

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  
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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  
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| 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<br>10<br>11 | 2176–2250<br>2251–2500<br>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<br>12      | 2748–2750<br>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<br>50      | 12113–12250<br>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                             |

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| 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<br>3   | 324–500<br>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<br>20 | 4748–4750<br>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              |

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|     | 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<br>52 | 12705–12739<br>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<br>42 | 10242–10250<br>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<br>16 | 3537–3750<br>3751–3817     |
| 85  | Jury Trial Transcript  | 03/06/18 | 28<br>29 | 6883–7000<br>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<br>34 | 8171–8250<br>8251–8427     |
| 94  | Jury Trial Transcript  | 03/15/18 | 34<br>35 | 8428–8500<br>8501–8636     |
| 95  | Jury Trial Transcript  | 03/16/18 | 35       | 8637–8750                  |

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|     |  |          | 36       | 8751–8822                  |
| 98  | Jury Trial Transcript  | 03/19/18 | 36<br>37 | 8842–9000<br>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<br>48 | 11743–11750<br>11751–11760 |
| 58  | Motions in Limine Transcript   | 01/29/18 | 12<br>13 | 2998–3000<br>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<br>33 | 7994–8000<br>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<br>7   | 1491–1500<br>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                  |

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| 120 | Motor Coach Industries, Inc.'s Renewed Motion for Judgment as a Matter of Law Regarding Failure to Warn Claim  | 05/07/18 | 48<br>49 | 11963–12000<br>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                |

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|     | 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 |



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|     | 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   |

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| 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 |

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| 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<br>2   | 237–250<br>251–312     |
| 65  | Reporter's Transcription of Proceedings   | 02/13/18 | 16<br>17 | 3818–4000<br>4001–4037 |
| 66  | Reporter's Transcription of Proceedings   | 02/14/18 | 17<br>18 | 4038–4250<br>4251–4308 |

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

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| 102 | Reporter's Transcription of Proceedings   | 03/21/18 | 40       | 9800–9880                 |
| 103 | Reporter's Transcription of Proceedings   | 03/22/18 | 40<br>41 | 9881–10000<br>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<br>15 | 3492–3500<br>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<br>4   | 665–750<br>751–989        |
| 28  | Volume 2: Appendix of Exhibits to Motion for Summary Judgment on Punitive Damages   | 12/01/17 | 4<br>5   | 990–1000<br>1001–1225     |
| 29  | Volume 3: Appendix of Exhibits to Motion for Summary Judgment on Punitive Damages   | 12/01/17 | 5<br>6   | 1226–1250<br>1251–1490    |

1 that a product liability plaintiff “must still prove his case”); *see generally* William L. Prosser, ‘*The*  
 2 *Fall of the Citadel*,’ 50 MINN. L. REV. 791, 799 (1966) (strict liability claims evolved from warranty  
 3 claims and, while they eliminated the need for privity of contract, they do not give rise to absolute  
 4 liability), *cited by Shoshone Coca-Cola Bottling Co. v. Dolinski*, 82 Nev. 439, 441, 420 P.2d 855,  
 5 857 (1966); *Greenman v. Yuba Power Products, Inc.*, 377 P.2d 897 (Cal. 1962).

6 This basic concept is underscored even by the Nevada Supreme Court’s *Stackiewicz*  
 7 decision. The Court held that evidence that a product malfunctioned “might properly be accepted  
 8 by the trier of fact as sufficient circumstantial proof of a defect, or an unreasonably dangerous  
 9 condition, without direct proof of the mechanical cause of the malfunction.” *Stackiewicz v. Nissan*  
 10 *Motor Corp. in U.S.A.*, 100 Nev. 443, 450-51, 686 P.2d 925, 929 (1984). Thus, while the plaintiff  
 11 did not have to provide direct evidence of “the mechanical cause,” the Court allowed the plaintiff’s  
 12 claim to proceed only because she had evidence that the product had, in fact, “malfunctioned.” *Id.*  
 13 It did not excuse plaintiff from proving an actual defect. And it certainly did not reduce the  
 14 showing that a plaintiff must make when alleging a design defect. Mere injury resulting from  
 15 contact with a product does not indicate it was defective.

16 **A. The Product is Defective Only if it is More Dangerous**  
 17 **than the Ordinary Consumer or User Would Already Expect**

18 In Nevada, a product may be deemed defective only if it “fails to perform in the manner  
 19 reasonably to be expected in light of its nature and intended function and it was more dangerous  
 20 than would be contemplated by the ordinary user having the ordinary knowledge available in the  
 21 community.” *Trejo*, 402 P.3d at 650 (2017), quoting *Ginnis*, 86 Nev. at 413, 470 P.2d at 138  
 22 (1970). Mere evidence of injury is not evidence of either a malfunction or a design defect without  
 23 evidence that the coach is unreasonably dangerous under the consumer-expectation test.<sup>5</sup>

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25 <sup>5</sup> *See generally Gunlock v. New Frontier Hotel Corp.*, 78 Nev. 182, 370 P.2d 682 (1962); *Cooper*  
 26 *Tire & Rubber Co. v. Mendez*, 204 S.W.3d 797, 807 (Tex. 2006) (“The inference of defect may not  
 27 be drawn ... from the mere fact of a product-related accident.”); *Clement v. Griffin*, 634 So.2d 412,  
 429-30, 441 (La. Ct. App. 1994) (“failure of a tire is not such an unusual event that a defect can be  
 (footnote continued)

Nevada’s consumer-expectation test originates from comment i to the Restatement (Second) of Torts § 402A (1965), which explains that a product “must be dangerous *to an extent beyond* that which would be contemplated by the ordinary consumer who purchases it, with the ordinary knowledge common to the community as to its characteristics.” (Emphasis added). Comment i explicitly acknowledges that unreasonable danger is a relative concept, as “any food or drug necessarily involves *some* risk of harm.” *Id.* at cmt. i; *see also Seattle-First Nat. Bank v. Tabert*, 542 P.2d 774, 779 (Wash. 1975) (en banc); *cf. Sea Ray Boats, Inc.*, 119 Nev. at 107, 65 P.3d at 249 (noting that *Allison v. Merck* involved a “reasonably or unavoidably unsafe” product).

The question is *how* potentially dangerous an objective, ordinary consumer contemplates the risks would be—an inherent reasonableness determination—given her general knowledge about the product’s “characteristics,” including its performance and “nature and intended function.” *See Ward v. Ford Motor Co.*, 99 Nev. 47, 48, 657 P.2d 95, 96 (1983); *Lenhardt v. Ford Motor Co.*, 683 P.2d 1097, 1101 (Wash. 1984) (Dimmick, J., dissenting); *see also Horst v. Deere & Co.*, 769 N.W.2d 536, 551 (Wis. 2009) (“ordinary consumer” is an objective standard). What degree of safety the consumer contemplates in regard to a particular product is inherently a reasonableness determination. If the alleged danger or the theoretical “defect” was within the ordinary consumer’s contemplation, then the product is not *unreasonably* dangerous.

***I. The Ordinary Consumer Test Applies to the Determination of a Defect Regardless of Whether a Bystander May Recover***

Assuming the rights of Section 402A extend to non-users, the test for determining the existence of a defect remains focused on the reasonable expectations of the ordinary *consumer* or

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inferred solely from the fact that the accident occurred”); *Vineyard v. Empire Machinery Co.*, 581 P.2d 1152, 1154 (Ariz. Ct. App. 1978) (“merely because the use of a product results in injury does not necessarily impose liability upon the manufacturer”); *R. W. Bass v. Gen. Motors Corp.*, 491 S.W.2d 941, 947 (Tex. Ct. App. 1973) (“[i]t is fundamental that in order to recover in a cause of action based upon strict liability or negligence, more than the accident itself must be proved”); *Kaesik v. John E. Mitchell Co., Inc.*, 492 P.2d 871, 873 (Colo. Ct. App. 1971) (“[t]o prove a prima facie case, the plaintiff had to prove – in addition to the happening of the accident – that the product was defective”).

1 user, and not of the bystander. *Ewen v. McLean Trucking Co.*, 706 P.2d 929, 932-33 (Or. 2009);  
 2 *Horst*, 769 N.W.2d at 554. “With respect to determining whether a product is unreasonably  
 3 dangerous, there are significant differences between a standard based on the expectations of an  
 4 ordinary consumer and a standard based on the expectations of an ordinary bystander.” *Horst v.*  
 5 *Deere & Co.*, 769 N.W.2d at 546. “The consumer contemplation test was developed in recognition  
 6 of the fact that it is reasonable for users and consumers of products to hold certain expectations  
 7 regarding the products they use and the products they buy.” *Id.* at 551. Interestingly, the *Horst*  
 8 court recognized that a bystander-expectation test would negate a particular policy underlying the  
 9 consumer-expectation test which the Nevada Supreme Court recently found to be important—*i.e.*,  
 10 that the focus be on the expectation of the ordinary user to a general focus on the product, as  
 11 evaluated by the world at large. *Id.*, *Trejo*, 402 P.3d at 658 (the appropriate test “focuses on the  
 12 reasonable expectation of the consumer” rather than “focus on the product itself.”).

13 In a case similar to this, the Oregon Supreme Court explained how the ordinary *consumer*  
 14 test still would be used to determine the existence of defect even where the injury is to a pedestrian.  
 15 In that case, a pedestrian was hit by a truck while crossing a street intersection. *Ewen*, 706 P.2d  
 16 929. The pedestrian’s guardian *ad litem* sued the truck manufacturer alleging that the vehicle had a  
 17 blind spot that prevented the driver from seeing a pedestrian who was immediately in front of and  
 18 to the right of the truck. A jury entered a verdict in favor of the pedestrian. The manufacturer,  
 19 appealed, contending that the jury instructions were erroneous because they defined “user” of a  
 20 product as anyone who may reasonably be expected to be affected by the product, such as a  
 21 pedestrian. The manufacturer asserted that expectations of the “user or consumer” under products  
 22 liability law should not be equated to the expectations of a pedestrian. The Oregon Supreme Court  
 23 agreed with the manufacturer, noting that Oregon has codified the Restatement (Second) of Torts §  
 24 402A and comment i, which has the “consumer contemplation test.” The court reversed the  
 25 plaintiffs’ judgment, holding that it was erroneous to use a pedestrian-contemplation test that  
 26 includes the perspective of everyone who might be affected by a product. *Regardless of who was*  
 27 *injured*, the jury still had to determine the reasonable expectation of the consumer or user.



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2. ***Dangers that Are Inherent or Otherwise Obvious Cannot Be Unexpected***

“One of the implications of the consumer contemplation test is that consumers can and do contemplate open and obvious dangers, and are not protected when injured by such dangers.”<sup>6</sup> *Horst*, 769 N.W.2d at 543; *Blue v. Environmental Engineering, Inc.*, 828 N.E.2d 1128, 1136 (Ill. 2005) (“Under the consumer-expectation test, the open and obvious nature of a danger would bar recovery where the injury was the result of the inherent properties of the product which were obvious to anyone who came into contact with it.”); *Tillman v. R.J. Reynolds Tobacco Co.*, 871 So. 2d 28, 34 (Ala. 2003) (obvious hazards of smoking cigarettes prevented recovery under consumer-expectations test); *Thongchoom v. Graco Children's Products, Inc.*, 71 P.3d 214, 218 (Wash. Ct. App. 2003) (baby walker not defective under consumer-expectations test because danger of baby's mobility was obvious); *Sacks v. Phillip Morris, Inc.*, 139 F.3d 892 (4th Cir. 1998) (Md. law) (obvious and commonly known risk that cigarettes may start fires precludes liability under both consumer-expectations and risk-utility tests). Put simply, if the allegedly dangerous aspect of a product is open and obvious, then the “ordinary user” will already expect it and approach the product accordingly.

**B. As with Any Other Element, Plaintiffs Must Present Proof of the Ordinary Consumer’s or User’s Reasonable Expectations**

“Adoption of strict tort liability as a theory of recovery ‘does not mean that the plaintiff is relieved of the burden of proving a case.’” *Trejo*, 402 P.3d at 653, quoting *Shoshone Coca-Cola Bottling Co. v. Dolinski*, 82 Nev. 439, 443, 420 P.2d 855, 857 (1966). This burden includes demonstrating that the allegedly defective aspect of the design is not already contemplated by the ordinary consumer, as an *element of plaintiffs’ prima facie case*. It is not an affirmative defense.

---

<sup>6</sup> The Nevada Supreme Court understood this when they reaffirmed Nevada’s commitment to the consumer-expectation test a few months ago, as Justice Pickering mentioned in her dissent that many design-defect claims (that might conceivably have merit under a risk-utility analysis) would be foreclosed as a necessary ramification of the consumer-expectation test. *Trejo*, 402 P.3d at 664 (Pickering, J., dissenting).

As one appellate court explained:

In order to establish a prima facie case of strict liability in tort the plaintiff must prove the product was in a defective condition unreasonably dangerous to any user or consumer or to his property. “Unreasonably dangerous” has been defined as “dangerous to an extent beyond that which would be contemplated by the ordinary consumer . . . with the ordinary knowledge common to the community as to its characteristics.” To be unreasonably dangerous a defective condition must be hidden or concealed. Whether a danger is open and obvious is the same as the question of whether a danger is concealed or hidden to the user in a given set of facts.

*FMC Corp. v. Brown*, 526 N.E.2d 719, 728 (Ind. Ct. App. 1988), *aff’d*, 551 N.E.2d 444 (Ind. 1990) (internal citations omitted). Thus, proving that a product is allegedly “more dangerous than would be contemplated by the ordinary user” necessarily requires proving that the allegedly dangerous condition is not already contemplated by the ordinary user.

**IV. Even Construing the Evidence in a Light Most Favorable to Plaintiffs, the Coach is Not More Potentially Dangerous than Consumers Expect**

Motor coaches, like any vehicle and especially large ones, present well-known potential dangers that must be respected. Plaintiffs have presented no evidence that the danger that killed Dr. Khiabani, his impact with the motor coach’s tire, was more dangerous than those open and obvious in any coach.

First, plaintiffs ignore the relevant community of consumers and users of coaches, which is a sophisticated class of purchasers and trained drivers. That community is, if anything, more attuned to these inherent dangers and therefore expects them. And given their specialized knowledge, their expectations could be established only by expert testimony, which plaintiffs have not offered. In any case, even if lay testimony were sufficient, no witness has attempted to describe their expectations or how the motor coach here fell short.

Second, even if the expectations of passengers or others on the roadway were relevant, plaintiffs again present no evidence of what they are. Plaintiffs gesture toward a body of complex expert testimony about “air blasts,” rear-tire “suction,” “proximity sensors,” and a virtually unknown “S1 Gard”—demonstrated at near-zero speeds. But they cannot escape the reality that

passengers, pedestrians, and cyclists already expect a high level of danger from proximity to a fast-moving motor coach. There is no evidence that the motor coach here fell defectively below those clear-eyed expectations.

**A. Plaintiffs Presented No Expectations of the Relevant Community of Consumers and Users, Bus Purchasers and Drivers**

A coach, unlike most consumer products, is not available for purchase by ordinary people. It is sold to a specialized subset of common carriers and used only by specially trained drivers with expertise in navigating the vehicle to protect passengers and others on the roadway. It is, therefore, insufficient simply to rely on lay jurors' own expectations—as might be the case for a product that ordinary jurors might purchase or use.

**1. *The Only Relevant Expectations are Those of People who Buy and Drive Motor Coaches***

If a bus is a “product” for strict products liability, then the consumers or users whose expectations are relevant to Nevada’s test for product defect are those who buy buses or control their operation. Passengers ride coaches, but they are subject to the decisions of the driver, who ultimately decides how to use the vehicle. To the extent that passengers are users, it relates only to those aspects of a coach that affect the passengers’ experience.<sup>7</sup>

**2. *Motor Coach Purchasers and Drivers are a Sophisticated Community with Specialized Knowledge of a Coach’s Dangers***

Those who purchase and drive motor coaches are a specialized subset of society. Companies such as Ryan’s Express have extensive knowledge through their own experience about the dangers

---

<sup>7</sup> Another way to think about it is that passengers “use” some just some components of the coach—the seats, the individual ventilation controls and lights, and (on public transit) straps or other handholds—while the driver “uses” the coach’s engine, brakes, and steering controls. While passenger use might be relevant in a case of injury from a broken strap causing a fall, for example, only the driver’s use of the bus is relevant in this case.

1 buses pose to their passengers and the public. Drivers of a motor coach require a specialized  
2 license and then complete internal training, and the coach company involved in this action trained  
3 both in the classroom and on the road. (Deposition of William Bartlett at 41:1-42:5, Ex. A at 2-3.)  
4 The nature of their profession, of course, gives them extensive real-world experience in navigating  
5 the potential hazards that their vehicle poses to passengers and others on the roadway.

6  
7 **3. *Plaintiffs Failed to Produce Expert Testimony on the***  
8 ***Sophisticated Expectations of those who Buy and Drive Coaches***

9 Lay jurors do not share this knowledge, training, or experience. That separation from the  
10 world of coach purchasers and drivers is critical because it demarcates the line for when expert  
11 testimony is critical. In *Krause Inc. v. Little*, the Nevada Supreme Court excused the lack of expert  
12 testimony in a case involving a fall from a ladder, but only because “[t]he average juror is quite  
13 familiar with a ladder’s functions, and does not require expert testimony to know that a ladder  
14 should not collapse while a person stands on it.” 117 Nev. 929, 938, 34 P.3d 566, 572 (2001). The  
15 average juror, in other words, is part of the community that buys and uses ladders, so they can be  
16 trusted without expert assistance to determine the reasonable expectations of that community. The  
17 corollary, however, is that where the average juror is not part of the community of consumers and  
18 users, the expectations of that community must be introduced through expert testimony.

19 Here, expert testimony is necessary, not because the consumer-expectations test always  
20 requires it, but because the consumers and users of a motor coach whose expectations are relevant  
21 to identifying a product defect are themselves a group with expertise. The consumers and users of  
22 buses form their expectations about reasonable danger with the perspective of their specialized  
23 insight into those very dangers, and only an expert can assist the jury in divining those expectations.

24 Plaintiffs presented none. Without admissible testimony on the expectations of the relevant  
25 consumers and users, plaintiffs’ product-defect claims fail.  
26  
27

1                   4.     *Even if Admissible, there is No Lay*  
 2                         *Testimony on these Expectations*

3           Even if a lay witness could testify about the expectations of a motor coach purchaser or  
 4 driver, none has. Edward Hubbard, the driver, did not testify that the motor coach fell below his  
 5 expectations of safety in light of his specialized knowledge. At most, he says that he would have  
 6 taken distance from a cyclist into greater consideration had he known about plaintiffs’ “air blast”  
 7 theory. But that does not establish that he believed the motor coach “failed to perform in the  
 8 manner reasonably to be expected in light of its nature and intended function and was more  
 9 dangerous than [he] would contemplate.” *See Ginnis*, 86 Nev. at 413, 470 P.2d at 138. If he  
 10 expected, in light of his training, that driving along-side a bicyclist could be extremely dangerous  
 11 (even deadly), as any driver should, the coach was not defective. Indeed, he *did* expect that, which  
 12 is why he testified that he both understood, and tried to comply with, the guideline of leaving at  
 13 least a three foot gap between his motor coach and a cyclist.

