limited Post-Trial Discovery	05/03/18	48	11761–11769
119	Appendix of Exhibits to: Motor Coach Industries, Inc.’s Motion for New Trial	05/07/18	48	11770–11962
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
121	Supplement to Motor Coach Industries, Inc.’s Motion for a Limited New Trial	05/08/18	49	12013–12018
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
123	Opposition to Defendant’s Motion to Retax Costs	05/14/18	49	12039–12085
124	Notice of Appeal	05/18/18	49	12086–12097
125	Case Appeal Statement	05/18/18	49	12098–12103
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
127	Combined Opposition to Motion for a Limited New Trial and MCI’s Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim	06/08/18	49 50	12113–12250 12251–12268
128	Reply on Motion to Retax Costs	06/29/18	50	12269–12281
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
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

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
132	Transcript	09/25/18	50	12333–12360
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
135	Order Granting Motion to Dismiss Wrongful Death Claim	01/31/19	50	12371–12372
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
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
138	Notice of Entry of "Findings of Fact and Conclusions of Law on Defendant's Motion to Retax"	04/24/19	50	12396–12411
139	Notice of Appeal	04/24/19	50	12412–12461
140	Case Appeal Statement	04/24/19	50	12462–12479
141	Notice of Entry of Court's Order Denying Defendant's Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendants Filed Under Seal on March 26, 2019	05/03/19	50	12480–12489

Filed Under Seal

142	Findings of Fact and Conclusions of Law and Order on Motion for Determination of Good Faith Settlement	03/14/18	51	12490–12494
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 Discovery on Order Shortening Time	05/03/18	51	12495–12602
144	Reporter’s Transcript of Proceedings	05/04/18	51	12603–12646
145	Motor Coach Industries, Inc.’s Motion to Alter or Amend Judgment to Offset Settlement Proceed Paid by Other Defendants	05/07/18	51	12647–12672
146	Motor Coach Industries, Inc.’s Motion for a Limited New Trial	05/07/18	51	12673–12704
147	Exhibits G–L and O to: Appendix of Exhibits to: Motor Coach Industries, Inc.’s Motion for a Limited New Trial	05/08/18	51 52	12705–12739 12740–12754
148	Reply in Support of Motion for a Limited New Trial	07/02/18	52	12755–12864
149	Motor Coach Industries, Inc.’s Reply in Support of Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendants	07/02/18	52	12865–12916
150	Plaintiffs’ Supplemental Opposition to MCI’s Motion to Alter or Amend Judgment to Offset Settlement Proceeds Paid by Other Defendants	09/18/18	52	12917–12930
151	Order	03/26/19	52	12931–12937

ALPHABETICAL TABLE OF CONTENTS TO APPENDIX

Tab	Document	Date	Vol.	Pages
84	Addendum to Stipulated Protective Order	03/05/18	28	6879–6882
59	All Pending Motions Transcript	01/31/18	13 14	3213–3250 3251–3469
2	Amended Complaint and Demand for Jury Trial	06/06/17	1	17–33
116	Amended Declaration of Peter S. Christiansen, Esq. in Support of Plaintiffs’ 4/24/18 Verified Memorandum of Costs and Disbursements Pursuant to NRS 18.005, 18.020, and 18.110	04/25/18	47	11736–11742
106	Amended Jury List	03/23/18	41	10236
114	Appendix of Exhibits in Support of Plaintiffs’ Verified Memorandum of Costs (Volume 1 of 2)	04/24/18	42 43 44 45 46	10382–10500 10501–10750 10751–11000 11001–11250 11251–11360
115	Appendix of Exhibits in Support of Plaintiffs’ Verified Memorandum of Costs (Volume 2 of 2)	04/24/18	46 47	11361–11500 11501–11735
32	Appendix of Exhibits to Defendant’s Motion in Limine No. 7 to Exclude Any Claims That the Subject Motor Coach was Defective Based on Alleged Dangerous “Air Blasts”	12/07/17	7 8	1584–1750 1751–1801
34	Appendix of Exhibits to Defendants’ Motion in Limine No. 13 to Exclude Plaintiffs’ Expert Witness Robert Cunitz, Ph.D., or in the Alternative, to Limit His Testimony	12/07/17	8 9	1817–2000 2001–2100

38	Appendix of Exhibits to 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 10 11	2176–2250 2251–2500 2501–2523
119	Appendix of Exhibits to: Motor Coach Industries, Inc.'s Motion for New Trial	05/07/18	48	11770–11962
76	Bench Brief in Support of Preinstructing the Jury that Contributory Negligence is Not a Defense in a Product Liability Action	02/22/18	22	5321–5327
67	Bench Brief on Contributory Negligence	02/15/18	18	4309–4314
51	Calendar Call Transcript	01/18/18	11 12	2748–2750 2751–2752
125	Case Appeal Statement	05/18/18	49	12098–12103
140	Case Appeal Statement	04/24/19	50	12462–12479
21	Civil Order to Statistically Close Case	10/24/17	3	587–588
127	Combined Opposition to Motion for a Limited New Trial and MCI's Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim	06/08/18	49 50	12113–12250 12251–12268
1	Complaint with Jury Demand	05/25/17	1	1–16
10	Defendant Bell Sports, Inc.'s Answer to Plaintiff's Amended Complaint	07/03/17	1	140–153
11	Defendant Bell Sports, Inc.'s Demand for Jury Trial	07/03/17	1	154–157
48	Defendant Bell Sports, Inc.'s Motion for Determination of Good Faith Settlement on Order Shortening Time	01/17/18	11	2720–2734
7	Defendant Motor Coach Industries, Inc.'s Answer to Plaintiffs' Amended Complaint	06/30/17	1	101–116
8	Defendant Sevenplus Bicycles, Inc. d/b/a Pro Cyclery's Answer to Plaintiffs' Amended Complaint	06/30/17	1	117–136

9	Defendant Sevenplus Bicycles, Inc. d/b/a Pro Cyclery's Demand for Jury Trial	06/30/17	1	137–139
19	Defendant SevenPlus Bicycles, Inc. d/b/a Pro Cyclery's Motion for Determination of Good Faith Settlement	09/22/17	2	313–323
31	Defendant's Motion in Limine No. 7 to Exclude Any Claims That the Subject Motor Coach was Defective Based on Alleged Dangerous "Air Blasts"	12/07/17	7	1572–1583
20	Defendant's Notice of Filing Notice of Removal	10/17/17	2 3	324–500 501–586
55	Defendant's Reply in Support of Motion in Limine No. 17 to Exclude Claim of Lost Income, Including the August 28 Expert Report of Larry Stokes	01/22/18	12	2794–2814
53	Defendant's Reply in Support of Motion in Limine No. 7 to Exclude Any Claims that the Subject Motor Coach was Defective Based on Alleged Dangerous "Air Blasts"	01/22/18	12	2778–2787
71	Defendant's Trial Brief in Support of Level Playing Field	02/20/18	19 20	4748–4750 4751–4808
5	Defendants Michelangelo Leasing Inc. dba Ryan's Express and Edward Hubbard's Answer to Plaintiffs' Amended Complaint	06/28/17	1	81–97
56	Defendants Michelangelo Leasing Inc. dba Ryan's Express and Edward Hubbard's Joinder to Plaintiffs' Motion for Determination of Good Faith Settlement with Michelangelo Leasing Inc. dba Ryan's Express and Edward Hubbard	01/22/18	12	2815–2817
33	Defendants' Motion in Limine No. 13 to Exclude Plaintiffs' Expert Witness	12/07/17	8	1802–1816

	Robert Cunitz, Ph.d., or in the Alternative, to Limit His Testimony			
36	Defendants' Motion in Limine No. 17 to Exclude Claim of Lost Income, Including the August 28 Expert Report of Larry Stokes	12/08/17	9	2106–2128
54	Defendants' Reply in Support of Motion in Limine No. 13 to Exclude Plaintiffs' Expert Witness Robert Cunitz, Ph.D., or in the Alternative to Limit His Testimony	01/22/18	12	2788–2793
6	Demand for Jury Trial	06/28/17	1	98–100
147	Exhibits G–L and O to: Appendix of Exhibits to: Motor Coach Industries, Inc.'s Motion for a Limited New Trial (FILED UNDER SEAL)	05/08/18	51 52	12705–12739 12740–12754
142	Findings of Fact and Conclusions of Law and Order on Motion for Determination of Good Faith Settlement (FILED UNDER SEAL)	03/14/18	51	12490–12494
75	Findings of Fact, Conclusions of Law, and Order	02/22/18	22	5315–5320
108	Jury Instructions	03/23/18	41 42	10242–10250 10251–10297
110	Jury Instructions Reviewed with the Court on March 21, 2018	03/30/18	42	10303–10364
64	Jury Trial Transcript	02/12/18	15 16	3537–3750 3751–3817
85	Jury Trial Transcript	03/06/18	28 29	6883–7000 7001–7044
87	Jury Trial Transcript	03/08/18	30	7266–7423
92	Jury Trial Transcript	03/13/18	33	8026–8170
93	Jury Trial Transcript	03/14/18	33 34	8171–8250 8251–8427
94	Jury Trial Transcript	03/15/18	34 35	8428–8500 8501–8636
95	Jury Trial Transcript	03/16/18	35	8637–8750

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

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

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

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

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

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

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

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

EDWARD HUBBARD - 09/20/2017

Page 6

1 LAS VEGAS, NEVADA; WEDNESDAY, SEPTEMBER 20, 2017

2 10:01 A.M.

3 -oOo-

4

5 THE VIDEOGRAPHER: This is the beginning
6 of Media Number 1 in the deposition of Edward
7 Hubbard in the matter of Khiabani versus Motor Coach
8 Industries, held at Kemp Jones & Coulthard on
9 September 20th, 2017, at 10:01 a.m.

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

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

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

18 THE WITNESS: Edward Hubbard.

19 MR. STEPHAN: Paul Stephan, Selman
20 Breitman, representing Mr. Hubbard and Michelangelo.

21 MR. FREEMAN: Eric Freeman, representing
22 Michelangelo Leasing and Edward Hubbard.

23 MR. TOOMEY: Scott Toomey on behalf of
24 Bell Sports, Inc.

25 MR. PEPPERMAN: Eric Pepperman,

EDWARD HUBBARD - 09/20/2017

Page 7

1 Plaintiff.

2 MR. CHRISTIANSEN: Pete Christiansen,
3 Plaintiff.

4 MR. KEMP: Will Kemp for Plaintiff.

5 MR. TERRY: Michael Terry, MCI.

6 THE VIDEOGRAPHER: Will the court
7 reporter please swear in the witness.

8 Whereupon,

9 EDWARD HUBBARD,
10 having been first duly sworn to testify to the
11 truth, the whole truth and nothing but the truth,
12 was examined and testified as follows:

13 EXAMINATION

14 BY MR. TERRY:

15 Q. Could you tell us your name, sir.

16 A. My name is Edward Hubbard.

17 Q. And where do you reside, Mr. Hubbard?

18 A. 6250 Hargrove Avenue, Las Vegas, Nevada.

19 Q. Are you employed?

20 A. Yes, sir.

21 Q. By whom are you employed?

22 A. Silverado Stages.

23 Q. And what do you do for Silverado Stages?

24 A. Charter bus driver.

25 Q. You know that we are here because of an

EDWARD HUBBARD - 09/20/2017

Page 8

1 incident that occurred on April 18th, 2017?

2 A. Yes.

3 Q. And you were operating a bus on that
4 occasion, correct?

5 A. Yes, sir.

6 Q. Had you operated buses before that day?

7 A. Yes, sir.

8 Q. When did you first start operating
9 buses?

10 A. I started operating buses here in
11 Las Vegas or in --

12 Q. Just generally.

13 A. Yes, I got my CDL in 1998.

14 Q. And where was the CDL awarded?

15 A. New York State.

16 Q. And did you operate a bus after you got
17 the CDL?

18 A. Yes, sir.

19 Q. Whom did you work for?

20 A. I worked for an ambulette company, and
21 then I worked for New York City Transit for almost
22 12 years.

23 Q. What was the first company?

24 A. An ambulette company.

25 Q. What are they?

EDWARD HUBBARD - 09/20/2017

Page 9

1 A. Like a paratransit, where you take
2 people from -- to like their dialysis and stuff like
3 that.

4 Q. So it was a transit bus for people with
5 special needs?

6 A. Yes, sir.

7 Q. And then you worked for New York
8 Transit?

9 A. Yes, sir.

10 Q. Did you operate a bus, Transit bus?

11 A. Yes, sir.

12 Q. In the city?

13 A. Yes, sir.

14 Q. In all the boroughs or a particular
15 borough?

16 A. Mostly Brooklyn.

17 Q. And you did that for 12 years?

18 A. Yes, sir.

19 Q. When -- and did you leave New York at
20 that time?

21 A. I moved here April 8th of last year.

22 Q. When you stopped working for the
23 New York Transit Authority, where did you go?

24 A. I moved here.

25 Q. Okay. So that's when you first came

1 here?

2 A. Yes, sir.

3 Q. And when you came here, whom did you go
4 to work for?

5 A. Silverado Stages.

6 Q. And how long did you work for
7 Silverado Stages?

8 A. From April 20th, and I'm still employed
9 with them right now.

10 Q. The day that this event occurred, you
11 were driving a Michelangelo's bus?

12 A. Correct.

13 Q. Did you work for Michelangelo?

14 A. Yes, sir.

15 Q. And when did you start working for
16 Michelangelo?

17 A. April 20th the same -- last year.
18 April 20th, 2016.

19 Q. So this event happened on
20 April 18th, 2017.

21 A. Correct.

22 Q. And you were working for Michelangelo on
23 that occasion?

24 A. Yes. I'm just a little confused,
25 because they got sold. So when you say

EDWARD HUBBARD - 09/20/2017

Page 11

1 Michelangelo, I just get a little confused, but it's
2 all the same company.

3 Q. So as far as you're concerned, it's the
4 same company that you started with when you first
5 came to Vegas?

6 A. Yes, sir.

7 Q. The owners may have changed, but it's
8 the same company?

9 A. Correct. Yes, sir.

10 Q. When you went to work for
11 Silverado/Michelangelo and you came here to
12 Las Vegas, did you operate transit buses or coaches?

13 A. I operated coaches when I came here.

14 Q. Had you operated coaches before?

15 A. No, sir.

16 Q. When you came here, went to work for
17 Silverado to operate coaches, did you receive any
18 specialized training?

19 A. Absolutely.

20 Q. What kind of training did you receive?

21 A. Ten days of classroom and on-the-road
22 training.

23 Q. Who provided the training?

24 A. Michelangelo.

25 Q. So they had in-house people who trained

1 you --

2 A. Yes, sir.

3 Q. -- how to operate the buses?

4 A. Yes, sir.

5 Q. And then they took you on the road?

6 A. Absolutely.

7 Q. Was there a probationary period that you
8 followed?

9 A. I -- I don't know.

10 Q. Was there a period of time when you had
11 a more licensed or more experienced driver accompany
12 you on routes, before you were let go on your own?

13 A. The first ten days is the training.

14 Q. So at the end of ten days, then you
15 became a coach operator?

16 A. Correct.

17 Q. As a coach operator, were you assigned a
18 particular coach or were you just placed in
19 rotation?

20 A. In rotation.

21 Q. So you would go from one coach to
22 another?

23 A. Yes, sir.

24 Q. The coaches that
25 Silverado/Michelangelo's operated when you started

1 with them, was there more than one kind?

2 A. Yes, sir.

3 Q. What kinds did you operate?

4 A. Prevosts, MCIs, Vanhools, Setras,
5 Volvos.

6 Q. Did you operate all of those coaches?

7 A. I trained on all of those, yes, sir.

8 Q. And you were competent to drive all of
9 those coaches?

10 A. Yes, sir.

11 Q. Did you have a particular coach or coach
12 line that you used more often than others?

13 A. No, sir.

14 Q. You used them all equally?

15 A. Yes, sir.

16 Q. On the day of the incident,
17 April 18th, 2017, how long had you been working
18 then for Silverado/Michelangelo's?

19 A. Two days shy of a year.

20 Q. And was your title still operator,
21 coach operator?

22 A. Yes, sir.

23 Q. Whom did you report to?

24 A. My supervisor was, I guess -- well,
25 Robert Garcia was the safety manager. And then you

1 had Javier and then you had Chris. These are all
2 management guys.

3 Q. And how did you receive your
4 assignments?

5 A. We receive our assignment -- they would
6 call you and give you an assignment over the phone.
7 Then when you come in, you get your paperwork.

8 Q. So you would receive a call at your
9 residence?

10 A. Yes, sir.

11 Q. And they would tell you what you were
12 going to do or what you were expected to do?

13 A. Yes.

14 Q. Was there a yard you reported to?

15 A. Correct.

16 Q. And then they gave you the paperwork?

17 A. Yes.

18 Q. And then you took the coach wherever you
19 were supposed to take it?

20 A. Right.

21 Q. On this day, when this event occurred,
22 did you receive the assignment the day of the event
23 or had you received it --

24 A. The day before.

25 Q. So they called you and they told you you

1 were expected to make this run?

2 A. Correct.

3 Q. And then did you come in the day of
4 the event?

5 A. Yes, sir.

6 Q. What time did you show up?

7 A. Oh, shucks. I don't remember that, what
8 time it was.

9 Q. Was it like 8:00 or 9:00 in the morning?

10 A. Yeah. Because I had to be at the
11 airport I believe at 10:00 a.m.

12 Q. When you came in, were you assigned
13 a bus?

14 A. Yes, sir.

15 Q. Was that the first time you knew which
16 bus you would be assigned?

17 A. When I came in?

18 Q. On the 17th.

19 A. Right. Well, yes. It's on your
20 paperwork. Yes.

21 Q. Okay. So when you get your paperwork,
22 you learn your bus?

23 A. Correct.

24 Q. Had you operated that particular bus
25 before?

EDWARD HUBBARD - 09/20/2017

Page 16

1 A. Yes, sir.

2 Q. Did that bus have a number designation
3 within Silverado/Michelangelo?

4 A. 5688.

5 Q. So you were assigned Bus 5688?

6 A. Yes, sir.

7 Q. And you had driven that bus before?

8 A. Yes, sir.

9 Q. And it was an MCI coach?

10 A. Correct.

11 Q. And you were familiar with the
12 MCI coaches?

13 A. Absolutely.

14 Q. Had you driven those before?

15 A. Yes, sir.

16 Q. What were you told was your mission or
17 your job?

18 A. I would be shuttling people who were
19 coming into the airport, and they were going to Red
20 Rock Casino. We were taking them to their place of
21 lodge for their time here.

22 Q. Was there more than one coach?

23 A. Correct, yes.

24 Q. How many coaches were assigned?

25 A. I don't know.

EDWARD HUBBARD - 09/20/2017

Page 17

1 Q. Was there a man in charge?

2 A. There was someone in charge who was the
3 contractor for the shuttle.

4 Q. Who had made arrangements for the
5 coaches?

6 A. Correct.

7 Q. Who was that man, do you know?

8 A. No, sir, I don't know.

9 Q. So when you picked up your coach, did
10 you go then to the airport?

11 A. Correct.

12 Q. Where did you station yourself at the
13 airport?

14 A. Zero level, Terminal 1.

15 Q. And how many coaches were there when you
16 arrived?

17 A. I don't know.

18 Q. Was there someone who collected the
19 people who were going to be transported and assign
20 them to the coaches?

21 A. Right. We give our -- you know, show up
22 and check in with whoever was in charge of the
23 shuttle at that particular location.

24 Q. But you didn't go into the airport; you
25 stayed with your coach?

EDWARD HUBBARD - 09/20/2017

Page 18

1 A. No, sir. No, sir.

2 Q. And they brought the people to you?

3 A. Correct.

4 Q. And then you were going to take the
5 people from the airport to the Red Rock?

6 A. Yes, sir.

7 Q. Was this -- when this event occurred,
8 was this your first run into the city for this
9 mission?

10 A. It was my first run, right, yes, sir.

11 Q. What time did you depart the airport?

12 A. I would say -- I don't -- I don't recall
13 what time exactly, what time it was.

14 Q. How long does it take to go from the
15 airport to the Red Rock Casino?

16 A. I don't exactly know exactly how long it
17 takes.

18 Q. And so you were to take whoever was on
19 the bus from the airport to the Red Rock Casino, let
20 them get out, and then go back to the airport --

21 A. Yes, sir.

22 Q. -- or were you done?

23 Go back to the airport?

24 A. Yes, sir.

25 Q. Would you tell me what route you

1 followed to get from the airport to the
2 Red Rock Casino?

3 A. I believe it's the 215 to the
4 Charleston exit, Charleston to Pavilion, and then to
5 the Red Rock.

6 Q. So you came down Charleston and turned
7 right on Pavilion?

8 A. Correct.

9 Q. And then you were going to the Red Rock?

10 A. Yes, sir.

11 Q. In terms of the number of people on your
12 bus, were you fully loaded, mostly loaded?

13 A. No, sir. 18 people.

14 Q. Do you count the souls before you
15 take off?

16 A. The people at the shuttle -- at the --
17 they have the clicker. They have counters. People
18 were counting.

19 Q. Okay. So they told you you had
20 18 people?

21 A. Correct.

22 Q. Do you remember people that were seated
23 in the first row behind you and to the right?

24 A. I do.

25 Q. Do you remember their names?

EDWARD HUBBARD - 09/20/2017

Page 20

1 A. Not offhand, no.

2 Q. What do you remember about those two?

3 A. That one was sitting right behind me,
4 and one was sitting in the very first row, very
5 first seat here.

6 Q. Both men? Men and women?

7 A. Both men, yes, sir.

8 Q. Did you talk or have conversation with
9 them over the course of the route?

10 A. I may have, yes, sir.

11 Q. Did they initiate it --

12 A. Yes, sir.

13 Q. -- or did you?

14 In terms of the route that you took,
15 once you took the Charleston exit you went down to
16 Pavilion. I assume you turned right?

17 A. Yes, sir.

18 Q. Do you know what street you were going
19 to, to get into the Red Rock Casino?

20 A. It's not a street. It's a turn-in.

21 Q. Does it have a name?

22 A. Not to my knowledge.

23 Q. Had you done that before --

24 A. Yes, sir.

25 Q. -- gone that way into the Red Rock?

1 A. Yes, sir.

2 Q. In terms of traveling from Charleston to
3 Pavilion headed toward the entrance to the Red Rock,
4 did you see a bicycle?

5 A. Say that again.

6 Q. When you were going down Charleston,
7 after you made the right turn onto Pavilion and
8 you're headed toward the entrance to the Red Rock,
9 did you see a bicycle?

10 A. No, sir.

11 Q. Did you ever see a bicycle?

12 A. Yes, sir.

13 Q. When did you first see the bicycle?

14 A. As I was approaching the turn off of
15 Charleston onto Pavilion.

16 Q. And at the time you first saw the
17 bicycle, was he in the bicycle lane or
18 right-turn lane?

19 A. On Charleston and Pavilion?

20 Q. Yes.

21 A. He was in the bicycle lane.

22 Q. When you came up on the bicycle, is that
23 intersection controlled by a traffic light?

24 A. Yes, sir.

25 Q. Did you have to come to a stop?

1 A. I don't -- I don't remember that. I
2 don't remember, sir.

3 Q. When you came up to that intersection,
4 is there a right-hand turn lane to go onto Pavilion?

5 A. Yes, sir.

6 Q. Did you go into the right-hand turn
7 lane?

8 A. Yes, sir.

9 Q. Where was the bicycle when you went into
10 the right-hand turn lane?

11 A. In the bike lane.

12 Q. Did he turn right as well?

13 A. Yes, sir.

14 Q. Did he turn right across your front?

15 A. No, sir.

16 Q. Was he then in the right-hand turn lane
17 in front of you, or was the bike lane to the right
18 of you?

19 A. At Charleston and Pavilion, at the turn?

20 Q. Yes.

21 A. He was in the bike lane.

22 Q. Was that to the right of the right-hand
23 turn lane?

24 A. Right. That's right. He's -- he's to
25 the right of me.

1 Q. Did he turn right before you?

2 A. He did, because I allowed him. Yes,
3 because I'm -- he's turning and I'm -- let him turn,
4 and then I turn.

5 Q. So when you turned onto Pavilion, were
6 you then in the main traveled lane, right-hand turn
7 lane? Where were you?

8 A. No, I was in the first -- this first
9 traffic lane right here (indicating).

10 Q. So it would be the outside
11 southbound lane?

12 A. I --

13 Q. Okay. Sorry.

14 There are two lanes that go south. One
15 is at the center stripe, one is closer to the curb.

16 A. Right. I'm in this lane right here,
17 that's closest to the curb.

18 Q. When you completed your turn, where was
19 the bike?

20 A. When I completed my turn, the bike was
21 in the bike lane.

22 Q. Did he remain in the bike lane, as far
23 as you could tell?

24 A. He remained in the bike lane, yes. Yes
25 he did. Until -- yes.

1 Q. Now, the street near -- or the
2 intersection near where this event occurred is the
3 intersection of Pavilion and a street called
4 Griffith?

5 A. Correct.

6 Q. Between the time you completed your
7 right-hand turn onto Pavilion, before you got to
8 Griffith, did you ever make a move to the right in
9 the bus?

10 A. No.

11 Q. Did you ever start a right-hand turn or
12 contemplate a right-hand turn?

13 A. No, sir.

14 Q. Did you always remain, then, in the main
15 traveled lane?

16 A. Correct.

17 Q. As you approached the intersection of
18 Pavilion and Griffith, was the bike in front of you
19 at some point?

20 A. The bike was nowhere -- the bike was not
21 anywhere near me when I approached the intersection
22 at Pavilion and Griffith.

23 Q. Was the bike in the bike lane?

24 A. No, sir.

25 Q. Where was the bike?

EDWARD HUBBARD - 09/20/2017

Page 25

1 A. It was not in my scanning view. It
2 was -- I did not see the bike.

3 Q. When you completed your turn and you
4 were behind the bike, did you see the bike in front
5 of you in the bike lane?

6 A. Are you talking at Charleston?

7 Q. No, sir. When you turned onto Pavilion.

8 A. Right. When I turned onto Pavilion, the
9 bike was in the bike lane.

10 Q. And were you behind the bike when you
11 first completed your turn?

12 A. Correct.

13 Q. Did you overtake the bike?

14 A. Not at all, sir. No, sir.

15 Q. Did he remain in the bike lane?

16 A. Yes, he did.

17 Q. Okay. Could you see him in the
18 bike lane?

19 A. I saw him in the bike lane.

20 Q. Did you watch him in the bike lane?

21 A. I continued on and -- on Charleston.

22 Q. Did you overtake the bike?

23 A. No, sir.

24 Q. Did he --

25 A. Not Charleston. Pavilion. Excuse me.

EDWARD HUBBARD - 09/20/2017

Page 26

1 Q. So when you went down Pavilion, you
2 completed your turn, you saw the bike in the bike
3 lane ahead of you?

4 A. Right. Yes, sir.

5 Q. And he remained in the bike lane?

6 A. Again -- I -- yeah -- I continued on,
7 sir. I continued on, straight down Pavilion.

8 Q. Did you pass the bike?

9 A. I did.

10 Q. Where were you when you passed the bike?

11 A. As I'm turning here (indicating), as I'm
12 turning onto Pavilion, I would say I guess a little
13 bit -- a little bit where the bus stop is, there's a
14 bus -- there's a city bus stop, maybe somewhere in
15 that area is where I passed him, and then just
16 continued to -- straight down Pavilion.

17 Q. Okay. So as you're going down Pavilion,
18 before you get to the bus stop area, you did
19 overtake the bike in the sense that you passed him?

20 A. Correct. I stayed in my lane and just
21 continued forward down Pavilion.

22 Q. When you passed him, did you see him to
23 your right?

24 A. I did. I did see him, yes. He was to
25 my right. And I just continued on and went down.

EDWARD HUBBARD - 09/20/2017

Page 27

1 Q. When did you first become aware that
2 there had been an impact between the bike and
3 your bus?

4 A. I would say -- the crosswalk is here
5 (indicating). I would say just maybe a little bit
6 past the crosswalk. I wouldn't say that I knew
7 there was an impact, but I -- I -- I went to get out
8 of the way of him because he had came over, so I
9 went to get out of the way of him.

10 And as I pulled up, I looked into my
11 mirror and I saw him on the ground. That's when I
12 knew there was an impact. I didn't hear an impact.
13 I didn't feel an impact.

14 Q. So your first notice, then, that
15 something was occurring is you sensed him
16 turning into you?

17 A. Correct. As I'm -- as I'm coming up
18 Pavilion, and the crosswalk -- the crosswalk was
19 here. As I'm coming up Pavilion, scanning -- you
20 know, scanning my area, and then he -- I look,
21 he comes right over -- he just like came right
22 over into the -- I want to say the door area, and
23 that's when I made my maneuver to not make contact
24 with him, and I -- and went into the other lane over
25 here, out of his way.

EDWARD HUBBARD - 09/20/2017

Page 28

1 And when I looked into the mirror, I saw
2 that he was on the ground in the back.

3 Q. So as you come up to the intersection of
4 Griffith and Pavilion, you saw the bike turn into
5 what looked like your door area?

6 A. I don't know if it was a turn. I don't
7 know what it was. I know that he just -- he came
8 into it.

9 Q. Did you see enough to determine whether
10 or not it was a deliberate effort or move on
11 his part?

12 A. I do not know, sir.

13 Q. As soon as you became aware of that,
14 then you turned to the left?

15 A. Absolutely.

16 Q. As you traveled on, did you see the
17 bicyclist on the ground?

18 A. I'm sorry?

19 Q. As you traveled on, having turned
20 left --

21 A. Right, I got -- as I got the bus out of
22 his way and hit -- you know, putting on my brakes to
23 slow down over into that next lane, and then when I
24 looked in the mirror, that's when I saw him down,
25 further back.

EDWARD HUBBARD - 09/20/2017

Page 29

1 Q. Where was he in relation to your bus
2 when you saw him?

3 A. Where was he in relation -- you mean
4 when I had stopped the bus?

5 Q. No, sir. When you first looked into
6 your rearview mirrors and you saw him on the ground,
7 where was he in relation to your bus?