14                   B.     **Even if Bystanders’ Expectations were Relevant, there**  
 15                         **is No Evidence that the Motor Coach Fell Short**

16           The consumer-expectation test for strict products liability does not take account of the  
 17 expectations of bystanders such as passengers, other motorists, cyclists, or pedestrians. But even if  
 18 it did, any reasonable bystander would recognize that riding a bicycle within two-to-three feet of a  
 19 large motor coach can be dangerous depending on the respective conduct of the coach operator and  
 20 the cyclist. The motor coach as designed and manufactured here—as opposed to how it was  
 21 operated—was no more dangerous than that sober expectation.

22           The difference between the motor coach’s design and manufacture, on the one hand, and its  
 23 operation, on the other, is critical. While the distance between Khiabani and the motor coach may  
 24 have been dangerously close, the danger created by that proximity was the driver’s decision to be in  
 25 that travel lane. It is not a defect in the motor coach itself; the motor coach did not dictate the  
 26 distance it would keep from a cyclist.  
 27

1 ***1. People Expect Coaches or Other Buses to be Boxy***

2 There is no evidence that ordinary people who interact with buses as passengers, drivers, or  
3 cyclists expect buses to be anything other than boxy. The shape of the motor coach here is entirely  
4 typical. Plaintiff's expert, Dr. Robert J. Cunitz, is in a sense correct that a "fast and close bus is  
5 [d]angerous as it threatens the stability of the bicyclist and, if the bicyclist falls, poses an additional  
6 threat of running over the fallen bicyclist with its rear wheels." (Cunitz Report, Ex. G at 40.) The  
7 problem for plaintiffs is that this is a known, expected danger inherent in any "fast and close bus."  
8 Cyclists reasonably *do* expect that passing vehicles—whether large ones or small ones—represent a  
9 hazard. There is no evidence that any alleged "air blasts" caused by this bus are more dangerous  
10 than disturbances that cyclists already expect, and indeed there can be no such evidence beyond  
11 rank speculation of what Dr. Khiabani was thinking in the moments before the accident.

12 ***2. People Expect Vehicles May Have Blind Spots***

13 A driver's vision is finite, so any mirror in any vehicle inevitably sacrifices the driver's view  
14 of one thing for another, obscuring what otherwise would have been in the driver's vision. In  
15 addition, all vehicles have to have structural components such as pillars for the safety and integrity  
16 of the vehicle. Changing or eliminating a pillar to clear the driver's vision can make the coach  
17 more dangerous in other ways.

18 Regardless of whether ordinary people recognize the *reasons* for these necessary  
19 compromises, they understand that vehicles have blind spots. (Nevada Driver's Handbook at 42,  
20 Ex. D at 25.) The ordinary consumer is unaware of proximity sensors,<sup>8</sup> much less expects them on  
21 a standard bus or coach. Ordinary people understand the considerable dangers posed by blind  
22 spots. By definition, a vaguely defined "blind spot" does not make a motor coach more dangerous  
23 than would be reasonably anticipated in any vehicle.

24  
25 \_\_\_\_\_  
26 <sup>8</sup> It is undisputed that even MCI, an industry leader, was unaware that effective and appropriate  
27 proximity sensors were available for its coaches in 2007, when it sold this coach. (Hoogestraat  
Deposition at 69:14–70:16, Ex. C at 18-19.)

Here, in addition, Edward Hubbard admitted that he was able to see Khiabani as Hubbard passed him. (Edward Hubbard Deposition at 26:1-25, Ex. H at 43.) He attempted to keep a three-to-four-foot distance as he passed him. (*Id.* at 32:11-15, Ex. H at 44) Hubbard even tried to swerve away when he saw Khiabani closing in on the bus. (*Id.* at 115:21-117:3, Ex. H at 45-47.) It is complete speculation that some alteration of what plaintiffs perceive to be a “blind spot” would have made any difference here.

### 3. *People Expect Injury and Death from Falling in the Pathway of a Large Vehicle*

Most critically, ordinary people *expect* any vehicle to cause some and potentially catastrophic injury when someone, for whatever reason, ends up in its pathway. The danger from the motor coach here presented exactly the danger that ordinary people expect, no more.

The danger of a large vehicle tire is open and obvious. And it is undisputed that the vast majority of private bus manufacturers like MCI do not use the S-1 Gard to conceal that potential danger. (Deposition of Transcript of Mark Barron at 38:8-12, Ex. F at 34.) No buses or coaches in Nevada use the S-1 Gard.

And as the S-1 Gard’s promotional video demonstrates, its function is for public transit (i.e. buses that make many stops around town), not long-haul motor coaches like MCI’s coach. (*See* S1GARD.COM (video demonstration of S-1 Gard), *available also at* <https://youtu.be/PA2JV5ypIj8>.) Although no studies so proved in 2007, such a guard may protect *passengers* at the point of embarking and disembarking for a transit bus that makes quick and frequent stops. Even then, its use is too infrequent for people to make its absence unreasonably dangerous. (Barron Depo. at 112:11-12, Ex. F at 37.) Because it is not intended to protect nonpassengers in the bus’s orbit when it is moving at high speeds, the S-1 Gard is relatively useless for a motor coach that loads its passengers in one place and then travels directly to a destination. And the S-1 Gard is only effective under certain circumstances. There is no reliable evidence here, for example, that Dr. Khiabani would have escaped his fate even if an S-1 Gard had been properly installed. (*See* Funk Depo. at 82:9-15, Ex. I at 49.)

1 People simply don't expect coaches to have an S-1 Gard; they understand that the  
2 consequences of falling into or under the tires of a large vehicle could be severe.

3 **C. Plaintiffs' Claim Lies Elsewhere**

4 Plaintiffs may be right that the motor coach should never have been so close to Dr.  
5 Khiabani. Perhaps the driver of the bus, who admits seeing Dr. Khiabani, should have given him a  
6 wider berth. Perhaps the civil engineer placed the bike lane uncomfortably close to the travel lane.  
7 Once Dr. Khiabani and the motor coach came into such close contact, however, the accident that  
8 ensued was exactly the tragedy ordinary people expect can happen.

9 Plaintiffs' litigation-driven efforts to further improve the design of the motor coach are  
10 laudable, but those efforts do not set the standard or dictate what ordinary people expect. There is  
11 no legally cognizable defect.

12 **Conclusion**

13 For the foregoing reasons, the Court should grant summary judgment in favor of MCI on all  
14 of plaintiffs' claims premised on liability for alleged product defects. As a matter of law, the motor  
15 coach was not defective.

16 DATED this 1st day of December, 2017.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 1st day of December, 2017, a true and correct copy of the foregoing **MOTOR COACH INDUSTRIES, INC.'S MOTION FOR SUMMARY JUDGMENT ON ALL CLAIMS ALLEGING A PRODUCT DEFECT** was served by e-service, in accordance with the Electronic Filing Procedures of the Eight Judicial District Court.

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An Employee of  
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# EXHIBIT A

# EXHIBIT A

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Plaintiffs, )

vs. )

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

Defendants. )

)Case No.  
)A-17-755977-C  
)Dept. No.  
)XIV

VIDEOTAPED DEPOSITION OF WILLIAM BARTLETT

LAS VEGAS, NEVADA

FRIDAY, SEPTEMBER 8, 2017

REPORTED BY: HOLLY LARSEN, CCR NO. 680, CA CSR 12170  
JOB NO.: 416787

1 BY MR. KEMP:

2 Q. All right. Now, earlier we talked about  
3 classroom training for Veolia and CUSA and Coach  
4 America and C America. Do you remember?

5 A. CUSA. Yes, sir.

6 Q. Would I be correct that neither Ryan's  
7 Express or Michelangelo had a classroom training  
8 program for either new hires or people that had a  
9 commercial driver's license?

10 A. No.

11 Q. I would not be correct?

12 A. You would not be correct.

13 Q. Okay. They did have training?

14 A. Yes, sir.

15 Q. Okay. Tell me about that.

16 A. We had a classroom training program that I  
17 put together that included, after the hire-on  
18 process, three days approximately of classroom  
19 training and another five or six days in skills  
20 testing and road on-course testing.

21 Q. Three days of classroom and how much of  
22 skills testing?

23 A. Well, after the classroom, we went through  
24 basic skills where we set up cones and drive around  
25 the cones and get the maneuvering to be proper.

1 Q. And this was both at Ryan's Express and  
2 Michelangelo?

3 A. Yes, sir.

4 Q. Same basic program at each?

5 A. Yes, sir.

6 Q. Okay. Where was the classroom at?

7 A. The classroom is above our shop at Gowan  
8 Road for Las Vegas. Each location had their own  
9 training location -- had their own training area.

10 Q. When you're saying "each location," you're  
11 talking about Torrance and Phoenix?

12 A. Yes, sir.

13 Q. Let's focus on Las Vegas.

14 A. Okay.

15 Q. So in Las Vegas the area designated as the  
16 classroom was located at Gowan Road?

17 A. Yes.

18 Q. When it wasn't being used for a classroom,  
19 what was it used as?

20 A. It was empty.

21 Q. And who was the trainer? Who taught the  
22 training?

23 A. Robert Garcia was the trainer at that  
24 location.

25 Q. During the entire time period that you were

1 Q. And this is something that's commonly known  
2 in the industry? That there's a potential for  
3 right-sided blind spots?

4 A. Every large commercial vehicle has a blind  
5 spot, yes -- has several blind spots.

6 Q. Okay. And you've known this since you've  
7 been involved in the transportation industry?

8 A. That's correct.

9 Q. And the rock-and-roll technique is to try  
10 to eliminate the blind spot a little bit?

11 A. That and other techniques.

12 Q. Okay. What kind of car do you drive?

13 A. I drive a Jeep.

14 Q. What year?

15 A. '15.

16 Q. Does that have a proximity sensor in it?

17 A. No.

18 Q. Do you know what a proximity sensor is?

19 A. It tells you when something is close to  
20 you.

21 Q. Have you been in cars where, if there's  
22 something on your right or left, a red light or  
23 something pops up in the rearview mirror?

24 A. Back-up proximity, yeah.

25 Q. Okay. Have you seen buses with proximity

# EXHIBIT B

001519

# EXHIBIT B



To:

Mr. Eric Pepperman  
Kemp Jones & Coulthard  
3800 Howard Hughes Pkwy 17th Floor  
Las Vegas, NV 89169

**REPORT:**

**RE: KHIABANI/HUBBARD, ET. AL.**  
**OUR FILE NUMBER: 17-0803**  
**DATE OF INCIDENT: 04/18/17**

October 6, 2017

Prepared by:

Robert J. Caldwell, P.E.  
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Robert J. Caldwell, P. E.

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CONSULTING ENGINEERS  
SCIENTISTS

October 6, 2017

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Re: Khiabani/Hubbard, et. al.  
Our File No. 17-0803  
Date of Incident: 04/18/17

Dear Mr. Pepperman:

Pursuant to your request, we have evaluated a commercial vehicle-bicycle accident that occurred at approximately 10:36 a.m. on April 18, 2017 in Las Vegas, Clark County, Nevada. The event began in the southbound lanes of S. Pavilion Center Dr. at the intersection with Griffith Peak Dr. and involved a 2008 MCI J4500 bus and a Scott Solace 10 Disc bicycle. At the time of the accident, the MCI bus was being driven by Edward Hubbard and the bicycle was being ridden by Kayvan Khiabani. Dr. Khiabani received fatal injuries as a result of the accident.

**Purpose:**

The purpose of this report is to present the findings of our reconstruction including vehicle dynamics and speeds.

**Procedure:**

Relative to this incident, we have reviewed the provided documents referenced in Attachment 1.

In addition to the materials listed above, Ponderosa Associates inspected, scanned and photographed the accident scene on August 9, 2017. Ponderosa Associates also inspected, scanned and photographed the 2008 MCI bus and Scott bicycle at 412 E. Gowan Rd., North Las Vegas, NV on August 9, 2017.

We have also gathered information regarding the involved vehicles through a VIN decode and through vehicle specification research. Additionally, we have generated various scene and vehicle diagrams and calculations regarding the subject accident.

Eric Pepperman  
Kemp Jones & Coulthard  
October 6, 2017  
Page 2 of 10

### **Background:**

According to the accident report, on April 18, 2017 at approximately 10:36 a.m. Dr. Khiabani was riding his bicycle in the designated bike lane southbound on S. Pavilion Center Dr. approaching the intersection with Griffith Peak Dr. He entered the intersection and contacted the MCI bus as it was traveling southbound in the righthand (number 2) travel lane. The attached aerial photo identifies the area of the event. (Attachment 2)

The Traffic Crash Report Scene Information Sheet indicates that the event involved one vehicle and one non-motorist on a two-way, not divided asphalt paved roadway. The lighting and environmental conditions at the time of the accident were classified as daylight with clear weather and dry roadway conditions. The overall geometry of the road for southbound vehicles at the area of the event was straight and relatively level. A raised concrete curb center median separates the southbound and northbound travel lanes.

### **Vehicle:**

2008 MCI J4500 Motor Coach: The 2008 MCI is a commercial bus, rear-wheel drive vehicle with a Vehicle Identification Number of 2M93JMHA28W064555 and date of manufacture of September 2007.

The exterior of the vehicle shows evidence of a sideswipe contact mark along the right side just behind the right front wheel well. (Attachment 3)

2017 Scott Solace 10 Disc: The 2017 Scott Solace bicycle is a 52cm frame with a serial number of SGR01F25216020236B. (Attachment 4) Inspection of the bicycle identified abrasions to the left front brake hood, the outside edge of the left pedal, the left side of the rear of the seat, and the left rear axle quick release skewer. The bicycle did not appear to be damaged by being run over by the bus. The damage identified during the inspection was consistent with the damage photographed by the Las Vegas Police Department.

### **Scene:**

S. Pavilion Center Dr. in the southbound direction has two through lanes, a left turn lane for Griffith Peak Dr., and a right turn lane to enter the Red Rock Casino, Resort & Spa. A designated bike lane runs parallel and to the right side of the number two through lane. A future left turn lane that is striped with white chevrons exists between the number one through lane and the left turn lane. At the intersection the roadway has a white stop bar and there is a designated cross walk. (Attachment 5) The posted speed limit in the area of travel is 30 MPH. During our inspection, photographs were taken and detailed measurements of the scene were recorded using a Faro 3D scanner. (Attachment 6)

Eric Pepperman  
Kemp Jones & Coulthard  
October 6, 2017  
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The Las Vegas Metropolitan Police Department investigation included photographic documentation and measurements of the scene geometry and evidence. (Attachment 7) The scene survey and the final police report have not yet been received at the time of this report. Additional photo alignment work was performed using the on-scene photography to determine evidence locations on the roadway that included scrapes, gouges and a blood stain. (Attachment 8)

### **Accident Reconstruction:**

Accident Dynamics: The Red Rock Casino Resort Spa was equipped with a video surveillance camera that was mounted at the northeast corner of the parking structure and was focused on the intersection. The camera recorded the traffic traveling southbound on S. Pavilion Center Dr. and portions of the event. Due to palm fronds partially blocking the view the entire event was not visible. (Attachment 9) As the MCI bus enters the intersection it is in a slight left steer moving away from the bike lane. Contact occurs between the left handlebar of the bicycle and the bus in the intersection just east of the bike lane into the #2 lane of travel. (Attachment 10) The bus continued southbound and partially ran over Dr. Khiabani's helmet and head prior to coming to a controlled stop along the right shoulder of S. Pavilion Center Dr.

Following contact, the left side of the bicycle contacts the roadway leaving the identified evidence and Dr. Khiabani is struck by a right rear tire. Dr. Khiabani and the bicycle come to rest in the #2 lane. Analysis of the event indicates that the bus was traveling approximately 25 MPH at the time of contact.

As noted above, subsequent to contact with the right side of the bus Dr. Khiabani and his bicycle upset. The bicycle was on its left side and left side components of the bicycle created scratches to the pavement as described above. The bicycle was not run over by the bus other than some possible interaction with left side of handle bar and the brake and shift assembly at that position. Dr. Khiabani's body interacted with the pavement and possibly the right underside of the bus. As the bus continued southbound at least one of the rear tires partially passed over Dr. Khiabani's head. Dr. Khiabani was wearing a bicycle helmet which was partially crushed as a result of the tire interaction.

A safety device known as an S1 Gard (<http://s1gard.com/>) was available to have been attached to the bus in front of the rear axles. Had such a device been present it would have interacted with Dr. Khiabani's helmet prior to him being engaged by the rear tire(s). The closing speed of the S1 Gard to Dr. Khiabani's helmet would have been below the speed of the bus which was approximately 25 mph.

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**Conclusions/Opinions:**

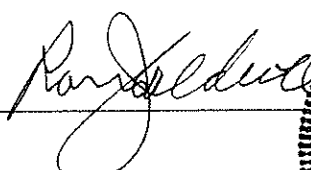
Based upon my training, education and experience, and our examination and analysis of the subject accident, I have reached the following conclusions:

- The speed of the 2008 MCI bus was approximately 25 mph at the time of contact with the bicycle.
- The first known contact between the bicycle and the bus was evidenced by a rubber smear that occurred just behind the right front (#1) wheel well of the bus. The likely source of the smear was the brake hood at the left side of bicycle handle bar.
- The location of the first documented contact between the bicycle and the bus was east of the bike lane into the #2 travel lane while the bus was swerving away from the bike lane.
- The closure speed between the S1 Gard, had it been in place, and Dr. Khiabani's helmet was less than 25 mph.

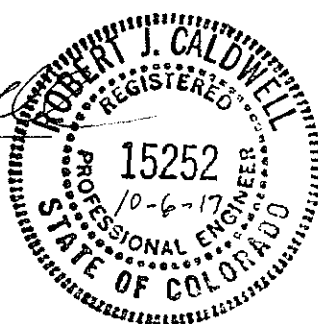
The opinions and findings expressed in this report are based upon the information available at the time of this writing. Should additional information become available in the future, the opinions and findings expressed in this report are subject to change.

Please contact me if you have any additional questions or concerns regarding this matter.

Sincerely,  
PONDEROSA ASSOCIATES, LTD.

  
Robert J. Caldwell, P.E.

Attachments

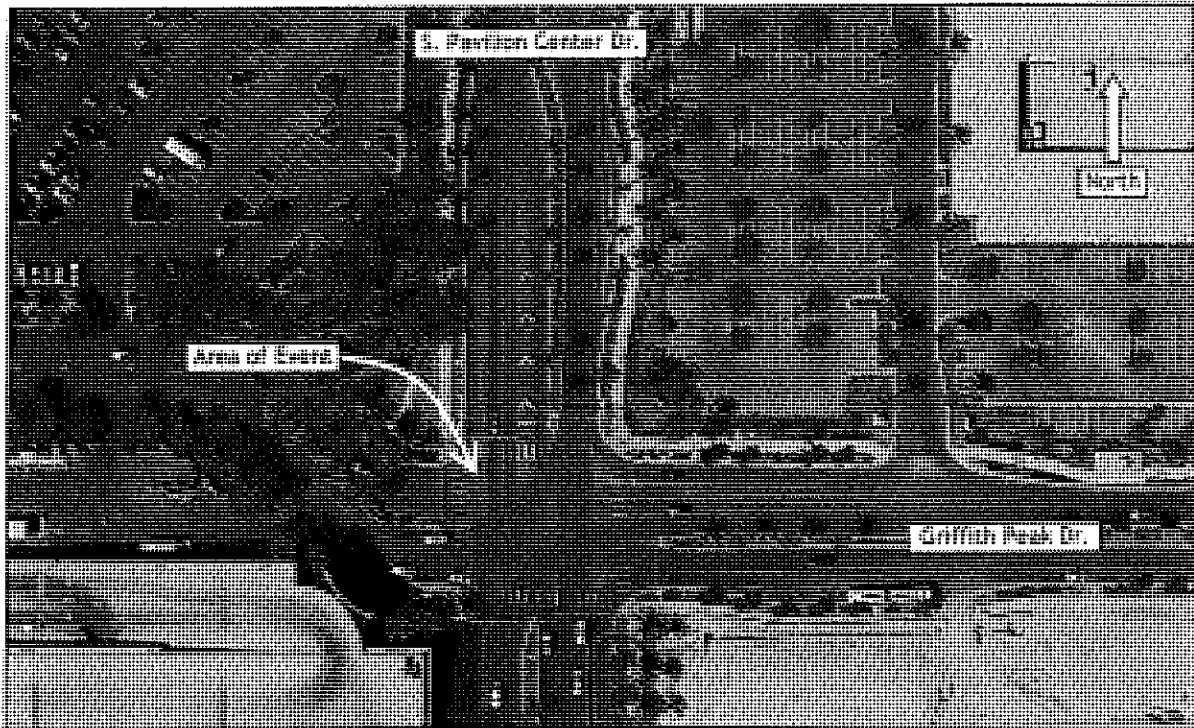


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Attachment 1. Documents Reviewed:

- State of Nevada Traffic Accident Report, Scene Information Sheet, Date Reviewed April 21, 2017
- The deposition of Aaron Bradley, Erika Bradley, Shaun Harney, Edward Hubbard, Zach Kieft, Samantha Kolch, Robert Pears, Michael Plantz, and Luis Fernando Sacarias Pina
- A cell phone video taken at the time of the event
- 41 photographs of the of the helmet 6-20-17; BELL 000259 - 299
- 53 photographs of the scene, bicycle and associated evidence 7-18-17; BELL 000300 – 352
- Clark County Coroner Medical Records
- Clark County Coroner Medical Records produced by subpoena, P01220 – P01259
- Amended Complaint And Demand For Jury Trial dated June 6, 2017
- Notice of Rule 34 Inspection of Subject Bus
- Red Rock Casino security video taken during the event
- Clark County Coroner investigation photographs, 193 each
- Las Vegas Metropolitan Police Department investigation photographs, 159 each
- MCI bus inspection photographs, 4 each

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October 6, 2017  
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Attachment 2. Aerial photo of the location of the event.



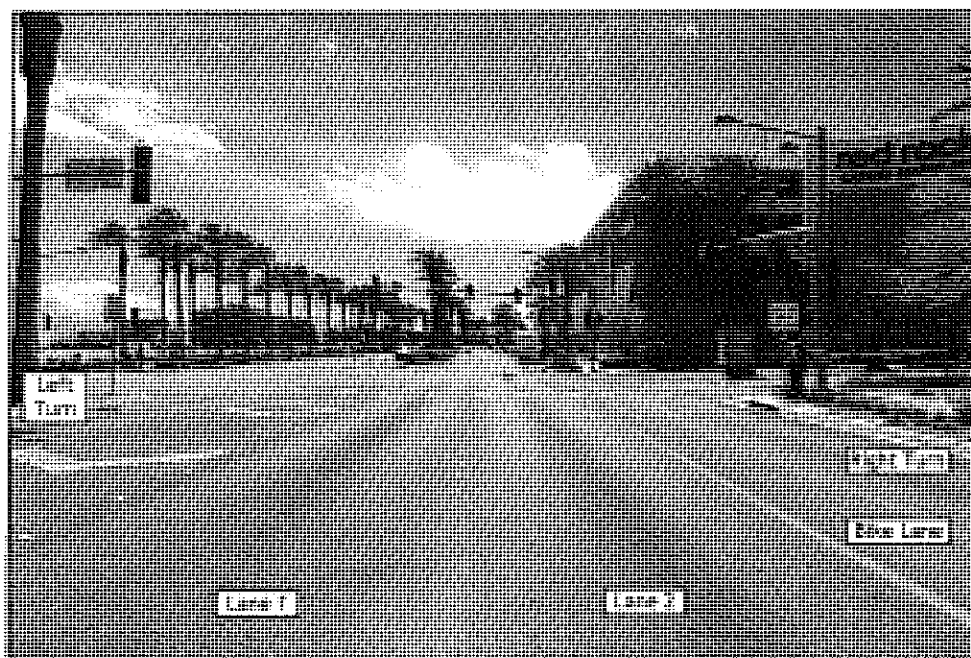
Attachment 3. Contact mark located on the right side of the MCI bus.



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October 6, 2017  
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Attachment 4. 2017 Scott Solace 10 Disc post-accident photograph

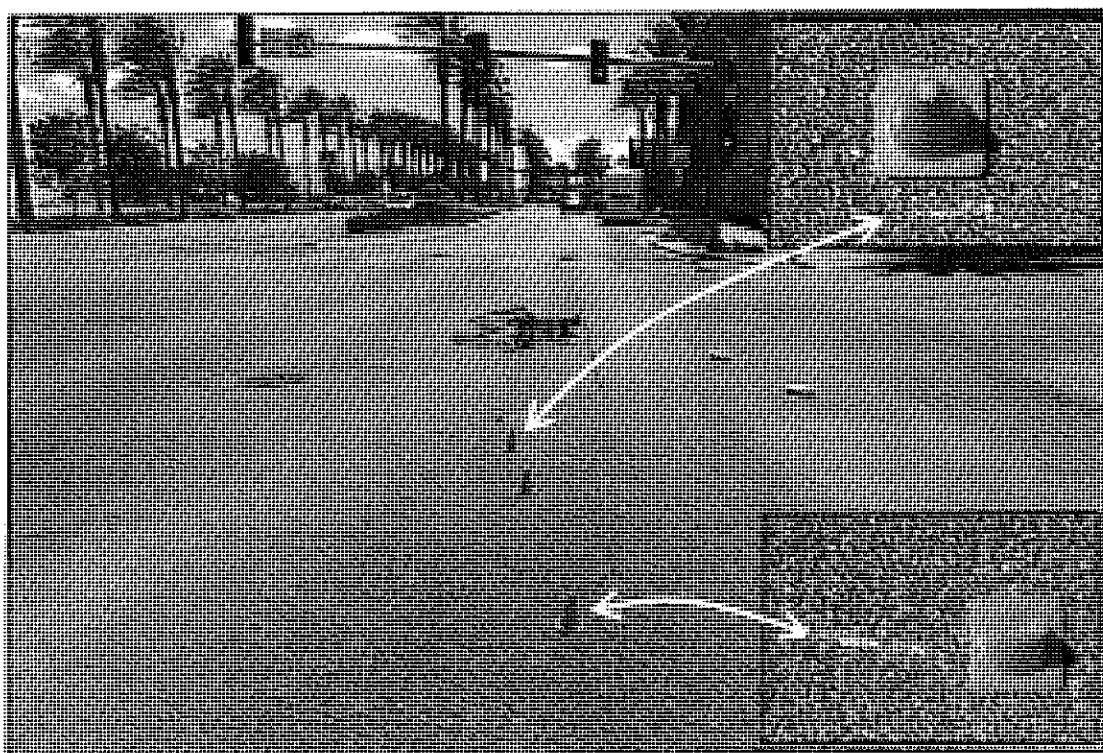


Attachment 5. Southbound S. Pavilion Center Dr.

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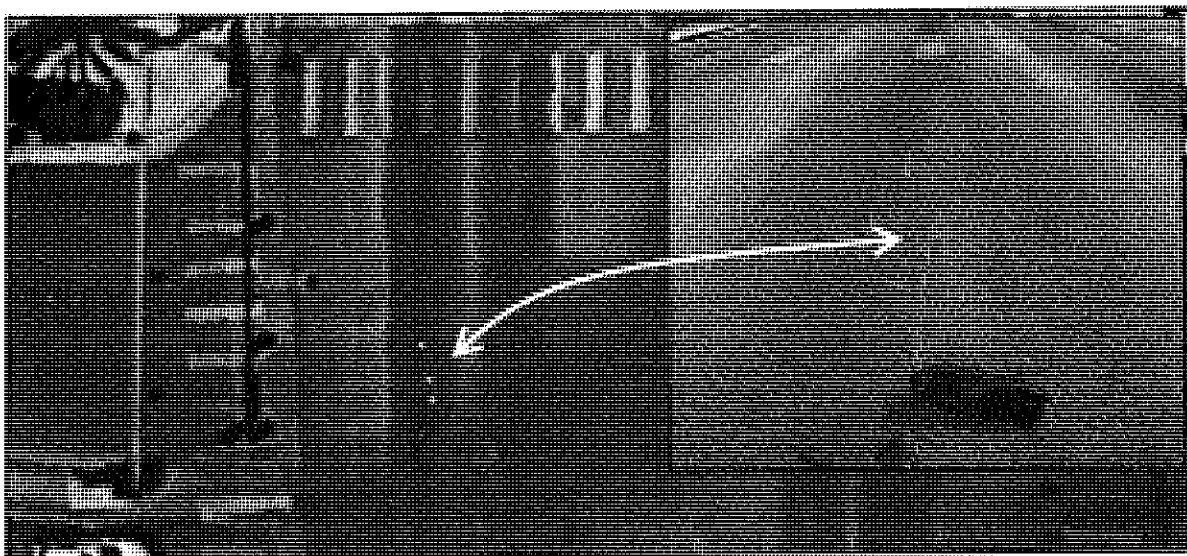


Attachment 6. Ponderosa scene scan



Attachment 7 Scene investigation photo

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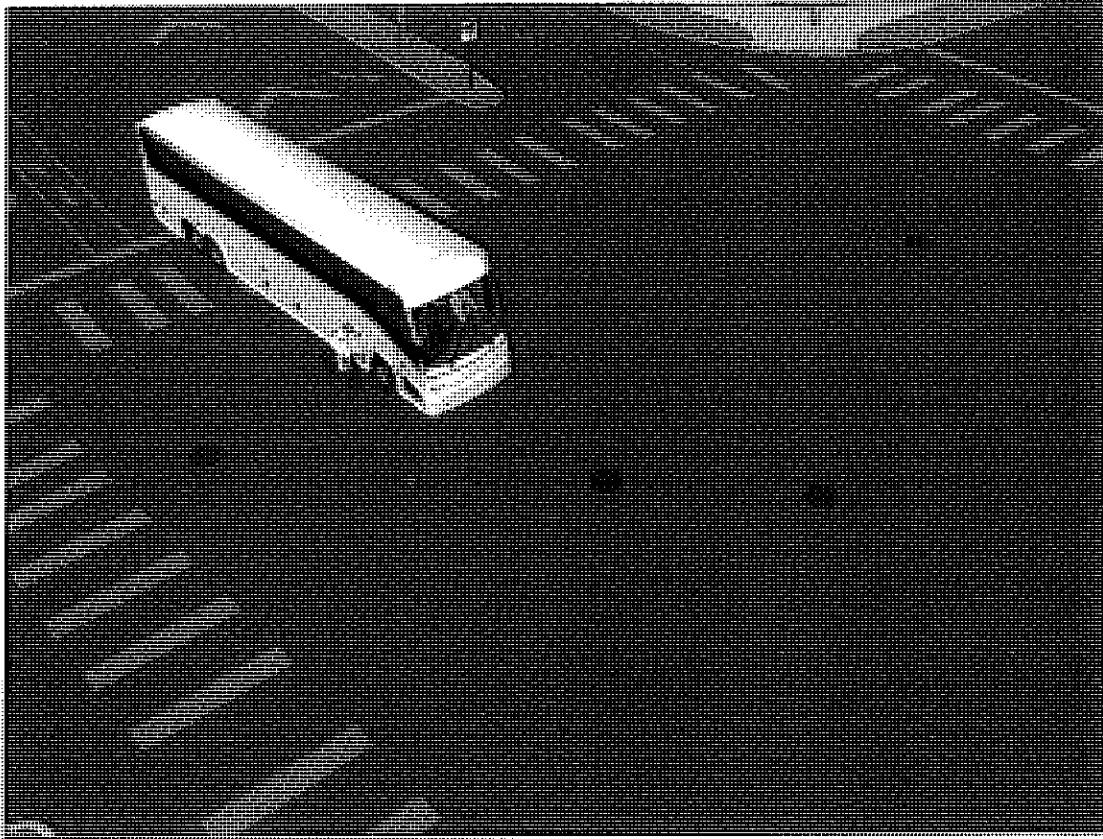


Attachment 8 Ponderosa evidence diagram



Attachment 9 Red Rock Casino Resort & Spa security video screenshot

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Attachment 10 Graphic by Fat Pencil Studio

# EXHIBIT C

001532

# EXHIBIT C

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Plaintiffs, )

vs. )

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

Defendants. )

)Case No.  
)A-17-755977-C  
)Dept. No.  
)XIV

VIDEOTAPED DEPOSITION OF VIRGIL HOOGESTRAAT

LAS VEGAS, NEVADA

FRIDAY, OCTOBER 13, 2017

REPORTED BY: HOLLY LARSEN, CCR NO. 680, CA CSR 12170  
JOB NO.: 425410

1 maybe it's wrong because no one is right all the  
2 time. There's been a suggestion in January 2017  
3 that's a standard feature. Is that --

4 A. It may be today because it was launched as  
5 an option to see what customer interest was and it  
6 may evolve to standard because they're all taking it  
7 anyway.

8 Q. Okay. So would it be fair to say that  
9 customer interest in the Wingman collision  
10 mitigation system has been good?

11 A. It has been growing, yes. They can still,  
12 I'm sure, insist it be taken off if it is standard,  
13 but acceptance has been improving.

14 Q. All right. Prior to 2014, did Bendix  
15 supply the brakes for the J series?

16 A. No.

17 Q. Who supplied the brakes prior to 2014?

18 A. The brakes were supplied by Meritor.

19 Q. And was that true back to when the J series  
20 first came out?

21 A. Yes.

22 Q. Does Meritor also make a collision  
23 mitigation system?

24 A. They have a joint venture with WABCO.

25 Q. Okay. Is there a reason why the Meritor

1 system was not used prior to 2014 for the 2013,  
2 2012, and back models?

3 MR. RUSSELL: Objection. Foundation.

4 THE WITNESS: It wasn't available.

5 BY MR. KEMP:

6 Q. Okay.

7 A. For buses.

8 Q. Was it available for trucks?

9 A. I'm sure it was.

10 Q. But not for buses?

11 A. It's very common that they will make  
12 something available for trucks before they make it  
13 for buses.

14 Q. Why is that, if you know?

15 A. I just know that we are always behind  
16 trucks as far as getting products like that.

17 Q. Is there a reason for that?

18 A. I can guess.

19 MR. RUSSELL: Foundation.

20 BY MR. KEMP:

21 Q. Well, what's your conjecture?

22 A. Volume.

23 Q. So they sell more trucks than buses, so  
24 trucks is the target market for these safety  
25 upgrades?



# EXHIBIT D

# EXHIBIT D

# NEVADA

## Driver's Handbook



May 2016

Brian Sandoval  
Governor



Terri L. Albertson  
Director

# NEVADA DRIVER'S HANDBOOK

DEPARTMENT OF MOTOR VEHICLES  
555 Wright Way  
Carson City, Nevada 89711-0400

This handbook has been written in an informal style for easy reading. As you read, you will find information on the knowledge, skills, abilities and attitudes you need to drive safely.

You will also find general licensing requirements, some basic traffic laws, explanations of signs and signals, material on driving under the influence and defensive driving tips. The knowledge test for your Nevada license is based on the information in this manual.

However, this handbook does not give the exact wording of traffic laws and it does not discuss all of them. For specific laws, please refer to the Nevada Revised Statutes (NRS). NRS copies are available in the public libraries and online at [leg.state.nv.us/law1.cfm](http://leg.state.nv.us/law1.cfm)



## Key Changes in This Edition

- Page 7 - Updated the "Documents You Will Need" section
- Page 9 - Updated DAC acceptable documents
- Page 19 - Updated Veteran Designation section
- Page 21 - Updated Fees
- Made changes since the last revision

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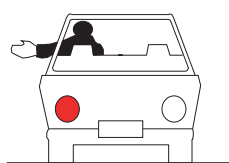
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# Signaling, Turning, Lane Changes and Passing

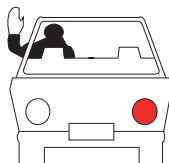
## Signaling

Using signals to tell others that you are going to change lanes, turn, slow down, stop or park is not just common courtesy, it is also the law. Most vehicles have turn signal lights and brake lights are required equipment. Hand and arm signals can also be used.