8 A. Oh, he was behind.

9 Q. He was behind the bus?

10 A. Yes.

11 Q. Now, in terms of what you experienced as
12 a driver, did you experience anything that told you
13 he had impacted your bus when you saw him turn or
14 come into you?

15 A. No, sir. I didn't -- I didn't -- I
16 did not know that he had made contact with the bus,
17 no, sir.

18 Q. Did you hear anything or feel anything?

19 A. No, sir. My -- I was -- I was -- he --
20 at that -- whatever that move was that he did, my
21 reaction was I've got to get out of his way and I --
22 I went over.

23 Q. And you turned left?

24 A. Yes, I went over and (indicating).

25 Q. From the time that you turned left until

EDWARD HUBBARD - 09/20/2017

Page 30

1 you brought the bus to a stop, did you as a driver
2 ever experience anything that suggested you had
3 driven over something?

4 A. No. No, sir.

5 Q. You didn't feel any bump --

6 A. No, sir.

7 Q. -- feel any bump or anything?

8 A. No, sir.

9 Q. And then you brought your vehicle to
10 a stop?

11 A. Yes, sir.

12 Q. In terms of your experience as an
13 operator -- an operator of Transit buses and
14 coaches, have you ever encountered a guard that is
15 placed in front of the right rear tires --

16 A. No, sir.

17 Q. -- that is to deflect things from under
18 the tires?

19 A. No.

20 Q. Ever seen that?

21 A. I seen it on a picture, but I
22 haven't -- no.

23 Q. Have you ever operated a bus that had
24 that kind of guard?

25 A. No, sir.

EDWARD HUBBARD - 09/20/2017

Page 31

1 Q. Based on what you saw or observed,
2 can you -- or do you know or have an opinion as
3 to whether or not your bus ran over the man on
4 the bike?

5 A. I do not know.

6 Q. In terms of what you experienced as an
7 operator, handling the wheel, listening to the
8 sounds, the feel of the bus in motion, did you
9 experience anything that suggested to you that your
10 bus had driven over him or run over him?

11 A. No, sir.

12 Q. In terms of when you did this maneuver,
13 when you turned from Charleston onto Pavilion, when
14 you traveled Pavilion up to the intersection, did
15 you see the bike, the bicyclist, in the bike lane?

16 A. I'm sorry, can you say that again.

17 Q. Okay. When you come down Charleston,
18 you turn right?

19 A. Correct.

20 Q. You're traveling down Pavilion toward
21 Griffith. Did you see the bike --

22 A. I did.

23 Q. -- in the bike lane?

24 A. Like I said, after that -- after I made
25 the turn onto Pavilion, I saw him in the bike lane,

1 and I continued straight on Pavilion, and there's
2 a -- there's a cutoff for where the city bus parks
3 at or picks up at. And as I'm scanning my mirrors,
4 that's when I don't -- he was not in my vicinity
5 anymore. And as I continued down Pavilion, like I
6 already said, that's -- you know.

7 Q. So as you're going down Pavilion, you
8 did see the bike in the bike lane and you overtook
9 him and passed him in your lane?

10 A. In my -- correct. I was in my lane.

11 Q. When you're in your lane and you're
12 looking at the bike, are you able to control the
13 lateral separation between your bus and the bike?

14 A. Yes. I'm 3 to 4 feet away, as I was
15 trained to be.

16 Q. After you overtake and pass the bike,
17 does he leave your field of vision?

18 A. Right, correct. I'm just doing, I'm --
19 right. I don't --

20 Q. Because you're looking ahead?

21 A. Right. And not just ahead. I'm trained
22 to look ahead and I'm trained to look at my mirrors
23 and scan, and that's what I was doing. There was no
24 bike anywhere in my -- in that next, you know,
25 however many feet it is. I'm not familiar with

EDWARD HUBBARD - 09/20/2017

Page 33

1 that. But as I'm traveling down, that's --

2 Q. As you're traveling down, do you know
3 where the bike was?

4 A. I don't. I know that he's not anywhere
5 near me.

6 Q. But at some point you had the sensation
7 that he came into you or turned into you?

8 A. As I'm -- as I'm -- as I'm entering the
9 intersection, that's this -- the whole thing -- when
10 he came, like I said, into the front door area, and
11 I made my move to avoid him.

12 Q. So as -- as you came down Pavilion,
13 having completed your turn from Charleston onto
14 Pavilion, you could see the bike in the bike lane as
15 you were driving down Pavilion?

16 A. After the turn, yes.

17 Q. And you did see the bike in the
18 bike lane?

19 A. Correct.

20 Q. And you watched him as you overtook him
21 and passed him?

22 A. Absolutely.

23 Q. Do you have a sense of how fast you were
24 going in your bus after you passed the bike?

25 A. After I -- I had made the turn -- after

1 I passed the bike?

2 Q. Or at the time you were passing the
3 bike, how fast were you going?

4 A. After I made the turn, I was going, I
5 don't know, maybe 15, because I had just come out of
6 a turn, so I'm not speeding. I had just come out of
7 the turn, so I'm going straight now.

8 So I'm probably, you know, going 15, you
9 know, trying to get up to 25 or whatever the speed
10 limit is. And that's what I would do.

11 Q. So you were accelerating as you
12 completed your turn?

13 A. After the turn, correct.

14 Q. After the turn. Up to the speed limit?

15 A. Correct.

16 Q. So do you know how fast your bus was
17 going when the bike came into you?

18 A. I would say about 25 to 30 miles
19 an hour.

20 Q. As you're going down Pavilion then, if I
21 understand you correctly, when the bike is in front
22 of you in the bike lane, you can see the bike?

23 A. You're talking about in the back -- back
24 at Charleston and Pavilion?

25 Q. Yes. After you complete the turn from

EDWARD HUBBARD - 09/20/2017

Page 35

1 **Charleston onto Pavilion --**

2 A. Right.

3 Q. -- and you can see the bike --

4 A. Yes, sir.

5 Q. -- in the bike lane?

6 A. Yes, sir.

7 Q. You do see the bike in the bike lane?

8 A. Yes, sir.

9 Q. You watch the bike in the bike lane as

10 you're coming down the road?

11 A. Correct.

12 Q. And you overtake and pass the bike?

13 A. Correct. In my lane, yes (indicating).

14 Maintaining my 3 to 4 feet away from the bike as I'm

15 trained, and I just continued going down.

16 Q. In your experience as a driver,

17 particularly when you were a Transit driver in

18 New York City, had you ever had an event where the

19 right rear wheels of a Transit bus ran over a

20 passenger or anything like that?

21 A. Absolutely not.

22 MR. TERRY: Okay, sir, that's all I

23 have. Thank you.

24 ///

25 ///

EDWARD HUBBARD - 09/20/2017

Page 36

1 EXAMINATION

2 BY MR. KEMP:

3 Q. Good morning, Mr. Hubbard. I think
4 we're going to ask some preliminary questions and
5 then we're going to get some exhibits that will kind
6 of help us, you know, pinpoint 50 foot, a hundred
7 foot, 150 foot, pictures of the scene. Okay? But
8 let me just ask you a quick follow-up or two.

9 What I seem to hear you saying is that
10 you saw the bike rider on Charleston, then you
11 turned on Pavilion and you still saw him, and then
12 you passed him and you lost track of him for some
13 period, and then you saw him again right at the
14 very end.

15 Is that pretty much a fair statement?

16 A. Right.

17 Q. Okay. Because you used the term "not in
18 scanning view"?

19 A. Correct.

20 Q. What do you mean by that?

21 A. What I mean by that is that I'm trained
22 to, of course, look in front of me, look in my
23 mirrors, lean in my mirrors so that I can get as
24 much view of my mirrors as possible. That's all of
25 my scanning. And that's what I was doing, and he

1 was nowhere in that area.

2 Q. And so you mentioned the municipal bus
3 stop. So between the municipal bus stop and the
4 intersection, you lost track of him during that time
5 period? Or you couldn't see him during that time
6 period?

7 A. Right. He was not in my -- he was not
8 near my bus at that time period.

9 Q. Okay. Fair enough.

10 All right. And then you think right
11 before -- before you went through the intersection,
12 you saw him coming at you again, is that --

13 A. Coming towards my side, my front door.

14 Q. Okay. Fair enough. All right. Let's
15 back up then. We'll get back to that, but let's
16 back up.

17 First of all, have you ever had your
18 deposition taken before, like we're doing here
19 today?

20 A. No, sir.

21 Q. Okay. Let me explain what the purpose
22 of a deposition is. The purpose of a deposition is
23 to discover facts relevant to a lawsuit; in this
24 case, the lawsuit filed as a result of the
25 April 18th incident.

1 Counsel's already asked you questions.

2 I've asked you some questions. I'm sure there's
3 going to be a lot of other people asking you
4 questions.

5 Our questions, your answers, get typed
6 up into a little booklet that you're given at a
7 later time, and that's called a deposition
8 transcript. And at that time, you get to review it
9 and see if, you know, your answers are accurate upon
10 reflection.

11 So for example, I think you said you
12 started working driving buses in '98. If later on
13 you think it's really '97, you'll have the right to
14 make that little correction.

15 Okay. But if you do make a correction
16 after today, everybody has the right to comment on
17 the fact you made a correction. So they'd be able
18 to say, Oh, well, Mr. Hubbard initially said A and
19 then he changed it to B.

20 Okay. So we -- we -- there is a premium
21 here on accuracy, and I'd ask you to give the best
22 possible answer you can.

23 If you don't understand the question,
24 please stop me and ask me to rephrase it; I'll be
25 more than happy to do so.

1 And I don't think we're going to get
2 real technical here, but there are going to be terms
3 that you know that I don't know; for example, like
4 parts of the bus or I think the driving technique
5 you were talking about has been referred to by some
6 witnesses as a rock-and-roll technique.

7 When we get into areas of bus
8 terminology or bus driver vernacular, things like
9 that, and you see that I'm wrong or I'm maybe making
10 a wrong assumption on what you're saying, stop me
11 and we'll try to iron it out. Okay?

12 A. Yes.

13 Q. Because it will go a lot faster.
14 Because I've seen a lot of times where the attorney
15 runs for 30 or 40 minutes down some rabbit hole and
16 all of a sudden the witness says, Well, I didn't
17 mean red, I meant blue. Okay? So it's better for
18 everybody.

19 The oath you've taken, that you took, is
20 the same oath that is administered in court of law.
21 It has the same force and effect.

22 Do you remember all that -- or you
23 understand that?

24 A. Yes.

25 Q. Okay. Now, prior to today, I assume you

EDWARD HUBBARD - 09/20/2017

Page 40

1 had some meetings with counsel, so I'm going to ask
2 you when they took place and how long, but do not
3 tell me what was said by you or your counsel during
4 those meetings. Okay?

5 A. Uh-huh.

6 Q. Okay. Did you have a meeting with
7 counsel prior to --

8 A. Yes.

9 Q. And when did that occur?

10 A. Yesterday, the 19th.

11 Q. Okay. And approximate length?

12 A. Seven hours.

13 Q. And prior to that time, had you met with
14 counsel before?

15 A. No, sir.

16 Q. On any occasion? Did counsel meet with
17 you to ask you some information?

18 A. Oh, yes, yes.

19 Q. Okay. And when did that occur?

20 A. Oh, I don't know the exact dates, you
21 know. I had to sign some papers. I don't know the
22 exact dates.

23 Q. All right. So you met with counsel
24 yesterday for seven hours?

25 A. Yes, sir.

EDWARD HUBBARD - 09/20/2017

Page 41

1 Q. And was that just your counsel or were
2 other people present?

3 A. Just my counsel.

4 Q. And more specifically, have you met with
5 the manufacturer's counsel, MCI's counsel?

6 A. No, sir.

7 Q. And we've been told that you had a
8 chance to look at a video of the scene?

9 A. Yes.

10 Q. Okay. Other than that, did you look at
11 anything else yesterday during your prep session?

12 A. Yes, sir.

13 Q. What did you look at?

14 A. Photographs of the -- the street.
15 Photographs of the bus afterwards. Photographs of
16 the area afterwards, the exact area.

17 Q. Anything else?

18 MR. STEPHAN: I'm going to hand the
19 witness the documents he reviewed yesterday.

20 THE WITNESS: My driving record from
21 New York and here. The police report. And that was
22 it, yes.

23 BY MR. KEMP:

24 Q. Okay. And I see a picture here, there's
25 a picture of the bus.

1 A. Oh, and my job application for
2 Michelangelo.

3 Q. Other than that, you've looked at
4 nothing else --

5 A. No, sir.

6 Q. -- in the prep session?

7 A. No, sir.

8 Q. The answer's yes, you've looked at
9 nothing else?

10 A. Oh, yes, I've looked at nothing else.

11 Q. Now, with regards to this bus, this bus
12 is apparently still in operation; is that correct?

13 A. It is, yes.

14 Q. And as I understand, it's been moved to
15 L.A. Do you know one way or the other?

16 A. I do not know.

17 Q. And prior to it being moved to L.A.,
18 assuming that to be a fact, did you operate this
19 particular bus any time after the accident?

20 A. I have.

21 Q. On how many different occasions?

22 A. I would say two times.

23 Q. Twice?

24 A. Yes.

25 Q. That's just the luck of the draw?

EDWARD HUBBARD - 09/20/2017

Page 43

1 A. No, I've operated it twice.

2 Q. I mean, but that's just the luck of the
3 draw, you happened to be on this bus as opposed to
4 another one of the buses?

5 A. Oh, yes, that's correct.

6 Q. In other words, you don't have an
7 affinity for this bus or a request for this bus?

8 A. No, sir.

9 Q. Okay. All right.

10 Okay. Now, you said you lived at
11 Hargrove Street?

12 A. That's where I reside now, yes, sir.

13 Q. Where did you previously live?

14 A. 8476 Indigo Sky, Las Vegas.

15 Q. And without getting real detailed, where
16 is Hargrove at?

17 A. Hargrove is --

18 Q. What are the major cross-streets?

19 A. Oh, 95 and Jones.

20 Q. And you've lived there since when?

21 A. I lived there -- August.

22 Q. Of 2017?

23 A. Yes.

24 Q. Okay. And then when you first came to
25 Nevada, I believe it was April 8th, 2016?

EDWARD HUBBARD - 09/20/2017

Page 44

1 A. Yes.

2 Q. And at that time, did you move into the
3 Indigo address?

4 A. Correct.

5 Q. Why did you move to Nevada from
6 New York?

7 A. I got married. My wife lives here and I
8 moved here.

9 Q. So your wife's from Vegas?

10 A. She's from Michigan, but she's been
11 living here for five-plus years.

12 Q. Okay. I assume she's got some kind of
13 job here?

14 A. Correct.

15 Q. Okay. All right.

16 And you had mentioned that you first got
17 your CDL in '98 in New York; is that right?

18 A. Yes.

19 Q. Do you currently have a New York CDL?

20 A. New York, no.

21 Q. You got a Nevada CDL --

22 A. Yes.

23 Q. -- as I understand it -- we have it in
24 your file somewhere -- sometime in early 2016?

25 A. January 2017.

1 Q. January 2017. Okay. Fair.

2 So for a time period when you were
3 working for Michelangelo or Silverado, whichever it
4 was, you were driving on your New York CDL?

5 A. Yes, sir.

6 Q. But you ultimately got a Nevada CDL?

7 A. Absolutely.

8 Q. Now, there's a reason -- excuse me --
9 there's a law here, and I don't know if applies to
10 buses, but it applies to cars, where if you move
11 from another state you're supposed to get your
12 driver's license in two weeks or three weeks or
13 something.

14 Are you kind of familiar with that?

15 A. I was under the impression you're
16 supposed to change your registration, which I did,
17 within, I don't know, the first month I was here.

18 Q. Okay. And by changing your
19 registration, you're talking about your personal
20 vehicle registration?

21 A. My car that I used to have, yes.

22 Q. So when you came here you had a car from
23 New York?

24 A. Yes.

25 Q. What kind of car was it?

1 A. '05 Dodge Grand Caravan.

2 Q. And so when you came here in April 2016,
3 you changed the registration on the Dodge Caravan
4 from New York to Nevada?

5 A. Yes, sir.

6 Q. And I assume when you came to Nevada it
7 was your intent to make it your permanent home?

8 A. Yes, sir.

9 Q. Now, we talked about the CDL license and
10 that you got a Nevada one. Do you also have a
11 driver's license?

12 A. I do.

13 Q. And is that from Nevada, too?

14 A. I'm sorry. Do I have -- I have a CDL
15 license.

16 Q. Does that cover the whole thing?

17 A. Yes.

18 Q. You don't have a separate driver's
19 license?

20 A. No, sir.

21 MR. STEPHAN: I'm sorry, Mr. Hubbard.
22 Could you let him finish the question and pause a
23 second, because it's going much too fast for the
24 court reporter.

25 MR. KEMP: Yeah, it makes it kind of

EDWARD HUBBARD - 09/20/2017

Page 47

1 sloppy, because she misses something I say and then
2 she misses -- so counsel's right. I'll slow down a
3 little bit, too.

4 BY MR. KEMP:

5 Q. So you said it was your intent to become
6 a Nevada resident when you moved here in April 2016.
7 Did you vote here after that point in time?

8 A. No.

9 Q. Are you registered to vote here in
10 Nevada?

11 A. Yes.

12 Q. When did you register?

13 A. I'm sorry, I did vote.

14 Q. You did vote here in Nevada?

15 A. The presidential election.

16 Q. Right. Okay. So that would have been
17 the one versus Trump and Clinton?

18 A. Yes.

19 Q. And without telling me who you voted
20 for, can you tell me where you voted?

21 A. I do not remember where I voted at. I
22 don't remember.

23 Q. But you did vote?

24 A. Yes, sir.

25 Q. So you voted in the -- for the state

1 officers, too?

2 A. Correct.

3 Q. And by state officers, I mean the Nevada
4 state officials that were running for election. You
5 voted for them?

6 A. Yes.

7 Q. Now, you said you worked for "ambulot."
8 Can you spell that, first of all? Ambulot?

9 A. It's called an ambulette. It's just
10 like a -- it's just like a paratransit here. You
11 know, like the RTC, small --

12 Q. Is that a municipal entity?

13 A. No, no.

14 Q. It's a private entity?

15 A. Yeah.

16 Q. The name is spelled what?

17 A. That's not a company. That's just what
18 it's called. That's the type of work it's called.
19 Back east it's called ambulette, but it's just like
20 the paratransit that you see here in Las Vegas, the
21 little RTC buses -- not buses -- 15-or-more-seaters
22 that pick up passengers and take them to church or
23 dialysis.

24 Q. So the service would be ambulette?

25 A. Correct.

EDWARD HUBBARD - 09/20/2017

Page 49

1 Q. But the specific employer would be
2 different?

3 A. Correct.

4 Q. And do you remember as we sit here today
5 who the specific employer was when you first drove
6 an ambulette service?

7 A. E-v-e, Eve Ambulette, was the name of
8 the company.

9 Q. Was that the only ambulette company you
10 worked with before you went to New York City
11 Transit?

12 A. Correct.

13 Q. How long did you work for Eve?

14 A. From 1998 until 2004.

15 Q. Is that regular trips or is that
16 piecework, or how does that work? I mean, are you
17 driving day -- every day?

18 A. Right.

19 Q. So do you have a regular schedule, like
20 9:00 to 5:00 or something like that?

21 A. Right. Yeah, 9:00 to 5:00.

22 Q. And basically you'd take people to
23 dialysis or whatever their needs were?

24 A. Yes.

25 Q. Okay. And then at some point in

EDWARD HUBBARD - 09/20/2017

Page 50

1 time you applied to become a driver for
2 New York City Transit?

3 A. Yes.

4 Q. And do you remember approximately when
5 that was?

6 A. I took the -- I took the exam in 2003,
7 and I got a call back from them in 2004.

8 Q. Okay. And I'm not familiar with their
9 exam. What's that consist of?

10 A. It's a civil service exam, where anyone
11 can take the exam, and you take the exam, and
12 depending on how well you scored, it depends --
13 depending on how well you score, where you line up
14 at, to when you'll get called back, called to come
15 in, you know, to -- for an interview to get hired.

16 Q. And then after you're hired do they give
17 you training?

18 A. Absolutely.

19 Q. And what kind of -- just in general,
20 what kind of training did New York City Transit
21 give you?

22 A. It's -- I'm trying to think how long my
23 training was. I want to say it was -- it's -- I
24 think it was ten -- ten days.

25 Q. Okay. Do you remember approximately

EDWARD HUBBARD - 09/20/2017

Page 51

1 when you got that? 2004?

2 A. I started with them in November 2004.

3 Q. So it would have to be prior to that you
4 got the training, or --

5 A. Yes.

6 Q. Okay. All right.

7 Now, you said that you drove primarily
8 in Brooklyn?

9 A. Yes.

10 Q. Did you live in Brooklyn?

11 A. I did.

12 Q. And did you also drive in New York City
13 in the other boroughs?

14 A. For New York City Transit Authority?

15 Q. Right.

16 A. Yes. On occasion, yes.

17 Q. Okay. Can you give me how much of the
18 time was in Brooklyn as opposed to anywhere else?

19 A. The majority of the time was in Brooklyn
20 because I was in the Brooklyn division. However,
21 when -- sometimes, when there's work being done on
22 the subway system, they will use the Transit buses
23 from any borough to transport the -- you know, to do
24 where the subways are being worked on, to shuttle
25 people between those points using Transit buses.

1 Q. Okay. So the majority of the time was
2 in Brooklyn. And by "majority" you mean over
3 50 percent?

4 A. Way over.

5 Q. 80, 90 percent in Brooklyn?

6 A. 90, 95 percent.

7 Q. Who was your supervisor at -- when you
8 were with New York City Transit?

9 A. My -- oh, man. I'm trying to think of
10 his name now. I have his card, but I don't -- I
11 have his card. I don't remember his name.

12 Q. There's a reference in your job
13 application. Is that the same person? You give a
14 New York City Transit person as a reference.

15 A. That's him, right.

16 Q. That's the same person?

17 A. Yes, sir.

18 Q. Okay. We'll get to that. All right.
19 And he was your supervisor the entire
20 time, 2004 to 2016?

21 A. Correct.

22 Q. Do you remember what his job title was?

23 A. General superintendent.

24 Q. Okay.

25 A. Michael Yodice. I'm sorry.

1 Q. Yeah, that's the same -- it's Y-o-d-i-s?
2 A. Y-o-d-i-c-e. Michael Yodice.
3 Q. What nationality is he?
4 A. Good man. I'm sorry. I said he was a
5 good man.
6 Q. What nationality is Yodice? Is that
7 Greek or something?
8 A. I don't know.
9 Q. When was the last time you talked
10 to him?
11 A. April 6th, 2016.
12 Q. Do you have contact information for him?
13 A. I do. I have his card, yeah.
14 Q. With you today?
15 A. I do. I only have his card so that I
16 could use it when I was --
17 Q. Okay. When we take a break, can you
18 take a look and give me -- is the phone number on
19 the card?
20 A. Yes.
21 Q. Okay. Give me his phone number.
22 All right. Now, and we've taken
23 Mr. Bartlett's deposition. Do you remember
24 Mr. Bartlett?
25 A. Will Bartlett?

1 Q. Right.

2 A. Yeah, I -- I --

3 Q. He went through the training program
4 with us, so I'm going to try to skip over a lot of
5 stuff he said. But one of the things he said is
6 that there's a pre-hiring requirement that they do a
7 background check.

8 A. Yes.

9 Q. Are you familiar with that?

10 A. Yes.

11 Q. Okay. And what was your understanding
12 of that requirement?

13 A. That they were going to check my
14 background, do a background check.

15 Q. And a background check would be your
16 driving history for a period of time and then any
17 accidents or citations --

18 A. Yes, sir.

19 Q. -- you got?

20 A. Sorry. My mind works fast, so --

21 Q. And Mr. Bartlett had suggested, given
22 the dates in the employment file, that you may have
23 done the background check and just brought it in to
24 the company. Do you -- is that the way it occurred?

25 A. That I did the background check?

1 Q. Yeah.

2 A. No.

3 Q. Okay. Well, I'll show you the file, but
4 the reason he says that is the background check is
5 dated March and the first contact he has with the
6 company is April.

7 A. That's my driving record. I'm
8 talking about my -- yes, I did present my MVR,
9 whatever you call it.

10 Q. What do you call it?

11 A. My driving record from -- you know,
12 previous driving record.

13 Q. Okay. So you gave him a driving
14 record for a set period of time that you
15 obtained somewhere?

16 A. Yes.

17 Q. Where did you get it?

18 A. From New York City, when I moved here.

19 Q. All right. Why don't we mark -- and by
20 the way, Mr. Hubbard, if you need a break at any
21 time, this isn't a contest to see how long you can
22 go. Okay? If you need a break for any reason -- I
23 don't know if you smoke, but if you want to smoke,
24 need to use the bathroom or whatever -- just let me
25 know and we'll stop and we'll take a break. Okay?

1 A. Yes.

2 Q. And I think all counsel here -- they're
3 a little older than you -- I think will be taking
4 more breaks than you will. Okay.

5 All right. Why don't we start out with
6 your driver's application, and you've got your copy.
7 Let me get my copy.

8 MR. STEPHAN: Can we use yours?

9 MR. KEMP: Yeah.

10 MR. STEPHAN: Because I put tabs on
11 this one.

12 MR. KEMP: There's secret notes on
13 that, huh?

14 MR. STEPHAN: No. There's actually just
15 Post-its on it so that I can keep up with you.

16 (Exhibit 1 marked.)

17 THE WITNESS: Do I keep this?

18 MR. STEPHAN: Just keep that in front of
19 you.

20 BY MR. KEMP:

21 Q. All right. Mr. Hubbard, I've handed you
22 a document that we've marked as Exhibit 1. That's
23 been presented to us as your complete employment
24 file at Michelangelo/Silverado. Okay?

25 A. Yes.

EDWARD HUBBARD - 09/20/2017

Page 57

1 Q. And I don't want to mislead you. They
2 also said there may be some other files related to
3 medical or some -- there's a different file for
4 other things, but this is the complete personnel
5 file they gave us. Okay?

6 A. Yes.

7 Q. All right. The first page, Exhibit 1,
8 is that your signature?

9 A. Yes.

10 Q. And the date on this is 4/18/16?

11 A. Yes.

12 Q. Is that the date you applied to be
13 with Michelangelo?

14 A. Correct.

15 Q. Okay. And the next page has things that
16 you've completed?

17 A. Yes, sir.

18 Q. All right. And it says that you're a
19 walk-in?

20 A. Yes, sir.

21 Q. Did you know anyone at Michelangelo or
22 Silverado before you applied for the position there?

23 A. No, sir.

24 Q. How did it come to your attention that
25 there was such an entity?

EDWARD HUBBARD - 09/20/2017

Page 58

1 A. I believe I seen them on either Indeed
2 or Craig's List.

3 Q. Advertising for drivers?

4 A. Correct.

5 Q. What was the first thing, N-D?

6 A. Indeed.

7 Q. Oh, Indeed. Okay.

8 And you list Mr. Yodice down at the
9 bottom there. Is that the same gentleman we talked
10 about before?

11 A. Yes, sir.

12 Q. And he has a phone number, which I can't
13 read. Can you read that?

14 A. (718) 927-7488.

15 Q. All right. And then we go on. Is there
16 a section here that lists prior accident or criminal
17 citations?

18 Top right of page 3 says "Accident
19 record for last three years"?

20 A. Oh, I'm sorry. Yes, sir.

21 Q. And in that you disclose a 2015
22 accident?

23 A. Yes, sir.

24 Q. Was that with the bus or is that with a
25 personal car or which?

EDWARD HUBBARD - 09/20/2017

Page 59

1 A. That was with the bus.

2 Q. And what is -- what is it you say there?

3 A. "Rear tire well clipped door."

4 Q. What does that mean?

5 A. It means that as I was coming up a
6 street, someone opened up their door as I
7 passed them, and the rear tire well of the bus hit
8 their door.

9 Q. And the person that opened the door was
10 a passenger car?

11 A. Correct.

12 Q. And then the next sentence on traffic
13 convictions you say "None"?

14 A. Correct.

15 Q. Now, you were -- I think you were going
16 for the printout when I stopped you. Where is that
17 at? What page number?

18 A. I was -- my abstract of driving record.

19 Q. Mm-hmm. What page is that? On the
20 bottom right there's little page numbers.

21 A. 821.

22 Q. 821, okay.

23 So now this is the abstract that you had
24 brought with you from New York City?

25 A. Correct.

EDWARD HUBBARD - 09/20/2017

Page 60

1 Q. And the abstract, does it list any
2 accidents?

3 A. It does not.

4 Q. Does it list any driving convictions?

5 A. No, sir.

6 Q. And what time period does this abstract
7 cover from?

8 A. It covers the last -- I'm trying --
9 I'm -- it covers from 2000 -- I'm sorry, 1998, up
10 until -- the last thing on here is 2013.

11 Did I say 2008 or 1998? 1998.

12 Q. And where do you see that on this?

13 A. It says, "Class Change 2/23/98 New DO
14 permit."

15 "Class Change 7/7/98 New CDL B." That's
16 when I got my CDL license.

17 Q. So you were presenting something to
18 the potential employer that would cover from 1998
19 to 2016?

20 A. Correct.

21 Q. Why that time period? Because that's
22 the time period you were a driver?

23 A. That's the time period of this abstract
24 of driving record.

25 Q. Okay. And is this intended to disclose

1 any accidents and/or criminal convictions during
2 this time period?

3 A. Absolutely.

4 Q. So basically you were telling the
5 potential employer that you had no accidents or
6 driving convictions from 1998 forward?

7 A. Correct.

8 Q. Is that a correct statement?

9 A. Yes, sir.

10 Q. So you had no accidents or driving
11 convictions from 1998 forward?

12 A. Well, I -- not that got reported to the
13 police, I guess, because you see that I put that
14 down here, but it's not on here (indicating). I
15 don't know why.

16 Q. You put what down here? You said -- I'm
17 confused. Okay. Let's back up.

18 A. This is -- this is my driving record,
19 right. Yes, you're right.

20 Q. And when you say "this," you're
21 referring to page 821 of Exhibit 1?

22 A. Yes, sir.

23 Q. Okay. And in that driving record I see
24 no accidents, correct?

25 A. Correct.

EDWARD HUBBARD - 09/20/2017

Page 62

1 Q. And I see no traffic violations, right?

2 A. Correct.

3 Q. Okay. Is that because you had no
4 accidents or traffic violations from 1998 forward?

5 A. Correct.

6 Q. And that's what you told the employer?

7 A. Yes.

8 MR. KEMP: Now, can I have my -- let's
9 see. Maybe Eric can help me. I'm looking for my --
10 okay, I got it right here. My fault. My fault.