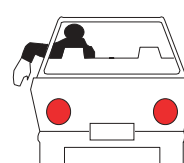
**Note: If the turn signals or brake lights on your car are temporarily out of order, you need to use the following hand signals:**



**LEFT  
TURN**



**RIGHT  
TURN**



**STOPPING  
or SLOWING  
ABRUPTLY**

- Left turn — Extend left arm horizontally out of open window
- Right turn — Extend left arm, with elbow bent upward, at about a 90-degree angle
- Slowing or stop — Extend left arm downward, with palm of hand to the rear

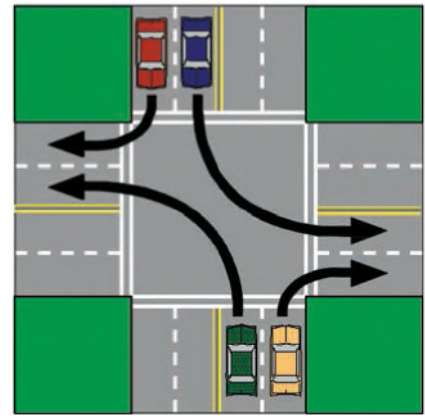
## Turning

To make safe and legal turns, you must:

- Make sure you are in the correct lane well ahead of time
- Look ahead, behind and to each side of your vehicle
- Be aware of other drivers and pedestrians
- Signal your turn at least 100 feet ahead (about 10 car lengths) on city streets and 300 feet (30 car lengths) on open highways
- Watch for and obey traffic signals, signs and pavement markings that direct your movement
- Allow time and space to make your turn safely – slow down
- Yield the right-of-way to pedestrians and other traffic
- Steer through the turn and accelerate to the speed of traffic
- Be sure your turn signal is off after you enter the flow of traffic

Note: Many crashes are caused by drivers making turns. When turning, be especially aware of pedestrians and bicyclists, as well as other vehicles. Before making your turn, look one more time in each direction.

When *turning right*, you must be in the extreme right-hand travel lane or a lane designated for right turns. If a single lane is provided to be used only for turning, you may only enter the lane if you are making a right turn, and may not travel through an intersection while driving in the right-turn lane. Turn into the right-hand lane of the roadway you are entering or the lane designated for the turn. If you then need to change lanes, signal and proceed carefully to the next lane when you are well away from the intersection.

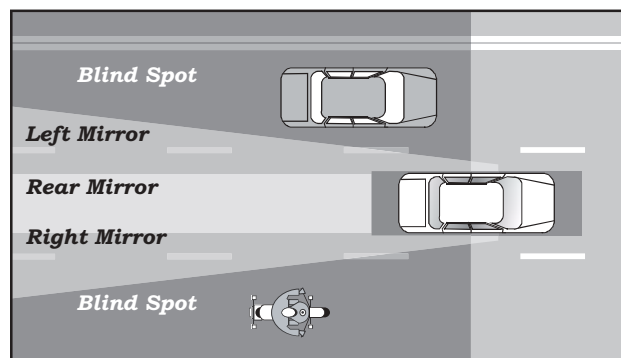


When *turning left*, keep your wheels pointed straight ahead until you begin to actually complete the turn. On a two-way road, use the lane just to the right of the center line and complete the turn into the traffic lane closest to you going in your intended direction. Do not attempt to change lanes until you can do so safely.

## Lane Changes

When you want to change lanes:

- Use your rear and side-view mirrors to check traffic
- Signal 100 feet (10 car lengths) on city streets, 300 feet (30 car lengths) on highways or freeways before changing lanes
- Check blind spots by looking over your shoulder and change lanes when traffic is clear
- Do not change lanes in an intersection



## U-Turns

In Nevada, U-turns are generally allowed on any road when they can be made safely. They are specifically not allowed:

- When prohibited by a traffic sign or signal
- In a business district, except at an intersection or an appropriate opening on a divided highway
- On curves
- Near a grade where there is less than 500 feet of visibility in both directions



You should also be aware that local authorities and the Nevada Department of Transportation may prohibit U-turns at any location within their respective jurisdictions.

Nevada law prohibits the operator of a vehicle from making a U-turn in a school zone except when there are no children present, it is a day when no school is in session, on school days from half an hour after schools ends to a half hour before the next school session begins or when the signs/lights designate that the school zone is currently not in effect.



## 5

## SHARING THE ROAD

## Commercial Vehicles

Over 200,000 crashes occur between cars and commercial vehicles each year. Many of these crashes could be avoided by keeping these points in mind:

- Large commercial vehicles cannot maneuver like a car or other smaller vehicles.
- Large commercial vehicles have much larger blind spots than smaller vehicles.
- Large commercial vehicles take more time and space to slow down or stop.
- Most crashes between large commercial trucks and smaller cars are caused by the car drivers.
- In commercial vehicle and small car accidents, the people in cars are much more likely to be killed or injured than the driver of the commercial vehicle.

### What is a No-Zone?

The “No-Zone” is the area around large commercial trucks or buses where cars “disappear” into blind spots. If truck drivers cannot see you, the possibility of a collision is greatly increased. These blind spots are the Side No-Zone, Rear No-Zone and Front No-Zone areas. The right-side blind spot is doubly dangerous because trucks and buses make wide right turns!

### Side No-Zones

Do not “hang out” on either side of trucks or buses!

Trucks and buses have big No-Zones (blind spots) on both sides. They are much larger than your car’s blind spots. If you cannot see the driver’s face in the side view mirror, he or she cannot see you. If that driver needs to swerve or change lanes for any reason, the chances of a collision are greatly increased.





**EXHIBIT E**

001544

**EXHIBIT E**



## DANGERZONE DEFLECTOR

Installed on over 30,000 buses worldwide since 1993

## PRODUCT INFORMATION

EXHIBIT 3  
REPORTER JANA RUIZ  
DEPONENT Mark Barron  
DATE 9-26-17

## **S-1 GARD® DANGERZONE DEFLECTOR**



The S-1 GARD Dangerzone Deflector is a securely mounted maintenance-free barrier installed in front of the right rear wheels of a transit bus or motor coach, designed to deflect a person out of the path of the wheels, preventing catastrophic injury or death.

Its patented new impact-resistant receiver design, guaranteed for the life of the bus, has improved energy absorption and is engineered to withstand poor road conditions and operator's abuse.

The S-1 GARD Dangerzone Deflector and S-1 GARD Dangerzone Barrier are cast using only the best BASF polyurethane available and will last for as long as any transit bus is in service. Each part is custom fit to accommodate any bus configuration.

## **S-1 GARD® DANGERZONE BARRIER**



Ideal for low-floor buses, the S-1 GARD Dangerzone Barrier covers the entire gap between the front and rear wheels.

Cast from heavy-duty polyurethane, the Barrier is strong enough to deflect pedestrians and cyclists from the path of the wheels, yet flexible enough to withstand impact from road obstacles.

A patented energy absorption mounting receiver allows for barrier movement against impact for, is customizable to fit any compatible frame, and is guaranteed for the life of the bus.

[www.s1gard.com](http://www.s1gard.com)





**Danger Zone Exposed**



**Danger Zone Eliminated**

## THE S-1 GARD IS WORKING

"We seldom have a need to do any maintenance on the S-1 GARD."

- Tom Barrio, Vehicle Maintenance Manager, Montebello Bus Lines, Montebello, CA

.n pleased to report that since the complete installation of the product six years ago, we have not had a right rear tire fatality. In addition, one preventable variable we did not factor in was the efficacy of the guard to apparently warn pedestrians to stand clear of the rear tires."

- Fred Goodine, Assistant General Manager, Safety and Risk Management, WMATA, Washington, D.C.

Washington Metropolitan Transit Authority (WMATA) in Washington, D.C., installed the S-1 GARD in 2000. At the time, WMATA was averaging two severe accidents or fatalities per year; since installing the S-1 GARD, WMATA has reported zero right rear wheel incidents.

"In continuous service through our harsh winters for 12 years, the S-1 GARD is still in good condition firmly attached."

- Daniel G. Holter, General Manager, Rochester City Lines, Rochester, MN

Capital Metro Transit in Austin, TX, installed the S-1 GARD in 2005. Prior to installation, Capital Metro had been averaging one severe accident or fatality every two years. Since installing the S-1 GARD, Capital Metro has reported zero right rear wheel incidents.

**ENDORSED BY PEDESTRIAN AND CYCLIST ADVOCATES NATIONWIDE**



## CONTROL CASUALTY LOSSES: INSTALL A PRODUCT PROVEN TO SAVE LIVES

With the continued rise of fuel prices, transit properties all over North America have continued to see increased ridership, which will demand more emphasis on safety. Because of the increased safety risks, transit properties' exposure rate is increasing by the day.

In order to reduce mounting casualty losses to risk reserves and insurance pools, major transit properties have installed the S-1 GARD. The S-1 GARD has been a proven safety device for over two decades and your entire fleet can be retrofitted for less than the cost of one settlement. The S-1 GARD will:

- ▶ **Prevent Catastrophic Losses.** Fatalities, dismemberment, and degloving injuries can result in verdicts and settlements in excess of \$5 million.
- ▶ **Reduce Legal Costs.** Attorney costs in catastrophic cases can exceed \$250,000.
- ▶ **Avoid Adverse Publicity.** Press coverage of accidents and large settlements are damaging to the image of your transit system.
- ▶ **Improve Public Image.** Dedication ceremonies upon installation demonstrate the concern of your transit property for public safety.
- ▶ **Minimize Exposure of your Drivers.** Even non-fault accidents causing serious injuries have resulted in operators being unable to return to duty.
- ▶ **Improve Loss Experience.** For favorable underwriting and rating at time of renewal.



Metropolitan  
Transport  
Authority

LOS ANGELES  
Division #7

**S-1 GARD SAVES LIFE**

**Date:** April 9, 2003 4:30 p.m.

**Location:** Wilshire Blvd., West Los Angeles, California

**Accident:** Bicyclist caught under bus and saved by S-1 GARD

**Result:** Minor scrapes, abrasions, and bruises

### PHOTOS OF INJURIES



[www.stgard.com](http://www.stgard.com)

## MAJOR TRANSIT FLEETS WORLDWIDE RETROFITTING WITH THE S-1 GARD

Transit agencies and bus OEMs around the world have made the decision to install the S-1 GARD:

### Transit Agencies including:

- LAMTA (Los Angeles, CA)
- SFMTA (San Francisco, CA)
- Keolis Sverige (Stockholm, Sweden)
- CapMetro (Austin, TX)
- WMATA (Washington, D.C.)
- MTA (Baltimore, MD)
- Riverside TA (Riverside, CA)
- Santa Clara Valley TA (San Jose, CA)
- Montebello Bus Lines (Montebello, CA)
- Big Blue Bus (Santa Monica, CA)
- Norwalk Transit System (Norwalk, CA)
- SDMTS (San Diego, CA)
- AC Transit (Oakland, CA)
- Glendale Beeline (Glendale, CA)
- Sun Tran (Tucson, AZ)
- OTS (Honolulu, Hawaii)

### Bus OEMs including:

- New Flyer Industries
- Gillig Corp.
- Daimler Buses
- North American Bus Industries (NABI)
- Volvo Buses
- Veolia Transportation
- Fiba Canning
- Orion Bus
- ElDorado National
- MAN Bus (Sweden)

... As well as major theme parks and international airport shuttles.



*Dedication Ceremony, City of Santa Monica*



*PTS representative inspecting installation on buses in Stockholm*



## WORLDWIDE MANUFACTURER OF THE S-1 GARD



TPC, INC.  
Fontana, California  
[www.goturethane.com](http://www.goturethane.com)

Since 1980, Turret Punch Company (TPC) has provided its customers with the highest grade urethane products with on-time deliveries, at a highly competitive price. TPC's state of the art equipment handles runs of all sizes, from single parts to mass production.



Produced with  
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Request yours today at [www.s1gard.com](http://www.s1gard.com)

FOR MORE INFORMATION, CONTACT:

**Public Transportation Safety International Corp.**

523 West 6th Street, Suite 1101  
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[info@s1gard.com](mailto:info@s1gard.com)



[www.s1gard.com](http://www.s1gard.com)

# EXHIBIT F

001551

# EXHIBIT F



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.

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) No. A-17-755997-  
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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

15:25 1 the bus.

2 Q. But they could put the S-1 Gard as standard  
3 equipment?

4 A. If it's specified by the contractor, the  
15:25 5 operator.

6 Q. And could they also put it on the bus as  
7 standard equipment --

8 A. Yes, they could.

9 Q. -- even if it's not specified by the operator?

15:25 10 A. Yeah.

11 But -- yeah, private contractors could. Yes, they  
12 could, but they don't.

13 Q. In your experience, why don't they include  
14 S-1 Gards as standard equipment on the buses they  
15:25 15 manufacture?

16 A. Because they want to sell the bus at a low  
17 cost, and any extra features -- video cameras, bike  
18 racks, S-1 Gards -- are extra equipment that needs to be  
19 specified by the end user, the contractor or the bus  
15:25 20 operator, the company that operates the buses, the  
21 private buses.

22 They would have to specify that special mirror. In  
23 Europe, they had mirrors that turned. They don't come  
24 standard on motor coaches.

15:26 25 Q. So if I understand you correctly, you're saying

16:29 1 Q. And the others are not?

2 A. Yeah.

3 It's extra paperwork they have to do to get the  
4 funding. It's called procurement. You can't just write  
16:29 5 a check. They have to get the money from the feds. So  
6 there's a procurement.

7 Q. So does the federal government, then, assist  
8 the agencies in acquiring the S-1 --

9 A. Yes.

16:29 10 Q. How do they assist?

11 A. Well, transit properties nationwide lose money  
12 every year, and the only profit they make is from fare  
13 box and advertising. That money goes into a special  
14 account for injury claims.

16:29 15 So they lose money every year. So the federal  
16 government pays, because they want people to go to work,  
17 to get tax revenue. So they're big, the federal  
18 government's big, on city transportation for riders for  
19 job operation.

16:30 20 Q. Okay.

21 So the federal government will actually pay transit  
22 authorities to buy the S-1; is that right?

23 A. Yes.

24 Q. So it's no cost to the transit agencies, just  
16:30 25 the paperwork?

16:30 1 A. Yes.

2 Q. And even then, some transit agencies don't do  
3 it?

4 A. Difficult, yes.

16:30 5 Q. Okay.

6 Do you market your product to actual governmental  
7 agencies?

8 A. Yes.

9 Q. Whom do you market to? Can you describe?

16:30 10 A. Government agencies?

11 Q. Yes.

12 A. Well, it would be the transit properties are  
13 government agencies.

14 Q. You sell to the FBI?

16:30 15 A. I see, like military and --

16 Q. That's right.

17 A. No, no.

18 Q. Okay.

19 But you do sell to those that can go to the federal  
16:30 20 government to get funding for the equipment that you  
21 sell?

22 A. Yes.

23 Q. If someone wanted to buy one of your equipment,  
24 an S-1 Gard, how do they go about doing that?

16:31 25 A. Well, they would contact our company, and then

16:53 1 Q. And why have they made the decision, do you  
2 know --

3 A. Well, they have them on all their other buses.

4 Q. Why do they put the S-1 Gard on their coaches,  
16:53 5 do you know?

6 A. All their buses?

7 Q. Yes.

8 A. Well, they're in -- they're in the tourists,  
9 and people come from all over the world. They got bike  
16:53 10 paths, and they're proactive. They're safety-conscious.

11 Some people aren't. Some agencies, 50 percent, are  
12 wanting to do it, and other half, roughly, don't.

13 Q. Now, does Santa Monica run coaches like fixed  
14 stops, like a transit bus?

16:54 15 A. No.

16 Q. But they do run coaches where there's a lot of  
17 people?

18 A. Yeah.

19 Santa Monica, yeah, there's a lot of foot action.  
16:54 20 They collect them on Ocean Avenue, the tourists, and  
21 they take them out. They have about, I believe,  
22 10 percent of their fleet is from MCI.

23 Q. So they made the decision they needed the  
24 S-1 Gard for their application?

16:54 25 A. Well, they have them on the rest of their

# EXHIBIT G

# EXHIBIT G

**Expert Witness Report of Robert J. Cunitz, Ph.D. CHFP****Khiabani v Motor Coach Industries, Inc.****October 5, 2017****I. Background**

I am president of Consumer Usage Laboratories that specializes in evaluating human factors and psychological issues as they relate to product safety and product safety labeling and warnings. I received my Ph.D. in Psychology from the University of Maryland in 1970, was head of the Human Factors Section at the National Bureau of Standards and thereafter became Board Certified as a Human Factors Professional in 1993. My experience is more fully set forth in my Curriculum Vitae attached hereto as Exhibit A. The history of cases in which I have provided testimony is attached hereto as Exhibit B.

**II. Materials Reviewed**

- a. Amended Complaint and Demand for Jury Trial
- b. Giro Owner's Manual
- c. Accident Video 20170418\_103810
- d. AMR Medical Records with Declaration of COR
- e. Behind The Scenes - Bell Helmets Test Lab Video
- f. CCFD Medical Records.
- g. Charles W. Powell Eng. Report - Darrington v. Giro Sports Design—2005
- h. Clark County Coroner Medical Records Produced by Subpoena
- i. Clark County Coroner's Photos – Scene
- j. CycleEye alerts bus driver\_x264 Video
- k. Death Certificate - P00001
- l. Duluth Barge heading out. (Soaking a few bystanders)-ASJ7p6xVTbY Video
- m. GIRO + MIPS Video
- n. James Green Report on S1 Guard
- o. P-01216 (1-180) Caldwell Inspection Photographs taken 8-9-17
- p. P00353-P00382 Photos of Helmet taken by KJC
- q. Pedestrian and Cyclist Detection System\_short\_x264 Video
- r. Red Rock Video
- s. Traffic Crash Report – unredacted
- t. UMC Medical Records with COR Cert
- u. Volvo Cyclist Detection With Full Auto Brake\_x264 Video
- v. Deposition of Aaron Bradley with Ex 0001
- w. Deposition of David Dorr with Exhibits
- x. Deposition of Brad Ellis
- y. Deposition of Erika Bradley with Exhibits
- z. Deposition of Christopher Groepler with Exhibits

- aa. Deposition of Edward Hubbard
- bb. Deposition of Jeffrey Justice
- cc. Deposition of Zach Kieft
- dd. Deposition of Samantha Kolch
- ee. Deposition of Luis Sacarias
- ff. Deposition of Terry McAfee
- gg. Deposition of Robert Pears with Exhibits
- hh. Deposition of Michael Plantz with Exhibits
- ii. Deposition of Shaun Harney with Exhibits
- jj. Deposition of Mary Witherell with Exhibits
- kk. Deposition of William Bartlett with Exhibits
- ll. Report of Robert E. Breidenthal

### **III. Factual Background**

On April 18, 2017, Dr. Kayvan Khiabani was riding his bicycle southbound in a designated bicycle lane on S. Pavilion Center Drive near the Red Rock Resort and Casino in Las Vegas, Nevada.

At approximately 10:34 AM, as he approached the intersection of S. Pavilion Center Drive and Griffith Peak Drive, Dr. Khiabani was overtaken by a large tour bus on his left side. The bus was a 2008, full-size Motor Coach Industries, Inc. Model J4500. The subject bus was designed and manufactured with limited driver ability to visualize the right side of the bus and without proximity sensors or sufficient visual aids to alert the driver to the proximity and location of adjacent pedestrians and bicyclists. At the time, the bus was owned and operated by Defendant Ryan's Express (Michelangelo) and was being driven by their employee, Edward Hubbard. At the time that it overtook Dr. Khiabani, the bus was traveling at sufficient speed to pass the bicycle and was traversing out of the right-hand turn lane and crossing over the designated bicycle lane from the right side of Dr. Khiabani to his left side. As it crossed the designated bicycle lane to overtake Dr. Khiabani on the left, the bus and Dr. Khiabani's bicycle collided, apparently behind the area of the bus's right front wheel.

David Dorr, a Motor Coach Industries sales and service manager for almost two decades, was unaware that a J4500 model bus at 35 to 45 mph would generate substantial disturbances of the air around the front edge and sides of the bus ("air blast") sufficient to be dangerous to bicyclists in the proximity of the bus. Neither the Purchase and Sales agreement for the bus nor other associated documents warned about this phenomenon. Ryan Express's General Manager, Christopher Groepler, and its Safety Director, William Bartlett, were also unaware of this "air blast" danger and were not otherwise warned of the issue. Mr. Bartlett did not cause their drivers to be trained with respect to this danger. Importantly, their driver, Edward Hubbard had no knowledge of the problem and has testified in his deposition (pp. 80-83) that had he known of the danger, he would have driven his bus differently and given bicyclists much wider clearance from the side of any bus that he was driving.



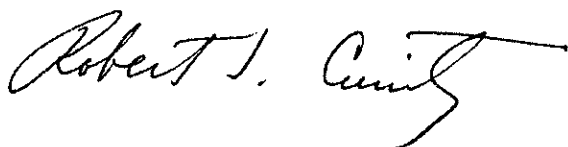
The report of Robert E. Breidenthal described the physics and aerodynamics that generate these "air blast" forces and the effects such forces would have on a bicyclist being passed in close proximity by a square fronted bus at speed. His report makes clear the nature and extent of the danger to bicyclists.

#### IV. Opinions and Conclusions

- a. The J4500 Motor Coach Industries bus at foreseeable speeds represents a known or knowable threat to bicyclists being passed in close proximity. Based on the report of Robert E. Breidenthal, the lateral forces created by the movement of the bus through air are substantial and rapidly changing in direction from outward to inward as the bus passes. Breidenthal concludes that such forces increase with the square of the speed.
- b. As a Human Factors Professional, it is my opinion that such forces would be surprising and so rapidly changing that even skilled bicyclists would be challenged beyond human capabilities and response times to adapt to being strongly pushed sideways away from the bus and almost instantly later being pulled in the opposite direction towards the side and then rear wheels of the bus.
- c. The Danger created represents a combination of Hazard and Risk. Specifically, the Hazard is the air blast forces first pushing away from and then rapidly reversing towards the side of the bus. The faster the bus moves through the area, the greater the forces generated. The Risk is related to a bicyclist's proximity to the moving bus. Risk is lessened the further the passing bus is from the bicyclist. At some distance, the Risk disappears. So, simply, the faster the bus moves, the greater the Hazard. The closer it is to a bicyclist, the greater the Risk. A fast and close bus is Dangerous as it threatens the stability of the bicyclist and, if the bicyclist falls, poses an additional threat of running over the fallen bicyclist with its rear wheels.
- d. Since, it is clear from the Breidenthal report that the Danger can be mitigated if substantial clearances are maintained while passing a bicyclist. A bus's distance and speed with respect to a bicyclists being passed by the bus is controlled primarily by the knowledge, training and thus the behavior of the bus driver.
- e. It is my opinion, within a reasonable degree of scientific certainty, that if safe passing speeds and clearance distances are to be maintained, the bus driver must be adequately warned and trained. Since the danger is not obvious, appropriate warnings and training materials must be provided by the manufacturer to bus purchasers and operators who then can pass the information on to their drivers.
- f. The driver, ultimately, must have this information and must know how to pass safely.
- g. In the present case, as the sales manager for the manufacturer, the general manager and safety director of the operator, and the driver of the bus were unaware of the nature and extent of the Danger, the Hazard should have been Identified by the manufacturer, the Risk evaluated, and warnings issued.

- h. Within a reasonable degree of scientific certainty in my field of Human Factors, it is my opinion that the failure of Motor Coach Industries, Inc. to warn of the Hazard and the means to reduce Risk, created an unreasonable Danger on the highways where it is foreseeable that buses will be passing bicyclists such as Dr. Khiabani.
- i. This Danger was, in my opinion, a substantial cause of his injuries and death. Had adequate warnings and training materials been provided by the manufacturer, the bus driver, Mr. Hubbard, has testified that he would have given bicycles greater clearance during passing maneuvers and Dr. Khiabani would not have been exposed to the oncoming Danger.

I expect to testify concerning the principles and uses of warnings as described in *Warnings: A Human Factors Perspective*, attached as Exhibit C. I also expect to review the results of other expert reports and testimony as it is made available to me.



Robert J. Cunitz, Ph.D. CHFP

**EXHIBIT H**

001562

**EXHIBIT H**

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Plaintiffs, )

vs. )

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

Defendants. )

VIDEOTAPED DEPOSITION OF EDWARD HUBBARD  
LAS VEGAS, NEVADA  
WEDNESDAY, SEPTEMBER 20, 2017

REPORTED BY: KAREN L. JONES, CCR NO. 694

JOB NO.: 417421

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.

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

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



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?

# EXHIBIT I

001569

# EXHIBIT I

EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*\*

|   |   |               |
|---|---|---------------|
| KEON KHIABANI and ARIA KHIABANI,        | * |               |
| minors by and through their natural     | * |               |
| mother, KATAYOUN BARIN, as Executrix    | * |               |
| of the Estate of Kayvan Khiabani, M.D., | * |               |
| (Decedent), and the Estate of Kayvan    | * |               |
| Khiabani, M.D. (Decedent),              | * |               |
| Plaintiffs,                             | * | Case No.      |
| vs.                                     | * | A-17-75597-C  |
| MOTOR COACH INDUSTRIES, INC.,           | * | Dept. No: XIV |
| a Delaware corporation, et al.,         | * |               |
| Defendants.                             | * |               |

\*\*\*\*\*

VIDEOCONFERENCE DEPOSITION OF JAMES R. FUNK, PH.D., PE  
November 14, 2017  
12:43 p.m. to 3:11 p.m.  
Charlottesville, Virginia

Job No. 431719

REPORTED BY: Kurt D. Hruneni, CVR, CCR-VA

1 A Yes, sir.

2 Q And what type of brain injury do you think  
3 it would have been severe enough to cause?

4 A That would depend on the specific  
5 hypothetical in question. It's intentionally left  
6 vague here, because I didn't -- I don't know enough  
7 details about how this guard would be set up in this  
8 hypothetical to give precise opinions.

9 Q So the guard could have saved him and he  
10 would have had minor brain injuries, or it could not  
11 have saved him and he could have had major brain  
12 injuries. Is that what your opinion is?

13 A At this point my opinion is that the guard,  
14 as set up according to manufacturer instructions, would  
15 miss the head and wouldn't prevent any injuries at all.

16 Now if I were to be presented with a  
17 different kind of configuration then I could analyze  
18 that in more detail. But I can't analyze it in a  
19 vacuum.

20 Q So as we sit here today you don't have an  
21 opinion as to what would have happened if the guard had  
22 hit him; correct?

23 A That's correct. Because I've not seen a  
24 design expressed in any detail where that would happen.

25 Q Okay. And on the last few pages of Exhibit

31

31

**MLIM**

D. Lee Roberts, Jr., Esq.

Nevada Bar No. 8877

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants.

Case No.: A-17-755977-C

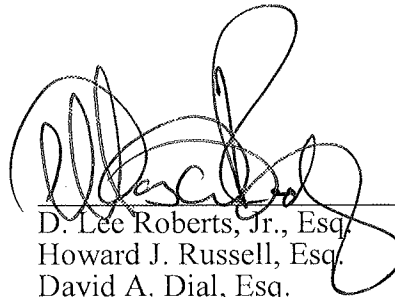
Dept. No.: XIV

**DEFENDANT'S MOTION IN LIMINE  
NO. 7 TO EXCLUDE ANY CLAIMS  
THAT THE SUBJECT MOTOR  
COACH WAS DEFECTIVE BASED ON  
ALLEGED DANGEROUS  
"AIR BLASTS"**

1 Defendant Motor Coach Industries, Inc. ("MCI"), by and through its attorneys of record,  
 2 hereby requests that the Court preclude Plaintiffs from claiming or arguing that the subject motor  
 3 coach was defective by claiming that it produced or caused unreasonably dangerous wind blasts,  
 4 suction, or turbulence when moving. This motion is made on the grounds that there is no evidence  
 5 that the subject coach at the time of the accident produced an air displacement that caused or  
 6 contributed to cause Dr. Khiabani to lose control of his bike so that he fell, or that the moving bus  
 7 produced a negative force (suction) sufficient to pull Dr. Khiabani into the side of the bus.

8 This Motion is based upon EDCR 2.47, the attached Declaration of Howard J. Russell,  
 9 Esq., the following Memorandum of Points and Authorities, the pleadings and papers on file  
 10 herein, and any argument presented at the time of hearing on this matter.

11  
 12 DATED this 7<sup>th</sup> day of December, 2017.



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NOTICE OF MOTION

PLEASE TAKE NOTICE that DEFENDANT'S MOTION IN LIMINE NO. 7 TO EXCLUDE ANY CLAIMS THAT THE SUBJECT MOTOR COACH WAS DEFECTIVE BASED ON ALLEGED DANGEROUS "AIR BLASTS" will come on for hearing in the above-entitled Court on the 25th day of January 2018, at 9:30AM a.m./p.m. before Dept. XIV of the above-entitled Court.

DATED this 7<sup>th</sup> day of December, 2017.



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## MEMORANDUM OF POINTS AND AUTHORITIES

### Introduction

Of the various matters and facts that will be debated in this matter, one that experts from both sides and the investigating police officer all agree on is this: The accident at issue occurred when Kayvan Khiabani left his designated bicycle lane and veered his bicycle into the travel lane of the subject motor coach. At this point, no one reasonably disputes this. (*See* Report of Caldwell, attached hereto as Exhibit "1"; Las Vegas Metropolitan Police Department Report, attached hereto as Exhibit "2"; Report of James Funk, attached hereto as Exhibit "3").

Plaintiffs have been trying to find a reason why Dr. Khiabani's bicycle left the bicycle lane, and have landed on a theory that is wholly speculative. Plaintiffs contend that the subject coach displaced air as it passed Dr. Khiabani with such force that it threw him off-balance, while at the same time the rear tires of the coach created suction which pulled him into the side of the coach. This is Plaintiffs' theory. No one has testified (or ever will testify) that this is actually what occurred, or that any supposed "air blast" effect is the reason that Dr. Khiabani diverged from his bicycle lane, into the coach's lane of travel. MCI has explained in its Motion for Summary Judgment why, even giving credence to this theory, this "air blast" effect did not render the subject coach defective or unreasonably dangerous in the eyes of the average consumer. But beyond that, there is simply no evidence to support this theory.

Plaintiffs must be precluded from claiming that the subject motor coach produced or caused unreasonably dangerous wind blasts, suction, and turbulence (referred to as "air blasts" by Plaintiffs' experts) when moving because there is no evidence to support that claim. Plaintiffs must be precluded from claiming the subject coach was defective by creating a dangerous air blast because there is absolutely zero evidence that any air displaced by the coach caused Dr. Khiabani to lose control of his bicycle so that he fell, or that the moving coach produced such a strong negative force (suction) to pull Dr. Khiabani into the side of the coach. Consequently, such claim is irrelevant. This theory is based on speculation, and must be excluded.

///

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**Statement of Facts**

Plaintiffs' expert witnesses claim that a passing MCI J4500, traveling at 25 miles per hour, would create substantial lateral aerodynamic forces, which they call "air blasts," that will cause a nearby cyclist to be forced out of control, and then be subject to being forcibly drawn into an uncontrollable collision with the coach due to resulting suction from the rear tires. (*See e.g.*, Robert E. Breidenthal report dated 10/04/2017, attached as Exhibit "4"). A correlated claim is that the specific shape of the subject coach is defective, in that it contributed to the formation of a dangerous "air blast." (*See id.*). These claims are meritless and based on incorrect assumptions and speculation.

Although it is a fact that all moving vehicles displace air, Plaintiffs' aerodynamics expert testified that to accurately determine the magnitude of vehicular displacement and the area that is affected one must measure the following: 1) the corner radius of the vehicle; 2) the speed of the bus; 3) the speed of the bicycle; 4) the ambient wind speed; 5) the wind's direction; 6) and the proximity of the coach to the bicycle. (Deposition of Robert E. Breidenthal, attached hereto as Exhibit "5", at 30:15-32:24). Interestingly, Mr. Breidenthal had no actual values for any of these factors. Instead, he testified that he based his opinions on assumptions. Specifically, he testified he assumed the following:

- The frontal area of the cyclist is 5.4 square feet;
- A ground speed of 8 miles an hour for the cyclist;
- An ambient wind of 6 miles an hour from the cyclist's right;
- That the plausible deflection angle is 30 degrees due to the displacement of the coach;
- A coach ground speed of 25 miles an hour;
- Local flow speed at the point where the flow is deflected 30 degrees at 40 miles an hour;

(*Id.*, at 20:10-21:6). He did not base the assumptions on anything specific other than his unrelated experience and what Plaintiffs' counsel told him. (*Id.*, at 21:7-21). Mr. Breidenthal did not do any work, testing or analysis to confirm that any of his assumptions were correct. (*Id.*, at 21:22-22:19).

Further, Mr. Breidenthal:

- 1 • *did not* inspect the subject coach (*id.*, at 10:24-11:3);
- 2 • *did not* inspect the subject bicycle (*id.*, at 11:7-11:8);
- 3 • *did not* reconstruct the event itself (*id.*, at 11:9-11:15);
- 4 • *did not* do any testing of the aerodynamics of the actual coach involved or of any coach of
- 5 the same model (*id.*, at 16:8-16:22);
- 6 • *did not* know the lateral separation between the bicycle and the coach; thus, he *estimated*
- 7 based on what seemed reasonable to him (*id.*, at 14:10-15:15);
- 8 • *did not* have access to any wind tunnel studies or information from any source about the
- 9 coach involved (*id.*, at 16:23-17:3); and,
- 10 • *did not* request that any testing be performed even though he believed testing would be
- 11 good. (*Id.*, at 17:4-11).

### Argument and Citation of Authority

#### I. Legal Standard for Motions in Limine

12 Pursuant to EDCR 2.47, “[u]nless otherwise provided for in an order of the court, all

13 motions in limine to exclude or admit evidence must be in writing and filed not less than 45 days

14 prior to the date set for trial and must be heard not less than 14 days prior to trial.” The trial court

15 has broad discretion in determining the admissibility of evidence and such discretion will not be

16 reversed on appeal absent palpable abuse. *Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev.

17 481, 492, 117 P.3d 219, 226 (2005).

18 The scope of a motion *in limine* is rather broad, applying to “any kind of evidence which

19 could be objected to at trial, either as irrelevant or subject to discretionary exclusion as unduly

20 prejudicial.” *Clemens v. Am. Warranty Corp.*, 193 Cal. App. 3d 444, 451, 238 Cal. Rptr. 339, 342

21 (Ct. App. 1987). “The usual purpose of motions in limine is to preclude the presentation of

22 evidence deemed inadmissible and prejudicial by the moving party. A typical order in limine

23 excludes the challenged evidence and directs counsel, parties, and witnesses not to refer to the

24 excluded matters during trial. Motions in limine serve other purposes as well. They permit more

25 careful consideration of evidentiary issues than would take place in the heat of battle during trial.

26

27

1 They minimize sidebar conferences and disruptions during trial, allowing for an uninterrupted flow  
 2 of evidence.” *R & B Auto Ctr., Inc. v. Farmers Grp., Inc.*, 140 Cal. App. 4th 327, 371-72, 44 Cal.  
 3 Rptr. 3d 426, 462 (2006) *citing Kelly v. New West Federal Savings*, 49 Cal.App.4th 659, 669-70, 56  
 4 Cal.Rptr.2d 803 (1996). Such a motion can also be advantageous in avoiding what is obviously a  
 5 futile attempt to “unring the bell” should the court grant a motion to strike during proceedings  
 6 before the jury. *Blanks v. Shaw*, 171 Cal. App. 4th 336, 375, 89 Cal. Rptr. 3d 710, 741 (2009)  
 7 (citation omitted).

## 8 **II. Claims That The Subject Motor Coach Was Defective By Creating Dangerous Air** 9 **Blasts Must be Excluded**

10 Pursuant to NRS 48.015, relevant evidence is “evidence having any tendency to make the  
 11 existence of any fact that is of consequence to the determination of the action more or less probable  
 12 than it would be without the evidence.” While relevant evidence is generally admissible, such  
 13 evidence is inadmissible “if its probative value is substantially outweighed by the danger of unfair  
 14 prejudice, of confusion of the issues[,] or of misleading the jury.” NRS 48.025(1); NRS 48.035(1).  
 15 Conversely, irrelevant evidence is always inadmissible. NRS 48.025(2). The trial court enjoys  
 16 broad discretion in determining the relevancy and admissibility of evidence. *Prabhu v. Levine*, 112  
 17 Nev. 1538, 1548, 930 P.2d 103, 110 (1996) (citation omitted); *Castillo v. State*, 114 Nev. 271, 277,  
 18 956 P.2d 103, 107–08 (1998) (citation omitted).

19 Here, there is absolutely zero evidence that alleged air blasts caused Dr. Khiabani to lose  
 20 control of his bicycle. To this day, no one—not Plaintiffs, not their counsel, and not their experts—can  
 21 explain with any probability *why* Dr. Khiabani bicycle moved into the coach’s travel lane. There  
 22 are myriad possibilities, but no one will ever be able to determine this to a degree of what is more  
 23 likely than not. The “air blast” theory is just that—a theory. Plaintiffs cannot establish that any such  
 24 claimed “defect” in the aerodynamics of the coach caused this accident to occur, and as such, the  
 25 “air blast” theory is pure speculation.

26 Thus, any claim that the subject coach was defective because it displaced air while moving  
 27 is irrelevant and as such, inadmissible. *See* NRS 48.025(2). Further, allowing such testimony to

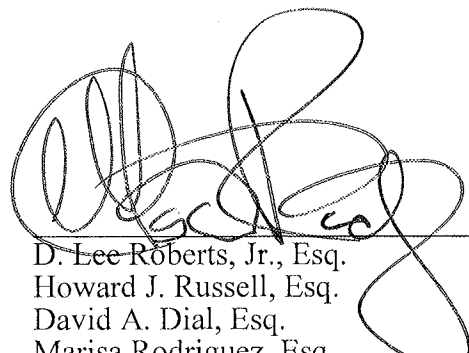
1 support this claim will serve only to confuse witnesses and jurors, and would be unfairly prejudicial  
2 to MCI. As such, these claims must be excluded.