11 Okay. Why don't we mark this as 2.

12 (Exhibit 2 marked.)

13 BY MR. KEMP:

14 Q. Do you have Exhibit 2 in front of you?

15 A. Yes.

16 Q. Okay. And Mr. Hubbard, this is a
17 document we got from the State of New York which
18 purports to show your driving history. It's six
19 pages long. And I direct your attention to page 4
20 of 6.

21 A. Yes.

22 Q. And on page 4 of 6 it indicates, number
23 one, that you were convicted on July 13th, 2010, for
24 not having a seat belt.

25 Do you see that?

EDWARD HUBBARD - 09/20/2017

Page 63

1 A. Yes, sir.

2 Q. Were you convicted on July 13th, 2010,
3 for not having a seat belt?

4 A. Yes, sir.

5 Q. And why did you just tell me you had no
6 traffic convictions from 1998 forward?

7 A. Okay. I'm confused about what you're
8 saying.

9 Yes, that's in my personal car.
10 Yes, sir.

11 Q. So you did have traffic convictions from
12 1998 forward?

13 A. Correct, but -- yes, I did, yes.

14 Q. And you did not disclose those to
15 Michelangelo?

16 A. No. I gave them my driver's abstract,
17 which has everything on it.

18 Q. And the next one I see is dated
19 May 2, 2010, where there's some kind of violation of
20 using a mobile phone while operating a vehicle.

21 Do you see that?

22 A. Yes, sir.

23 Q. Were you, in fact, convicted on
24 May 2nd, 2010, for using a mobile phone while
25 operating a motor vehicle?

1 A. My personal vehicle, yes, sir.

2 Q. And again you did not tell that to
3 Michelangelo?

4 A. No, sir.

5 Q. Okay. Now, the next conviction is dated
6 January 28th, 2002, where it says you disobeyed a
7 traffic DV -- or DEV, whatever that means.

8 Do you know what that means?

9 A. No, sir.

10 Q. Maybe it means device, traffic device.
11 Were you convicted on January 28th,
12 2002, for disobeying a traffic device?

13 A. Yes, sir.

14 Q. Again you didn't tell Michelangelo that?

15 A. No, sir. Because this says record for
16 past three years.

17 Q. Okay. I didn't ask you why you didn't
18 tell them. I asked you if you didn't tell them.

19 A. No, sir.

20 Q. Okay. All right.

21 Now, with regards to the next one, it
22 says that you were convicted on October 1st, 1998,
23 for unsafe lane change. Is that what that is?

24 A. Yes, sir.

25 Q. Were you in fact convicted on

EDWARD HUBBARD - 09/20/2017

Page 65

1 October 1st, 1998, for an unsafe lane change?

2 A. Yes, sir.

3 Q. And again you didn't disclose that to
4 Michelangelo?

5 A. No, sir.

6 Q. All right. Now, with regards to the
7 accidents, I see an accident dated August 6th, 2010,
8 involved some personal injury and a motorist.

9 Do you see that?

10 A. Yes.

11 Q. Were you involved in an accident on
12 August 6th, 2010, that there was some sort of
13 personal injury to another motorist?

14 A. Yes.

15 Q. Can you tell me what happened in general
16 on that?

17 A. I do not -- I don't remember that.

18 Q. Do you know if there was any lawsuit
19 arising out of that?

20 A. No, sir.

21 Q. No, you don't know?

22 A. I don't know.

23 Q. Okay. All right. And then the next one
24 I see is April 7, 2009, involving a personal
25 injury/property damage. Do you see that?

1 A. Yes, sir.

2 Q. Were you involved in an accident on
3 April 7th, 2009, that involved personal injury and
4 property damage?

5 A. Yes, sir.

6 Q. Okay. Do you remember any circumstances
7 of that?

8 A. No, sir.

9 Q. All right. The next one I see is dated
10 June 16th, 2000. And if you look at the next page,
11 it involves another personal injury/property damage.

12 Were you involved with an accident on
13 that particular day?

14 A. Yes, sir.

15 Q. Do you remember anything about
16 that accident?

17 A. No, sir.

18 Q. Other than that you were cited?

19 A. Other than what?

20 Q. You were cited?

21 A. I wasn't cited, sir. If you see,
22 it says "Fire/Police: No." There was no fire
23 or police involved in these things. I
24 don't understand --

25 Q. Okay. Why don't we go back to the first

EDWARD HUBBARD - 09/20/2017

Page 67

1 one then.

2 The August 6th, 2010, you were involved
3 in an accident?

4 A. Yes, sir.

5 Q. And where do you see a reference to fire
6 or police?

7 A. Right here. It says, "Type: Personal
8 injury. Reports: Motorist. Fire/Police: No."
9 Same thing on the other one. Same thing
10 on the other one. Which is why it's not on this
11 (indicating).

12 MR. STEPHAN: The witness is pointing to
13 Exhibit Number 1 as he's testifying.

14 BY MR. KEMP:

15 Q. So when it says no fire and police, what
16 does that mean to you? What do you think that
17 means? That you were involved in an accident and
18 the police didn't investigate it?

19 A. That means that they -- right. I don't
20 know what it means, but I know that it -- they
21 weren't involved in it. Where it wasn't a serious
22 accident.

23 Q. Okay. How did you get a case number for
24 it then?

25 Do you see the case number on the right?

EDWARD HUBBARD - 09/20/2017

Page 68

1 A. Yes, sir, I do.

2 Q. Where did that come from?

3 A. I do not know, sir.

4 Q. I mean, I assume it came from some
5 governmental authority. Do you make that same
6 assumption?

7 A. I do.

8 Q. Okay. All right. Back to the third
9 one that we were talking about, which is the
10 June 6th, 2000, one.

11 Do you remember anything about that as
12 we sit here today?

13 A. Where are you at, sir?

14 Q. Bottom of 3, top of 4.

15 A. No, sir.

16 Q. Okay. Then we have a fourth one, which
17 is dated March 29th, 1999. Did you get -- were you
18 involved in an accident on that day?

19 A. Yes, sir.

20 Q. Can you tell me anything about that?

21 A. I don't remember, sir.

22 Q. Now, this report says "Police motorist,"
23 right?

24 A. Right.

25 Q. Did you hit a police --

EDWARD HUBBARD - 09/20/2017

Page 69

1 A. No.

2 Q. -- car or motorcycle?

3 A. No, no.

4 Q. Do you know why a police motorist made
5 this report?

6 A. Okay, now I think -- I don't know, sir.

7 Q. Okay. Were you involved in any other
8 accidents, other than the four we have here?

9 A. No, sir.

10 Q. And you think these were all involved
11 with your personal vehicle?

12 A. Yes.

13 Q. Would that have been the 2004 Dodge we
14 talked about earlier?

15 Excuse me. With regards to the 2010 and
16 2009 incidents, would that have been the 2005 Dodge?

17 A. I don't know, sir, because -- I
18 don't know.

19 Q. You don't know what you were driving
20 in 2010?

21 A. Right, because I also had another car
22 before. This is a long time. I don't know.

23 Q. All right. Now let's get to the point
24 that I think you wanted to make earlier.

25 You said the reason this was not

EDWARD HUBBARD - 09/20/2017

Page 70

1 disclosed to the company is because these were older
2 than three years?

3 A. Right. It says for me to -- it says
4 record for past three years.

5 Q. Okay. So you were thinking about them
6 at the time, but you only recorded ones within the
7 last three years when you filled out page 812?

8 A. Right. That's why I put the 2015.
9 Yes, sir.

10 Q. But you were thinking of the others at
11 the time; you just didn't put them down? You knew
12 you had the others?

13 A. Right.

14 Q. Okay. All right.

15 Did there come a time that New York
16 suspended your driver's license?

17 A. No, sir -- yes, sir. Yes, yes, yes.

18 Q. In what time period was your license
19 suspended in New York?

20 A. It was suspended on
21 September 11th, 2012, and it was cleared on
22 September 12th, 2012.

23 Q. Okay. And how did you become aware that
24 your license got suspended?

25 A. The New York City Transit Authority runs

1 periodically, like every year or whatever it is,
2 your license. I came into work one day, one of my
3 supervisors called me in and said, "Yo, dude, your
4 license is suspended. You better go take care of
5 this."

6 I went and took care of it.

7 Q. So how long had it been suspended, do
8 you know?

9 A. I do not know.

10 Q. Okay.

11 A. I do not know.

12 Q. So your understanding is that someone in
13 New York City Transit was doing an update check on
14 you, after you were already driving for them;
15 right?

16 A. Right.

17 Q. They find out about the suspension.
18 They relayed that to you?

19 A. Right.

20 Q. And you went and cleaned it up?

21 A. Right.

22 Q. Okay. What did you have to do to clean
23 it up?

24 A. I had to pay a fine.

25 Q. Is that indicated on here somewhere?

EDWARD HUBBARD - 09/20/2017

Page 72

1 A. Give me one second. I don't believe
2 it is.

3 Q. Do you remember how much the fine was?

4 A. No, sir.

5 Q. Okay. Now, let's go back to the cell
6 phone conviction.

7 Is it against New York law to talk on a
8 cell phone while operating a vehicle?

9 A. Yes.

10 Q. Were you, in fact, doing that?

11 A. Actually, I was parked and my car was
12 running, and that's why I got the ticket.

13 Q. But you were talking on a cell phone
14 while your car was running?

15 A. Parked.

16 Q. Okay. As long as we're talking about
17 cell phones, what's the policy at Michelangelo or
18 Silverado with regards --

19 A. No cell phones while -- I'm sorry.

20 Q. While you were there.

21 A. No cell phones while you're operating
22 the bus.

23 Q. And when it says "no cell phones,"
24 does that mean you were supposed to turn the cell
25 phone off?

EDWARD HUBBARD - 09/20/2017

Page 73

1 A. I don't know.

2 Q. In other words, if you have a cell phone
3 in your pocket, you're not using it, but you can
4 still feel it vibrate sometimes, depending on the
5 setting, if an incoming message is coming in.

6 Are you with me so far?

7 A. I hear what you're saying. I don't know
8 if that's a question or not.

9 Q. Okay. The question is: Is that
10 allowed?

11 A. No, sir.

12 Q. So you're supposed to have the cell
13 phone turned off?

14 A. You're not supposed to have your cell
15 phone on you.

16 Q. Where are you supposed to put it?

17 A. I don't know. Wherever you need to
18 put it.

19 Q. Somewhere in the bus, I assume?

20 A. Right.

21 Q. Okay. Where was your practice to put
22 the cell phone?

23 A. Probably in one of my -- if I had my bag
24 with me.

25 Q. Did you have a policy?

EDWARD HUBBARD - 09/20/2017

Page 74

1 A. I'm sorry?

2 Q. You had a policy to put the cell
3 phone away?

4 A. I did, yes, sir.

5 Q. And your policy was to put it in a bag?

6 A. Yes.

7 Q. Which bag was that?

8 A. I'm sorry?

9 Q. Which bag was that?

10 A. See, I don't know if I had it in the bag
11 that day. Are you talking about that day?

12 Q. In general what was your policy?

13 A. Well, sometimes, if I don't know where
14 I'm going, I have my cell phone out.

15 Q. For what reason?

16 A. GPS, the -- the map.

17 Q. Well, I thought -- on this particular
18 day you knew where you were going?

19 A. Yes, sir.

20 Q. So you didn't have it out for that
21 reason?

22 A. No, sir.

23 Q. So it's your understanding you can use a
24 cell phone for GPS while you're driving the bus?

25 A. No, sir.

1 Q. Before you engage in the operation?

2 A. Correct.

3 Q. So no texting, incoming or outgoing,
4 is allowed while you're operating the bus; is
5 that right?

6 A. No.

7 Q. No, it's not right?

8 A. You're correct.

9 Q. Okay. And with regards to cell phones,
10 we've been allowed to download your cell phone.

11 Did you have one cell phone or two at
12 that period of time? Referring to April 18th, 2017.

13 A. One.

14 Q. Okay. And as we understand it, Cricket
15 was your provider?

16 A. Yes.

17 Q. Is Cricket still your provider?

18 A. Yes.

19 Q. And you still have the same phone number
20 that you had then?

21 A. Yes.

22 Q. And -- okay. Why don't we go through
23 maybe another section and then we'll take a break.
24 Okay? Are you okay?

25 A. I'm great.

EDWARD HUBBARD - 09/20/2017

Page 76

1 Q. All right.

2 Have you taken any courses in
3 aerodynamics?

4 A. No.

5 Q. Do you have any special training of any
6 sort in aerodynamics?

7 A. No.

8 Q. Do you understand in general that a
9 large object will alter the surrounding airflow?

10 A. I have no knowledge of that.

11 Q. Do you have any sort of understanding
12 that a bus, if it's moving at 30, 35 miles an hour,
13 will cause air blasts or air disturbances at the
14 front of the bus? Have you ever heard of that?

15 A. Yes.

16 Q. You have heard of that? Okay.
17 In what respect have you heard that?

18 A. I'm sorry. Can you say that again?

19 Q. You said you have heard of that?

20 A. Of what? Of the --

21 Q. Of the bus, a large bus, is moving --
22 strike that. Let's make it more specific for you.

23 If a J4500 is moving forward at 30,
24 35 miles an hour, is it your understanding that
25 there are no air blasts, some air blasts, air blasts

1 on some occasions?

2 A. I don't -- I don't know, sir.

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

4 A. No, sir.

5 Q. Okay. And we've referred to a number of
6 different types of buses that you said you drove.
7 And I wrote down that you drove -- one was Serta;
8 right?

9 MR. CHRISTIANSEN: Setra.

10 MR. KEMP: I started off wrong and I'm
11 going to screw up the whole case.

12 BY MR. KEMP:

13 Q. You have driven a Setra before?

14 A. Yes.

15 Q. Is that a Setra 417?

16 A. I don't know the number. I just know
17 it's a Setra.

18 Q. Okay. And you've also driven a Volvo?

19 A. Yes, sir.

20 Q. And what were the other -- the MCI we
21 talked about. What were the other two?

22 A. Prevost.

23 Q. P-r-e-v-o-s-t?

24 A. Yes.

25 Q. And what else?

EDWARD HUBBARD - 09/20/2017

Page 78

1 A. And Setra, Volvo. Oh, Vanhool.

2 Q. And that's spelled ...?

3 A. Vanhool, V-a-n-h-o-o-l.

4 Q. And those are the five kind of buses
5 they had at Michelangelo when you were there?

6 A. Right, yes.

7 Q. Do they still have all five?

8 A. Yes.

9 Q. We were talking about air disturbance or
10 air blasts potentially caused by a bus. Do you know
11 one way or the other whether or not the air blasts
12 or air disturbance caused by a Setra 417 is
13 different in any way, shape or form than that caused
14 by an MCI J4500 when you're traveling at 30,
15 35 miles an hour?

16 MR. STEPHAN: I'm just going to make an
17 objection to form.

18 THE WITNESS: I -- I don't know anything
19 about that, sir.

20 BY MR. KEMP:

21 Q. So you don't know if there's a
22 difference between the two in terms of air blasts,
23 if they do generate air blasts?

24 A. I don't know about that.

25 Q. And would the same answer apply to the

EDWARD HUBBARD - 09/20/2017

Page 79

1 Volvo, the Prevost and the Vanhool, you don't know
2 if there's any difference, if there are air blasts?

3 A. Yeah, I don't know, sir.

4 Q. Now, assuming for the sake of argument
5 that a J4500 does create some sort of air blast when
6 it's traveling 30 to 35 miles an hour, at the front
7 of the bus, and you had become aware of that fact
8 from some -- somewhere, would you take that into
9 consideration while you were driving?

10 MR. STEPHAN: Objection to form.

11 THE WITNESS: I -- again, I don't know
12 anything about the wind.

13 BY MR. KEMP:

14 Q. All I'm asking is if you knew that the
15 bus was generating air blasts, would you take that
16 into account in your driving habits?

17 MR. STEPHAN: Same objection.

18 THE WITNESS: I don't know, sir.

19 BY MR. KEMP:

20 Q. Okay. Let me make it a little bit more
21 specific.

22 If you knew that a bus was giving out an
23 air blast that was, say, 10 feet -- goes out 10
24 feet, and you were within the range of a small child
25 or a bicyclist, for example, would you take that

EDWARD HUBBARD - 09/20/2017

Page 80

1 into account in how you drove your bus?

2 MR. STEPHAN: Objection to form.

3 THE WITNESS: I've answered it. I
4 don't know, sir. I don't know what you want me to
5 say, but ...

6 BY MR. KEMP:

7 Q. Is there a reason you wouldn't take that
8 into account?

9 A. Take what into -- the wind? I don't
10 know anything about the wind.

11 Q. Assuming for the sake of argument that
12 someone had told you --

13 A. I couldn't -- I can't answer that
14 question because I don't know anything about
15 the wind and I don't know who's telling me. I don't
16 know --

17 Q. Okay. Well, let me make it more
18 specific then.

19 Assuming today you got a bulletin from
20 the manufacturer of the bus that said, Our bus
21 creates a 10-foot air blast on the front, would you
22 take that into account when you were driving the bus
23 tomorrow, the next day, on?

24 MR. STEPHAN: Objection to form.

25 Answer.

EDWARD HUBBARD - 09/20/2017

Page 81

1 THE WITNESS: Yes, sir.

2 BY MR. KEMP:

3 Q. And the reason you would take it into
4 account is because why?

5 A. Because the bus manufacturer's telling
6 me that it -- or --

7 Q. That it's a potential safety hazard; is
8 that right?

9 A. Yeah.

10 Q. That's the reason you would take it into
11 account, right?

12 A. I'm sorry?

13 Q. Right? That's the reason you would take
14 it into account?

15 A. Because if that was part of my training,
16 yeah. If that's what they told me, right.

17 Q. All right. Now let me ask you a related
18 question.

19 Has anyone ever indicated to you that
20 the rear tires on a bus can create a negative air
21 situation, where people are sucked into the bus?

22 MR. STEPHAN: Objection to form.

23 BY MR. KEMP:

24 Q. Has anybody ever said that to you?

25 A. No.

EDWARD HUBBARD - 09/20/2017

Page 82

1 MR. STEPHAN: Sorry. I didn't mean to
2 interrupt. I don't really want to keep
3 interrupting.

4 MR. KEMP: No, you're just supposed
5 to say "Form; foundation." That's all you've got
6 to say.

7 MR. STEPHAN: That's all I'm doing.

8 MR. KEMP: Believe me, I do it myself.

9 MR. STEPHAN: Thank you, sir.

10 BY MR. KEMP:

11 Q. Okay. Let's just make sure we got
12 this down.

13 So you didn't have any information from
14 any source, including the manufacturer, that there
15 was some sort of suction when you're driving a
16 J4500 at 30, 35 miles an hour, that would pull
17 objects or potentially pull objects or people into
18 the rear wheels?

19 MR. STEPHAN: Form; foundation.

20 THE WITNESS: No.

21 BY MR. KEMP:

22 Q. And when I say "the manufacturer," I'm
23 referring to MCI, the manufacturer of the J4500.

24 You didn't have that information?

25 A. No.

1 Q. And in -- any source, you didn't know
2 that from any source, right?

3 A. No.

4 Q. Now, same question that I asked before.
5 If MCI had sent you a directive saying, Hey, you
6 know, the rearview [sic] wheels potentially create a
7 suction that can pull people in, would you take that
8 into consideration in the future when you were
9 driving the bus?

10 MR. STEPHAN: Form; foundation.

11 THE WITNESS: Yes.

12 BY MR. KEMP:

13 Q. And for the same reason; that it was a
14 safety hazard, potential safety hazard?

15 A. Part of my training.

16 Q. Part of your training to be aware of
17 potential safety hazards?

18 A. Correct.

19 Q. So if you knew that there were either
20 air blasts or suction in the rear tires, you
21 would -- you would take that into account in how you
22 drive the bus?

23 MR. STEPHAN: Form; foundation.

24 THE WITNESS: Yes.

25 BY MR. KEMP:

EDWARD HUBBARD - 09/20/2017

Page 84

1 Q. And I asked you before if you knew of
2 any differences between bus types with regards to
3 air turbulence.

4 Do you know of any differences in bus
5 types with regards to the suction, if any, in the
6 rear tires?

7 MR. STEPHAN: Form; foundation.

8 THE WITNESS: No.

9 BY MR. KEMP:

10 Q. Do you know whether or not the
11 manufacturer represents that a Setra 417 or
12 Setra 500 is more aerodynamic in general than a
13 J4500 or other buses? Do you know that one way or
14 the other?

15 A. No, sir.

16 Q. Okay. Does your car have a proximity
17 sensor? Referring to your 2005 Dodge.

18 A. I don't -- I don't own that anymore. I
19 don't have a car.

20 Q. You don't have any vehicle now?

21 A. No.

22 Q. Does your wife have a car?

23 A. No.

24 Q. Do you know what proximity sensors are?

25 A. No, sir.

1 Q. Have you driven or been in cars where a
2 red light pops up in the rearview mirror when
3 they're close to other vehicles or anything?

4 A. (Shakes head in the negative.)

5 Q. Haven't heard of that?

6 A. No.

7 MR. KEMP: Why don't we take our break
8 and I'll get some boards and move to that part.

9 MR. STEPHAN: Thank you.

10 THE VIDEOGRAPHER: Going off the record.
11 The time is 11:13.

12 (A recess taken.)

13 THE VIDEOGRAPHER: We are back on the
14 record. The time is 11:32.

15 BY MR. KEMP:

16 Q. Okay. Mr. Hubbard, I -- in the break
17 here I put two big charts, and I'm showing you the
18 first one, which has Charleston, Pavilion, the Red
19 Rock, to get you oriented with the second one, which
20 doesn't have Charleston on it.

21 But if you'll look at both of these,
22 you'll see that it's -- see how the vehicles are
23 here? It's the same -- it's the same blowup, only
24 one's a little bit bigger. Do you see what I mean?

25 And this does not purport to be the day

1 of the accident. This is a completely different
2 day. Okay?

3 A. Yes.

4 Q. All right. So are you oriented? You've
5 got Charleston, Pavilion?

6 A. Yes.

7 Q. Okay. All right. Now, with regards to
8 Charleston, I believe you said that you got off 215
9 and went on Charleston; is that correct?

10 A. Yes.

11 Q. Okay. Was there a reason you didn't get
12 off Sahara and come the other way?

13 A. That's -- no reason. That's just the
14 way I take 215 to Charleston.

15 Q. And there's been some work done on the
16 Charleston off-ramp the last couple months, I think
17 it's ongoing, to fix it because there's been concern
18 about it backing up. Are you aware of that, or --

19 A. No, sir.

20 Q. Now, with regards to the Sahara
21 off-ramp, have you ever used the Sahara off-ramp to
22 go to Red Rock?

23 A. No, sir.

24 Q. You said you've been to Red Rock before?

25 A. Yes.

1 Q. How many times do you think, before this
2 accident?

3 A. Many, many -- many times. Because we do
4 a lot of work there.

5 Q. And by "we" you mean the bus company?

6 A. Yes.

7 Q. The -- okay.

8 And you mean -- when you say you do a
9 lot of work there, you pick a lot of people up there
10 and drop a lot of people off there?

11 A. Yes.

12 Q. Is there a typical place that you pick
13 people up and drop people off at Red Rock Casino?

14 A. Yes.

15 Q. Where is that at?

16 A. (Indicating.)

17 Q. So that would be to the south side of
18 the east parking garage?

19 A. I'm -- I'm not familiar with south side,
20 north side.

21 Q. Okay. All right. If -- if -- this is
22 south. This is north. Charleston is north, right?

23 A. Yes.

24 Q. Charleston is north of Red Rock, right?
25 Charleston Street's north of Red Rock, right?

EDWARD HUBBARD - 09/20/2017

Page 88

1 A. Yeah, I'm listening to you, sir.

2 Q. Okay. And you understand Charleston
3 runs east/west, right?

4 A. Yes.

5 Q. And the west would be this way
6 (indicating), towards your left, and the east would
7 be towards the right?

8 A. Yes.

9 Q. So where you drop people off would be to
10 the south of the east parking garage, right?

11 A. Yes.

12 Q. And there appears to be some sort of
13 porte-cochere there?

14 A. The overhang?

15 Q. Right.

16 A. Correct. Drop them right underneath
17 here.

18 Q. So you drop them right underneath the
19 overhang?

20 A. Correct.

21 Q. Is that where you pick people up, too?

22 A. Yes, sir.

23 Q. So when you started this trip, it was
24 your intent to drop people off here, underneath the
25 overhang; is that correct?

EDWARD HUBBARD - 09/20/2017

Page 89

1 A. Yes, sir.

2 Q. Okay. Now, do you know what a -- that's
3 the wrong one.

4 Is there some sort of device on the bus
5 that keeps track of how fast you were going?

6 A. Speedometer?

7 Q. In addition to that. Some kind of GPS
8 monitor system of some sort?

9 A. I do not know.

10 Q. Have you ever heard of what's called a
11 Trimble report?

12 A. Yes.

13 Q. What is a Trimble report?

14 A. I've heard of Trimble. I don't know
15 what the report is. The Trimble is our thing that
16 keeps our time. It's a tablet that keeps our -- the
17 log time.

18 MR. KEMP: Can I get that marked as 3.

19 (Exhibit 3 marked.)

20 BY MR. KEMP:

21 Q. Okay. Exhibit 3, have you ever seen a
22 document like this before?

23 A. No, sir.

24 Q. Okay. This purports to be a Trimble
25 report that we've been provided by your employer

1 with your trip details as of the day of this
2 accident. Okay?

3 This is the first time you've seen this?

4 A. Yes, sir.

5 Q. Did you know they were keeping this kind
6 of information on the bus trips?

7 A. No, sir.

8 Q. All right. Now, if you take a close
9 look at it, it says 4/18/17. That's the date,
10 right? And then you see the time, which is 8:31.
11 This is apparently -- or 8:28, rather -- is when you
12 were starting the trip. And it has your route to
13 travel, you know, where you're at.

14 Do you see that?

15 A. Yes, sir.

16 Q. Okay. And so it says, "Location: Logan
17 Avenue, North Las Vegas."

18 Is that where you started the trip?

19 A. I started the trip at 4 -- at
20 East Gowan.

21 Q. East Gowan? Okay.

22 A. But I don't -- I don't --

23 Q. Okay. That's the third entry there, and
24 that references 8:31. Do you see that?

25 A. I do, but I just don't recognize the

EDWARD HUBBARD - 09/20/2017

Page 91

1 address. Because our address -- it is supposed to
2 start where I start at, correct?

3 Q. I think it is.

4 A. The address of our depot is
5 412 East Gowan.

6 Q. Okay. At some point it says that you
7 got on -- and I'm referring to the 8:46 mark. Do
8 you see where it says you got on Las Vegas Boulevard
9 or I-15?

10 A. Yes.

11 Q. Okay. Did you get on I-15 at some point
12 during this trip?

13 A. Yes.

14 Q. So you left the yard, you went to I-15;
15 is that correct?

16 A. Yes.

17 Q. And when you got on I-15, did you use
18 the Cheyenne on-ramp?

19 A. Yes.

20 Q. And then you went from I-15 to where?

21 A. To the airport, which is the
22 Tropicana exit.

23 Q. Okay. And if you went to the Tropicana
24 exit, why does it say in here that you were on
25 Paradise for a period of time?

EDWARD HUBBARD - 09/20/2017

Page 92

1 A. Right. Because you get on the Tropicana
2 exit -- you get off the 15 at the Tropicana exit,
3 and you take Tropicana straight up to Paradise, and
4 you make the right on Paradise, which takes you into
5 the airport terminals.

6 Q. Is that your recollection of the route
7 you took?

8 A. That's the recollection.

9 Q. Okay. All right. And do you see the
10 miles-per-hour on this particular thing? It's the
11 third column.

12 A. Yes.

13 Q. And according to this, you were going
14 39 miles per hour on Paradise. Do you see that?

15 A. Yes.

16 Q. Is that how fast you were going on
17 Paradise?

18 A. I don't recall.

19 Q. How fast is the speed limit on Paradise?

20 A. I don't -- 40 miles an hour?

21 Q. Do you think maybe it's 35?

22 A. I do not recall. I thought -- I don't
23 recall.

24 Q. And this states that you were on
25 Paradise at 9:02. Do you see that?

1 A. Yes.

2 Q. Is that consistent with your
3 recollection?

4 A. Yes.

5 Q. And you said it was a 9:30 pickup, or
6 what did you say?

7 A. I said I didn't recall what time the
8 pickup was.

9 Q. All right. All right. And then
10 according to this, at 10:07 you're on Wayne Newton
11 Boulevard. Do you see that?

12 A. Correct.

13 Q. Where is Wayne Newton Boulevard at?

14 A. That's the zero level.

15 Q. Of the airport?

16 A. Yes, sir.

17 Q. So you were still at the airport as of
18 10:07, correct?

19 A. Yes, sir.

20 Q. Okay. And according to this you left
21 the airport at 10:09. Do you see that?

22 A. 10:07.

23 Q. 10:07, that's when you see the bus is
24 moving. Is that why you say 10:07?

25 A. Yes, sir.

EDWARD HUBBARD - 09/20/2017

Page 94

1 Q. Okay. And so the entry you're referring
2 to is the one that says 10:07, 18 miles per hour, at
3 Wayne Newton Boulevard, right?

4 A. Yes.

5 Q. Okay. So basically you left the airport
6 at 10:07 to go to the Red Rock. Is that consistent
7 with your memory?

8 A. Yes.

9 Q. And you've already said you don't
10 remember how long the trip is from the airport to
11 the Red Rock?

12 A. Yes.

13 Q. Would I be correct that it's at least a
14 half-hour?

15 A. Yes.

16 Q. And did you have an understanding as to
17 what these people you were picking up were doing at
18 the Red Rock?

19 A. No.

20 Q. And more specifically, did you know that
21 they were salespeople that were going to some sort
22 of sales conference?