3 And Plaintiffs cannot salvage this theory through their expert. During his deposition, Mr.  
4 Breidenthal candidly admitted that to accurately determine the magnitude of vehicular displacement  
5 and the area that is affected one must measure a number of factors (*i.e.*, radius of the coach, coach  
6 speed, bicycle speed, wind speed, wind direction, proximity of the coach to the bicycle). He also  
7 admitted that he assumed all the values corresponding to these factors. Consequently, Mr.  
8 Breidenthal's opinions associated with air displaced by the moving coach are speculative and  
9 inadmissible. *See Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 302, 662 P.2d 610, 621  
10 (1983) (holding that a party "is not entitled to build a case on the gossamer threads of whimsy,  
11 speculation and conjecture."). Mr. Breidenthal cannot base his opinion on speculation and as such,  
12 cannot offer opinions on any purported "air blasts".

### 13 Conclusion

14 Based on the foregoing, MCI requests that Plaintiffs be precluded from claiming that the  
15 subject motor coach was defective by producing dangerous "air blasts" because there is no evidence  
16 to support that claim. Such claim would be irrelevant, speculative, and prejudicial to MCI and must  
17 not be allowed at trial.

18  
19 DATED this 7<sup>th</sup> day of December, 2017.

20  
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*Motor Coach Industries, Inc.*

# CERTIFICATE OF SERVICE

I hereby certify that on the 7<sup>th</sup> day of December, 2017, a true and correct copy of the foregoing **DEFENDANT'S MOTION IN LIMINE NO. 7 TO EXCLUDE ANY CLAIMS THAT THE SUBJECT MOTOR COACH WAS DEFECTIVE BASED ON ALLEGED DANGEROUS "AIR BLASTS"** was electronically filed and served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

|   |  |
|---|--|
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**DECLARATION OF HOWARD J. RUSSELL, ESQ.**

1. I am Howard J. Russell, Esq. I am over the age of 18 and competent to testify to the matters herein,
2. I am counsel of record for Motor Coach Industries, Inc. ("MCI") in this matter and have personal knowledge of the matters set forth herein.
3. On December 7, 2017, pursuant to EDCR 2.47, I emailed Plaintiffs' counsel a proposed list of motions in limine that MCI sought to resolve prior to seeking Court intervention.
4. On December 7, 2017, I had a telephone conference to discuss these proposed motions with Plaintiffs' counsel, Kendelce Works, Esq.
5. We discussed these proposed motions, and the issues raised, in good faith, but we could not reach agreement on these issues, thereby necessitating the motions.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 7<sup>th</sup> day of December, 2017.



Howard J. Russell, Esq.

32

32

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20 *Attorneys for Defendant*

21 *Motor Coach Industries, Inc.*

22 DISTRICT COURT

23 CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

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Case No.: A-17-755977-C

Dept. No.: XIV

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"

Marisa Rodriguez, 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.

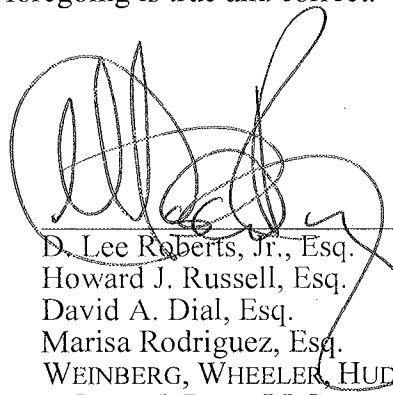
I have personal knowledge of the matters contained in this declaration and am competent to testify regarding them.

The exhibits below are true and correct copies as noted:

| <u>Exhibit</u> | <u>Description</u>                                |
|----------------|---|
| 1              | Report of Robert Caldwell dated 10/06/2017        |
| 2              | Las Vegas Metropolitan Police Report, LVMPD 13-92 |
| 3              | Report of James Funk, PhD dated 10/19/2017        |
| 4              | Report of Robert Breidenthal dated 10/04/2017     |
| 5              | Deposition of Robert Breidenthal, 11/03/2017      |

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 7<sup>th</sup> day of December, 2017.



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*Attorneys for Defendant  
Motor Coach Industries, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 7<sup>th</sup> day of December, 2017, a true and correct copy of the foregoing **APPENDIX OF EXHIBITS TO DEFENDANTS' MOTION IN LIMINE NO. 7 TO EXCLUDE ANY CLAIMS THAT THE SUBJECT MOTOR COACH WAS DEFECTIVE BASED ON ALLEGED DANGEROUS "AIR BLASTS"** was electronically filed and served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

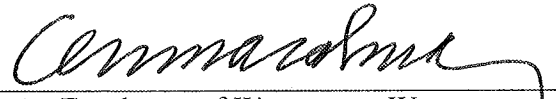
|   |  |
|---|--|
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# EXHIBIT 1

# EXHIBIT 1



To:

Mr. Eric Pepperman  
Kemp Jones & Coulthard  
3800 Howard Hughes Pkwy 17th Floor  
Las Vegas, NV 89169

**REPORT:**

**RE: KHIABANI/HUBBARD, ET. AL.**  
**OUR FILE NUMBER: 17-0803**  
**DATE OF INCIDENT: 04/18/17**

October 6, 2017

Prepared by:

Robert J. Caldwell, P.E.  
Ponderosa Associates LTD  
130 Miners Dr.  
Lafayette, CO 80026

001590

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Report and Attachments of Robert J. Caldwell, P. E.

Appendix A: Curriculum vitae

Appendix B: Fee Schedule of Robert J. Caldwell, P. E.

Appendix C: Billings and future billings

Appendix D: Trial Testimony and Deposition Information of  
Robert J. Caldwell, P. E.

Appendix E: Proposed Exhibits



CONSULTING ENGINEERS  
SCIENTISTS

October 6, 2017

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SEAN R. CALDWELL, P.E.  
TEGAN SMITH, BFA  
LILLIAN CHATHAM, M.S.

Re: Khiabani/Hubbard, et. al.  
Our File No. 17-0803  
Date of Incident: 04/18/17

Dear Mr. Pepperman:

Pursuant to your request, we have evaluated a commercial vehicle-bicycle accident that occurred at approximately 10:36 a.m. on April 18, 2017 in Las Vegas, Clark County, Nevada. The event began in the southbound lanes of S. Pavilion Center Dr. at the intersection with Griffith Peak Dr. and involved a 2008 MCI J4500 bus and a Scott Solace 10 Disc bicycle. At the time of the accident, the MCI bus was being driven by Edward Hubbard and the bicycle was being ridden by Kayvan Khiabani. Dr. Khiabani received fatal injuries as a result of the accident.

**Purpose:**

The purpose of this report is to present the findings of our reconstruction including vehicle dynamics and speeds.

**Procedure:**

Relative to this incident, we have reviewed the provided documents referenced in Attachment 1.

In addition to the materials listed above, Ponderosa Associates inspected, scanned and photographed the accident scene on August 9, 2017. Ponderosa Associates also inspected, scanned and photographed the 2008 MCI bus and Scott bicycle at 412 E. Gowan Rd., North Las Vegas, NV on August 9, 2017.

We have also gathered information regarding the involved vehicles through a VIN decode and through vehicle specification research. Additionally, we have generated various scene and vehicle diagrams and calculations regarding the subject accident.

Eric Pepperman  
Kemp Jones & Coulthard  
October 6, 2017  
Page 2 of 10

### **Background:**

According to the accident report, on April 18, 2017 at approximately 10:36 a.m. Dr. Khiabani was riding his bicycle in the designated bike lane southbound on S. Pavilion Center Dr. approaching the intersection with Griffith Peak Dr. He entered the intersection and contacted the MCI bus as it was traveling southbound in the righthand (number 2) travel lane. The attached aerial photo identifies the area of the event. (Attachment 2)

The Traffic Crash Report Scene Information Sheet indicates that the event involved one vehicle and one non-motorist on a two-way, not divided asphalt paved roadway. The lighting and environmental conditions at the time of the accident were classified as daylight with clear weather and dry roadway conditions. The overall geometry of the road for southbound vehicles at the area of the event was straight and relatively level. A raised concrete curb center median separates the southbound and northbound travel lanes.

### **Vehicle:**

2008 MCI J4500 Motor Coach: The 2008 MCI is a commercial bus, rear-wheel drive vehicle with a Vehicle Identification Number of 2M93JMH A28W064555 and date of manufacture of September 2007.

The exterior of the vehicle shows evidence of a sideswipe contact mark along the right side just behind the right front wheel well. (Attachment 3)

2017 Scott Solace 10 Disc: The 2017 Scott Solace bicycle is a 52cm frame with a serial number of SGR01F25216020236B. (Attachment 4) Inspection of the bicycle identified abrasions to the left front brake hood, the outside edge of the left pedal, the left side of the rear of the seat, and the left rear axle quick release skewer. The bicycle did not appear to be damaged by being run over by the bus. The damage identified during the inspection was consistent with the damage photographed by the Las Vegas Police Department.

### **Scene:**

S. Pavilion Center Dr. in the southbound direction has two through lanes, a left turn lane for Griffith Peak Dr., and a right turn lane to enter the Red Rock Casino, Resort & Spa. A designated bike lane runs parallel and to the right side of the number two through lane. A future left turn lane that is striped with white chevrons exists between the number one through lane and the left turn lane. At the intersection the roadway has a white stop bar and there is a designated cross walk. (Attachment 5) The posted speed limit in the area of travel is 30 MPH. During our inspection, photographs were taken and detailed measurements of the scene were recorded using a Faro 3D scanner. (Attachment 6)

Eric Pepperman  
Kemp Jones & Coulthard  
October 6, 2017  
Page 3 of 10

The Las Vegas Metropolitan Police Department investigation included photographic documentation and measurements of the scene geometry and evidence. (Attachment 7) The scene survey and the final police report have not yet been received at the time of this report. Additional photo alignment work was performed using the on-scene photography to determine evidence locations on the roadway that included scrapes, gouges and a blood stain. (Attachment 8)

### **Accident Reconstruction:**

Accident Dynamics: The Red Rock Casino Resort Spa was equipped with a video surveillance camera that was mounted at the northeast corner of the parking structure and was focused on the intersection. The camera recorded the traffic traveling southbound on S. Pavilion Center Dr. and portions of the event. Due to palm fronds partially blocking the view the entire event was not visible. (Attachment 9) As the MCI bus enters the intersection it is in a slight left steer moving away from the bike lane. Contact occurs between the left handlebar of the bicycle and the bus in the intersection just east of the bike lane into the #2 lane of travel. (Attachment 10) The bus continued southbound and partially ran over Dr. Khiabani's helmet and head prior to coming to a controlled stop along the right shoulder of S. Pavilion Center Dr.

Following contact, the left side of the bicycle contacts the roadway leaving the identified evidence and Dr. Khiabani is struck by a right rear tire. Dr. Khiabani and the bicycle come to rest in the #2 lane. Analysis of the event indicates that the bus was traveling approximately 25 MPH at the time of contact.

As noted above, subsequent to contact with the right side of the bus Dr. Khiabani and his bicycle upset. The bicycle was on its left side and left side components of the bicycle created scratches to the pavement as described above. The bicycle was not run over by the bus other than some possible interaction with left side of handle bar and the brake and shift assembly at that position. Dr. Khiabani's body interacted with the pavement and possibly the right underside of the bus. As the bus continued southbound at least one of the rear tires partially passed over Dr. Khiabani's head. Dr. Khiabani was wearing a bicycle helmet which was partially crushed as a result of the tire interaction.

A safety device known as an S1 Gard (<http://s1gard.com/>) was available to have been attached to the bus in front of the rear axles. Had such a device been present it would have interacted with Dr. Khiabani's helmet prior to him being engaged by the rear tire(s). The closing speed of the S1 Gard to Dr. Khiabani's helmet would have been below the speed of the bus which was approximately 25 mph.

Eric Pepperman  
Kemp Jones & Coulthard  
October 6, 2017  
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**Conclusions/Opinions:**

Based upon my training, education and experience, and our examination and analysis of the subject accident, I have reached the following conclusions:

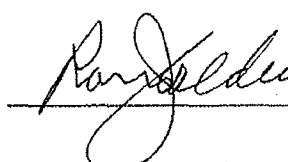
- The speed of the 2008 MCI bus was approximately 25 mph at the time of contact with the bicycle.
- The first known contact between the bicycle and the bus was evidenced by a rubber smear that occurred just behind the right front (#1) wheel well of the bus. The likely source of the smear was the brake hood at the left side of bicycle handle bar.
- The location of the first documented contact between the bicycle and the bus was east of the bike lane into the #2 travel lane while the bus was swerving away from the bike lane.
- The closure speed between the S1 Gard, had it been in place, and Dr. Khiabani's helmet was less than 25 mph.

The opinions and findings expressed in this report are based upon the information available at the time of this writing. Should additional information become available in the future, the opinions and findings expressed in this report are subject to change.

Please contact me if you have any additional questions or concerns regarding this matter.

Sincerely,

PONDEROSA ASSOCIATES, LTD.

  
Robert J. Caldwell, P.E.

Attachments

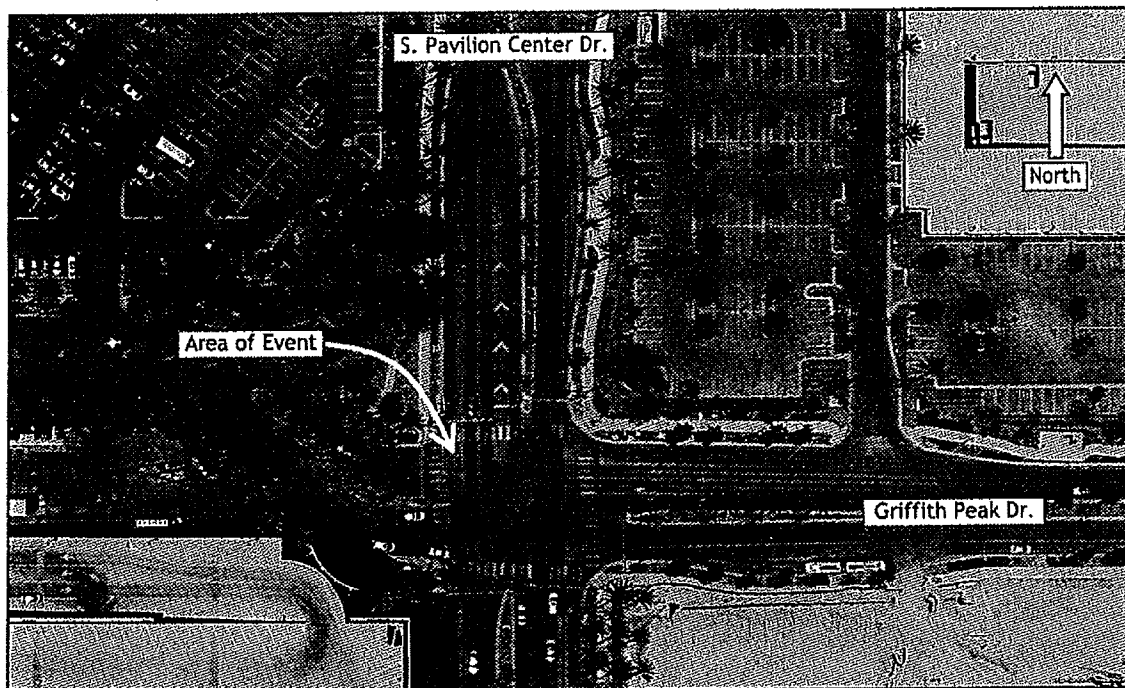


Eric Pepperman  
Kemp Jones & Coulthard  
October 6, 2017  
Page 5 of 10

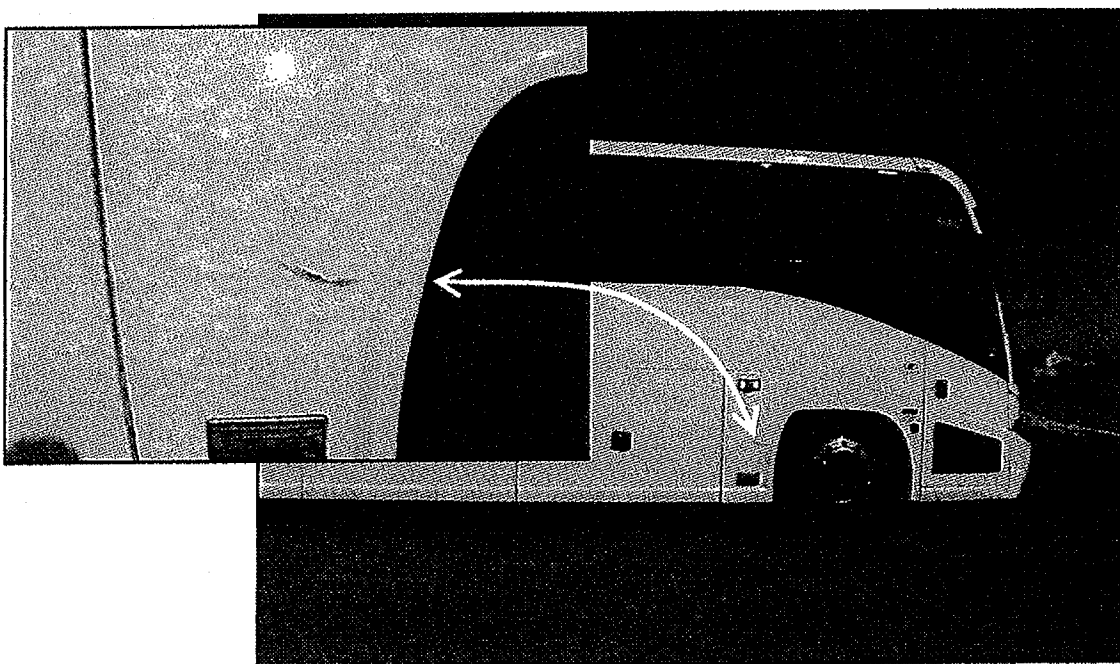
Attachment 1. Documents Reviewed:

- State of Nevada Traffic Accident Report, Scene Information Sheet, Date Reviewed April 21, 2017
- The deposition of Aaron Bradley, Erika Bradley, Shaun Harney, Edward Hubbard, Zach Kieft, Samantha Kolch, Robert Pears, Michael Plantz, and Luis Fernando Sacarias Pina
- A cell phone video taken at the time of the event
- 41 photographs of the of the helmet 6-20-17; BELL 000259 - 299
- 53 photographs of the scene, bicycle and associated evidence 7-18-17; BELL 000300 – 352
- Clark County Coroner Medical Records
- Clark County Coroner Medical Records produced by subpoena, P01220 – P01259
- Amended Complaint And Demand For Jury Trial dated June 6, 2017
- Notice of Rule 34 Inspection of Subject Bus
- Red Rock Casino security video taken during the event
- Clark County Coroner investigation photographs, 193 each
- Las Vegas Metropolitan Police Department investigation photographs, 159 each
- MCI bus inspection photographs, 4 each

Eric Pepperman  
Kemp Jones & Coulthard  
October 6, 2017  
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Attachment 2. Aerial photo of the location of the event.