23 A. No.

24 MR. KEMP: Let me mark this as
25 Exhibit 4.

1 (Exhibit 4 marked.)

2 BY MR. KEMP:

3 Q. Okay. I'm handing you a document that's
4 marked as Exhibit 4, which I don't expect you to
5 have seen before, but this is information provided
6 to us by Thermofisher, who was apparently the
7 company that chartered the bus, and it has the
8 agenda for the meetings that they are having at the
9 Hard Rock -- excuse me, the Red Rock, on -- on the
10 day in question. Okay?

11 So we're talking about Tuesday,
12 April 18th, right?

13 A. Yes, sir.

14 Q. And do you see where on this agenda it
15 refers to the sales meeting and when it starts, the
16 team meeting? Sales activity team meeting, do you
17 see that?

18 A. Sales activity team meeting?

19 Q. Right.

20 A. Sales advisory?

21 Q. Right.

22 A. Sales advisory committee team meeting?

23 Q. Right.

24 A. Okay.

25 Q. Do you see what the start time of

1 that is?

2 A. 9:00 a.m. to 5:00 p.m.

3 Q. Okay. Now, you left the airport at
4 10:07. Did any of these gentlemen on the bus
5 indicate to you that they were late for a sales
6 meeting?

7 A. Absolutely not.

8 Q. And prior to today, you didn't know that
9 their sales meeting was starting at 9:00 a.m.?

10 A. No, I did not.

11 MR. STEPHAN: Belated objection. Form;
12 foundation.

13 BY MR. KEMP:

14 Q. While you were driving on the bus, did
15 anyone indicate to you that you should speed up?

16 A. No, sir.

17 Q. And more specifically, did anyone
18 indicate to you that you should speed up and pass
19 the bike driver?

20 A. No, sir.

21 Q. And more specifically, did anyone, while
22 the bus was on Charleston, say to you, Speed up and
23 pass the bicyclist?

24 A. No, sir.

25 MR. KEMP: Eric --

EDWARD HUBBARD - 09/20/2017

Page 97

1 BY MR. KEMP:

2 Q. I want to show you a clip from
3 Mr. Pears, who was the right front passenger, where
4 he describes a conversation that he believes
5 happened, okay, to see if it can refresh your
6 recollection.

7 (Video played as follows:

8 "QUESTION: And the bus driver, he
9 actually -- you and he -- and I know this is
10 an unpleasant topic for you -- I know there
11 was some discussion relative to the cyclist
12 before the collision, between the driver, you
13 and Mr. Plantz, correct?

14 "ANSWER: Yes.

15 "QUESTION: Tell me what that was,
16 sir.

17 "ANSWER: We had joked about the
18 cyclist, because the bus driver was driving
19 very slow, and we were aware that the resort
20 was really close. And we joked to the bus
21 driver: Speed up and get the cyclist's heart
22 rate up.

23 "QUESTION: Obviously -- when you say
24 'we,' I want to understand who said that.

25 "ANSWER: So, Mike Plantz and myself.

EDWARD HUBBARD - 09/20/2017

Page 98

1 "QUESTION: And did you say that --
2 where are you when that is said? Because, if
3 I understand correctly, you first observed
4 Dr. Khiabani on eastbound Charleston, riding
5 his bike?

6 "ANSWER: That is correct, and we
7 started joking on eastbound Charleston, and
8 when he turned onto Pavilion.")

9 (Video stopped.)

10 BY MR. KEMP:

11 Q. Mr. Hubbard, I've shown you the clip of
12 Mr. Pears. Do you recognize that gentleman?

13 A. I do.

14 Q. Do you recognize him as the right front
15 passenger, or one of the front passengers?

16 A. Right. He's one of them. I don't
17 remember if he was the one behind me or the one -- I
18 had two people here, in each seat.

19 Q. And by "here," your left hand is the
20 seat behind you?

21 A. One behind me, and one in the very first
22 seat here (indicating).

23 Q. Now, I've been on the bus, and it's kind
24 of -- the seats are kind of staggered, so the
25 right-hand seat is not directly in line with the

1 left-hand passenger seat. Am I right?

2 A. I believe it is directly in line with
3 it, to my knowledge.

4 Q. All right. But in any event, you
5 remember Mr. Pears as one of the passengers behind
6 you, but you don't know which seat he was in?

7 A. He was in one of the front seats. I
8 don't remember if he was in this front seat or the
9 one behind me.

10 This is the first time I've seen that
11 gentleman since April 18th, when this incident
12 happened. So I really don't -- it's the first time
13 I've seen him.

14 Q. Now, you heard his testimony that the
15 comment was made by him or Mr. -- or the other
16 gentleman to speed up. Did you hear his testimony
17 just then?

18 A. I heard him say that.

19 Q. Was that a true statement?

20 A. I don't -- I don't know. I didn't hear
21 him say it on the bus, no.

22 Q. So you didn't hear him say, "Speed up"?

23 A. No, sir.

24 Q. And he also says that the comment was
25 made to get the cyclist's heart rate up.

EDWARD HUBBARD - 09/20/2017

Page 100

1 Did you hear him testify about that?

2 A. I heard him say that, yes, right there.

3 Q. Did that, in fact, happen?

4 A. I did not hear that.

5 Q. And is there a reason -- well, first of
6 all, how far away would the passenger behind -- two
7 passengers behind you be? Are we talking three or
8 four feet?

9 A. I don't know exactly the amount of feet.
10 I'm -- I don't know the feet, amount of feet.

11 Q. Within 5 feet, would you agree?

12 A. I don't know, sir.

13 Q. Is there any kind of reason you
14 can think of why you wouldn't be able to hear
15 their comment?

16 A. I wasn't listening. I was operating
17 the bus. They were talking between themselves. I
18 don't know.

19 Q. Okay. He said in the testimony that he
20 was talking to you. Did you see that?

21 MR. STEPHAN: Objection; form and
22 foundation.

23 THE WITNESS: I don't -- I didn't hear
24 him say he was talking to me. I heard him say that
25 he had a conversation with him and the other

1 gentleman.

2 BY MR. KEMP:

3 Q. I thought he said he joked to the
4 driver. That's what he said.

5 A. I did not hear that, sir.

6 Q. Okay. Was there any reason, in terms of
7 physical obstruction, like music or something, that
8 you can think of why you wouldn't have heard his
9 statement?

10 THE WITNESS: I -- the bus is a big bus.
11 I didn't hear him say that.

12 BY MR. KEMP:

13 Q. Okay. All right. Now, you've already
14 testified that you became aware of the cyclist
15 sometime on Charleston; is that correct?

16 A. Yes.

17 Q. And according to Mr. Pears you were
18 following him slowly for some point in time. Is
19 that accurate?

20 A. That I was following him?

21 Q. Right.

22 A. No, that's not accurate.

23 Q. You were in your lane and he was in the
24 bike lane?

25 A. I was operating my bus, right.

EDWARD HUBBARD - 09/20/2017

Page 102

1 Q. So you weren't following the cyclist?

2 A. I wasn't following him, no, sir.

3 Q. Okay. All right. Now, you've indicated
4 you turned right onto South Pavilion Center,
5 correct?

6 A. Yes.

7 Q. And during the entire time period you
8 were on South Pavilion Center -- well, strike that.

9 On South Pavilion Center there's a bike
10 lane, correct?

11 A. Yes.

12 Q. And then there's two lanes of travel
13 heading to the south, correct?

14 A. Yes.

15 Q. And you were in the far right lane the
16 entire time?

17 A. Is it okay if I stand up?

18 Q. Yeah, if you want to move the --

19 A. When you say the far right lane --

20 Q. Let me move the -- let me move the -- do
21 you need the little one anymore?

22 A. No.

23 Q. If you need the little one back, let
24 me know.

25 All right. We've changed directions on

EDWARD HUBBARD - 09/20/2017

Page 103

1 you. So you are where Charleston is. Okay. Are

2 you --

3 A. Yes.

4 Q. Okay. Go ahead.

5 A. Right. I turned --

6 Q. Now, there's the bike lane.

7 A. Correct.

8 Q. Am I correct? That's goes all the way

9 through to the intersection, right?

10 A. Yes, sir.

11 Q. Now, there are two lanes of travel here

12 heading to the south?

13 A. Yes.

14 Q. Which one were you in, if any?

15 A. I was in this lane right here

16 (indicating).

17 Q. So that would be the lane on the

18 Red Rock or curb side, correct?

19 A. Right. Yes, right here (indicating).

20 Q. And that would be the lane -- that would

21 be the west lane as opposed to west and east, right?

22 A. This traffic lane right here. I was in

23 this lane right here.

24 Q. The lane with the white vehicle in it?

25 A. Yes, sir.

EDWARD HUBBARD - 09/20/2017

Page 104

1 Q. And at no time were you in the lane with
2 the gray vehicle in it, before you went into the
3 intersection?

4 A. No, sir.

5 Q. So I am correct?

6 A. Sorry?

7 Q. I am correct, at no time were you in
8 that left lane until you went to the intersection?

9 A. Right. I was in this lane right here
10 (indicating).

11 Q. Okay. Let's break it down a little bit.

12 All right. When -- at some point in
13 time the bus was in that lane at the 300-foot mark;
14 is that correct?

15 A. Yes, sir.

16 Q. Where is the bicycle at that time?

17 A. The bicycle at that time -- I don't see
18 the -- the --

19 Q. Do you want the small thing?

20 MR. STEPHAN: I think he wants the
21 smaller one where the cut-out is.

22 BY MR. KEMP:

23 Q. Hang on, Mr. Hubbard. We're not trying
24 to trick anybody here.

25 MR. STEPHAN: Don't crush the bike.

EDWARD HUBBARD - 09/20/2017

Page 105

1 (Indicating.)

2 THE WITNESS: Right --

3 MR. STEPHAN: Wait. Just one second.

4 Okay. I'm sorry. I just wanted to make sure which
5 corner we were working off of.

6 BY MR. KEMP:

7 Q. Okay. All right. Mr. Hubbard, at the
8 time the bus was at the 300-foot mark, where --
9 let's put the bus back on the 300-foot mark -- where
10 was the bicyclist at that time?

11 A. Okay. Right. So I'm about right here
12 then (indicating).

13 Q. That's where the 300-foot mark is?

14 A. Right.

15 Q. Where was the bike at that time?

16 A. Okay, I -- I went past the bike, so the
17 bike --

18 Q. So at that point in time you think you'd
19 already passed the bike?

20 A. Correct. Because I passed the bike -- I
21 passed the bike somewhere in this area where the --
22 this is the city bus -- where the city bus turns in
23 at. So, yes, I passed the bus -- the bike in here,
24 in this area (indicating), and I'm still in my lane
25 right here.

EDWARD HUBBARD - 09/20/2017

Page 106

1 Q. Okay. All right. So you think that
2 when the bus was at the 300-foot mark, the bike was
3 behind you; is that correct?

4 A. Yes.

5 Q. Okay. Do you know how far behind you?

6 A. No, I don't.

7 Q. All right. But you think it's
8 behind you?

9 MR. KEMP: What happened to the bike?

10 MR. STEPHAN: It's right there.

11 BY MR. KEMP:

12 Q. So can you put the bike behind you, and
13 we can take a picture of this so the record's --
14 yeah, we've got to take a picture, because they
15 can't tell from --

16 MR. STEPHAN: Can we get a marker for
17 the exhibit number that that picture will be, like
18 we've done in all the prior depositions?

19 MR. KEMP: Well, we haven't done it in
20 all the priors, but we should have.

21 MR. CHRISTIANSEN: What's the next in
22 line, Bill?

23 MR. KEMP: Why don't we use A, B?

24 Okay. This will be A.

25 THE VIDEOGRAPHER: Do you want me to

1 take the picture?

2 MR. KEMP: Yeah, from the top down

3 (indicating).

4 (Exhibit A marked. Photo taken by
5 videographer.)

6 BY MR. KEMP:

7 Q. Okay. Now, can you put the bus where
8 you were at the 250-foot mark?

9 A. (Indicating.) Still in the lane.

10 Q. And where was the bike at that time?

11 A. I do not know, sir. He was not in the
12 bike lane. He was not in my -- my area of front of
13 me or my area of my scan of my mirrors, just as I
14 stated earlier, leaning into my mirrors. He was
15 nowhere near my bus.

16 Q. So somewhere between the 250 and the 300
17 mark you lost visibility of the bike?

18 A. Right, yes.

19 MR. KEMP: Okay. So let's just make
20 this B. And let's leave the bike out of it, since
21 you don't know where the bike was.

22 (Exhibit B marked. Photo taken by
23 videographer.)

24 BY MR. KEMP:

25 Q. Okay. And now at the point where the

1 bus is at B, approximately how fast were you going?

2 A. I've already come out the turn. I -- I
3 thought that I was, you know, starting to speed up
4 to about 25, but as I see here, I didn't even do
5 over 17 miles an hour, so I was wrong in my
6 judgment. On Charleston I didn't even do over
7 17 miles an hour.

8 Q. According to this, you did 31 on
9 Charleston.

10 A. I'm sorry. Not on Charleston.
11 On Pavilion.

12 Q. According to this, it says, if I'm
13 reading this right, it says 32.

14 A. No. Actually, I don't even see -- I'm
15 sorry, I was on -- I was on Charleston doing 17. I
16 don't even see a speed for Pavilion.

17 Q. Okay. Well, what's that number that I'm
18 looking at (indicating)?

19 A. That's the distance. That's the
20 distance, sir. If you turn the page to the first
21 page, it will say "Distance."

22 Q. What's it say on speed? It says
23 "Parked." Okay. All right. Fair enough.
24 All right.

25 So at this point in time you think

EDWARD HUBBARD - 09/20/2017

Page 109

1 you're going about 25?

2 A. Again, I was -- I don't know exactly how
3 fast I was going, but I know that I -- when you come
4 out -- when I completed my turn, I'm going -- as I
5 said earlier, I'm going to build up to the speed
6 limit.

7 Q. Okay. Now, there's been some suggestion
8 by one of the witnesses that you attempted to turn
9 into Red Rock prior to this particular intersection.

10 A. That's incorrect.

11 Q. At any time did you cross the bus into
12 the bike lane?

13 A. No, sir.

14 Q. And at any time did you get into the
15 right-hand turn lane prior -- well, at any time did
16 you get in the right-hand turn lane?

17 A. No, sir.

18 Q. Okay. All right. So at the 250-foot
19 mark you can't see the bike?

20 A. Right. The bike is not -- it's not
21 anywhere near me, as far as -- as far as I see.

22 Q. And do you remember one way or the other
23 whether there were cars in front or behind you at
24 this point in time?

25 A. I don't remember.

EDWARD HUBBARD - 09/20/2017

Page 110

1 Q. All right. Let's move to the 200-foot
2 mark. If you could put the bus at that mark.

3 A. (Indicating.)

4 Q. And where was the bike at that time, if
5 you know?

6 A. I did not see the bike.

7 MR. KEMP: Okay. So let's get a picture
8 of that at Exhibit C.

9 (Exhibit C marked. Photo taken by
10 videographer.)

11 BY MR. KEMP:

12 Q. Okay. So, same question. Approximately
13 how fast were you going at this point in time?

14 A. 25.

15 Q. And same question with the cars. Do you
16 remember one way or the other whether there were
17 cars in front or behind you?

18 A. No, I don't.

19 Q. And the same question in the lane. Do
20 you remember if there were any cars in the lane to
21 the left of you?

22 A. No, I don't.

23 Q. Okay. Now, could you place the bike --
24 or the bus, excuse me, where it was when you were at
25 the 150-foot mark.

EDWARD HUBBARD - 09/20/2017

Page 111

1 A. (Indicating.)

2 Q. And do you know where or did you see the
3 bike at this point in time?

4 A. No, sir.

5 MR. KEMP: Okay. And let's put D there.
6 Go ahead.

7 (Exhibit D marked. Photo taken by
8 videographer.)

9 BY MR. KEMP:

10 Q. All right. And same questions: Do you
11 remember if there were cars either in the far left
12 lane or in front or behind you?

13 A. No, sir.

14 Q. You don't remember one way or the other?

15 A. No, sir.

16 Q. All right. And could you place the bus
17 where it was -- where you were when you were at the
18 100-foot line.

19 A. (Indicating.)

20 Q. Okay. And is your answer the same on
21 the bike; you don't know where it was at this point
22 in time?

23 A. That's correct.

24 (Exhibit E marked. Photo taken by
25 videographer.)

EDWARD HUBBARD - 09/20/2017

Page 112

1 BY MR. KEMP:

2 Q. And with regards to speed, how fast do
3 you think you were going at that point in time?

4 A. About 25.

5 Q. And with regards to cars either in the
6 left lane or in front of you or behind you, what, if
7 anything, do you remember?

8 A. I do not.

9 Q. You don't remember one way or the other
10 whether there were any cars?

11 A. No, sir.

12 Q. Okay. All right. It may be probably
13 better to go around on that side. I think it would
14 be easier to reach.

15 Can you place the bus where you were
16 when you were at the 50-foot mark.

17 A. (Indicating.)

18 Q. Is the same answer true, you don't know
19 where the bike is at this point in time?

20 A. Yes, sir.

21 (Exhibit F marked. Photo taken by
22 videographer.)

23 BY MR. KEMP:

24 Q. And with regards to cars, do you know if
25 there were cars in the left-hand lane or in front or

1 behind you at this point in time?

2 A. I don't recall.

3 Q. Do you remember seeing some
4 motorcyclists on -- kitty-corner from you, on the
5 south- --

6 A. No.

7 Q. -- west portion of the intersection?

8 A. No.

9 Q. Okay. All right. And I think I asked
10 you, how fast were you going at this point in time?

11 A. 25.

12 Q. All right. Now, you're approaching the
13 intersection at this point in time?

14 A. Yes, sir.

15 Q. Is the light red or green?

16 A. It was green.

17 Q. So was your intent to go through the
18 intersection?

19 A. Yes, sir, straight.

20 Q. Now, can you place the bus at the zero
21 mark, where you were?

22 (Exhibit G marked. Photo taken by
23 videographer.)

24 BY MR. KEMP:

25 Q. And did you see the bike at this period

EDWARD HUBBARD - 09/20/2017

Page 114

1 of time?

2 A. No, sir.

3 Q. And same question about cars on the --
4 in the left-hand travel lane or in front of you or
5 behind you. You don't know if there were any cars
6 one way or the other?

7 A. I don't recall.

8 Q. So basically you did not see the bike
9 from the 300-foot mark until the zero-foot mark?

10 A. No, I didn't -- I didn't even see him
11 here, sir.

12 Q. But my statement's true, you didn't see
13 him from zero to 300; is that correct?

14 A. Right.

15 Q. Did there come a time that you saw
16 the bike?

17 A. Correct.

18 Q. And where was the bus when you saw
19 the bike?

20 A. I would say about -- maybe right here
21 (indicating).

22 Q. Okay. Now, you -- okay.

23 A. I don't know how straight I've got it,
24 but I'm going straight.

25 Q. Can you put where the bike is when you

EDWARD HUBBARD - 09/20/2017

Page 115

1 see him?

2 A. (Indicating.) He was coming into that
3 area right here.

4 MR. STEPHAN: You have to put it down.

5 THE WITNESS: (Indicating.)

6 BY MR. KEMP:

7 Q. And when you say "that area right
8 here" --

9 MR. STEPHAN: What exhibit number?

10 BY MR. KEMP:

11 Q. I'm having a tough time seeing where you
12 put the bike.

13 MR. KEMP: First of all, let's get a
14 picture here.

15 MR. FREEMAN: It's turned around, too.

16 MR. KEMP: Yeah, before we start taking
17 pictures, let's get the --

18 (Exhibit H marked. Photo taken by
19 videographer.)

20 BY MR. KEMP:

21 Q. Now, when we're in position H, how fast
22 are you going?

23 A. At this time, I'm -- like now I'm
24 going -- I'm veering over --

25 Q. No. Right at the time when you first

1 see the bike.

2 A. I'm hitting -- right when I'm seeing the
3 bike, I'm hitting my brakes and going that way.

4 Q. But before you hit your brakes --

5 A. I was about 25 or less.

6 Q. Now, you said you first saw the bike --
7 and I think you told previous counsel that you don't
8 know where the bike hit the bus?

9 A. I'm sorry?

10 Q. Do you know how --

11 A. I don't know.

12 Q. So you don't know if he hit the front of
13 the bus, the side of the bus?

14 A. Well, I know -- I don't know. I don't
15 know. This is the front, right here. So I know he
16 didn't hit this, because I went like that
17 (indicating).

18 Q. Okay. So it did not hit the front of
19 the bus?

20 A. No, sir.

21 Q. And you don't think it hit the back of
22 the bus?

23 A. I don't know.

24 Q. All right. Now, so let's put it back to
25 where you first saw the bike, before you took -- I

EDWARD HUBBARD - 09/20/2017

Page 117

1 guess you're saying you took evasive maneuvers,
2 right?

3 A. I did. (Indicating.)

4 Q. Okay. That's the approximate point that
5 you think you first saw the bike?

6 A. Yes.

7 Q. Okay. And we've already established
8 that you didn't see the bike from the 300-foot mark
9 to that. Where do you think the bike came from?

10 A. I don't know. I -- I don't know.

11 Q. And since you were traveling about
12 25 miles an hour, do you think the bike was going
13 faster than that?

14 A. Again, I don't know, sir.

15 Q. You've already said you were past the
16 bike, so he had to catch you from behind?

17 A. I don't know. I don't know.

18 Q. Why don't you sit down, sir. Okay.

19 Now, what is your understanding of what
20 the law is in Nevada when a motor vehicle, including
21 buses, is overtaking a bicycle?

22 A. That you must give it 3 feet and -- as
23 you pass it, you must give it 3 feet.

24 Q. Do you have any other understanding?

25 A. Sorry?

EDWARD HUBBARD - 09/20/2017

Page 118

1 Q. Do you have any other understanding?

2 A. No, sir.

3 Q. And more specifically, do you know
4 whether or not you are also required to get into the
5 far left lane when there's two lanes of travel by a
6 bike lane?

7 A. I don't know that.

8 Q. Don't know? This is the first you've
9 heard of that?

10 A. I'm sorry?

11 Q. You don't know if that's the law?

12 A. I don't know if that's the law.

13 Q. So let me read you a Nevada Revised
14 Statute and tell me if this is the first you've
15 heard of that.

16 Okay. This would be NRS 484B.270,
17 Section 2. Quote, "When overtaking or passing a
18 bicycle or electric bicycle proceeding in the same
19 direction, the driver of a motor vehicle shall
20 exercise due care and; (a) If there is more than one
21 lane for traffic proceeding in the same direction,
22 move the vehicle to the lane to the immediate left,
23 if the lane is available and moving into the lane is
24 reasonably safe," unquote.

25 Is this the first you've heard that

EDWARD HUBBARD - 09/20/2017

Page 119

1 that's the law in Nevada?

2 A. Yes.

3 Q. Yes, this is the first you've heard
4 of that?

5 A. As far as what you're reading there.

6 Q. So you've never heard that before?

7 A. I mean, we've discussed it, but that's
8 the first I've heard of it.

9 Q. Don't tell me what you've talked to your
10 attorney about. Let me ask it differently.

11 Prior to Monday of this week, did you
12 know that this was the law in the state of Nevada?

13 A. No, sir, I did not.

14 Q. And so Michelangelo or Ryan's Express
15 did not provide you information that this was the
16 law in Nevada?

17 A. I did not know that.

18 Q. All right. So if you had known this was
19 the law, would you have gotten into the
20 left-hand lane?

21 MR. STEPHAN: Objection; form and
22 foundation.

23 THE WITNESS: Where do you mean at?

24 BY MR. KEMP:

25 Q. If you had known prior to this accident,

EDWARD HUBBARD - 09/20/2017

Page 120

1 April 18th, 2017, that this was the law in the state
2 of Nevada, would you have followed the law and
3 gotten into the left-hand lane?

4 A. Back here, you mean?

5 Q. No. I mean when you were coming down
6 Pavilion.

7 A. Yes, I would have, of course, yes.

8 Q. Do you think that would have prevented
9 this accident from happening?

10 MR. STEPHAN: Objection; form and
11 foundation.

12 THE WITNESS: I don't know, sir.

13 BY MR. KEMP:

14 Q. Now, there's another provision in the
15 law that says if there's only one lane, you have
16 to give a safe distance, which must be not less than
17 3 feet -- strike that.

18 Subsection 5 says that you're supposed
19 to exercise due care and, quote, "give an audible
20 warning with a horn of the vehicle if appropriate
21 and when necessary to avoid such a collision,"
22 unquote.

23 First of all, did you know that there
24 was a provision in the law requiring an audible
25 warning under certain circumstances?

EDWARD HUBBARD - 09/20/2017

Page 121

1 A. You mean blowing your horn?

2 Q. Right.

3 A. I mean, if -- I did not know that.

4 Q. And did you blow the horn at any time in
5 this trip?

6 A. No, sir.

7 Q. Is there a reason you didn't blow
8 the horn?

9 A. I wasn't anywhere near the bicycle to
10 have to blow the horn. You mean at that point?

11 Q. At any point between 300 and zero --

12 A. No, I did not blow my horn.

13 Q. Did you blow the horn when you passed
14 the bicyclist?

15 A. No, I did not.

16 Q. Is there a reason you didn't do that?

17 A. Because I was more than 4 feet away
18 from him.

19 Q. All right. Now, we've already talked
20 about the five different buses that you drive, five
21 different kinds?

22 A. Yes, sir.

23 Q. Do those buses have different visibility
24 on the right side in terms of what's blocked and how
25 low the window goes and -- are there differences

1 between the buses?

2 A. There are differences.

3 Q. And with regards to buses, which has, in
4 your view, the best right-hand visibility and which
5 has the worst?

6 A. I really don't know which has the best
7 or the worst. You asked -- I don't know, sir.

8 Q. But you do recognize there's
9 differences?

10 A. Yeah. When I'm talking about
11 differences, I'm talking about the door, mostly
12 the door area. Because the doors are made
13 differently. Some --

14 Q. Some doors are see-through and some
15 are not?

16 A. Well, some have more window, some have
17 less window. Something like that.

18 Q. So some have more visibility and some
19 have more obstruction?

20 A. Right. More window, less window, yeah.

21 Q. And this particular bus, the J4500, does
22 that have more or less, if you can recall?

23 A. That has the whole -- as you see on the
24 picture, it has the whole visible window right here.
25 Very big window.

1 Q. And would I be correct that the
2 visibility line of the Volvo drops 6 or 8 inches
3 below the visibility line of a J4500?

4 A. I don't know -- I don't know how much it
5 drops.

6 Q. And with regards to the right pillar, is
7 the J4500 different than some of the other buses?

8 A. I don't know.

9 Q. Earlier we talked about the
10 rock-and-roll technique?

11 A. Yes, sir.

12 Q. Do you use that more for any particular
13 type of bus than --

14 A. I use it for every single bus I'm in,
15 and even when I was driving my personal car.

16 Q. Now, with regards to the mirrors on
17 buses, some mirrors have buses [sic] coming over
18 from the top and some mirrors are mounted on the
19 side, correct?

20 A. Yes.

21 Q. So, for example, I think the Volvo has
22 mirrors that come down from the top?

23 A. Yes.

24 Q. And is there any particular term you use
25 for mirrors that come down from the top as opposed

1 to the mirrors that we had on the J4500?

2 A. I don't know any term.

3 Q. Do you have any preference for one type
4 of mirror as opposed to the other type of mirror?

5 A. I do not.

6 Q. And have you experienced any difference
7 in the visibility you get from one type of mirror as
8 opposed to the other type of mirror?

9 A. No, sir.

10 Q. And more specifically, do you know if
11 there's better right-hand visibility from a Volvo
12 mirror coming over the top than from an MCI J4500?

13 A. I don't know the difference.

14 Q. Now, you said you drove a municipal bus
15 for 12 years?

16 A. Almost, yes.

17 Q. What kind of a municipal bus did the
18 New York City Transit Authority have?

19 A. Flyers, hybrids, RTCs.

20 Q. And Flyers would be the bus made by
21 New Flyer?

22 A. Right. They're the newer ones, right.

23 Q. Now, counsel alluded to this earlier,
24 that there may be some sort of safety device that's
25 available for buses with regards to its rearview

EDWARD HUBBARD - 09/20/2017

Page 125

1 tires, and you said you hadn't heard of anything
2 like that?

3 A. I haven't.

4 MR. KEMP: Okay. Yeah. Eric, can I
5 have the stunt video, stuntman video.

6 BY MR. KEMP:

7 Q. I'm going to ask you to watch a video
8 that is produced -- or I shouldn't say produced --
9 provided by a manufacturer of a device called an
10 S-1 Gard. I'll just ask you to take a look at it.

11 (Video played.)

12 MR. KEMP: That's enough, Eric.

13 BY MR. KEMP:

14 Q. In case you want to look at it, that's
15 an S-1 Gard sitting in that box over there.

16 So does this refresh your recollection
17 as to ever becoming aware of an S-1 Gard?

18 A. No, sir.

19 Q. And you said that you drove
20 Flyers, right?

21 A. Yes.

22 Q. And we've had testimony from an engineer
23 for Flyers about this S-1 Gard. In fact, he gave a
24 testimonial to it.

25 Do you know whether or not any of the

EDWARD HUBBARD - 09/20/2017

Page 126

1 New York Transit buses had S-1 Gards on them while
2 you were there?

3 A. I don't know, sir.

4 Q. How about New Jersey?

5 A. I don't know about New Jersey.

6 Q. Okay. You've seen the S-1 Gard in the
7 video, correct? You saw the video?

8 A. That you just showed?

9 Q. Yeah.

10 A. I didn't even notice that there was
11 something on there. I don't know. I just saw the
12 man on the ground, you know.

13 Q. Do you think it would be a good idea to
14 have buses with safety devices that push people out
15 of the way before they're run over by rearview
16 tires?

17 MR. STEPHAN: Objection; form and
18 foundation.

19 THE WITNESS: I -- I have no idea,
20 because I don't -- I just drive the bus. I don't
21 know about nothing like that. I don't know about
22 that.