Attachment 3. Contact mark located on the right side of the MCI bus.



Eric Pepperman  
Kemp Jones & Coulthard  
October 6, 2017  
Page 7 of 10



Attachment 4. 2017 Scott Solace 10 Disc post-accident photograph

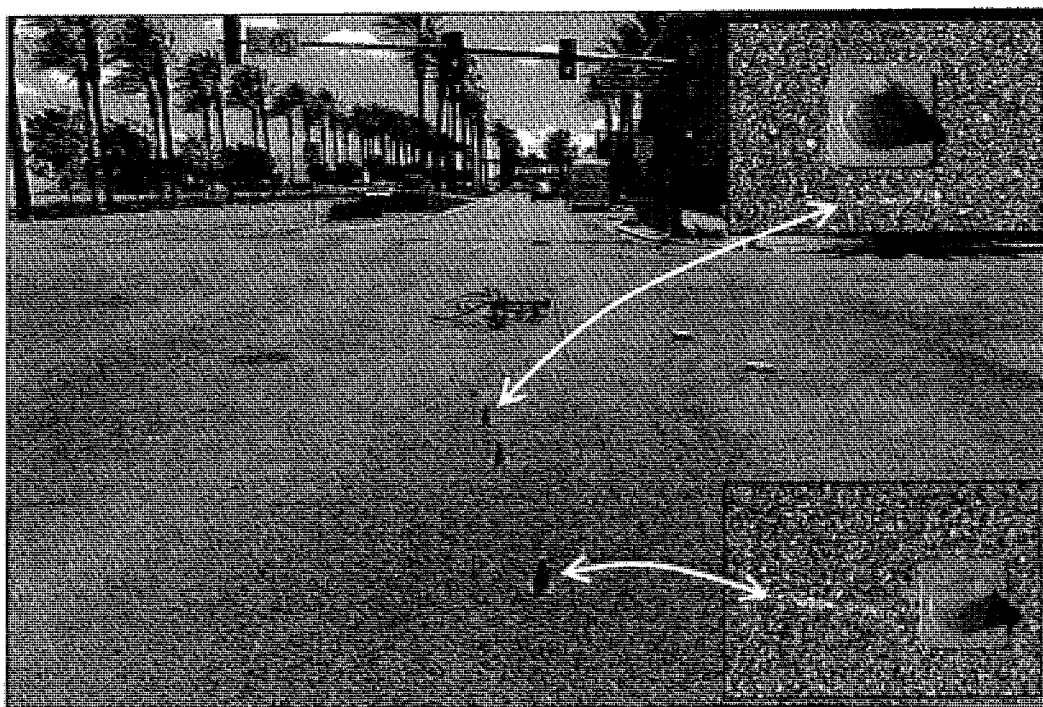


Attachment 5. Southbound S. Pavilion Center Dr.

Eric Pepperman  
Kemp Jones & Coulthard  
October 6, 2017  
Page 8 of 10

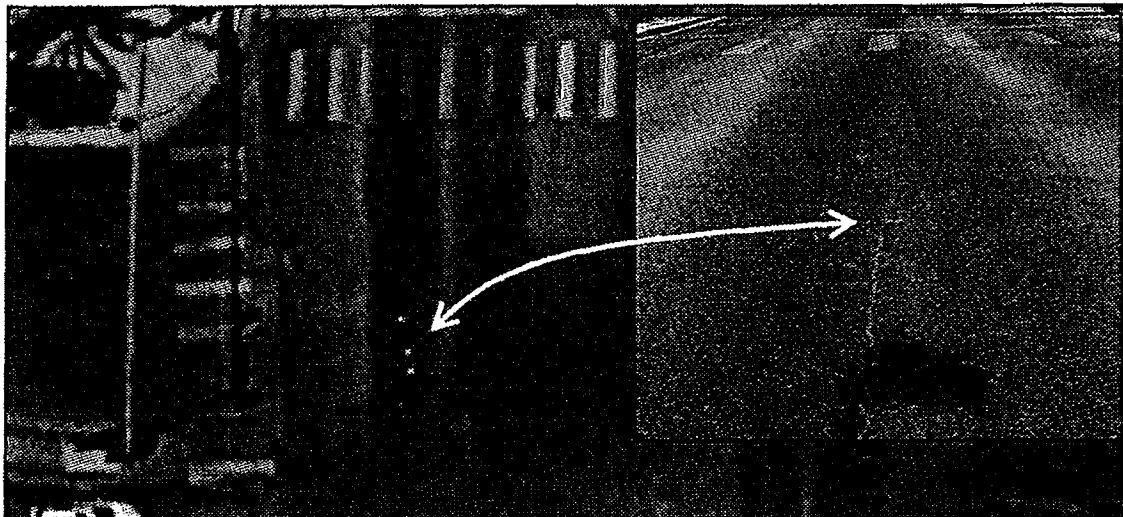


Attachment 6. Ponderosa scene scan



Attachment 7 Scene investigation photo

Eric Pepperman  
Kemp Jones & Coulthard  
October 6, 2017  
Page 9 of 10



Attachment 8 Ponderosa evidence diagram



Attachment 9 Red Rock Casino Resort & Spa security video screenshot

Eric Pepperman  
Kemp Jones & Coulthard  
October 6, 2017  
Page 10 of 10



Attachment 10 Graphic by Fat Pencil Studio

# EXHIBIT 2

# EXHIBIT 2

# LAS VEGAS METROPOLITAN POLICE DEPARTMENT

JOSEPH LOMBARDO, Sheriff

Partners with the Community

STATE OF NEVADA            )  
  ) ss.  
COUNTY OF CLARK         )

October 11, 2017

## AFFIDAVIT:

I, SHARNETTE HAMMOND, being duly sworn, on oath, depose and say:

That I am the Manager of the Records and Fingerprint Bureau of official police records maintained by the Las Vegas Metropolitan Police Department.

That I am in receipt of your Motion to Compel served to us on October 6, 2017, requesting the diligent search for copies of any reports, video surveillance, accident reconstruction reports and color photographs regarding event number 170418-1868.

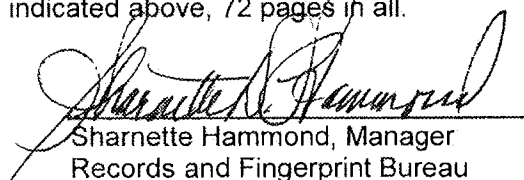
That the Las Vegas Metropolitan Police Department Records and Fingerprint Bureau is not the custodian of 911 call logs. A copy of the subpoena has been forwarded to the Las Vegas Metropolitan Police Communications Bureau for response by the Communications Bureau. The Communications Bureau may be contacted at (702) 828-3871.

That I am providing you a copy a CD copy of the crashzone data and video surveillance regarding event number 170418-1868, which was provided to me by the Las Vegas Metropolitan Police Department Traffic Bureau.

That the Las Vegas Metropolitan Police Department Records and Fingerprint Bureau is not the custodian of photographs. A copy of this subpoena has been forwarded to the Las Vegas Metropolitan Police Department Photo Laboratory for response by the Photo Laboratory. The Photo Laboratory may be contacted at (702) 828-3345.

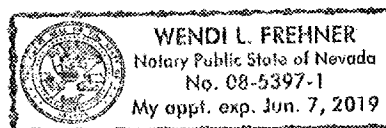
That the Las Vegas Metropolitan Police Department has redacted privileged private personal information in which a reasonable person would have a legitimate expectation of privacy. Therefore, the Las Vegas Metropolitan Police Department objects to the subpoena on the foregoing grounds pursuant to NRCP 45(c)(2)(B).

That I have provided true and correct copies of all responsive documents under my hand and not privileged by law, except as otherwise indicated above, 72 pages in all.

  
Sharnette Hammond, Manager  
Records and Fingerprint Bureau

SUBSCRIBED AND SWORN to before me  
this 11th day of October, 2017, in the  
County of Clark, State of Nevada by Sharnette Hammond

  
NOTARY PUBLIC



ORIGINAL  
RECORDED & INDEXED

Electronically Filed  
10/5/2017 5:06 PM  
Steven D. Grierson  
CLERK OF THE COURT

2017 OCT -6 PM 2:15

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# DISTRICT COURT

## CLARK COUNTY, NEVADA

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

20 Plaintiffs,

21 v.

22 MOTOR COACH INDUSTRIES, INC., a  
23 Delaware corporation; MICHELANGELO  
24 LEASING INC. d/b/a RYAN'S EXPRESS,  
an Arizona corporation; EDWARD  
25 HUBBARD, a Nevada resident; BELL  
26 SPORTS, INC. d/b/a GIRO SPORT  
27 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,

28 Defendants.

Case No.: A-17-755977-C

Dept. No.: XIV

ENTERED  
*[Signature]*

DEFENDANT MOTOR COACH  
INDUSTRIES, INC.'S MOTION TO  
COMPEL PRODUCTION OF  
DOCUMENTS BY LAS VEGAS  
METROPOLITAN POLICE  
DEPARTMENT ON ORDER  
SHORTENING TIME

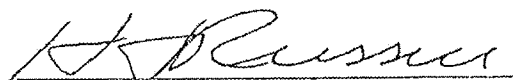
Hearing Date: October 12, 2017

Hearing Time: 9:30 am

1 Defendant MOTOR COACH INDUSTRIES, INC. (hereinafter "Defendant"), by  
 2 and through its attorneys of record, the law firms of WEINBERG, WHEELER, HUDGINS,  
 3 GUNN & DIAL, LLC and HARTLINE DACUS BARGER DREYER LLP, hereby submits this  
 4 Motion to Compel Production of Documents by Las Vegas Metropolitan Police  
 5 Department on Order Shortening Time.

6 This Motion is based on the following Memorandum of Points and Authorities, all  
 7 pleadings and filings of record, and any oral argument the Court may allow.

8  
 9 DATED this 5th day of October, 2017,

10 

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 13 David A. Dial, Esq.  
 14 Marisa Rodriguez, Esq.  
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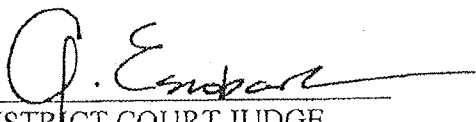
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ORDER SHORTENING TIME

Good cause appearing, it is ordered that the hearing on this MOTION TO COMPEL PRODUCTION OF DOCUMENTS shall be heard on the 12<sup>th</sup> day of October 2017, at the hour of 9:30 a.m./p.m. in front of the Department XIV of the above captioned Court, or as soon thereafter as counsel may be heard.

  
DISTRICT COURT JUDGE  
g

Submitted by:



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DISTRICT COURT  
CLARK COUNTY, NEVADA

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

20 Plaintiffs,

21 v.

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

27 Defendants.  
28

Case No.: A-17-755977-C

Dept. No.: XIV

SUBPOENA DUCES TECUM TO THE  
CUSTODIAN OF RECORDS OF LAS  
VEGAS METROPOLITAN POLICE  
DEPARTMENT


1 THE STATE OF NEVADA SENDS GREETINGS TO:

2 Custodian of Records  
 3 Las Vegas Metropolitan Police Department  
 4 400 S. Martin Luther King Blvd.  
 Las Vegas, NV 89106

5 YOU ARE HEREBY COMMANDED, that all and singular business and excuses being  
 6 set aside, you appear on the 14<sup>th</sup> day of August, 2017, at the hour of 9:00 a.m. at WEINBERG,  
 7 WHEELER, HUDGINS, GUNN & DIAL, LLC; 6385 S. Rainbow Blvd., Suite 400, Las Vegas, NV  
 8 89118. You are required to bring with you at the time of your appearance any items set forth in  
 9 Exhibit "A" of this subpoena. If you fail to attend, you will be deemed guilty of contempt of  
 10 Court and liable to pay all losses and damages caused by your failure to appear and in addition  
 11 forfeit One Hundred (\$100.00) dollars.

12 You may avoid appearing at the deposition by providing WEINBERG, WHEELER,  
 13 HUDGINS, GUNN & DIAL, LLC with the requested documents one week in advance, or August  
 14 7, 2017, of the requested appearance date. If you plan to provide the requested records in lieu of  
 15 appearance, please complete, sign, and notarize the enclosed Certificate of Records Affidavit and  
 16 return to this office with the file. Pursuant to the Nevada Rules of Civil Procedure Rule  
 17 45(a)(1)(D), attached as Exhibit B is a copy of the text of Rule 45(c)-(d).

18  
 19 DATED this 21<sup>st</sup> day of July, 2017.

20   
 21 D. Lee Roberts, Jr., Esq.  
 22 Howard J. Russell, Esq.  
 23 Michael S. Valiente, Esq.  
 WEINBERG, WHEELER, HUDGINS,  
 GUNN & DIAL, LLC  
 6385 S. Rainbow Blvd., Suite 400  
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 28

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC  
 6385 S. Rainbow Blvd., Suite 400  
 Las Vegas, Nevada 89118  
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001608

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Las Vegas, Nevada 89118  
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1 John C. Dacus, Esq.  
2 Brian Rawson, Esq.  
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4 8750 N. Central Expressway  
5 Suite 1600  
6 Dallas, TX 75231


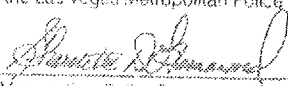
7 *Attorneys for Defendant*  
8 *Motor Coach Industries, Inc.*  
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## EXHIBIT "A"

2 You are requested to produce a complete, unredacted copy of your file as it relates to Las  
3 Vegas Metropolitan Police Department Event Number LLV170418001868, including, but not  
4 limited to all investigation reports, accident reports, incident reports, notes, correspondence,  
5 video surveillance, written statements, recorded statements, accident reconstruction reports,  
6 citations, color photographs, scene diagrams and any other documentation in your file as it  
7 relates to the aforementioned event.

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

LVMPD - 00021

|   |   |                                    |                   |
|---|---|------------------------------------|-------------------|
| Event Number: LLV170418001868   | <b>STATE OF NEVADA<br/>TRAFFIC CRASH REPORT<br/>SCENE INFORMATION SHEET</b><br>Revised 10/20/15 | Crash Number:<br>LVM170418001868   | Scene Information |
| Code Revision: 01/01/2016   |   | Agency Name:<br>LAS VEGAS METRO PD |                   |
| <b>Description of Crash / Narrative</b>   |   |                                    |                   |
| <p>AS OF OCTOBER 6, 2017, THE INVESTIGATION OF THIS COLLISION IS COMPLETE. A COLLISION INVESTIGATION SUPPLEMENT REPORT IS AVAILABLE FROM THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT RECORDS BUREAU LOCATED AT 400 S. MARTIN LUTHER KING BOULEVARD LAS VEGAS, NV 89106. PLEASE REFER TO THE COLLISION INVESTIGATION NARRATIVE FOR FURTHER DETAILS REGARDING THIS COLLISION. IF YOU HAVE ANY QUESTIONS YOU CAN EMAIL THEM TO FATALDETAIL@LVMPD.COM REFERENCING THIS REPORT NUMBER.</p> <p>PRELIMINARY REPORT OF INVESTIGATION:</p> <p>V1, WHICH IS A BUS, WAS TRAVELING S/B PAVILION CENTER AND ENTERED THE INTERSECTION OF GRIFFITH PEAK FROM S/B T2 OF 2. PEDAL CYCLIST1 WAS TRAVELING S/B PAVILION CENTER AND ENTERED THE INTERSECTION OF GRIFFITH PEAK FROM S/B MARKED BICYCLE LANE AND THEN FAILED TO MAINTAIN SINGLE TRAVEL LANE.</p> <p>WITNESS1 STATED AS V1 AND PEDAL CYCLIST ENTERED THE INTERSECTION, PEDAL CYCLIST1 STARTED TO WOBBLE AND THEN JUST TURNED LEFT INTO THE SIDE OF V1 AND APPEARED TO HAVE BEEN RUN OVER BY V1S RIGHT REAR TIRES. WITNESS4 STATED THAT PEDAL CYCLIST CHANGED LANES FROM THE BIKE LANE LEFT, INTO S/B T2 AND THEN TURNED HIS HEAD OVER HIS LEFT SHOULDER AND LIFTED HIS LEFT ARM IN AN ATTEMPT TO SIGNAL AND THEN REALIZED THE BUS WAS THERE AND PEDAL CYCLIST LOST CONTROL AND HIT V1.</p> <p>D2 STATED HE WAS JUST TRAVELING STRAIGHT AND SAW PEDAL CYCLIST1 SO HE MOVED OVER TO THE LEFT TO GIVE PEDAL CYCLIST ROOM AND PEDAL CYCLIST JUST HIT V1 AND D2 STOPPED AND CALLED FOR MEDICAL. PEDAL CYCLIST1S FRONT LEFT STRUCK V1S RIGHT AND PEDAL CYCLIST OVERTURNED ONTO ITS LEFT SIDE TOTALLY EJECTING PEDAL CYCLIST TO THE GROUND AND V1S RIGHT REAR TIRES THEN RAN OVER PEDAL CYCLIST. THE BICYCLE THEN SLID 27 FEET BEFORE COMING TO A STOP AND V1 MOVED PRIOR TO MY ARRIVAL.</p> <p>PEDAL CYCLIST WAS TRANSPORTED TO UMC TRAUMA WITH LIFE THREATENING INJURIES PRIOR TO MY ARRIVAL. AIC WAS DETERMINED BY THE SCUFF AND SCRAPE IN THE INTERSECTION. IT WAS DETERMINED THAT PEDAL CYCLIST1 WAS AT FAULT FOR FAILING TO MAINTAIN SINGLE TRAVEL LANE.</p> |   |                                    |                   |
| <div><br/>Indicate North</div> <div>I hereby certify this is a full, true and correct copy of the<br/>ORIGINAL DOCUMENT<br/>(HARD COPY/COMPUTERIZED/MICROGRAPHIC COPY)</div> <div>OCT 11 2017</div> <div>on file with the Las Vegas Metropolitan Police Department</div> <div><br/>Las Vegas Metropolitan Police Dept</div> <div>A.I.C.: 25S/N X 20E/W</div> <div>Page<br/>2 of 7</div>  |   |                                    |                   |