23 BY MR. KEMP:

24 Q. Is there any reason you can think of not
25 to put a safety feature like that on a bus?

EDWARD HUBBARD - 09/20/2017

Page 127

1 MR. STEPHAN: Objection; form and
2 foundation.

3 THE WITNESS: I don't know, sir.

4 BY MR. KEMP:

5 Q. Prior to you taking the bus out on a
6 particular day, do you do some sort of inspection on
7 the bus?

8 A. Yeah, pre-trip.

9 Q. It's called a pre-trip inspection?

10 A. Yes, pre- and post-trip.

11 Q. Okay. Can you tell me just in general
12 what you do?

13 A. Well, the pre-trip?

14 Q. Right.

15 A. It consists of, you start at the front
16 of the bus and I check my windshield wipers. I work
17 my way to the door area and I check my -- my door
18 area. I work my way to the front tire, check my lug
19 nuts, make sure that those little arrow things are
20 not one turned this way or the other way, make sure
21 they are all lined up.

22 Again, work my way to the back rear
23 tires, doing the same thing, make sure those -- the
24 lug nuts are all there and that those little
25 triangle things or whatever you call them are all

EDWARD HUBBARD - 09/20/2017

Page 128

1 lined up and not, you know, off-line. Also checking
2 the tire that's on the inside as best I can.
3 Working my way to the back of the bus and, you know,
4 checking the back of the bus as well.

5 And same thing on the other side, as far
6 as the tires and the -- and the -- both tires on the
7 front and the back, and the -- when I get back to
8 the front, I get in the bus. I check my mirrors,
9 make sure that they're working properly. Make sure
10 that they're not loose or shaky, because some buses,
11 you get on them when you -- when you -- the mirrors
12 are not -- are broken. You have to go get it fixed
13 with maintenance.

14 Check my mirrors. Walk back on the
15 inside of the bus, check the seats to make sure
16 they're all good and intact.

17 Check my fire exit windows, make sure
18 that they're operational and can be used if
19 necessary. And check my horn.

20 And that's, in a roundabout way,
21 basically what a pre-trip is.

22 Q. Let's talk a little bit about the
23 pre-inspection examination of the rear tires, okay,
24 that you've already alluded to?

25 A. Uh-huh.

1 Q. So you said you look at the lug bolts,
2 is that what you said?

3 A. Well, the nuts on them, the nuts, and
4 then the triangle things that are on them, to make
5 sure that they're lined up and not turned -- that
6 way you can tell whether one is loose or not, or
7 broken.

8 Q. Okay. I'm kind of lost when you say --
9 let's put a picture in so we can make it easier for
10 everybody.

11 MR. KEMP: Can we mark that as the next
12 in order.

13 (Exhibit 5 marked.)

14 BY MR. KEMP:

15 Q. Okay. I'm showing you a picture of a
16 tire on a bus, which I think is a rear tire. But in
17 any event, so you would inspect the lug nuts which
18 are in the center of the tire there?

19 A. Yeah, you're -- all these nuts right
20 here (indicating). And also, if they have them on
21 there, which most buses do, they have a -- they're
22 usually orange, and they're on each of these big
23 nuts, and they're lined the same way. And if one
24 is, like, turned, you know, off-line, you want to
25 take it to the maintenance and make sure that they

1 take a peek at that.

2 Q. And why is that?

3 A. Because it could be that one of the nuts
4 is loose or something. I'm not much of a mechanic,
5 but I was just told that if those -- those orange
6 things that are on each of these big nuts here have
7 to be lined up the same way and facing, you know,
8 lined up. If they're not, if one is turned up or
9 down or out of line, you need to take it to the
10 maintenance and have them look at it.

11 I don't exactly know exactly what the
12 exact reason is, but that's what I was trained
13 to do.

14 Q. Now, in the far right of the picture
15 there appears to be an object that drapes, you know,
16 in front of this tire, I think there's another tire.
17 It's kind of barely depicted. What is that thing
18 called?

19 A. I -- I don't know what it's called, but
20 I guess it's for the mud or something. I don't know
21 what it's called.

22 Q. Have you heard the term "mud flap"
23 before?

24 A. Yeah.

25 Q. Is that what it's called?

1 A. I think so, yeah.

2 Q. Is the mud flap one of the things you
3 also inspect?

4 A. Right, yes. That's part of your tire
5 inspection, correct.

6 Q. Now, between the tire and the mud flap,
7 do you see that other object that's hanging down
8 from the bus, that steel thing?

9 A. I don't know what that is, sir.

10 Q. You do recognize that as a part that's
11 on buses?

12 A. Again -- I don't know what it is,
13 though, yeah.

14 Q. Okay. Is the picture, as I've got it on
15 Exhibit 5, is that the way you usually see that
16 steel thing -- in other words, bent towards the --
17 that particular wheel -- or do you usually see it
18 straight up and down, perpendicular?

19 A. I -- I don't know.

20 Q. All right.

21 MR. KEMP: Let me show you another
22 picture that's been marked for identification as
23 Number 6 that was taken by the coroner at the time
24 of the incident.

25 (Exhibit 6 marked.)

EDWARD HUBBARD - 09/20/2017

Page 132

1 BY MR. KEMP:

2 Q. Do you see how there's some red material
3 on the tires?

4 A. Yes, sir.

5 Q. Is that something you would observe
6 during a pre-inspection examination?

7 A. Yes.

8 Q. If you saw red material like that on the
9 tires, would you drive the bus out of the yard?

10 A. Well, that's -- that's like -- that's
11 paint or -- sometimes red and sometimes yellow.

12 Q. So it wouldn't bother you to have that
13 on the tires leaving the yard?

14 A. No, because we -- it's -- drivers
15 sometimes tend to get too close to the curb and the
16 paint comes off on the tire. You can tell that it's
17 paint. As long as -- as long as, what I explained
18 to you earlier about these tires, that's what I was
19 trained to pull it in for. Not if there's paint
20 from people getting too close to the curb.

21 Now, if the tire is low or something
22 like that, if you see something, you know, like
23 that.

24 But a paint smudge, no, that's not a
25 reason to pull the bus -- to take the bus out of

EDWARD HUBBARD - 09/20/2017

Page 133

1 service.

2 Q. You said you can tell that's paint.

3 Other people have suggested that is blood.

4 A. I'm sorry?

5 Q. Other people have suggested that that is
6 blood.

7 A. Oh, I'm not -- you're talking about this
8 picture, particularly this picture here?

9 Q. Yes, this picture.

10 A. Oh, no, no. I'm not talking about this
11 picture. In general, I'm talking about, you said if
12 I saw a bus in the yard with paint -- with red on
13 it, would I take it out of service, and my answer
14 was, no, I would not.

15 I didn't know that you were referring
16 to this.

17 Q. I didn't say take it out of service. I
18 said is that something that you would remedy before
19 you left the yard. In other words, if you saw
20 discoloration on the tire, would you wash it off
21 before you left the yard?

22 A. No. Because like I said before, I know
23 that it was one of the drivers got too close to the
24 curb and it was either red or yellow paint.

25 Q. Okay. So focusing more specifically on

EDWARD HUBBARD - 09/20/2017

Page 134

1 Exhibit 6, you don't know one way or the other what
2 the red substance is on these tires?

3 A. I do not.

4 Q. Now, earlier I talked to you about the
5 steel object next to the mud flap. Do you see that
6 in Exhibit 6?

7 A. Yes.

8 Q. And do you see how close it is to the
9 tire there?

10 A. Yes.

11 Q. Is that too close?

12 A. I don't know, sir. I don't know. I
13 don't know about that.

14 Q. If you had seen that tire in that -- or
15 that object in that configuration, what, if
16 anything, would you have done, again, during the
17 pre-inspection back at the yard?

18 A. I -- I don't -- I was not told to do
19 anything. That's just a mud flap, I guess. You're
20 talking about the mud flap thing?

21 Q. No. I'm talking about the piece of
22 steel between the mud flap and the tire.

23 A. I don't know what that is, sir.

24 Q. Okay. And you don't know whether the --
25 as it's depicted in Exhibit 6, it's in its correct

1 and normal position or whether it's been bent?

2 A. I don't know.

3 (Exhibit 7 marked.)

4 BY MR. KEMP:

5 Q. Okay. This is a picture taken of the
6 right front of the bus, behind the right front tire,
7 by the coroner after the accident. Okay?

8 A. Yes.

9 Q. And see that smudge mark there?

10 A. Yes.

11 Q. Okay. Is that something you would
12 observe or not observe on a pre-trip inspection?

13 A. You would -- you would observe that.

14 Q. Why is that?

15 A. You would see it. You look for -- part
16 of your pre-trip is looking for, you know, stuff
17 that's -- that could be caused by damage to the bus,
18 so you would look for that.

19 Q. And if you had observed it prior to the
20 trip, what, if anything, would you have done?

21 A. If I saw that, I would write it on my --
22 on my -- there's a paper that you write on, your
23 pre-trip.

24 Q. So there's some sort of pre-trip
25 inspection report?

1 A. Right.

2 Q. What's that called?

3 A. It's called your pre-trip sheet or, you
4 know -- and it has, you know, the bus side view, not
5 a picture, but just like a, you know, bus side view,
6 back. And you can put on -- it has where you put
7 scratches, dents, such as that, scuff marks. And
8 that would be a scuff mark.

9 Q. And you want to note scuff marks and
10 dents so you don't get accused of making them during
11 your trip?

12 A. Right.

13 Q. So that's an important thing for a
14 driver to do, to note scuff marks and dents?

15 A. Yes.

16 Q. Okay. So you think if you had seen a
17 dent -- a scuff mark such as depicted in Exhibit 7,
18 you would have put it on the pre-trip sheet; is that
19 correct?

20 A. Well, I don't know how -- I don't know
21 how -- this is blown up, so I don't know if it's --
22 how big it is. Because if it's a little tiny mark,
23 no, I wouldn't have put it there. I can't -- I
24 can't really tell, because this is a blown-up
25 picture.

1 Q. Well, it's as long as the light. You
2 can see that, right?

3 A. Yes. I -- yeah.

4 Q. So you would have or you wouldn't have
5 put this down?

6 A. For all I know I may have. Do you have
7 my pre-trip from that day?

8 Q. No, I don't think I've got your
9 pre-trip.

10 A. Because I could have marked that down.
11 I don't know. I don't remember.

12 Q. That's a fair point. All right.

13 Now, it's been suggested by some people
14 that this is the point where the bicycle first
15 impacted the bus. Okay? Has anyone ever indicated
16 that to you?

17 A. No, sir.

18 Q. Do you know one way or the other whether
19 this -- this scuff mark that I've got in Exhibit 7
20 is the first area where the bicycle hit the bus?

21 A. I don't know.

22 Q. You don't know one way or the other?

23 A. No, sir.

24 Q. Okay. Do you have any reason to dispute
25 that this was the area where the bicycle first hit

1 the bus?

2 A. I don't know if it is or isn't or is.

3 Q. Now, there was a video taken from the
4 top of Red Rock Casino that shows parts, but not
5 all, of the accident. Have you seen that before?

6 A. (Nods head in the affirmative.)

7 Yes, sir.

8 Q. When did you see that?

9 A. Yesterday.

10 Q. Now, in fact, there were two videos.
11 There was one taken from the roof of the casino
12 looking down, and then there was one taken by a
13 bystander that's a little more graphic.

14 Have you seen both videos?

15 A. Yes, sir.

16 Q. You saw them both for the first time
17 yesterday?

18 A. Yes, sir.

19 Q. Okay. I'm going to refer to the one
20 that was taken from the top of the roof as the Red
21 Rock video, and then I'm going to refer to the other
22 one as the gardener's video. Okay? Okay?

23 A. Yes.

24 Q. Now, with regards to the Red Rock video,
25 did that change, in any way, shape or form, the way

1 you remember the accident, when you viewed it
2 yesterday?

3 A. I'm sorry. Can you say that again?

4 Q. Did that change, in any way, shape or
5 form, the way you remembered the accident, when you
6 viewed the video yesterday?

7 A. No.

8 Q. That was consistent with what you
9 remember?

10 A. Yes.

11 Q. And do you remember in that video that
12 there were no cars, when your bus came through, for
13 quite some time period either before or after the
14 bus? Do you remember that?

15 A. No, I don't remember that.

16 Q. Okay. I prepared a still -- why don't
17 we get the first one. This is a still that's been
18 produced from the Red Rock video that doesn't show
19 the bus. I'm just trying to orientate you here.
20 And this line would be the line dividing the left
21 travel lane and the right travel lane, and then the
22 bus -- bus lane -- excuse me, bike lane is over
23 here.

24 Are you with me so far?

25 A. Yes.

EDWARD HUBBARD - 09/20/2017

Page 140

1 MR. KEMP: Okay. Can I have the other
2 one?

3 BY MR. KEMP:

4 Q. I'd be happy to show you the video to
5 confirm this, if you need it, Mr. Hubbard.

6 All right. Do you see in this -- in
7 this depiction that -- where the bus is
8 (indicating)? See the bus coming in the picture?

9 Let me try to move it a little closer
10 towards you. Do you see where the bus is coming
11 into the picture there?

12 A. Yes.

13 Q. And do you see where the travel
14 demarcation of the left and right lane is?

15 A. I see the yellow line.

16 Q. So you see that the bus is on the
17 right-hand side of the yellow line?

18 A. Yes.

19 Q. So assuming for the sake of argument
20 that this yellow line is correctly showing the
21 difference between the left lane and the right lane,
22 is this consistent with what you told me?

23 A. That I was in this lane here, yes, sir.

24 Q. So the entire bus was in the right-hand
25 lane when you were approaching the intersection; is

1 that right?

2 A. Yes.

3 Q. Now, at this point in time, I
4 think you've already said you don't know where the
5 bike was?

6 A. Correct, because I haven't crossed here
7 yet, no.

8 Q. So when you say "crossed here," you mean
9 crossed the crosswalk?

10 A. Right.

11 Q. So it wasn't until after you had crossed
12 the crosswalk that you first observed the bicycle?

13 A. Right, coming across -- right.

14 Q. And let me rephrase that.

15 You first observed the bicycle back in
16 Charleston, but this is when you first saw him again
17 between the 300-foot mark and the zero mark, as
18 we've established before?

19 A. Right.

20 Q. Okay. So you first saw him when the
21 bike was -- when the bus was on the other side of
22 this crosswalk?

23 A. Just like -- just like that is right
24 there, sir (indicating).

25 Q. Well, in the -- the thing we take the

1 picture of, the bus is -- looks like about

2 40 percent through the crosswalk. Is that fair?

3 A. I -- I really don't know. I just know
4 that's about right where I saw him. I don't know
5 about how much percentage.

6 Q. Okay. So about a third of the bus was
7 through the crosswalk?

8 A. About three-quarters of the bus was past
9 the zero line.

10 Q. Okay, great.

11 Well, would I be correct that since you
12 were in the far right lane, the bicyclist had to be
13 in the bike lane immediately before impact?

14 A. Had to what?

15 Q. Had to be in the bike lane immediately
16 before impact?

17 A. No, sir. No, sir.

18 MR. STEPHAN: Objection; form.
19 Foundation.

20 BY MR. KEMP:

21 Q. Why do you say "No, sir"?

22 A. Because as you see right here, he's
23 not -- he's not in -- I just showed you exactly
24 where I first saw him at, sir. And as you see, he's
25 out of the bike lane.

EDWARD HUBBARD - 09/20/2017

Page 143

1 Q. Do you know how far -- how wide the
2 right-hand lane is?

3 A. I don't -- I do not know.

4 Q. Do you know how wide the bus is?

5 A. Not offhand, sir, no.

6 Q. Do you know if it's even possible to
7 give 3-feet clearance between the bus and this lane?

8 A. Yes, it is possible, yeah.

9 Q. Okay. You think at all times you gave
10 him 3 feet of clearance?

11 MR. STEPHAN: Objection; form and
12 foundation of the question.

13 THE WITNESS: He was not in -- he was
14 not anywhere near me until right there, sir. So
15 remember, I didn't -- he was not in the bike lane.

16 BY MR. KEMP:

17 Q. How do you know he was not anywhere near
18 you until right there if you don't know where he was
19 between the zero and the 300-foot mark?

20 A. When I say I don't know where he was,
21 I'm saying he was not anywhere near the bus. He was
22 not near the bus. He was not in the bike lane. He
23 was not in my scanning area.

24 When I look in my mirrors, I can see the
25 bike lane. When I'm looking in my mirror and I'm

EDWARD HUBBARD - 09/20/2017

Page 144

1 leaning in my mirror, I can see the bike lane.

2 He -- and when I'm scanning my bus and
3 looking in my mirrors and -- he was not in the bike
4 lane. That's what I mean by scanning, when I'm
5 scanning, going like that (indicating).

6 So when I first saw him, just like I
7 have it right there, I don't know how -- where --
8 how he came that way, but that's where I first made
9 contact with that bicyclist and I -- I turned the
10 steering wheel to avoid hitting him, and went over
11 to where you saw the bus at -- was stationed at.

12 Q. When you were in the right -- you were
13 in the far right lane, correct?

14 A. This lane right here, sir. Yes, sir.

15 Q. And the bike lane's to the right of you,
16 right?

17 A. Correct.

18 Q. And he came from the right of
19 you, right?

20 A. Correct.

21 Q. So he had to come out of the bike lane
22 at some point, right?

23 A. No. He could have came from over here.
24 He could have came from the corner. I don't know.
25 He could have came anywhere.

EDWARD HUBBARD - 09/20/2017

Page 145

1 But he was not in the bike lane as I am
2 coming up here. As I'm coming up here, he was not
3 in the bike lane, as I've stated.

4 Q. So he was not in the --

5 A. As you see the angle of the bike, that's
6 exactly what -- when I made vision with him, that's
7 how that bike was coming in, like that, into that
8 front door corner area, as I stated, and that's when
9 I turned the steering wheel and went like that
10 (indicating).

11 I'm going straight. I'm not -- I'm not
12 this way, I'm not that way (indicating). I am going
13 straight. So I'm going straight, and if something's
14 coming at you like that and you're in a bus, your
15 first reaction is going to be to go to the left, and
16 that's exactly what I did.

17 So I was not -- I was not turned this
18 way. I wasn't turned that way. He was not beside
19 me prior to me getting to that point of impact, as
20 you guys call it. He was not beside me. I don't
21 know which way he came from, to be honest with you.
22 I don't know.

23 Q. Have you considered the possibility that
24 he was in your blind spot coming up the bike lane
25 during this time period?

1 A. Well, again, that is why I'm doing --
2 that's why I'm leaning into the mirror. I did not
3 see this bicycle in my area. I did not see him.

4 And coming from that angle, how can he
5 be -- how -- I would have seen him.

6 Q. Don't get all agitated. I'm not trying
7 to --

8 A. I'm not agitated. I'm just trying to
9 explain myself. I would have seen him as I'm
10 leaning. At some point I would have seen that
11 bicyclist.

12 Q. Here's my question. Have you
13 considered the possibility that he was in a blind
14 spot on the right side of the bus during all or part
15 of this time?

16 A. I have, but he was not, because that's
17 why I'm -- to avoid -- the purpose of the -- what
18 did you just say you called it? The rock-and-roll?

19 The purpose of the rock-and-roll, or as
20 I call it the sits-ups, is to eliminate the blind
21 spot. So that's what I'm doing. I'm eliminating
22 the blind spot by leaning and getting as much view
23 of that mirror as I possible can.

24 And that gentleman was not -- he was --
25 especially right before that, he was not anywhere in

1 that area.

2 Q. Well, he had to come from somewhere,
3 right?

4 A. Again, and that's why I'm saying, look
5 at the angle of the bike. Maybe -- I don't know,
6 maybe he was over here somewhere. I don't know.
7 But he was not near my bus where I had to -- you
8 understand -- just like when he was back here at
9 Charleston, I was aware of him. I saw him.

10 Q. Let's try it this way.

11 You agree with me that there is a
12 blind spot?

13 A. Absolutely. That's why -- yes, sir.

14 Q. And so you can't say he was -- he was
15 or he was not in the blind spot, because you didn't
16 see him?

17 MR. STEPHAN: Objection; form.
18 Foundation.

19 BY MR. KEMP:

20 Q. Is that correct?

21 A. I'm sorry? I can't say that?

22 Q. You can't say one way or the other
23 whether he was in or outside of the blind spot
24 because you didn't see him from the 300 to the zero
25 mark? We've already established that?

1 A. Again, when you -- a blind spot is not
2 something that's -- if you're -- have you ever
3 driven -- I can't ask questions.

4 But again, I -- I don't know any other
5 way to explain it. But I'm eliminating as much of
6 the blind spot as I possibly can by leaning into my
7 mirrors.

8 So at some point, if this gentleman was
9 in my -- especially from the 100 to the point of
10 impact, if he was in -- anywhere in this bike lane,
11 with me scanning and leaning into the mirror as I've
12 been trained to do and as I've been doing since --
13 all of my career, I would have seen him. At some
14 point I would have seen him.

15 Q. I'm going to show you the testimony of a
16 number of witnesses, who all say he was in the bike
17 lane prior to impact. Okay? I mean, you said he's
18 not there. I'm going to show you the testimony of a
19 couple of witnesses who say a little different
20 version here.

21 But before I do that, would you agree
22 with me that if you had some sort of sensor on the
23 bus that had alerted you that he was near you, that
24 you would have taken evasive action earlier?

25 MR. STEPHAN: Objection; form.

EDWARD HUBBARD - 09/20/2017

Page 149

1 Foundation.

2 THE WITNESS: I -- I would -- if
3 something's going to alert me that I'm about to hit
4 something before I hit it, or someone before, of
5 course I'm going to do something.

6 But I don't know that that would have
7 changed that situation, because of the maneuver that
8 the gentleman made by just coming in as -- it was
9 like this (indicating).

10 BY MR. KEMP:

11 Q. Okay.

12 A. It was -- it was -- it was a very --
13 that's --

14 Q. But if there had been some sort of
15 warning light going off for whatever reason, you
16 would have -- you would have heeded that?

17 MR. TERRY: Objection; form.

18 THE WITNESS: Again, I don't -- I don't
19 know that.

20 BY MR. KEMP:

21 Q. My Mercedes has a proximity sensor. If
22 there's a car to my right or an object to my right,
23 there's a big red light that goes off in the mirror.
24 You know? And there's a lot of cars where, if you
25 do that, there's an audible warning.

EDWARD HUBBARD - 09/20/2017

Page 150

1 If something like that had happened and
2 you'd become aware that he was in that spot, even if
3 you didn't see him, would you have done something
4 about it?

5 A. I would have did exactly what I just
6 did.

7 MR. TERRY: Objection to form.

8 THE WITNESS: Which was take evasive
9 action to move away from the bike.

10 BY MR. KEMP:

11 Q. So if you'd been given some sort of
12 warning at the 50 or the hundred, you would have
13 taken evasive action earlier?

14 MR. TERRY: Objection; form.

15 THE WITNESS: Yes.

16 BY MR. KEMP:

17 Q. And the same, if one of your passengers
18 had said, Hey, you're getting close to a bicyclist,
19 at the 50 or the 100, you would have taken evasive
20 action earlier?

21 A. Of course.

22 MR. STEPHAN: Will, he doesn't have the
23 microphone on. Can you make sure we're getting
24 this?

25 MR. KEMP: Are you getting this?

EDWARD HUBBARD - 09/20/2017

Page 151

1 THE VIDEOGRAPHER: Yes.

2 MR. KEMP: Do you want me to check on
3 lunch?

4 MR. STEPHAN: It's 12:45. Whatever you
5 want.

6 MR. KEMP: I'll check. Let's stay on
7 the record.

8 No lunch yet.

9 Now, why don't we go through the depo
10 clips real quick, Eric. Why don't we start with the
11 top.

12 BY MR. KEMP:

13 Q. This is Erica Bradley. She was a
14 passenger in the car behind you.

15 (Video played as follows:

16 "QUESTION: First question. Was
17 there more than one lane available for
18 traffic heading --

19 "ANSWER: South.

20 "QUESTION: -- south on Pavilion?

21 "ANSWER: Yes.

22 "QUESTION: And could either you or
23 the bus have moved into the left lane if you
24 wanted to?

25 "ANSWER: Yes.

EDWARD HUBBARD - 09/20/2017

Page 152

1 "QUESTION: And do you believe it
2 would have been reasonably safe for the bus
3 to move into the left-hand lane?

4 "ANSWER: Yes.

5 "QUESTION: So based on my reading of
6 the statute, would you agree with me that the
7 bus driver in this case violated the statute?

8 "ANSWER: Yes.")

9 (Video stopped.)

10 BY MR. KEMP:

11 Q. Basically, you don't disagree with any
12 of that, do you?

13 A. I'm sorry?

14 Q. You don't disagree with any of what she
15 said?

16 A. I have no opinion on that. I don't
17 really --

18 Q. She said there was a lane you could move
19 into. You don't disagree with that?

20 A. Where is she, sir?

21 Q. She's in the car right behind you.

22 A. I do disagree with her, because she
23 can't see -- she can't see around that bus, so she
24 doesn't know what I -- she doesn't know what I can
25 see around that bus. She's behind me. She can't

EDWARD HUBBARD - 09/20/2017

Page 153

1 see around that bus. That's impossible.

2 Q. Okay. As we sit here today, you don't
3 know one way or the other whether there were cars
4 either in front of you, the side of you, or behind
5 you in the far left travel lane; is that correct?

6 A. I said I don't recall, sir, because this
7 was how many months ago. I didn't say that they
8 weren't; I said I don't recall.

9 Q. Okay. We'll show you the Red Rock video
10 in a minute and see if we can get an answer to that.

11 MR. KEMP: All right, Eric, can I have
12 the next one. This is Mrs. Bradley still. There's
13 two, I thought. Or is that just a different type
14 of clip?

15 MR. PEPPERMAN: There may only be one.

16 MR. KEMP: Okay. Let's go to the next
17 one.

18 BY MR. KEMP:

19 Q. This is one of the motorcyclists that's
20 kitty-corner from you.

21 (Video played.)

22 (Inaudible.)

23 MR. KEMP: Let's skip this one.

24 This guy didn't understand much anyway. Go to the
25 next one.

EDWARD HUBBARD - 09/20/2017

Page 154

1 (Video played as follows:

2 "QUESTION: Okay. When you say 'his
3 lane,' you mean the bicyclist was where?

4 "ANSWER: The bicycle lane there.

5 "QUESTION: The bicyclist was in the
6 bike lane?

7 "THE WITNESS: The bicycle lane, yes.

8 "QUESTION: And the bus hit him when
9 the bike was in the bicycle lane?

10 "ANSWER: The bicycle lane, yes.")

11 MR. KEMP: Stop, Eric.

12 (Video stopped.)

13 BY MR. KEMP:

14 Q. So you disagree with what the gardener
15 just testified to? That's the gardener, by the way.

16 He said the bus hit the bicycle when the
17 bike was in the bicycle lane. You disagree with
18 that?

19 A. Yes, sir.

20 Q. In what lane -- you think the bike was
21 in what lane when it hit the bus?

22 A. Exactly as that diagram is, sir.

23 Q. So you think the bicyclist was in the
24 far right lane when he hit the bus?

25 A. When he hit the bus?

EDWARD HUBBARD - 09/20/2017

Page 155

1 Q. Yeah.

2 A. I don't know where he was when he hit
3 the bus because I didn't see that.

4 Q. Okay. When you first saw him, you think
5 he was already in your lane?

6 A. He was -- correct.

7 Q. Okay. So you disagree with what the
8 gardener just said?

9 A. Yes, sir.

10 MR. KEMP: Let's have the next one,
11 Eric.

12 (Video played as follows:

13 "QUESTION: When you say 'he did
14 this,' what do you mean?

15 "ANSWER: That he was at fault,
16 because he was like from here to there.

17 "QUESTION: The bus driver was at
18 fault?

19 "ANSWER: Yes.

20 "QUESTION: And why do you think the
21 bus driver was at fault?

22 "ANSWER: Because he -- and didn't
23 turn to this side, he turned this side
24 [inaudible], and the entrance is farther
25 down. When he made a [inaudible] movement

EDWARD HUBBARD - 09/20/2017

Page 156

1 like this, the gentleman was fine, but he did
2 this and when he hit it, it went backwards.")

3 (Taken down to the best of reporter's
4 ability; may not be complete.)

5 MR. KEMP: Okay, Eric. Stop here.

6 (Video stopped.)

7 BY MR. KEMP:

8 Q. Okay. You just heard the gardener's
9 testifying that he thought that the bus came into
10 the bike lane and then went back out?

11 A. No, sir.

12 Q. You didn't hear that?

13 A. I did, and I --

14 Q. I know. I'm just asking if you heard
15 his testimony.

16 A. Yes, sir.

17 Q. You disagree with that?

18 A. Yes, sir.

19 Q. And you heard his testimony that he
20 thinks you were at fault, right?

21 A. I heard him.

22 Q. So you disagree with that?

23 A. Yes, sir.

24 MR. KEMP: Go ahead, Eric. Next one.

25 (Video played.)

EDWARD HUBBARD - 09/20/2017

Page 157

1 "QUESTION: Let's back up a little
2 bit.

3 "When you first saw the bicyclist,
4 was he in the bike lane?

5 "ANSWER: Inside.

6 "QUESTION: And where was the bus at
7 that time?

8 "ANSWER: Next to it.

9 "QUESTION: In the -- in the drive
10 lane next to it?

11 "ANSWER: Yes.

12 "QUESTION: And then the bus started
13 going into the bike lane?

14 "ANSWER: Into the bicycle lane."

15 (Video stopped.)

16 BY MR. KEMP:

17 Q. And you disagree with that?

18 A. Yes, sir.

19 MR. KEMP: Okay. Next one, Eric.

20 (Video played as follows:

21 "QUESTION: If there is more than one
22 lane for proceeding in the same direction,
23 move the vehicle to the lane to the immediate
24 left if the lane is available and moving into
25 the lane is reasonably safe.

1 "Mr. Hubbard, didn't do that,
2 correct?"

3 "ANSWER: Correct.")

4 THE WITNESS: Excuse me. I can't
5 hear it.

6 MR. KEMP: Let's back it up and start
7 over again.

8 (Video played as follows:

9 "QUESTION: If there is more than one
10 lane for proceeding in the same direction,
11 move the vehicle to the lane to the immediate
12 left if the lane is available and moving into
13 the lane is reasonably safe.

14 "Mr. Hubbard didn't do that, correct?

15 "ANSWER: Correct.

16 "QUESTION: And that was -- he was
17 able to do that. You looked at the video.
18 There was nothing preventing him from doing
19 that?

20 "ANSWER: I saw no car in that one
21 lane.")

22 (Video stopped.)

23 BY MR. KEMP:

24 Q. Okay. That's Mr. Plantz. He was one of
25 the front passengers. And he said he saw no car

EDWARD HUBBARD - 09/20/2017

Page 159

1 keeping you from going over in the left-hand lane.

2 So your testimony is you don't know one
3 way or the other; is that right?

4 A. I don't recall whether there was cars
5 over there.

6 MR. KEMP: Fair enough.

7 Another one, Eric.

8 (Video played.)

9 "QUESTION: Did you know in Nevada
10 that it's illegal, it's against the law, to
11 get within 3 feet of a cyclist if you're
12 driving a vehicle?

13 "ANSWER: No, I did not know that.

14 "QUESTION: And that's the law, and
15 I'll tell you it is Nevada Revised Statute
16 484B.270.

17 "It's your testimony that this bus
18 was inside of 3 feet when Dr. Khiabani turned
19 and you saw the look of shock on his face,
20 correct?

21 "ANSWER: At that point, yes.")

22 (Video stopped.)

23 BY MR. KEMP:

24 Q. So you said you were never within 3 feet
25 of the bicyclist; is that correct?

EDWARD HUBBARD - 09/20/2017

Page 160

1 MR. STEPHAN: Objection; form of the
2 question. Foundation.

3 THE WITNESS: If you heard what he said,
4 he said at -- at -- when -- when he saw the look on
5 the man's face that I was. And as you see, that's
6 what it is, right there.

7 BY MR. KEMP:

8 Q. Did you see the look of shock on
9 Dr. Khiabani's face?

10 A. I'm sorry?

11 Q. Did you see the look of shock on
12 Dr. Khiabani's face yourself?

13 A. I did not. I was trying to make my
14 maneuver so that I can not make contact with this
15 gentleman. So I did not see his face.

16 Q. Before you turned to the left, did you
17 look to the left to see if there was another car
18 there?

19 A. I did not. I was trying to not hit him.

20 Q. So you just turned left without looking
21 into the left lane?

22 A. At that particular moment, second,
23 that's exactly what I was doing, sir. I would have
24 gladly traded that in for the result of this.

25 MR. KEMP: All right. Next one.

EDWARD HUBBARD - 09/20/2017

Page 161

1 (Video played as follows:

2 "QUESTION: Did you know it was
3 Nevada law that if there's two lanes, like
4 there was in that southbound Pavilion Center,
5 a vehicle driver has an obligation to get
6 into -- when there's a bicyclist, the vehicle
7 has an obligation to get into the far
8 left-hand lane? Did you know that?

9 "ANSWER: Did not know that.

10 "QUESTION: Mr. Hubbard did not get
11 into that far left-hand lane. Can we agree
12 on that?

13 "THE WITNESS: Correct.")

14 (Video stopped.)

15 BY MR. KEMP:

16 Q. You don't disagree with anything he said
17 there, right?

18 A. No.

19 MR. KEMP: All right. This last one.

20 (Video played.)

21 (Inaudible.)

22 MR. KEMP: Let's skip that one, too.

23 BY MR. KEMP:

24 Q. All right. Now, you said you saw the
25 Red Rock video yesterday?

EDWARD HUBBARD - 09/20/2017

Page 162

1 A. Yes, sir.

2 Q. And in that video it appears that you're
3 talking on the telephone?

4 A. Absolutely not.

5 Q. Not while you're operating the bus.
6 After the accident.

7 A. Oh. Oh, okay.

8 Q. Okay?

9 A. Yes.

10 Q. After you became aware there was an
11 accident, what did you do with the bus?

12 A. Well, I pulled it -- like I say, I made
13 the maneuver, got over to that area over there in
14 the left lane. And as I said, I saw in the mirror
15 that someone was down. I got my phone, went to see
16 what was going on. As I'm going to where the
17 gentleman is, I dial 911, I'm calling 911. And
18 that's what I did.

19 Q. Did you call 911?

20 A. Immediately.

21 Q. Did you talk to a 911 operator?

22 A. Absolutely.

23 Q. Okay. And you gave them your name?

24 A. Did I give them my name? I don't know
25 if I -- I don't remember I gave them my name. I

EDWARD HUBBARD - 09/20/2017

Page 163

1 told them where I was at and what was happening and
2 I was -- you know, I was out of it, as far as -- I
3 don't remember if I said my name or not. I just
4 know that I was like, "I'm at the Red Rock," and,
5 you know, I said what was going on, "I need an
6 ambulance here at Pavilion."

7 Q. But you're sure you called 911?

8 A. I'm absolutely positive I called 911.

9 Q. And the reason I ask is because we
10 subpoenaed 911 and today there's been no indication
11 that --

12 A. That was the very first call I
13 made, sir.

14 Q. And you made another call after that?

15 A. Yes. To the control center.

16 Q. And the "control center" would refer to
17 what?

18 A. That's my job. That's like the center
19 of operation. That's where you call right after you
20 call 911.

21 Q. And when you called the control center,
22 who, if anyone, did you talk to?

23 A. Oh, Lord, I don't remember her name. I
24 don't remember her name.

25 Q. And was that a call that lasted more

1 than one or two minutes?

2 A. I don't know how long it lasted because
3 she called me back several -- someone -- they called
4 me back several times, so I don't recall how long
5 the call lasted.

6 Q. Prior to the time you got back on the
7 bus, who at your employer did you talk to, if
8 anyone? And I'm talking the time period you parked
9 the bus after you became aware of the accident and
10 the time period you got back on the bus.

11 Did you get back on the bus to move it?

12 A. I spoke to the control center, 911 and
13 the control center.

14 Q. But I'm just asking what the names of
15 these people were you talked to.

16 A. I don't remember their names, sir. I
17 was -- I was not thinking about names at that
18 particular time. I don't know the name. But that's
19 who I called, 911 and the call center.

20 Q. Okay.

21 MR. STEPHAN: His mic is down.

22 MR. KEMP: I don't think that was
23 particularly critical testimony, but ...

24 MR. STEPHAN: But if you ask him a
25 question, I didn't want it not to be covered.

EDWARD HUBBARD - 09/20/2017

Page 165

1 BY MR. KEMP:

2 Q. Okay. I'd like you to watch the Red
3 Rock video with the point of view of whether there
4 were cars immediately before you or immediately
5 after you that would have prevented you from moving
6 to the far left lane. Okay?

7 MR. KEMP: All right, Eric.

8 BY MR. KEMP:

9 Q. And I'll make you aware there's two
10 buses in this video. There's a bus before yours,
11 so ...

12 (Video played.)

13 MR. KEMP: Okay, Eric, stop.

14 BY MR. KEMP:

15 Q. Do you see any cars immediately
16 before you?

17 A. No, sir.

18 Q. And no cars immediately after you?

19 A. I don't know how many -- how much time
20 went by, but no.

21 Q. No reason you couldn't have moved over
22 to the left-hand lane if you wanted to?

23 A. No, I don't know how much time we went
24 by, so I don't know if --

25 Q. Well, it's enough time for the bus to

1 travel from one side of the intersection to the
2 other.

3 A. Okay.

4 Q. So, I mean, there's at least four or
5 five bus lengths.

6 MR. KEMP: Keep going, Eric. I don't
7 think a car comes.

8 THE WITNESS: Okay.

9 BY MR. KEMP:

10 Q. Okay? So you would agree with me that
11 if you wanted to you could have gotten over into the
12 left-hand lane at any time between the 300-foot to
13 the zero mark?

14 A. Yes, I could have. But -- okay.

15 Q. All right. Now, I asked you earlier if
16 you had seen any motorcyclists across the street.
17 Did seeing those -- the picture now of the
18 motorcyclists and the one running across the street
19 refresh your recollection in any way, shape or form?

20 A. No.

21 MR. KEMP: Okay. Go ahead, Eric.

22 (Video played.)

23 MR. KEMP: Okay. Stop right here.

24 BY MR. KEMP:

25 Q. Do you see that white delivery truck

1 there?

2 A. Yes.

3 Q. And did you have any interaction with
4 the driver of that truck, that you can recall?

5 A. No, that I can recall.

6 Q. Do you know who the driver of that truck
7 was?

8 A. No.

9 Q. Did you make any effort to find out who
10 the driver of that truck was?

11 A. No.

12 Q. Same thing for the motorcyclists: Did
13 you make any effort to find out who they were?

14 A. No, sir.

15 MR. KEMP: Okay. Go ahead.

16 (Video played.)

17 MR. KEMP: Stop. Stop.

18 BY MR. KEMP:

19 Q. Do you see how the motorcyclist and the
20 driver in the white truck are administering aid of
21 some sort to the doctor?

22 A. Yes, sir.

23 Q. Did you attempt to administer aid to the
24 doctor at any point in time?

25 A. No, sir.

EDWARD HUBBARD - 09/20/2017

Page 168

1 Q. Why not?

2 A. Because somebody was already doing
3 something, and I was calling 911. That was my main
4 concern, was to get the paramedics there.

5 Q. Do you have any particular training with
6 regards to first aid of any sort?

7 A. CPR.

8 Q. You have CPR training?

9 A. Yes.

10 Q. And when did you get that?

11 A. I have no idea, sir.

12 Q. And when you say "CPR," what does that
13 mean? You're trained as a -- to administer CPR?

14 A. Right. I have been, yes.

15 Q. Did you get some sort of certification
16 in regards to that point?

17 A. Yes.

18 Q. What kind of certification did you get?

19 A. CPR training.

20 Q. Was that here in Nevada or back in
21 New York?

22 A. In New York.

23 Q. Was that as part of your employment with
24 the New York Transit?

25 A. No.

EDWARD HUBBARD - 09/20/2017

Page 169

1 Q. Do you remember approximately when you
2 got that training?

3 A. I don't remember.

4 Q. Was that more than a one- or two-day
5 class, or ...

6 A. I don't remember, sir.

7 MR. KEMP: All right. Go ahead.

8 (Video played.)

9 MR. KEMP: Stop.

10 BY MR. KEMP:

11 Q. Is that you walking into the
12 picture, sir?

13 A. Yes.

14 MR. KEMP: Okay. Go ahead, Eric.

15 (Video played.)

16 MR. KEMP: Stop.

17 BY MR. KEMP:

18 Q. Can you tell -- could you tell whether
19 you're on the phone at that time?

20 A. I am.

21 Q. You are on the phone at that time?

22 A. Yes, sir.

23 Q. Are you left-handed or right-handed?

24 A. I'm left-handed -- right-handed.

25 Q. And the phone is in which hand at that

EDWARD HUBBARD - 09/20/2017

Page 170

1 time?

2 A. It's probably in my right hand.

3 MR. KEMP: Okay. Go ahead, Eric.

4 (Video played.)

5 MR. KEMP: Stop.

6 BY MR. KEMP:

7 Q. Now you seem to be gesticulating. See
8 how you moved your left arm there a second ago?

9 A. Yes, I do.

10 Q. Do you remember what you're saying?

11 A. I'm talking to the 911 operator. I'm
12 just seeing this man on the ground. I'm talking to
13 the 911 operator, telling them what's going on and
14 where to come to and what's -- I -- I assume
15 that's --

16 Q. You think at this point in time you're
17 still talking to the 911 operator?

18 A. I don't know how much -- it was either
19 the 911 or the call center. That's who I'm
20 talking to.

21 Q. Do you know one way or the other whether
22 it was 911 or the call center at this point in time?

23 A. I don't know, because I don't know how
24 much time is elapsed on that.

25 MR. KEMP: For the record, we're at the

EDWARD HUBBARD - 09/20/2017

Page 171

1 10:35:06 mark.

2 Go ahead, Eric.

3 (Video played.)

4 MR. KEMP: Stop.

5 BY MR. KEMP:

6 Q. You're still on the phone?

7 A. Uh-huh.

8 Q. Given the length of the call, do you
9 think it's more likely you were talking to the call
10 center at this time as opposed to 911?

11 A. I don't know, sir.

12 MR. KEMP: Go ahead, Eric.

13 (Video played.)

14 MR. KEMP: Stop.

15 BY MR. KEMP:

16 Q. At this point in time did you realize
17 this was a serious accident?

18 A. Absolutely. I realized it from the
19 moment I saw him.

20 MR. KEMP: Okay. Go ahead.

21 (Video played.)

22 BY MR. KEMP:

23 Q. And again, you don't know any of these
24 people, right?

25 A. I don't.

EDWARD HUBBARD - 09/20/2017

Page 172

1 Q. You didn't exchange contact information
2 with any --

3 A. Sorry?

4 Q. -- contact information with anybody?

5 A. No, sir.

6 (Video continues.)

7 BY MR. KEMP:

8 Q. Do you recall what you were doing at
9 this point in time, when you were apparently back
10 near the bus?

11 A. Probably -- who knows, man. I was -- I
12 don't know. I was probably -- I don't know.

13 Q. And Mr. Hubbard, if you want to take a
14 break at any time, I'm fine with that. I think
15 we're almost through the video.

16 MR. KEMP: Okay. Stop.

17 BY MR. KEMP:

18 Q. See you're going back towards the scene?

19 A. Uh-huh.

20 MR. KEMP: Go ahead, Eric.

21 (Video played.)

22 BY MR. KEMP:

23 Q. Can you tell if you're still on
24 the phone?

25 A. I am.

1 Q. It appears to me you're on the phone
2 with the left hand.

3 A. Yeah, but I'm right-handed.

4 Q. But sometimes you use the left hand to
5 talk on the phone?

6 A. Man, sir, at that particular time, you
7 have no idea what was -- I was going through. I
8 don't know, left hand, right hand. I just know I
9 wanted somebody there, and I wanted the ambulance to
10 get there, and I was -- I kept asking, "Is he going
11 to be all right? Is he going to be all right?"
12 That's what I was doing.

13 Q. Okay. I think the ambulance is coming
14 in right now.

15 A. No, the police was first.

16 Q. Oh, right.

17 (Video continues.)

18 BY MR. KEMP:

19 Q. Okay. You see yourself going back in
20 the scene, right? Correct?

21 A. I'm sorry?

22 Q. You saw yourself coming back into the
23 scene there, at about the 10:40:25 mark? Right? Do
24 you see yourself in the video there?

25 A. I do.

EDWARD HUBBARD - 09/20/2017

Page 174

1 MR. KEMP: Now stop.

2 BY MR. KEMP:

3 Q. It appears at this point in time you're
4 having some sort of discussion with that gentleman
5 in the red shirt. Do you see -- do you see -- I'm
6 going to have you watch the interaction between the
7 two of you from this point forward.

8 A. My hands are on my head there.

9 Q. See --

10 A. I'm seeing --

11 Q. See how the guy kind of pointed?

12 A. I'm pointing to say what happened.

13 Q. So did you discuss with him what had
14 happened?

15 A. No, no, I pointed to my bus right up
16 there. Now I'm telling the officer what happened.
17 See, I'm telling him.

18 And you can see my hand moving. I did
19 the same thing. Did you see --

20 THE WITNESS: I didn't even see that
21 yesterday, Paul. I did the same thing I just showed
22 that cop, man. Oh, God.

23 BY MR. KEMP:

24 Q. Like I said, if you want to take a
25 break, Mr. Hubbard, at any point.

EDWARD HUBBARD - 09/20/2017

Page 175

1 MR. KEMP: Stop it here for a second,

2 Eric.

3 BY MR. KEMP:

4 Q. Do you remember getting into a
5 conversation with the person in the red shirt?

6 A. No, sir.

7 Q. You don't remember what was said or by
8 whom?

9 A. I don't.

10 Q. Or if there even was a conversation?

11 A. I don't remember. The only thing I
12 remember asking is, "Is he going to be all right?
13 Is he going to be all right?"

14 MR. KEMP: Okay. Go ahead, Eric.

15 (Video played.)

16 MR. KEMP: Okay. I think that's enough.

17 BY MR. KEMP:

18 Q. Now, why we started this viewing of the
19 video is I asked you to look at the video and
20 determine whether or not there were cars either
21 immediately before you, side of you, or after you,
22 that would have prevented you from moving into the
23 left-hand lane.

24 Do you recall that question?

25 A. Yes.

EDWARD HUBBARD - 09/20/2017

Page 176

1 Q. And you said, after viewing the video,
2 that there were no cars. Correct?

3 A. Correct.

4 Q. So you could have moved into the
5 left-hand lane?

6 A. Yes.

7 Q. And now that I've read you the law,
8 would you agree with me that you violated that
9 particular statute?

10 MR. STEPHAN: Objection; form and
11 foundation.

12 THE WITNESS: If that statute's -- yes,
13 yes. Correct, yes.

14 MR. KEMP: This is probably a good place
15 to break. Why don't we take a half-hour.

16 THE VIDEOGRAPHER: We're going off the
17 record. The time is 1:11.

18 (A lunch recess is taken.)

19 THE VIDEOGRAPHER: We're back on the
20 record. The time is 1:34.

21 BY MR. KEMP:

22 Q. Mr. Hubbard, these buses have adjustable
23 seats, right?

24 A. Yes, sir.

25 Q. And do they have any, like, numbers, 1,

1 2, 3, 4, 5, as to how high you make them or how low
2 you make them?

3 A. It's air. It's a thing that you pull.
4 You pull to make it go down and you push it in to
5 make it go up.

6 Q. How tall are you?

7 A. 5-8, 5-9.

8 Q. And I assume that you have drivers that
9 are bigger or smaller than you at the shop?

10 A. Yes.

11 Q. Other bus drivers?

12 And is there a seat setting that is
13 compatible to everybody, or does everybody just go
14 in and kind of put it where they want it to?

15 A. No, you adjust it to what's good for you
16 with your mirrors.

17 Q. And when you adjust it, can you describe
18 for me how high you make it or whether it can move
19 left or right, I don't know, forward or backward?

20 A. It can move up and down and it can move
21 forward and backward.

22 Q. And on the up and down, is there a way
23 you can describe for me how high you make it or
24 don't make it?

25 A. I can't describe it without being in the

1 bus, but -- yeah, I can't.

2 Q. Is there a typical point you typically
3 set it at? In other words, when you -- you set it
4 the same place every time you ride that bus?

5 A. Right. But it's just air. It's not
6 a -- it's not a number or a -- you know, it's
7 just --

8 Q. You just do it by feel?

9 A. Right. By feel and by your gas pedal
10 and with the mirrors, and that's how you do it.

11 Q. And how about the up and back, how do
12 you set that?

13 A. That's -- again, that's what I'm talking
14 about with your gas pedal. You don't want to be
15 sitting -- you don't want it way back here to where
16 you're stretching your foot for the gas. It's all
17 determined by the person's height.

18 Q. So, in general, you being 5-8 would be
19 more forward than someone who's 6-foot-6, for
20 example?

21 A. Right. Because I don't have long legs.

22 Q. Other than sitting you in the bus, is
23 there any way we can determine -- and having you
24 adjust the seat for us, is there any way we can
25 determine where the seat was exactly at the time of

1 the accident?

2 A. I don't know how I would do that.

3 Q. Yeah, we're doing a bus inspection
4 Tuesday. Could you adjust it -- assuming you're
5 around Tuesday, could you physically do it for us
6 Tuesday maybe?

7 A. You mean me?

8 Q. Yeah. I don't know how else we could
9 do it.

10 A. I'll be working Tuesday. I don't know.

11 Q. Are you scheduled for work Tuesday?

12 A. I believe I would be. You said just the
13 19th and the 20th; right?

14 Q. Well, this would be out at the bus yard.
15 That's where you work; right?

16 A. Yes.

17 Q. Okay. All right. Well, we'll address
18 that with your counsel at a later point.

19 Now, we've talked about you
20 moving forward and backward and trying to avoid
21 blind spots?

22 A. Yes.

23 Q. And that's referred to by some people as
24 a rock-and-roll technique?

25 A. Yes.

1 Q. Where did you first learn that?

2 A. When I first started driving my personal
3 vehicle.

4 Q. Okay. Is that a formal thing that's
5 taught to bus drivers?

6 A. I was taught that with my regular
7 driver's license.

8 Q. Before you got your bus driver license?

9 A. Correct.

10 Q. And once you went through these bus
11 training classes, either with New York City Transit
12 or with Michelangelo/Silverado, did they also teach
13 rock-and-roll technique at that time?

14 A. Yes, sir.

15 Q. Is there any difference in a
16 rock-and-roll technique as you use it in a car and
17 when you use it in a bus?

18 A. Well, with a bus it's used more often
19 than with a car, because the bus you have a -- you
20 know, it's bigger, so you definitely use it more.

21 Q. The bus is bigger and has more blind
22 spots than a passenger vehicle?

23 A. I don't -- I don't know how -- I don't
24 know about the blind spots. I just know the bus is
25 bigger, so you're doing more leaning in so that you

1 can get more vision in your mirror.

2 Q. Okay. And you said you adjust your
3 mirrors. Is there -- would it be true that
4 different drivers have the mirrors in different
5 locations?

6 A. Correct.

7 Q. And you typically have yours in the same
8 location?

9 A. Yes.

10 Q. Now, on the day of the accident, did you
11 give an interview to the Metropolitan Police
12 Department?

13 A. Yes.

14 Q. And was that a recorded interview?

15 A. Yes.

16 Q. They recorded you?

17 A. Yes.

18 Q. Okay. And do you remember the officer's
19 name?

20 A. No, sir.

21 Q. Was it Salisbury, does that ring a bell?

22 A. Yes, that does.

23 Q. And so Officer Salisbury had some sort
24 of tape recorder?

25 A. Yes.

EDWARD HUBBARD - 09/20/2017

Page 182

1 Q. Where was that interview taken at?

2 A. On the bus.

3 Q. And when you say "on the bus," you mean
4 physically on your bus?

5 A. Yes.

6 Q. Okay. Now, as I understand it, the bus
7 was parked to the side and some other bus came and
8 completed the mission?

9 A. Correct.

10 Q. So you unloaded the -- did these people
11 have luggage?

12 A. Yes, sir.

13 Q. So somehow or another the luggage went
14 from your bus to another bus and they were taken to
15 Red Rock?

16 A. Yes, sir.

17 Q. And then was it before or after that
18 point in time that Detective Salisbury
19 interviewed you?

20 A. I don't recall. I don't know exactly
21 when.

22 Q. Okay. And so with regards to the
23 interview that was recorded by Detective Salisbury,
24 was it one interview or more than one interview?

25 A. It was only one interview.

EDWARD HUBBARD - 09/20/2017

Page 183

1 Q. And have you seen a transcription of
2 that since the time you gave it to the present time?

3 A. No.

4 Q. Have you heard it again since the time
5 you gave it to the present time?

6 A. No.

7 Q. Have you had any communications with
8 Detective Salisbury since the time you gave that
9 interview to the present time?

10 A. No.

11 Q. Have you had any communications with
12 anybody at Metro from the time you gave that
13 interview to the present time?

14 A. No.

15 Q. Now, with regards to other interviews --
16 and again, don't tell me what you said to your
17 counsel -- but did you give an interview to your
18 counsel at some point?

19 A. Yes.

20 Q. And other than Detective Salisbury and
21 your counsel, did you give any other interviews?

22 A. I mean, there was a chaplain, there was
23 a grief counselor who came on the bus. I told him
24 what happened.

25 Q. A chaplain?

EDWARD HUBBARD - 09/20/2017

Page 184

1 A. Like a grief counselor.

2 Q. At the time of the accident?

3 A. Correct.

4 Q. Do you know who he was employed by?

5 A. He was -- I don't know exactly. He was
6 just a Nevada chaplain or grief counselor or
7 whatever.

8 Q. Did you have any sort of debriefing when
9 you went back to the bus yard?

10 A. Debriefing? I don't know what you mean
11 by that.

12 Q. Did Mr. Bartlett or anyone else ask you,
13 Well, what happened?

14 A. Oh, I'm sorry. I told Robert Garcia, as
15 well, what happened, Robert Garcia, when he came to
16 the scene.

17 Q. That was at the scene, though?

18 A. Yes.

19 Q. As I understand it, two people came from
20 Michelangelo to the scene, Mr. Garcia and another
21 person?

22 A. I think it was Don.

23 Q. And what's his last name?

24 A. I don't know.

25 Q. So you told Mr. Garcia in general what

EDWARD HUBBARD - 09/20/2017

Page 185

1 had happened?

2 A. Right.

3 Q. Did you tell Don, too?

4 A. I don't believe I -- he might have been
5 standing there, but I was talking to Robert Garcia.

6 Q. Hadon I think his name is, H-a-d-o-n.

7 Does that sound --

8 A. He was only there for a minute. He's
9 not there.

10 Q. All right. After that point in time,
11 did you give any other statements to anybody?

12 A. No.

13 Q. Sometimes insurance adjusters call you
14 up, or insurance rep --

15 A. Oh, yeah. Yeah, yes. Yeah, I did.

16 Q. Who was that?

17 A. I don't know their names. I just know
18 the night of they called.

19 Q. And you understood that to be someone
20 employed by the insurance company?

21 A. Right.

22 Q. And do you know if that interview was
23 recorded or not?

24 A. I don't know.

25 Q. And how is it you think that it was

EDWARD HUBBARD - 09/20/2017

Page 186

1 someone from the insurance company?

2 A. That's what they said, yeah.

3 Q. They identified themselves as
4 representatives of the insurance company?

5 A. Right.

6 Q. Did you have any heads-up before the
7 phone call came in that you would be getting a call
8 from the insurance company?

9 A. Yes.

10 Q. And who gave you the heads-up?

11 A. I don't remember. Somebody.

12 Q. Was it Mr. Garcia or this other
13 gentleman, Don?

14 A. I don't remember.

15 Q. So you talked to the insurance company
16 the night of the accident; yes?

17 A. It was somewhere near the
18 accident, yeah.

19 Q. And how long was that call?

20 A. I don't -- I don't know.

21 Q. Is that the only time you talked to the
22 insurance company?

23 A. I think so, yeah.

24 Q. Did they send you any sort of statement
25 to review and look at?

1 A. (Shakes head in the negative.)

2 Q. "No"?

3 A. No.

4 Q. Now, I mentioned earlier that the
5 coroner's office took some pictures on the site.

6 Did you talk to anyone at the coroner's office?

7 A. No.

8 Q. Now, you said that you saw the bike
9 briefly coming towards you somewhere in the
10 intersection. Do you recall that?

11 A. Yes.

12 Q. Did the bike appear to be wobbling?

13 A. I don't know. It was very quick. I
14 just know that he was -- if I did not make that
15 maneuver that I made, he was going to hit either the
16 door area or somewhere in that area. So I don't
17 know if he was wobbling or not.

18 Q. Okay. And by "wobbling," I'm talking
19 about the bike kind of going from left to right.

20 A. I -- I don't know.

21 Q. You don't know one way or the
22 other, okay.

23 Did the bicyclist have a helmet on?

24 A. I don't -- I don't recall.

25 Q. At the accident scene -- do you recall

EDWARD HUBBARD - 09/20/2017

Page 188

1 if he had the helmet on at the accident scene?

2 A. I saw that someone had took it off. But
3 I didn't see the helmet when -- again, I didn't see
4 his face. I was just trying to avoid making contact
5 with him.

6 Q. Okay. You're talking about the moment
7 before impact?

8 A. Correct.

9 Q. Okay. After you had parked the bus on
10 the other side of the street and walked back, did
11 you see whether he had the helmet on?

12 A. I did not, no. I don't.

13 Q. You didn't take the helmet off?

14 A. No, sir.

15 Q. Did you observe anyone else take the
16 helmet off?

17 A. I don't know. No, I didn't see anybody.
18 I don't know.

19 Q. Now, without showing you the gardener's
20 video, you saw that yesterday?

21 A. Yes.

22 Q. Was that substantially similar to what
23 you saw on the site?

24 A. Yes.

25 MR. KEMP: I don't have any further

1 questions.

2 MR. CHRISTIANSEN: I have a few.

3 MR. KEMP: Oh, sorry, I do have further
4 questions.

5 MR. CHRISTIANSEN: You do?

6 MR. KEMP: Yes, I do. Now I see my
7 stack of stuff.

8 Can we mark this what was next in order
9 and number it -- what are we on, 8? So let's make
10 it 8A through however pages we've got.

11 (Exhibits 8A through 8H marked.)

12 BY MR. KEMP:

13 Q. Mr. Hubbard, I'm handing you what's been
14 marked 8A through H, which is a series of photos
15 taken from the Red Rock video that we looked at a
16 second ago that are blown up and focused on a
17 particular spot.

18 If you take a look at 8A, you see the
19 bus and the palm trees, but you don't see any other
20 object, right?

21 A. Yes, I see the bus.

22 Q. 8B, you see the bus, it appears like you
23 can still see the palm trees, right?

24 A. Yes.

25 Q. Okay. 8C, if you take a look there, you

1 see what may or may not be either legs or palm tree
2 fronds sticking out in this area. See this area
3 (indicating)?

4 A. I -- it just looks blurry, sir.

5 Q. What?

6 A. It looks blurry.

7 Q. I'm not asking you to say one way or the
8 other what that is. I'm just saying you do see that
9 spot in 8C, right?

10 A. Yes.

11 Q. Okay. Great. Now, if we go to the next
12 spot, 8D, do you see what appears to be two legs
13 pointing directly to the bottom of the picture, and
14 trunks?

15 A. I don't know what that is, sir.

16 Q. Okay. I ask you to take a look at the
17 exact position of the legs in that picture. Do you
18 see how they're -- they're basically parallel to
19 each other? I'm assuming those to be legs.

20 A. I can't tell what that is, sir.

21 Q. Okay. But assuming that -- you do see
22 the two white objects are parallel to each other
23 in 8D?

24 A. Right.

25 Q. And do you see the upper left-hand

EDWARD HUBBARD - 09/20/2017

Page 191

1 portion that you don't see any evidence of an arm,
2 correct?

3 A. Are you on D or E?

4 Q. I'm on D.

5 A. Yes.

6 Q. Now, if you look at E and you compare D
7 with it, do you see that the legs have changed
8 position and now we see an arm?

9 A. I -- I don't know. I don't know.

10 Q. Some of the -- and then if you take a
11 look at --

12 A. It's really blurry.

13 Q. If you take a look at F, you'll see that
14 the arm is in a little bit different position than
15 it was before, right? I know it's blurry, but --

16 A. Right. I'm looking at it.

17 Q. Now, some of the witnesses have told us
18 that after the accident they observed the doctor
19 attempting to get up and rolled his shoulders. Did
20 you observe anything similar?

21 A. No.

22 Q. At the time you were there, did you
23 observe the doctor move his arms or legs or
24 shoulders or any other body part?

25 A. (Shakes head in the negative.)

1 Q. All right. When you approached the
2 doctor, was he in the position that we see in
3 Exhibit 8F?

4 MR. STEPHAN: Objection; foundation.
5 BY MR. KEMP:

6 Q. Assuming -- was the doctor's body in the
7 same position as whatever the object is in -- let's
8 use 8H -- in 8H, for purposes of this examination?

9 A. I don't know. I know -- I don't
10 know, sir.

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

12 A. Because I can't -- I can't tell.

13 Q. So as we sit here today, you can't tell
14 us one way or the other whether the doctor was
15 moving his arms, legs or shoulders after the
16 accident; is that correct?

17 A. No, sir, I can't.

18 Q. Now, when you went up to the doctor, was
19 he making any sort of noise?

20 A. Yes. He was (indicating).

21 Q. Gurgling kind of sound?

22 A. Yes. (Indicating.)

23 Q. The same sound we see on the video? You
24 heard the sound on the video, the gardener's video?

25 A. I didn't hear any sound, but I'm saying,

1 when I first saw him he was (indicating), you know,
2 like (indicating), and you could see the -- like he
3 was breathing out bubbles.

4 Q. Did he appear to be in pain to you?

5 A. Absolutely.

6 MR. KEMP: I have no further questions.

7 MR. CHRISTIANSEN: Switch spots?

8 MR. KEMP: Yeah.

9 EXAMINATION

10 BY MR. CHRISTIANSEN:

11 Q. Good afternoon, Mr. Hubbard. My name is
12 Pete Christiansen. I represent Dr. Katy Barin, who
13 is the widow of the cyclist that was in the accident
14 with you on April the 18th. Okay?

15 A. Yes.

16 Q. I also represent one of her sons.
17 Did you understand them to have two
18 sons?

19 A. Just recently.

20 Q. And do you understand that we have a
21 November trial in this case?

22 A. Yes.

23 Q. And do you know why we have a trial set
24 so quickly?

25 A. (Nods head in the affirmative.)

1 Yes.

2 Q. And is it your understanding that trial
3 has been set because Dr. Barin, Katy, has Stage 4
4 colon cancer?

5 A. Yes.

6 Q. You have your hands over your mouth and
7 it's a little hard to hear you, so if I just ask you
8 is that a "yes" or is that a "no" --

9 A. Yes.

10 Q. -- it's not me being rude; it's just
11 trying to get our record clear. Okay?

12 I want to understand the chronology.

13 We saw the video. After the wreck,
14 okay, that's what I want to talk to you about.
15 After the wreck, all right, you get out of the bus
16 and you call 911 and then you call dispatch?

17 A. Yes.

18 Q. And you saw the length of the phone
19 call, as you and Mr. Kemp were talking, in that
20 video after the accident occurs, where it looks like
21 you're going back and forth to the bus?

22 A. Yes.

23 Q. And for a good chunk of that time you're
24 on the phone with dispatch; fair?

25 A. Right.

EDWARD HUBBARD - 09/20/2017

Page 195

1 Q. And who was it you spoke to at dispatch?

2 A. I don't know her name.

3 Q. And what, if anything, did dispatch tell
4 you you were supposed to do?

5 A. I told -- what did they tell me I had
6 to do?

7 Q. Yes, sir.

8 A. I just -- they didn't tell me to do
9 anything. They just told me to -- they asked did I
10 call 911. I said, yes, I did.

11 And I was mainly asking them to get
12 Robert Garcia down here, and ...

13 Q. Was that it?

14 A. Yeah.

15 Q. And then about how long from that point
16 in time until Mr. Garcia and Don, the last person --
17 the last name that you don't remember, how long
18 until they arrived?

19 A. I don't know, sir. I don't have any
20 sense of time for that particular moment.

21 Q. Let's use the interview you gave with
22 the detective as a water mark. Okay?

23 Did the people from dispatch arrive
24 before or after you gave Metro an interview?

25 A. I want to say after, after.

EDWARD HUBBARD - 09/20/2017

Page 196

1 Q. And if Detective -- Sergeant Salisbury
2 doesn't get out there until hours after the events
3 in question, after the actual accident, would you
4 still think you talked to the people sent by
5 dispatch after you talked to him?

6 A. Honestly, I don't know. I really don't
7 know which happened first. I don't.

8 Q. Okay. Before -- go ahead.

9 A. No, because there were other officers
10 there, too. So I don't know. I don't know.

11 Q. And did you tell all the police
12 officers, from the patrol officers that arrived --
13 you saw in the video with Mr. Kemp like a little --
14 like an SUV pulled up with Metro markings; fair?

15 A. Right.

16 Q. And out of that gets a patrolman, a
17 police officer?

18 A. Right.

19 Q. That's different than the detective you
20 ultimately gave a statement to?

21 A. Correct.

22 Q. There were, I imagine, a number of
23 first responders, police officers, we saw a fire
24 truck pull up, all of which off and on you were
25 talking to?

EDWARD HUBBARD - 09/20/2017

Page 197

1 A. Not -- not the paramedics. I didn't --
2 I didn't get a chance -- I didn't say anything to
3 them.

4 Q. Prior to talking to -- we'll just call
5 it the detective who took the taped statement,
6 because I'm not sure if it's Salisbury or Lourenco.
7 Do you remember a Detective Lourenco?

8 A. No, I don't remember.

9 Q. So before you speak to a Metro
10 officer/detective who recorded your statement, did
11 you talk to anybody, other than dispatch, from your
12 employer?

13 A. I talked to Robert Garcia.

14 Q. And what did Mr. Garcia tell you you
15 were supposed to say in your interview?

16 MR. STEPHAN: Objection; form of the
17 question.

18 THE WITNESS: What was I supposed to say
19 in my interview?

20 BY MR. CHRISTIANSEN:

21 Q. Yeah. What, if anything, did Robert
22 Garcia communicate to you about what you were
23 supposed to say when you went to your interview?

24 A. Nothing. I don't -- nothing.

25 Q. And step back.

1 In the first two -- or in the front row
2 of your bus you told us there were two gentlemen who
3 were seated there, right?

4 A. Right.

5 Q. You know those guys' names today to be
6 Mr. Pears and Mr. Plantz?

7 A. Right.

8 Q. And do you know if both of them were
9 deposed? Mr. Stephan and I and the rest of the
10 lawyers were back in the Chicago area to take their
11 depositions a month or so ago. Did you know that?

12 A. Yes.

13 Q. Was it communicated to you what those
14 two gentlemen said relative to the facts and
15 circumstances leading up to this incident?

16 A. No.

17 Q. You reviewed the police report, correct?

18 A. Yes.

19 Q. That was in the group --

20 A. Right.

21 Q. -- of papers that you looked at?

22 And in the police report you're referred
23 to as Driver 2 or D-2, right?

24 A. I -- I don't have it -- I don't have it
25 in front of me.

EDWARD HUBBARD - 09/20/2017

Page 199

1 MR. CHRISTIANSEN: Do you have your copy
2 of his police report?

3 MR. STEPHAN: I've got one. Do you want
4 to use that?

5 MR. CHRISTIANSEN: Let's mark that as
6 next in line, Ms. Court Reporter.

7 (Exhibit 9 marked.)

8 BY MR. CHRISTIANSEN:

9 Q. Those gentlemen seated to your right and
10 a little bit behind you and then directly behind
11 you, they would have had a clear view of that
12 southbound Pavilion Center just like you did; fair?

13 A. Yes.

14 Q. I mean, it's not a foggy day on this
15 morning in April, right? It's sunny and clear?

16 A. Correct.

17 Q. There's no obstructions preventing you
18 from seeing what's in front of you or beside you or
19 behind you, correct?

20 A. Correct.

21 Q. And there was nothing obstructing their
22 viewpoints, correct?

23 MR. STEPHAN: Objection to foundation.

24 THE WITNESS: They didn't have the
25 driver's viewpoint. I have a viewpoint and they

1 have a viewpoint.

2 BY MR. CHRISTIANSEN:

3 Q. Okay. Well, both of those gentlemen
4 testified that they see in front of the bus that
5 bicycle the entire way until the collision, the
6 entire way southbound on Pavilion Center. Did you
7 know that?

8 MR. STEPHAN: Objection; foundation.
9 Form.

10 THE WITNESS: No.

11 BY MR. CHRISTIANSEN:

12 Q. And you did not see the bicyclist after
13 the 300-foot mark that you told for us, when you
14 believe you passed him at the cutout to the
15 municipal bus stop?

16 A. Correct.

17 Q. You don't see him for a full 300-plus
18 feet, until he just appears in your lane, right?
19 That's your testimony?

20 A. Yes.

21 Q. And both of those gentleman who were
22 seated behind you testified that he's in front of
23 you and they can see him the entire way southbound
24 down Pavilion Center.

25 MR. STEPHAN: Objection; form.

1 Foundation.

2 BY MR. CHRISTIANSEN:

3 Q. Are you aware of that?

4 A. Again, I don't know what they could see,
5 but I know that as I'm scanning my mirrors and as
6 I'm -- I'm in my mirrors and doing what I do, was
7 trained to do, I did not see that bicyclist until I
8 crossed the intersection.

9 Q. Right. You know as a holder of a CDL in
10 the state of Nevada, and New York before that for a
11 significant period of time, you have an obligation
12 to keep a lookout when you're driving; fair?

13 A. Correct.

14 Q. In other words, you've got to know
15 what's in front of you, right?

16 A. Right.

17 Q. You've got to know what's on your
18 sides, right?

19 A. Right.

20 Q. You got to know when you're overtaking
21 or passing persons or vehicles or pedestrians, all
22 that thing -- all that stuff?

23 A. Yes.

24 Q. And so if the two passengers in your bus
25 see a bicyclist in front of you the entire 300 feet

1 down southbound Pavilion Center and you don't -- as
2 you testified, right?

3 A. Correct.

4 Q. -- then you weren't maintaining a proper
5 lookout --

6 MR. STEPHAN: Objection; form and
7 foundation.

8 BY MR. CHRISTIANSEN:

9 Q. -- correct?

10 A. Again, they have a different view than I
11 do, sir.

12 Q. Who has a better view?

13 A. Who has a better -- I have -- I have a
14 view -- a driver's view. I don't know who has a
15 better view. I don't know what their view is. I'm
16 the operator of the bus and I'm responsible to --
17 like I -- like I've been stating, to look around the
18 bus, and that's what I -- what I did.

19 Q. And I'm telling you both those
20 gentlemen --

21 A. Again, I can't --

22 Q. Just listen to my question. Okay?
23 -- testified that from the front seats
24 of your bus, they watched Dr. Khiabani ride his bike
25 in front of the bus, up into the intersection.

EDWARD HUBBARD - 09/20/2017

Page 203

1 MR. STEPHAN: Objection.

2 BY MR. CHRISTIANSEN:

3 Q. Did you know that?

4 MR. STEPHAN: Objection; form and
5 foundation.

6 THE WITNESS: I'm listening to what
7 you're saying, sir.

8 BY MR. CHRISTIANSEN:

9 Q. Assuming their recollections are
10 accurate, then you just missed him for that
11 300 yards, because you said you didn't see him,
12 right?

13 A. I did not miss him.

14 Q. That's not what I asked you.

15 You told Mr. Kemp you didn't see
16 Dr. Khiabani from the time you passed him at the
17 municipal bus cutout at 300 feet north of the
18 intersection until the second before the
19 collision, right?

20 A. Correct.

21 Q. And both Mr. Pears and Mr. Plantz, who
22 were seated in the front seats of your bus,
23 testified that they watched Dr. Khiabani ride his
24 bike in front of the bus the entire way until the
25 collision.

EDWARD HUBBARD - 09/20/2017

Page 204

1 MR. STEPHAN: Objection; form and
2 foundation.

3 BY MR. CHRISTIANSEN:

4 Q. Did you know that?

5 A. I'm listening to your telling me that,
6 yeah.

7 Q. If they're right, then you weren't
8 paying proper lookout, correct?

9 MR. STEPHAN: Objection; foundation.

10 THE WITNESS: No, that's not correct.

11 BY MR. CHRISTIANSEN:

12 Q. Well, with a bus driver with a CDL and a
13 bicyclist in front of him, he should be able to see
14 him for the 300 feet he's behind him; right?

15 A. That's correct.

16 Q. And you didn't see anybody, did you?

17 A. No, sir, I did not.

18 Q. So if he's there and you didn't see him,
19 you weren't maintaining proper lookout, correct?

20 MR. STEPHAN: Objection; foundation.

21 THE WITNESS: Again, as I stated, I was
22 in my mirrors and leaning into my mirrors. He was
23 not beside me.

24 BY MR. CHRISTIANSEN:

25 Q. Was he in front of you?

EDWARD HUBBARD - 09/20/2017

Page 205

1 A. Again, I don't know -- I don't know
2 where he was until he -- until he came in from
3 that -- like I said, from that angle into the --
4 onto the side of the door bus.

5 MR. CHRISTIANSEN: All right.

6 Well, Eric, can you hand me the bike,
7 please.

8 BY MR. CHRISTIANSEN:

9 Q. I'm going to back this bus up to where
10 you told -- why don't you put that bike where you
11 passed it, right at the cutout as you told us, the
12 300-foot line.

13 A. It's not on here. I can't. It was back
14 here (indicating).

15 Q. Okay. So before the 300-foot line you
16 passed him?

17 A. Correct. Because the thing that's over
18 here, sir.

19 Q. All right. I got you. It's further
20 north is what you're saying?

21 A. Right.

22 Q. And so for the entire -- we've got the
23 big blowup out here -- for the entire 300 feet, and
24 even more than that because the cutout's more north,
25 you don't see the bicyclist until it appears just

1 south of the crosswalk?

2 A. Correct.

3 Q. Explain that to me. Where was that
4 bike?

5 MR. STEPHAN: Objection; form.

6 THE WITNESS: I'm sorry?

7 BY MR. CHRISTIANSEN:

8 Q. Where was that bike, for the ten seconds
9 you're driving down Pavilion Center?

10 A. He was not in my -- he was not in any
11 perimeter of my bus or in the bus -- bike lane
12 beside me.

13 Q. So --

14 A. So I don't know. I can't say where he
15 was, sir.

16 Q. So if the bike was in the bike lane in
17 front of the bus you would have seen him. Can we
18 agree?

19 A. If the bike -- if that -- if he was, at
20 some point during that -- yes, I would have seen him
21 with the -- with the leaning in and looking in my
22 mirrors, yes, I would have seen him.

23 Q. And you didn't see him; we're clear on
24 that?

25 A. Yes, sir.

1 Q. For at least 300 feet before the
2 intersection, you don't see the bike?

3 A. Right, he was not in my -- he was not in
4 the vicinity of my bus, correct.

5 Q. And you don't believe the bike
6 transported, like somehow beamed into the point of
7 collision, do you?

8 A. Again, I don't know where that bike
9 was, sir.

10 Q. But if he was in front of you, you would
11 have seen him?

12 A. Correct.

13 Q. And so can we agree he couldn't have
14 been in front of you, because you would have
15 seen him?

16 A. When you say "in front," this is in
17 front (indicating).

18 Q. Right. If he's in the bike lane, where
19 I've got the bike right now, and you're in the
20 driver's seat of that bus where it is right now,
21 could you see the doctor?

22 A. You're saying -- you're saying in the
23 bike lane?

24 Q. Yeah.

25 A. Yes. Yes.

EDWARD HUBBARD - 09/20/2017

Page 208

1 Q. And you didn't ever see him in front of
2 you for 300-plus feet, correct?

3 A. That's -- because I had already -- I had
4 already passed him back here. I'm not going very
5 fast.

6 Q. And that's the same -- from the moment
7 you passed him at the municipal cutout until the
8 second before the collision, you don't see the
9 bicyclist anywhere in your purview in front of you,
10 to the side of you, or in your mirrors, right?

11 A. I answered. No, sir.

12 Q. That's a correct statement, is it not?

13 A. He was not -- he was not in my area,
14 correct.

15 Q. So it has to be one of two things.
16 Either you missed him, you didn't see him, or he was
17 in your blind spot, right?

18 MR. STEPHAN: Objection to foundation.

19 THE WITNESS: I don't know, sir.

20 BY MR. CHRISTIANSEN:

21 Q. What -- give me another plausible
22 explanation for how a bike travels 4 or 500 feet
23 next to a bus and you don't see him before the
24 collision occurs?

25 A. It's possible he was over here

EDWARD HUBBARD - 09/20/2017

Page 209

1 (indicating). I don't know. But he was not in the
2 bike lane. You see this whole -- we're not even --
3 you're not even mentioning this whole area here that
4 he could have been in.

5 Q. Did you see him in the right-turn lane?

6 A. No, sir. No, sir, I did not, because,
7 again, I'm focusing on -- this is what I'm focusing
8 on. As I'm traveling, this -- of course I can't see
9 in the back of me, but I'm talking about -- this is
10 what I'm focusing on. This is what I'm focusing on
11 as I'm traveling. That's what I'm focusing on. And
12 you still have all of this that you're not
13 discussing, and it's possible that that --
14 unfortunately, he could have been over there. I
15 don't know.

16 But what I do know is he was not -- this
17 is my area, man. I'm responsible for this, and this
18 is --

19 Q. All right. Mr. Hubbard --

20 A. I'm explaining it to you, sir.

21 Q. Okay.

22 A. And this is where -- this is what I --
23 this is what I was making sure was nothing in there
24 (indicating).

25 Q. Mr. Hubbard, I don't want you to guess.

EDWARD HUBBARD - 09/20/2017

Page 210

1 A. I'm not guessing.

2 Q. Isn't it true you never saw the bicycle
3 in the right-hand turn lane, the lane that you're
4 pointing to on South Pavilion Center? You never saw
5 him there?

6 A. I -- I'm not looking over there. I'm
7 not looking to there. I'm -- I'm telling you what
8 I -- where I'm at.

9 Q. It's a yes-or-no question. Isn't it
10 true you --

11 A. No, I did not. No, I did not see him --
12 you said in this lane here?

13 Q. Right.

14 A. In the car lane? No, I did not.

15 Q. And you never saw him in the bike lane,
16 right?

17 A. No, sir.

18 Q. That's a correct statement, you never
19 saw him in the bike lane?

20 A. Correct.

21 Q. Until the moment before the crash?

22 A. Right. But he wasn't in the bike lane.
23 He was as I -- as I had it up there.

24 Q. I remember how you had it up there.
25 And there was nothing in your way or

1 there was no like box trucks or anything in between
2 you and the right-turn lane, right?

3 A. I don't remember. I don't know what was
4 over there. I don't know.

5 Q. And so since you didn't see the
6 bicyclist over there, you can't testify that that's
7 where he was, correct?

8 A. As I said, I don't know where -- I don't
9 know where he was, yeah.

10 Q. And again, back to Mr. Pears and
11 Mr. Plantz. Both of them testified that you, as
12 you're going southbound on Pavilion Center, cross
13 into the bicycle lane, and then make some type of
14 comment about, Oops, this isn't my turn, and then
15 come back out of the bicycle lane.

16 A. No, sir, I never said that.

17 Q. Mr. Pears told the police that on
18 the very day the incident happened. Were you aware
19 of that?

20 A. No. No, I was not aware. I never said
21 that. What I've said --

22 Q. Listen to my question.

23 Were you aware that Mr. Pears told the
24 police you had mistakenly gotten into the turn lane
25 too early and had to get back out of it?

1 A. No, I was not aware.

2 Q. Were you aware he testified to that in
3 his deposition a month or so ago?

4 A. No, sir.

5 Q. Were you aware Mr. Plantz gave the same
6 testimony?

7 A. No, sir.

8 Q. You saw the gardener -- we'll refer to
9 him, because I can't pronounce his last name -- he
10 was standing where that fire hydrant is, according
11 to his testimony. Do you remember he was the bald
12 Hispanic man on the videos Mr. Kemp showed you? Do
13 you remember him?

14 A. Yes.

15 Q. He says he sees you go into the bike and
16 right-turn lane.

17 So that's three different eyewitnesses,
18 two of which are on your bus, that say you crossed
19 the bike lane before coming back out of it into the
20 southbound travel lane.

21 A. No, sir.

22 MR. STEPHAN: Objection; form and
23 foundation.

24 BY MR. CHRISTIANSEN:

25 Q. They're all wrong?

EDWARD HUBBARD - 09/20/2017

Page 213

1 A. They're mistaken. I did not -- I had no
2 reason to go over there. My turn is not there. My
3 turn is the next turn.

4 Q. Any idea why a gardener and two guys on
5 your bus, who've never met each other in life, would
6 have -- would all three testify that your version of
7 events is wrong and that you did, in fact, get into
8 that right-turn lane?

9 MR. STEPHAN: Objection; form and
10 foundation.

11 THE WITNESS: Again, the only thing I
12 can say is they're mistaken. I had no reason to go
13 over there.

14 BY MR. CHRISTIANSEN:

15 Q. When you get off the bus after the
16 incident, are you saying things audibly?

17 A. I'm sorry. Can you --

18 Q. After the collision, when you get off of
19 the bus, you're moving your hands about, you appear
20 to be upset. Fair?

21 A. I'm totally distraught.

22 Q. What are you saying?

23 A. I don't remember exactly what I'm
24 saying. I know I was asking, "Is he all right? Is
25 he going to make it? Is he going to make it? Is he

1 all right?"

2 Q. Look at page 2 of Exhibit 9, which is
3 the police report, and look down to the third full
4 paragraph for me, if you would.

5 A. You said page 2?

6 Q. Yeah, just turn to the second page. The
7 third full paragraph, I'll read it to you.

8 "D-2" -- that's you, that's the
9 driver -- "stated he was just traveling straight and
10 saw Pedal Cyclist 1, so he moved over to the left to
11 give pedal cyclist room, and pedal cyclist hit
12 Vehicle 1, and Driver 2 stopped and called for
13 medical."

14 Is that what you told the cops?

15 A. No, sir.

16 Q. So the cops --

17 A. This is -- this is --

18 Q. Hold on. I asked you a question. You
19 answered it.

20 Is that what you told the cops, yes
21 or no?

22 A. Not -- that's not exactly the words I
23 used. I don't -- I don't even -- no, that's not
24 exactly -- I guess they put that in their own words,
25 but that's not exactly what I said.

EDWARD HUBBARD - 09/20/2017

Page 215

1 Q. Okay. So, so far we've got Mr. Pears
2 being wrong about how he remembers you traveling;
3 fair? You disagree with his testimony; is that
4 right?

5 A. Correct.

6 Q. We've got Mr. Plantz, you disagree with
7 his testimony, correct?

8 A. Correct.

9 Q. We've got the gardener who's just
10 standing on the sidewalk blowing leaves, you
11 disagree with his testimony, correct?

12 A. They're mistaken, that's correct.

13 Q. And now you're disagreeing with what you
14 told the cops and what they put in your police
15 report about what you said?

16 MR. STEPHAN: Objection; form and
17 foundation.

18 THE WITNESS: Right. What I
19 said to the --

20 BY MR. CHRISTIANSEN:

21 Q. Just answer the question "yes" or "no."
22 You're disagreeing with what the cops put in the
23 report, correct?

24 A. What he put in the report is not what I
25 said, correct.

EDWARD HUBBARD - 09/20/2017

Page 216

1 Q. All right. So the cops got it
2 wrong, too?

3 A. He misworded my statement, correct.
4 Because that's not exactly what I said.

5 Q. Right. Because that's not what you've
6 said today, is it? I mean, what's in the police
7 report's not what you told Mr. Kemp for the last
8 three hours?

9 A. Correct.

10 Q. I mean, you told Mr. Kemp you didn't see
11 a bicycle for 300-plus feet, correct?

12 A. Correct.

13 Q. And this -- but the police report says
14 you did see him, correct?

15 A. Correct.

16 Q. You real early on, and I think it
17 might have been in response to Mr. Terry's
18 questions, said that you learned in your training
19 that you had to stay 3 feet away from a cyclist. Do
20 you remember that?

21 A. Yes, sir.

22 Q. Tell me when you learned that. I want
23 to know when in time you learned the actual
24 distance, 3 feet, you were supposed to stay from a
25 cyclist?

EDWARD HUBBARD - 09/20/2017

Page 217

1 A. That's -- that was -- I might have --
2 even in New York, it's -- I don't know if it's
3 exactly 3, but you've got to give them room,
4 correct.

5 Q. Hold on. My question is: Tell me when
6 in time you learned the distance 3 feet. Because
7 that's what you said very specifically --

8 A. That -- it may have been in one of the
9 videos, or if not the video, Garcia may have talked
10 about it in our training when we were doing the
11 classroom training.

12 Q. See, that's the problem. See, we've
13 already deposed the head of security that designs
14 all the training, and he didn't know that the --

15 A. Head of security?

16 Q. The head of safety, I'm sorry,
17 Mr. Bartlett. And he didn't know that the required
18 distance was 3 feet.

19 So if he didn't know it, he couldn't
20 teach it to somebody else, and he agreed with that.

21 MR. STEPHAN: Objection; form and
22 foundation.

23 THE WITNESS: I -- I -- Mr. Bartlett is
24 not who trained me and did my classes.

25 BY MR. CHRISTIANSEN:

1 Q. And at some point that bus -- because
2 you know the bus hits and ultimately runs over the
3 head of Dr. Khiabani, right?

4 MR. STEPHAN: Objection. Foundation.
5 BY MR. CHRISTIANSEN:

6 Q. You know that, don't you, as you sit
7 here today?

8 A. Yes, sir. Yes.

9 Q. And you know he dies as a result --

10 A. Correct.

11 Q. -- correct?

12 So at some point you'll agree with me
13 that the bus and the bike were closer than 3 feet to
14 each other, right?

15 A. Again, as I stated, at -- up there we
16 were closer than 3 feet. When he -- when he came
17 over into -- into this area here, yes, we were
18 closer than 3 feet.

19 Q. All right. And before you were closer
20 than 3 feet, before that split second, as you've
21 described it, that you see him turning towards your
22 lane or into your lane, you'd never seen that
23 bicycle until way back at the municipal cutout?

24 A. That's correct.

25 Q. And Mr. Kemp read you the statute that

1 you were unaware of in Nevada that requires a bus
2 driver to get into the far left lane if it's open.

3 Do you remember that?

4 A. Yes.

5 Q. And in April you didn't know that that
6 was the law?

7 A. I did not.

8 Q. And you -- you agree that you were
9 able to do it, you could have done it that day, but
10 you didn't?

11 MR. STEPHAN: Objection as to form and
12 foundation.

13 THE WITNESS: Correct.

14 BY MR. CHRISTIANSEN:

15 Q. Same question about the horn. You were
16 unaware that an audible warning was required under
17 certain circumstances when overtaking a bicycle,
18 back in April?

19 A. Correct, yes.

20 Q. Right. And had you been aware of both
21 of them, I think you told Mr. Kemp you would have
22 got over and honked your horn, if you would have
23 known that was the law?

24 A. Correct.

25 Q. And the collision takes place -- I think

1 it was H, picture H. And you had it somewhere
2 like -- about like that (indicating)?

3 A. No, sir.

4 Q. Further out?

5 A. Yeah, I'm not even in that lane, sir.
6 I'm in this lane.

7 Q. You're right. I got it wrong,
8 thank you.

9 So I think you had it about -- I can't
10 see the bike, but somehow like that (indicating).
11 Fair?

12 A. Can I get up and put it where --

13 MR. STEPHAN: Microphone. Microphone.

14 BY MR. CHRISTIANSEN:

15 Q. It's all right. We all do it.

16 A. (Indicating.)

17 Q. You've got to get your microphone back
18 on, Mr. Hubbard.

19 So you've placed the bus and the bike in
20 the positions you were when you first visualized the
21 bicycle?

22 A. Well, I have it a little crooked,
23 but ...

24 Q. Unintentionally a little crooked, right?
25 It was more like that (indicating)?

EDWARD HUBBARD - 09/20/2017

Page 221

1 A. Yes, sir.

2 Q. And you've got the bike coming in at
3 a -- not a -- straight into the lane, but at a --
4 somewhat of an angle?

5 A. Right, yes, sir.

6 Q. And if the bus is in (indicating) -- I
7 just moved the bus into the lane further to the
8 left, but kept it at the same space. Do you see
9 that?

10 A. Yes, sir.

11 Q. If that bus is in that left lane, this
12 collision never occurs, does it?

13 MR. STEPHAN: Objection; form and
14 foundation.

15 BY MR. CHRISTIANSEN:

16 Q. Does it?

17 A. I hear what you're saying, sir.

18 Q. That's a true statement, correct?

19 A. It's possible.

20 Q. If the bus is in the left lane, as
21 required by Nevada law, the collision doesn't occur;
22 isn't that true?

23 A. Correct, sir.

24 MR. CHRISTIANSEN: I don't have anything
25 else. Thank you, sir.

EDWARD HUBBARD - 09/20/2017

Page 222

1 MR. TOOMEY: No questions.

2 MR. STEPHAN: Can we take a two-minute
3 break?

4 MR. CHRISTIANSEN: Sure.

5 THE VIDEOGRAPHER: Going off the record.
6 The time is 2:30.

7 (A discussion is held off the record.)

8 THE VIDEOGRAPHER: Back on the record.
9 The time is 2:31.

10 EXAMINATION

11 BY MR. TERRY:

12 Q. Mr. Hubbard, I have just a few questions
13 for you, and I want to use this exhibit, which is
14 Exhibit Number --

15 MR. KEMP: That's not an exhibit. It's
16 just a demonstrative.

17 BY MR. TERRY:

18 Q. -- demonstrative exhibit, is a blowup of
19 the road with markings on it that indicate 300 feet
20 to zero feet at the intersection. Okay?

21 A. Yes.

22 Q. I'm going to take this bus and I'm going
23 to put it here. Okay? The bicycle is here. I'm
24 just going to put the bicycle here. Okay. And this
25 is just so you and I can discuss the issue. All

EDWARD HUBBARD - 09/20/2017

Page 223

1 right?

2 Now, it is my understanding that when
3 you turned from Charleston onto Pavilion, you
4 entered into the right-hand lane?

5 A. Yes, sir.

6 Q. And the bus -- or the bike was in the
7 bike lane?

8 A. Yes.

9 Q. In front of you?

10 A. Yes, sir.

11 Q. And at some point you overtook the bike?

12 A. Passed the bike, yes.

13 Q. Passed the bike.

14 And as you're coming up on the bike and
15 passing the bike, you are able to see the bike,
16 visualize the bike?

17 A. Yes, sir.

18 Q. You can see it in front of you in the
19 bike lane and you can see it as you overtake?

20 A. Yes, sir.

21 Q. And you are aware, or it is your opinion
22 that you have a responsibility to maintain a lateral
23 separation between you and the bike of 3 to 4 feet?

24 A. Yes, sir.

25 Q. And you do that?

1 A. Correct.

2 Q. And then once you do that, you pass the
3 bike and continue on your path?

4 A. Right.

5 Q. It is your testimony that that maneuver
6 occurred on South Pavilion at the point where there
7 is a cutout for the city bus?

8 A. Right.

9 Q. Which is more than 300 feet from the
10 zero line?

11 A. Yes, sir.

12 Q. And it is not depicted on this aerial
13 photograph?

14 A. No, sir.

15 Q. Now, once you pass the bike, as a
16 trained bus driver, you still maintain forward
17 vision, you look forward?

18 A. Yes, sir.

19 Q. And do you maintain vision to the sides
20 of your vehicle?

21 A. Absolutely.

22 Q. Do you have a process or a pattern that
23 you follow when you're doing this?

24 A. Well, you're doing -- you're doing left
25 to right, and, you know, you're scanning, it's

1 called scanning, and that's what you're doing, as
2 you're driving down.

3 Q. As you're driving down, then, are you
4 always scanning?

5 A. Yes. It's like a -- it's like -- it's
6 like every three to five seconds or -- just
7 scanning, you know (indicating).

8 Q. I'm going to move the bike -- or the bus
9 down here, just so I can understand.

10 So when you're at that position and you
11 are scanning, you are looking ahead and to your left
12 and to your right?

13 A. Yes.

14 Q. And when you look to your left and to
15 your right, you look into your mirrors?

16 A. Correct.

17 Q. And you look into your mirrors and they
18 give you a view down the side of your bus?

19 A. Yes, sir.

20 Q. And you move within your seat so that
21 you can see completely down the side of your bus?

22 A. So you get a -- right, a more better
23 view. Yes, sir.

24 Q. When you do that maneuver, are there any
25 blind spots along the side of your bus?

EDWARD HUBBARD - 09/20/2017

Page 226

1 A. Not to my knowledge. That's the whole
2 idea. It takes away the blind spot.

3 Q. And as you're going down the road, South
4 Pavilion, and you're doing that maneuver -- forward
5 looking, left, right, moving backwards and
6 forwards -- can you see or is it within your area of
7 vision what is depicted here as the bike path? Can
8 you see that?

9 A. Absolutely.

10 Q. As you go down, when you pass the bus
11 [sic], until you visualize the bike again as it
12 comes into your lane of travel, do you ever see the
13 bike in the bike path?

14 A. No, sir.

15 MR. KEMP: Wait. You said "pass the
16 bus."

17 MR. STEPHAN: Yeah, he misstated.

18 MR. TERRY: Where did I use the wrong
19 term?

20 MR. KEMP: You said "pass the bus."

21 MR. STEPHAN: You said "pass the bus."

22 MR. KEMP: "When you pass the bus."

23 MR. TERRY: I'm sorry.

24 BY MR. TERRY:

25 Q. Okay. So after you pass the bike --

1 forgive me, it was the tuna fish that this guy fed
2 me that did that -- after you pass the bike then,
3 and you proceed down South Pavilion, you never see
4 the bike again in the bike lane until he's in front
5 of you?

6 A. Until he's -- right. From that angle
7 like I had up there.

8 Q. Based on your knowledge of how you drive
9 the bus and do the scanning that you have described
10 for us, if he had been in the bike path after the
11 cutout for the city bus when you passed him, would
12 you have seen him?

13 A. Yes, sir.

14 Q. When you saw him, was a portion of the
15 bike in your lane of travel?

16 A. Absolutely. That's why I
17 (indicating) -- that's why I did my (indicating)
18 evasive movement, because otherwise he was going
19 to -- as I -- as everyone saw, he was going to come
20 right into the bus.

21 Q. Was then his front tire ahead of your
22 bumper?

23 A. No. I would say that it was kind of at
24 the door.

25 Q. At the door?

EDWARD HUBBARD - 09/20/2017

Page 228

1 A. Yes, sir.

2 MR. TERRY: Okay. All right. Thank
3 you, sir. That's all I have.

4 MR. KEMP: I don't have anything more.

5 MR. STEPHAN: Nothing. Okay.

6 THE VIDEOGRAPHER: We're going off the
7 record. The time is 2:36.

8

9 (The deposition concluded at 2:36 p.m.)

10 -oOo-

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

EDWARD HUBBARD - 09/20/2017

Page 229

1	CERTIFICATE OF DEPONENT			
2	PAGE	LINE	CHANGE	REASON
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14			*	*
15			*	*
16			*	*
17			*	*
18			*	*
19			*	*
20			*	*
21			*	*
22			*	*
23			*	*
24			*	*
25			*	*

I, EDWARD HUBBARD, 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.

EDWARD HUBBARD, Deponent

EDWARD HUBBARD - 09/20/2017

Page 230

1 CERTIFICATE OF REPORTER

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

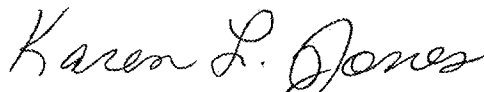
4 I, Karen L. Jones, a duly commissioned and
5 licensed Court Reporter, Clark County, State of
6 Nevada, do hereby certify: That I reported the
7 taking of the deposition of the witness, EDWARD
8 HUBBARD, commencing on Wednesday, September 20,
9 2017, at 10:01 a.m.

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 24th day of September, 2017.

24
25



KAREN L. JONES, CCR NO. 694

29

29

1 APEN

2 D. Lee Roberts, Jr., Esq.

3 Nevada Bar No. 8877

4 lroberts@wwhgd.com

5 Howard J. Russell, Esq.

6 Nevada Bar No. 8879

7 hrussell@wwhgd.com

8 David A. Dial, Esq.

9 Admitted Pro Hac Vice

10 ddial@wwhgd.com

11 Marisa Rodriguez, Esq.

12 Nevada Bar No. 13234

13 mrodriguez@wwhgd.com

14 WEINBERG, WHEELER, HUDGINS,

15 GUNN & DIAL, LLC

16 6385 S. Rainbow Blvd., Suite 400

17 Las Vegas, Nevada 89118

18 Telephone: (702) 938-3838

19 Facsimile: (702) 938-3864

20 Attorneys for Defendant

21 Motor Coach Industries, Inc.

Darrell L. Barger, Esq.

Admitted Pro Hac Vice

dbarger@hdbdlaw.com

Michael G. Terry, Esq.

Admitted Pro Hac Vice

mterry@hdbdlaw.com

HARTLINE DACUS BARGER DREYER LLP

800 N. Shoreline Blvd.

Suite 2000, N Tower

Corpus Christi, TX 78401

Telephone: (361) 866-8000

John C. Dacus, Esq.

Admitted Pro Hac Vice

jdacus@hdbdlaw.com

Brian Rawson, Esq.

Admitted Pro Hac Vice

brawson@hdbdlaw.com

HARTLINE DACUS BARGER DREYER LLP

8750 N. Central Expressway, Suite 1600

Dallas, TX 75231

Telephone: (214) 369-2100

DISTRICT COURT

CLARK COUNTY, NEVADA

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.

Case No.: A-17-755977-C

Dept. No.: XIV

VOLUME III: 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

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

001227

1 I declare under penalty of perjury that the foregoing is true and correct.

2 DATED this 1st day of December, 2017.

3 WEINBERG, WHEELER, HUDGINS,
4 GUNN & DIAL, LLC

5 

6 D. Lee Roberts, Jr., Esq.
7 Howard J. Russell, Esq.
8 David A. Dial, Esq.
9 Marisa Rodriguez, Esq.
10 Weinberg, Wheeler, Hudgins,
11 Gunn & Dial, LLC
12 6385 S. Rainbow Blvd., Suite 400
13 Las Vegas, NV 89118

14 Darrell L. Barger, Esq.
15 Michael G. Terry, Esq.
16 Hartline Dacus Barger Dreyer LLP
17 800 N. Shoreline Blvd.
18 Suite 2000, N Tower
19 Corpus Christi, TX 78401
20 John C. Dacus, Esq.
21 Brian Rawson, Esq.
22 Hartline Dacus Barger Dreyer LLP
23 8750 N. Central Expressway, Suite 1600
24 Dallas, TX 75231

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

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

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of December, 2017, a true and correct copy of the foregoing **APPENDIX OF EXHIBITS TO MOTION FOR SUMMARY JUDGMENT ON PUNITIVE DAMAGES** was served by e-service, in accordance with the Electronic Filing Procedures of the Eight Judicial District Court.

Will Kemp, Esq.
Eric Pepperman, Esq.
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Pkwy., 17th Floor
Las Vegas, NV 89169
e.pepperman@kempjones.com

Attorneys for Plaintiffs

Keith Gibson, Esq.
James C. Ughetta, Esq.
LITTLETON JOYCE UGHETTA PARK & KELLY
LLP
The Centre at Purchase
4 Manhattanville Rd., Suite 202
Purchase, NY 10577
Keith.Gibson@LittletonJoyce.com
James.Ughetta@LittletonJoyce.com

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

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

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

///

///

///

///

Peter S. Christiansen, Esq.
Kendele L. Works, Esq.
CHRISTIANSSEN LAW OFFICES
810 S. Casino Center Blvd.
Las Vegas, NV 89101
pete@christiansenlaw.com
kworks@christiansenlaw.com

Attorneys for Plaintiffs

C. Scott Toomey, Esq.
LITTLETON JOYCE UGHETTA PARK & KELLY
LLP
201 King of Prussia Rd., Suite 220
Radnor, PA 19087
Scott.toomey@littletonjoyce.com

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

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


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

1 Michael J. Nunez, Esq.
 2 MURCHISON & CUMMING, LLP
 3 350 S. Rampart Blvd., Suite 320
 4 Las Vegas, NV 89145
 5 mnunez@murchisonlaw.com

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

Paul E. Stephan, Esq.
 Jerry C. Popovich, Esq.
 William J. Mall, Esq.
 SELMAN BREITMAN LLP
 6 Hutton Centre Dr., Suite 1100
 Santa Ana, CA 92707
pstephan@selmanlaw.com
jpopovich@selmanlaw.com
wmall@selmanlaw.com

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


 An Employee of WEINBERG, WHEELER,
 HUDGINS, GUNN & DIAL, LLC

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

EXHIBIT 5

EXHIBIT 5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DISTRICT COURT

COUNTY OF CLARK, NEVADA

KEON KHIABANI AND ARIA KHIABANI,
MINORS BY AND THROUGH THEIR NATURAL
MOTHER, KATAYOUN BARIN, ET AL.,

Defendants.

vs.

MOTOR COACH INDUSTRIES, INC., A
DELAWARE CORPORATION, ET AL.,

Defendants.

No. A-17-755997-
C

VIDEOTAPED DEPOSITION OF MARK B. BARRON, a witness
herein, noticed by Kemp, Jones & Coulthard, at
523 West 6th Street, Los Angeles, California, at
2:18 p.m., on Tuesday, September 26, 2017, before
Jana Ruiz, CSR 12837.

Job No.: 418647

001232

MARK B. BARRON - 09/26/2017

Page 2

1 APPEARANCES OF COUNSEL:

2

3 For Plaintiffs:

4 KEMP, JONES & COULTHARD

5 BY ERIC PEPPERMAN

6 3800 Howard Hughes Parkway, 17th Floor

7 Las Vegas, Nevada 89169

8 (702)385-6000

9

10 For Defendant MOTOR COACH INDUSTRIES, INC.:

11 HARTLINE DACUS BARGER DREYER, LLP

12 BY MICHAEL G. TERRY

13 800 North Shoreline Road, Suite 2000N

14 Corpus Christi, Texas 78401

15 (361)866-8000

16 mterry@hdbdlaw.com

17

18

19 Also Present: MARNIE LEVY, Videographer;

20 KRISTA BARRY, Public Transportation Safety

21 International Corporation

22

23

24

25

MARK B. BARRON - 09/26/2017

Page 3

1 I N D E X

2 WITNESS: MARK B. BARRON

3 EXAMINATION BY: PAGE

4 MR. PEPPERMAN 5, 96, 116

5 MR. TERRY 67, 110, 117

6

7

8 E X H I B I T S

9	PLAINTIFF	DESCRIPTION	IDENTIFIED	MARKED
10	EXHIBIT 1	United States Patent Number 5,462,324	11	119
11	EXHIBIT 2	Photograph	17	119
12	EXHIBIT 3	S-1 Gard Dangerzone Deflector Product Information	21	119
14	EXHIBIT 4	Prevention of Accidents Caused by Rotating Transit Bus Wheels by James M. Green, P.E., DEE	24	119
18	EXHIBIT 5	Journal of the National Academy of Forensic Engineers paper	25	119
19	EXHIBIT 6	Thumb drive	28	119
20	EXHIBIT 7	Testimonial letters	47	119
21	EXHIBIT 8	TCRP Report 125	52	119
22	EXHIBIT 9	Important Installation Instructions for Dangerzone Deflector	92	119

25

MARK B. BARRON - 09/26/2017

Page 4

14:18 1 THE VIDEOGRAPHER: Good afternoon. We are on the
2 record. The time is 2:18 p.m. on Tuesday,
3 September 26th, 2017. This is the beginning of Media
4 Number 1 in the deposition of Mr. Mark Barron in the
14:18 5 matter of Keon Khiabani, et al., versus Motor Coach
6 Industries, Inc., et al. This is Case Number
7 A-17-755977-C.

8 This deposition is being held at 523 West 6th
9 Street in Los Angeles, California. The court reporter
14:19 10 today is Ms. Jana Ruiz, and I am Marnie Levy, certified
11 legal video specialist, retained by Litigation Services,
12 3770 Howard Hughes Parkway, Suite 300, in Las Vegas,
13 Nevada.

14 This deposition is being videotaped at all times
14:19 15 unless specified to go off the video record.

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

18 THE WITNESS: Mark B. Barron.

19 MR. PEPPERMAN: Eric Pepperman for plaintiffs.

14:19 20 MR. TERRY: Michael Terry, defendant MCI.

21 MS. BARRY: Krista Barry for Public Transportation
22 Safety.

23 THE VIDEOGRAPHER: Please swear in the witness.
24 (Continued on following page.)
25

MARK B. BARRON - 09/26/2017

Page 5

14:19

1 MARK B. BARRON,
2 a witness herein, having been sworn, testifies as
3 follows:

4

14:19

5 -EXAMINATION-

6

7 BY MR. PEPPERMAN:

8 Q. Mr. Barron, for the record, my name is
9 Eric Pepperman. I represent the plaintiffs in this
10 lawsuit.

14:19

11 Can you please spell your name for the record.

12 A. M-A-R-K, B., Barron, B-A-R-R-O-N.

13 Q. And have you ever been known by any other
14 names?

14:20

15 A. Yes.

16 Q. What other names?

17 A. Mark Bowen, B-O-W-E-N, which is a middle name.

18 Q. Have you ever had your deposition taken before?

19 A. Yes.

14:20

20 Q. Approximately how many times?

21 A. Oh, over the years, several.

22 Q. When was the last time you've had your
23 deposition taken?

24 A. Three years.

14:20

25 Q. Just give you a brief reminder of some of the

14:20 1 highlights.

2 The oath you were given is the same oath you would

3 be given in the court of law.

4 Do you understand that?

14:20 5 A. Uh-huh, yes.

6 Q. Everything that is being said today is being

7 transcribed in a booklet, and you will have the

8 opportunity to review that booklet and sign off on it or

9 make changes to your testimony today.

14:21 10 Any substantive changes -- for example, changing a

11 yes answer to a no answer -- could be commented upon and

12 adversely affect your credibility.

13 Do you understand that?

14 A. I understand.

14:21 15 Q. Now, it's my understanding that you are waiving

16 the right to review and sign off on the transcript?

17 A. Yes.

18 Q. If that changes at the end of the deposition,

19 please just let me know.

14:21 20 Some things for the benefit of the court reporter,

21 everything that you say today is being transcribed and

22 videotaped. Certain things, like nods of the head,

23 uh-huh, huh-uh, they translate to the videotape, but

24 they don't translate to the transcript.

14:21 25 So we'd ask you to answer questions audibly and yes

14:21 1 or no as opposed to uh-huh, huh-uh, hm-mm, mm-hm. So I
2 might remind you if you give me one of those answers.
3 I'm not trying to pester you. I'm just trying to make
4 sure we have a clear record.

14:22 5 The other common problem we have is, in
6 conversation, it's very common to anticipate what the
7 other person is saying and to start responding before
8 the other person is done talking.

9 That creates a special problem in this environment
14:22 10 because, one, it's hard for the court reporter to type
11 out what two people are saying at the same time, and
12 two, it creates a disjointed record.

13 So I would ask that you do your best to wait until
14 the person asking the question is done with their
14:22 15 question before you answer, and I will do my best, at
16 least, to wait until you're done with your answer before
17 I ask my next question; okay?

18 I don't anticipate we'll be here very long, but
19 it's certainly not an endurance contest. If you need a
14:22 20 break, just let me know. We can go off record and take
21 a break. If, in the interim, if -- we typically take
22 break about an hour or so in.

23 Can you tell me, just give me a brief thumbnail of
24 your educational background.

14:23 25 A. Let's see, high school.

MARK B. BARRON - 09/26/2017

Page 8

14:23 1 Q. You're a high school graduate?

2 A. No.

3 Q. Did you get any type of high school completion

4 certificate, like a GED or something?

14:23 5 A. No.

6 Q. Do you have any certifications?

7 A. Certification, engineering, no.

8 Q. No -- no schooling in which you were given a

9 certificate of some sort?

14:24 10 A. As a journeyman carpenter.

11 Q. And were you ever part of a union?

12 A. Yes.

13 Q. Can you tell me how you're currently employed.

14 A. Runs different businesses. One is Public

14:24 15 Transportation Safety.

16 Q. And what type of entity is Public

17 Transportation Safety?

18 A. We hold IP on three different safety products

19 we have manufactured by outsourcing to vendors, do the

14:24 20 marketing.

21 Q. And is Public Transportation Safety a

22 corporation, an LLC?

23 A. LLC.

24 Q. Is the LLC -- is the proper name Public

14:25 25 Transportation Safety, LLC?

14:25 1 A. Yes.

2 Q. Has it ever had any different names?

3 A. No.

4 Q. Does it own or manage any subsidiaries?

14:25 5 A. No.

6 Q. What type of businesses is Public

7 Transportation Safety engaged in?

8 A. IP, intellectual property, tooling, designing

9 engineer work on safety products for mass transit and

14:25 10 school buses.

11 Q. You mention that Public Transportation Safety

12 holds IP on three different safety devices?

13 A. Yes.

14 Q. Can you tell me what those safety devices are.

14:26 15 A. The S-1 Gard Dangerzone Deflector,

16 Barrier Receiver Management System, and the MDZ Shield,

17 Minimize Dangerzone.

18 Q. The S-1 Dangerzone Deflector, is that also

19 referred to as an S-1 Gard?

14:26 20 A. Yes.

21 Q. And did you invent the S-1 Gard?

22 A. Yes.

23 Q. Can you describe for me the hazards that

24 triggered the S-1 Gard invention.

14:26 25 A. That triggered it?

14:27 1 It was a woman that was run over and seriously
2 injured by an RTS Novabus with a barrel side bus, the
3 tire sticking out. So that's what triggered the
4 project.

14:27 5 Q. Did you witness the woman run over by the bus?
6 A. No.

7 Q. Did you read about it in the paper?
8 A. No.

9 Q. How did you learn about the woman run over by
14:27 10 the bus?
11 A. It was on the news.

12 Q. So you saw a news story about this woman run
13 over by the bus, and it caused you to think of different
14 ideas to prevent those types of hazards?

14:27 15 A. Yes.

16 MR. TERRY: Objection. Form.

17 MR. PEPPERMAN:

18 Q. When you were coming up with the idea for the
19 S-1 Gard invention, did you think of similar hazards
14:28 20 that the device could prevent?
21 A. Yes.

22 Q. What kind of additional hazards did you
23 consider when inventing the S-1 Gard?
24 A. Bicycles, road defects, et cetera, road
14:28 25 conditions, buses, turning buses.

14:28 1 Q. I'm going to hand you what's been marked as
2 Exhibit 1 to your deposition.

3 (Whereupon the document referred to is marked by
4 the reporter as EXHIBIT 1 for identification.)

14:28 5 THE WITNESS: All right.

6 MR. PEPPERMAN:

7 Q. Can you tell me what the document is that we
8 see in Exhibit 1.

9 A. This is the first patent on the S-1 Gard.

14:29 10 Q. When you invented the S-1 Gard, did you apply
11 for a United States patent on your invention?

12 A. Yes.

13 Q. Is Exhibit 1 a true and correct copy of the
14 United States patent that was issued upon your
15 application?

16 A. Yes.

17 Q. Under Inventors, it lists Mark A. Bowen.
18 Is that you?

19 A. Yes.

14:29 20 Q. And that is the name that you were previously
21 known by; correct?

22 A. Right.

23 Q. Under Assignee, it says Public Transportation
24 Safety Devices Corp.

14:29 25 Is that the same entity?

14:29 1 A. Yes.

2 Q. And Patent Number 5462324, is that the patent
3 number you were given with respect to your patent on the
4 S-1 Gard?

14:29 5 A. Yes.

6 Q. Do you know if whether I went to the
7 United States Patent web site and put in Patent
8 Number 5462324, this patent number in Exhibit 4 would
9 come up?

14:30 10 A. Yes.

11 Q. If you look at the bottom right-hand corner of
12 Exhibit 1, you'll see numbers. We call those Bates
13 Numbers. On the first page, it's P01303.

14 A. Uh-huh, yes.

14:30 15 Q. If you could turn to page P01312.

16 A. Okay.

17 Q. Under Background of the Invention, under
18 Number 2, Scope and Content of the Prior Art, the second
19 paragraph, it reads, "With this advent of buses and
14:31 20 other heavy-wheeled vehicles, a problem has arisen.
21 These vehicles, especially buses in metropolitan areas,
22 cause injury to individuals and objects. Many of the
23 most serious of these injuries are a result of
24 individuals being run over by the vehicle. Injuries
14:31 25 often occur when the wheel or chassis of the vehicle

14:31 1 travels over an individual who has slipped and fall in
2 the road, crushing a limb or other body part of an
3 individual as the weight of the vehicle is applied to
4 the individual."

14:31 5 Is one of the hazards you were aiming to reduce or
6 prevent with the invention of the S-1 Gard was
7 preventing individuals who slipped and fall in the road
8 from being crushed by the weight of the vehicle as the
9 vehicle runs over the person?

14:32 10 A. Yes.

11 Q. And these individuals that you envisioned as
12 potentially falling under the wheels of the bus, did
13 they include individuals who may fall off a bicycle into
14 the path of the rear wheels?

14:32 15 A. No, not at the time.

16 Q. As you worked with promoting or selling your
17 S-1 Gard invention, did at some point you come to
18 realize that this product might be helpful to
19 individuals who fall off their bicycle into the path of
14:33 20 the rear wheels of a bus?

21 A. Yes.

22 Q. That same page, on the second column, the last
23 paragraph above Summary of the Invention, you write,
24 "Therefore, a need was perceived for a safe, effective,
14:33 25 reliable, and relatively inexpensive safety barrier that

14:33 1 will protect individuals lying in the path of an
2 oncoming vehicle, as well as individuals who might cause
3 a hand or arm to get caught between the wheel and wheel
4 well of a vehicle."

14:33 5 As you worked and promoted the sale of your
6 S-1 Gard invention, did you come to realize that this
7 invention would benefit individuals, including
8 individuals lying in the path of oncoming vehicles as a
9 result of a bicycle accident with a bus?

14:34 10 A. Yes.

11 Q. Can you generally describe how the S-1 Gard
12 works.

13 A. It's a flexible urethane material that pushes
14 the limbs, the body, the torso out of the way of the
15 wheels.

16 Q. And where does the S-1 Gard attach to the bus?

17 A. To the -- different, every bus is different --
18 undercarriage, but to where there's integrity points.
19 There's a bracket train that's bolted to chassis points
20 under the bus, depending on the bus design.

21 Q. Does the S-1 Gard go in front of the rear
22 wheels of the bus?

23 A. Yes.

24 Q. And it's designed to -- it's designed so in the
25 event that someone happens to fall under the bus, rather

14:35 1 than being run over by the rear wheels, the S-1 Gard
2 pushes them out of the way?
3 MR. TERRY: Objection. Form.
4 MR. PEPPERMAN:
14:35 5 Q. Is that true?
6 A. Well, depending on the incident, depending --
7 their hand can go under.
8 Q. Sure, generally speaking.
9 A. Generally, the main torso and body parts would
14:35 10 be.
11 Q. And the body parts including someone's head?
12 A. No.
13 Q. It wouldn't -- the S-1 Gard, if someone's head
14 was under there, the S-1 Gard wouldn't protect the head
14:36 15 from being run over?
16 A. It would. It would.
17 Q. Okay.
18 Looking at the third paragraph down, it says, "The
19 present invention may also be provided with a wheel
14:36 20 molding that extends from the wheel well over the top of
21 the wheel of the vehicle."
22 If I can direct your attention to page P01130 of
23 Exhibit 1.
24 A. Okay.
14:37 25 Q. Looking at Figures 13 and 14 on this page and

14:37 1 the covering over the wheels, is this a picture of the
2 wheel molding that extends from the wheel well over the
3 top of the wheel well that you reference in Summary of
4 the Invention?

14:37 5 A. Yes.

6 Q. And it was your understanding or intention that
7 the S-1 Gard could be combined with this wheel molding
8 and used simultaneously; correct?

9 MR. TERRY: Objection. Form.

14:37 10 THE WITNESS: Yes.

11 MR. PEPPERMAN:

12 Q. Was it your intention with the invention that
13 the S-1 Gard could be used in conjunction with the wheel
14 molding?

14:38 15 A. Wheel skirt.

16 MR. TERRY: Objection to the form.

17 MR. PEPPERMAN:

18 Q. Wheel skirt?

19 A. Yes.

14:38 20 Q. There's been some testimony that these have
21 also been called spats.

22 Have you ever heard them referred to as spats?

23 A. Uh-huh, yes.

24 Q. I'm going to hand you what's been marked as
14:38 25 Exhibit 2.

14:38 1 (Whereupon the document referred to is marked by
2 the reporter as EXHIBIT 2 for identification.)
3 MR. PEPPERMAN:
4 Q. Actually, before I get to that, if you could
14:38 5 turn to page P01313, where you, under Figure 13, it
6 describes Figure 13. Figure 13 illustrates a futuristic
7 bus design with fairing wheel covers and safety
8 barriers.
9 A. Yes.
14:38 10 Q. Looking at Exhibit 2, is this -- does this
11 photo depict the bus design with fairing wheel covers --
12 A. No.
13 Q. -- as you describe in Figure 13?
14 A. No.
14:39 15 Q. What's -- how is Exhibit 2 different than
16 Figure 13?
17 A. Two is an S-1 Gard, and the other one is an
18 S-1 Gard with a wheel skirt.
19 Q. Okay.
14:39 20 Just the wheel skirt?
21 A. Yes.
22 Q. Okay.
23 So Exhibit 2 depicts a bus with the wheel skirt
24 that you described in Figure 13 and 14; correct?
14:39 25 A. Yes.

14:39 1 MR. TERRY: I'm not sure he understands he's
2 supposed to be looking at the picture.
3 THE WITNESS: I'm looking.
4 MR. TERRY: Oh, you are? Okay.
14:39 5 THE WITNESS: Yeah.
6 Thirteen, there's a wheel skirt.
7 MR. PEPPERMAN: Right.
8 Q. So Figure 13 in the patent shows the wheel
9 skirt --
14:39 10 A. With the guard.
11 Q. -- with the guard?
12 Exhibit 2 just shows the wheel skirt?
13 A. Just the S-1 Gard. Here's figure --
14 Q. Exhibit 2 is the photo in the box.
14:39 15 A. This one here?
16 Q. Yeah.
17 A. I'm sorry. Yeah, that's a wheel skirt only.
18 Q. No S-1 Gard in this picture?
19 A. No.
14:40 20 Q. But looking at the picture in Exhibit 2, you
21 designed the S-1 Gard so that it could be used in
22 conjunction with the type of wheel skirt we see in
23 Exhibit 2?
24 A. Yes.
14:40 25 MR. TERRY: Objection. Form.

14:40

1 MR. PEPPERMAN:

2 Q. And just so we have a clean record, did you
3 design the S-1 Gard so that it could be used in
4 conjunction with the type of wheel skirt that we see in
14:40 5 the photo marked as Exhibit 2?

6 A. Yes.

7 MR. TERRY: Objection. Form.

8 MR. PEPPERMAN:

14:40

9 Q. On the same page of the patent, P01313, under
10 the Description of the Preferred Embodiments, it states,
11 "It will be readily appreciated that a vehicle of this
12 general type can cause considerable injury to animate as
13 well as inanimate objects if driven over them."

14:41

14 A vehicle of this general type, you're referring to
15 a bus; correct?

16 A. Yes.

14:41

17 Q. Is the general idea that it is safer for
18 someone under a bus to be impacted by the S-1 Gard and
19 pushed out of the way than to be run over by the rear
20 wheels of a multi-ton bus?

21 A. Could you repeat that, please.

22 Q. Sure.

14:41

23 When you're talking in the patent about
24 appreciating that a vehicle like a bus can cause
25 considerable injury if driven over a person, is the