| Event Number:<br>LLV170418001868   |                   |                                      | <b>STATE OF NEVADA<br/>TRAFFIC CRASH REPORT<br/>VEHICLE INFORMATION SHEET<br/>Revised 1/2016</b>   |   |  | Crash Number:<br>LVM170418001868  |             |   | Vehicle Information   |                                |                     |                                |                                     |     |      |                          |                          |     |    |                          |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |
|--|-------------------|--------------------------------------|--|---|--|---|-------------|---|---|--------------------------------|---------------------|--------------------------------|-------------------------------------|-----|------|--------------------------|--------------------------|-----|----|--------------------------|--------------------------|-----|--|--------------------------|--------------------------|-----|--|--------------------------|--------------------------|--|--|--|--|--|--|
| Vehicle #<br>V1  |                   | # Occupants<br>1                     |  | <input type="checkbox"/> 1) At Fault<br><input type="checkbox"/> 2) Non Contact Vehicle |  | Agency Number:<br>LAS VEGAS METRO PD  |             |   |   |                                |                     |                                |                                     |     |      |                          |                          |     |    |                          |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |
| Direction of Travel: <input type="checkbox"/> 1) North <input type="checkbox"/> 3) East <input type="checkbox"/> 5) Unknown<br><input checked="" type="checkbox"/> 2) South <input type="checkbox"/> 4) West   |                   |                                      |  | Roadway / Street Name:<br>S PAVILION CENTER DR  |  |   |             | Travel Lane #: 2  |   |                                |                     |                                |                                     |     |      |                          |                          |     |    |                          |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |
| Vehicle Action: <input checked="" type="checkbox"/> 1) Straight <input type="checkbox"/> 3) Left Turn <input type="checkbox"/> 5) U-Turn <input type="checkbox"/> 7) Wrong Way <input type="checkbox"/> 9) Passing <input type="checkbox"/> 11) Leaving Parked <input type="checkbox"/> 13) Leaving Lane <input type="checkbox"/> 16) Driverless Vehicle <input type="checkbox"/> 19) Unknown<br><input type="checkbox"/> 2) Backing <input type="checkbox"/> 4) Right Turn <input type="checkbox"/> 6) Parked <input type="checkbox"/> 8) Stopped <input type="checkbox"/> 10) Racing <input type="checkbox"/> 12) Entering Lane <input type="checkbox"/> 15) Enter Parked <input type="checkbox"/> 17) Lane Change <input type="checkbox"/> 22) Negotiating a Curve  |                   |                                      |  |   |  |   |             |   |   |                                |                     |                                |                                     |     |      |                          |                          |     |    |                          |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |
| Driver: (Last Name, First Name, Middle Name Suffix)<br>HUBBARD, EDWARD   |                   |                                      |  |   |  | Transported By: <input checked="" type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown<br><input type="checkbox"/> 5) Other _____                                    |             |   |   |                                |                     |                                |                                     |     |      |                          |                          |     |    |                          |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |
| Street Address:  |                   |                                      |  |   |  | Transported To:   |             |   |   |                                |                     |                                |                                     |     |      |                          |                          |     |    |                          |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |
| City:  |                   |                                      | State / Country <input checked="" type="checkbox"/> 1) NV  |   |  | Zip Code:   |             |   | Person Type: 1  |                                | Seating Position: 1 |                                |                                     |     |      |                          |                          |     |    |                          |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |
| <input checked="" type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female   |                   |                                      | DOB:   |   |  | Phone Number:   |             |   | Injury Severity: 0  |                                | Injury Location:    |                                |                                     |     |      |                          |                          |     |    |                          |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |
| OLN:   |                   |                                      | State NV   |   |  | Class: <input checked="" type="checkbox"/> 1) NV <input type="checkbox"/> 2) DL   |             |   | License Status: 0   |                                |                     |                                |                                     |     |      |                          |                          |     |    |                          |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |
| Compliance: <input checked="" type="checkbox"/> 1) Restrict <input type="checkbox"/> 2) Endorse  |                   |                                      | Endorsements: P  |   |  | Restrictions: 18  |             |   | Airbags: 1  |                                |                     | Airbag Switch: 0               |                                     |     |      |                          |                          |     |    |                          |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |
| Alcohol / Drug Involvement<br><input checked="" type="checkbox"/> 1) Not Involved<br><input type="checkbox"/> 2) Suspected Impairment<br><input type="checkbox"/> 3) Alcohol <input type="checkbox"/> 4) Drugs<br><input type="checkbox"/> 5) Unknown  |                   |                                      | Method of Determination (check up to 2)<br><input type="checkbox"/> 1) Field Sobriety Test <input type="checkbox"/> 4) Urine Test<br><input type="checkbox"/> 2) Evidentiary Breath <input type="checkbox"/> 5) Blood Test<br><input type="checkbox"/> 3) Driver Admission <input type="checkbox"/> 6) Preliminary Breath Test |   |  | Test Results:   |             |   | Driver Factors<br><input checked="" type="checkbox"/> 1) Apparently Normal <input type="checkbox"/> 6) Driver Ill / Injured<br><input type="checkbox"/> 2) Had Been Drinking <input type="checkbox"/> 7) Other Improper Driving<br><input type="checkbox"/> 3) Drug Involvement <input type="checkbox"/> 8) Driver Inattention / Distracted<br><input type="checkbox"/> 4) Apparently Fatigued / Asleep <input type="checkbox"/> 9) Physical Impairment<br><input type="checkbox"/> 5) Obstructed View <input type="checkbox"/> 10) Unknown |                                |                     |                                |                                     |     |      |                          |                          |     |    |                          |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |
| Vehicle Year: 2008   |                   | Vehicle Make: MCI                    |  | Vehicle Model: BUS  |  | Vehicle Type: BUS   |             | Vehicle Factors<br><input type="checkbox"/> 1) Failed To Yield Right of Way <input type="checkbox"/> 13) Over Correct / Steering<br><input type="checkbox"/> 2) Disregard Control Device <input type="checkbox"/> 14) Other Improper Driving<br><input type="checkbox"/> 3) Too Fast For Conditions <input type="checkbox"/> 16) Driverless Vehicle<br><input type="checkbox"/> 4) Exceeding Speed Limit <input type="checkbox"/> 17) Unsafe Backing<br><input type="checkbox"/> 5) Wrong Way / Direction <input type="checkbox"/> 18) Ran Off Road<br><input type="checkbox"/> 6) Mechanical Defects <input type="checkbox"/> 19) Hit and Run<br><input type="checkbox"/> 7) Drove Left of Center <input type="checkbox"/> 20) Road Defect<br><input type="checkbox"/> 8) Other <input type="checkbox"/> 21) Object Avoidance<br><input type="checkbox"/> 9) Failed to Maintain Lane <input type="checkbox"/> 22) Unknown<br><input type="checkbox"/> 10) Following Too Close <input type="checkbox"/> 28) Aggressive<br><input type="checkbox"/> 11) Unsafe Lane Change <input type="checkbox"/> 29) Reckless / Careless<br><input type="checkbox"/> 12) Made Improper Turn |   |                                |                     |                                |                                     |     |      |                          |                          |     |    |                          |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |
| Plate / Permit No.: Z044712  |                   | State <input type="checkbox"/> 1) NV |  | Expiration Date: 12 / 31 / 2017   |  | Vehicle Color: WHI  |             | <div style="display: flex; justify-content: space-around;"> <div> <p>1st Contact</p> </div> <div> <p>Damaged Areas</p> <p><input type="checkbox"/> 1) Front <input type="checkbox"/> 2) Right Side <input type="checkbox"/> 3) Left Side <input type="checkbox"/> 4) Rear <input type="checkbox"/> 5) Right Front <input type="checkbox"/> 6) Right Rear <input type="checkbox"/> 7) Top <input type="checkbox"/> 8) Under Carriage <input type="checkbox"/> 9) Left Front <input type="checkbox"/> 10) Left Rear <input checked="" type="checkbox"/> 11) Unknown <input type="checkbox"/> 12) Other</p> <p>Extent of Damage<br/><input type="checkbox"/> 1) Minor <input type="checkbox"/> 4) Total<br/><input type="checkbox"/> 2) Moderate <input checked="" type="checkbox"/> 5) None<br/><input type="checkbox"/> 3) Major <input type="checkbox"/> 6) Unknown</p> </div> </div>   |   |                                |                     |                                |                                     |     |      |                          |                          |     |    |                          |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |
| Registered Owner Name: INC, MICHELANGELO   |                   |                                      |  |   |  |   |             |   |   |                                |                     |                                |                                     |     |      |                          |                          |     |    |                          |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |
| Registered Owner Address: 465 S BLUFF ST, SAINT GEORGE, UT 84770   |                   |                                      |  |   |  |   |             |   |   |                                |                     |                                |                                     |     |      |                          |                          |     |    |                          |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |
| Insurance Company Name: LANCER INSURANCE   |                   |                                      |  |   |  |   |             |   |   |                                |                     |                                |                                     |     |      |                          |                          |     |    |                          |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |
| Policy number: BA170107#2  |                   | Effective: 11 / 1 / 2016             |  | To: 11 / 1 / 2017   |  |   |             |   |   |                                |                     |                                |                                     |     |      |                          |                          |     |    |                          |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |
| Insurance Company Address or Phone Number: 412-351-5800  |                   |                                      |  |   |  |   |             |   |   |                                |                     |                                |                                     |     |      |                          |                          |     |    |                          |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |
| <input type="checkbox"/> 1) Vehicle Towed  |                   | Towed By:                            |  |   |  |   |             |   |   |                                |                     |                                |                                     |     |      |                          |                          |     |    |                          |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |
| Removed To:  |                   |                                      |  |   |  |   |             |   |   |                                |                     |                                |                                     |     |      |                          |                          |     |    |                          |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |
| <p><b>Traffic Control</b></p> <p><input checked="" type="checkbox"/> 2) Traffic Control Signal <input type="checkbox"/> 11) Stop Sign</p> <p><input type="checkbox"/> 3) Flashing Traffic Control Signal <input type="checkbox"/> 12) Yield Sign</p> <p><input type="checkbox"/> 4) School Zone Sign / Device <input type="checkbox"/> 13) Railway Crossing Sign / Device</p> <p><input type="checkbox"/> 5) Pedestrian Signal / Sign <input type="checkbox"/> 17) Chain / Snow Tire Req.</p> <p><input type="checkbox"/> 6) No Passing <input type="checkbox"/> 19) Unknown</p> <p><input type="checkbox"/> 7) No Controls</p> <p><input type="checkbox"/> 8) Warning Sign</p> <p><input type="checkbox"/> 10) Other</p>  |                   |                                      |  |   |  | <p><b>Distance Traveled After Impact</b></p> <p>MOVED</p> <table border="1" style="width:100%;"> <tr> <th colspan="3">Speed Estimate</th> </tr> <tr> <th>From</th> <th>To</th> <th>Limit</th> </tr> <tr> <td>30</td> <td>35</td> <td>35</td> </tr> </table> |             |   |   |                                |                     | Speed Estimate                 |                                     |     | From | To                       | Limit                    | 30  | 35 | 35                       |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |
| Speed Estimate   |                   |                                      |  |   |  |   |             |   |   |                                |                     |                                |                                     |     |      |                          |                          |     |    |                          |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |
| From   | To                | Limit                                |  |   |  |   |             |   |   |                                |                     |                                |                                     |     |      |                          |                          |     |    |                          |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |
| 30   | 35                | 35                                   |  |   |  |   |             |   |   |                                |                     |                                |                                     |     |      |                          |                          |     |    |                          |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |
| <p><b>Sequence of Events</b></p> <p>I hereby certify this is a true and correct copy of the original document.</p> <table border="1" style="width:100%;"> <tr> <th>Code #</th> <th>Description</th> <th>Collision With Fixed Object</th> <th>Most Harmful Event</th> </tr> <tr> <td>1st</td> <td>202 PEDAL CYCLIST</td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>2nd</td> <td></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>3rd</td> <td></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>4th</td> <td></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>5th</td> <td></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </table> <p style="text-align: center;">OCT 11 2017</p> |                   |                                      |  |   |  | Code #  | Description | Collision With Fixed Object   | Most Harmful Event  | 1st                            | 202 PEDAL CYCLIST   | <input type="checkbox"/>       | <input checked="" type="checkbox"/> | 2nd |      | <input type="checkbox"/> | <input type="checkbox"/> | 3rd |    | <input type="checkbox"/> | <input type="checkbox"/> | 4th |  | <input type="checkbox"/> | <input type="checkbox"/> | 5th |  | <input type="checkbox"/> | <input type="checkbox"/> | <p>Violation on file with the Las Vegas Metropolitan Police Department</p> <p>Violation Citation Number</p> <p>Las Vegas Metropolitan Police Dept.</p> |  |  |  |  |  |
| Code #   | Description       | Collision With Fixed Object          | Most Harmful Event   |   |  |   |             |   |   |                                |                     |                                |                                     |     |      |                          |                          |     |    |                          |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |
| 1st  | 202 PEDAL CYCLIST | <input type="checkbox"/>             | <input checked="" type="checkbox"/>  |   |  |   |             |   |   |                                |                     |                                |                                     |     |      |                          |                          |     |    |                          |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |
| 2nd  |                   | <input type="checkbox"/>             | <input type="checkbox"/>   |   |  |   |             |   |   |                                |                     |                                |                                     |     |      |                          |                          |     |    |                          |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |
| 3rd  |                   | <input type="checkbox"/>             | <input type="checkbox"/>   |   |  |   |             |   |   |                                |                     |                                |                                     |     |      |                          |                          |     |    |                          |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |
| 4th  |                   | <input type="checkbox"/>             | <input type="checkbox"/>   |   |  |   |             |   |   |                                |                     |                                |                                     |     |      |                          |                          |     |    |                          |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |
| 5th  |                   | <input type="checkbox"/>             | <input type="checkbox"/>   |   |  |   |             |   |   |                                |                     |                                |                                     |     |      |                          |                          |     |    |                          |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |
| <input type="checkbox"/> 1) NRS <input type="checkbox"/> 2) CFR <input type="checkbox"/> 3) CC/MC <input type="checkbox"/> 4) Pending<br>(1)   |                   | Investigator(s)<br>Lourenco          |  |   |  | ID Number<br>5198   |             | Date<br>4 / 18 / 2017   |   | Reviewed By<br>Paul McCullough |                     | Date Reviewed<br>10 / 6 / 2017 |                                     |     |      |                          |                          |     |    |                          |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |
| <input type="checkbox"/> 1) NRS <input type="checkbox"/> 2) CFR <input type="checkbox"/> 3) CC/MC<br>(2)   |                   |                                      |  |   |  |   |             |   |   | Page<br>3 of 7                 |                     |                                |                                     |     |      |                          |                          |     |    |                          |                          |     |  |                          |                          |     |  |                          |                          |  |  |  |  |  |  |



| Event Number:   |  | STATE OF NEVADA<br>TRAFFIC CRASH REPORT<br>VEHICLE INFORMATION SHEET<br>Revised 1/2016 |  | Crash Number:<br>LVM170418001868  |  | Vehicle Information  |  |
|---|--|--|--|---|--|--|--|
| LLV170418001868   |  |  |  | Agency Number:<br>LAS VEGAS METRO PD  |  |  |  |
| Name: (Last Name, First Name, Middle Name Suffix)   |  |  |  | Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown<br><input type="checkbox"/> 5) Other _____   |  |  |  |
| Street Address:   |  |  |  | Transported To:   |  |  |  |
| City:   |  | State / Country <input type="checkbox"/> 1) NV Zip Code:                               |  | Person Type:  |  | Seating Position: Occupant Restraints:   |  |
| <input type="checkbox"/> 1) Male <input type="checkbox"/> 3 Unknown DOB: / /  |  | Phone Number:  |  | Injury Severity:  |  | Injury Location:   |  |
| <input type="checkbox"/> 2) Female  |  |  |  |   |  |  |  |
|   |  |  |  | Airbags:  |  | Airbag Switch: Ejected: Trapped:   |  |
| Name: (Last Name, First Name, Middle Name Suffix)   |  |  |  | Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown<br><input type="checkbox"/> 5) Other _____   |  |  |  |
| Street Address:   |  |  |  | Transported To:   |  |  |  |
| City:   |  | State / Country <input type="checkbox"/> 1) NV Zip Code:                               |  | Person Type:  |  | Seating Position: Occupant Restraints:   |  |
| <input type="checkbox"/> 1) Male <input type="checkbox"/> 3 Unknown DOB: / /  |  | Phone Number:  |  | Injury Severity:  |  | Injury Location:   |  |
| <input type="checkbox"/> 2) Female  |  |  |  |   |  |  |  |
|   |  |  |  | Airbags:  |  | Airbag Switch: Ejected: Trapped:   |  |
| Name: (Last Name, First Name, Middle Name Suffix)   |  |  |  | Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown<br><input type="checkbox"/> 5) Other _____   |  |  |  |
| Street Address:   |  |  |  | Transported To:   |  |  |  |
| City:   |  | State / Country <input type="checkbox"/> 1) NV Zip Code:                               |  | Person Type:  |  | Seating Position: Occupant Restraints:   |  |
| <input type="checkbox"/> 1) Male <input type="checkbox"/> 3 Unknown DOB: / /  |  | Phone Number:  |  | Injury Severity:  |  | Injury Location:   |  |
| <input type="checkbox"/> 2) Female  |  |  |  |   |  |  |  |
|   |  |  |  | Airbags:  |  | Airbag Switch: Ejected: Trapped:   |  |
| <input type="checkbox"/> 1) Trailing Unit 1 VIN :   |  |  |  | Plate:  |  | State: <input type="checkbox"/> 1) NV Type:  |  |
| <input type="checkbox"/> 1) Trailing Unit 1 VIN :   |  |  |  | Plate:  |  | State: <input type="checkbox"/> 1) NV Type:  |  |
| <input type="checkbox"/> 1) Trailing Unit 1 VIN :   |  |  |  | Plate:  |  | State: <input type="checkbox"/> 1) NV Type:  |  |
| Commercial Vehicle Configuration  |  |  |  | <input checked="" type="checkbox"/> 1) Commercial Vehicle <input type="checkbox"/> 2) School Bus  |  |  |  |
| <input type="checkbox"/> 1) Bus, 9 - 15 Occupants<br><input checked="" type="checkbox"/> 2) Bus, > 15 Occupants<br><input type="checkbox"/> 3) Single 2 Axle and 6 Tire<br><input type="checkbox"/> 4) Single > 3 Axle<br><input type="checkbox"/> 5) Any 4 Tire Vehicle<br><input type="checkbox"/> 6) Tractor Only<br><input type="checkbox"/> 7) Tractor / Trailer<br><input type="checkbox"/> 8) Tractor / Doubles<br><input type="checkbox"/> 9) Tractor / Triples<br><input type="checkbox"/> 10) Truck with Trailer<br><input type="checkbox"/> 11) Tractor / Semi Trailer<br><input type="checkbox"/> 12) Passenger Vehicle, (Haz-Mat)<br><input type="checkbox"/> 13) Light Truck, (Haz-Mat)<br><input type="checkbox"/> 14) Other Heavy Vehicle |  |  |  | Source<br><input type="checkbox"/> 1) Driver<br><input type="checkbox"/> 2) Log Book<br><input type="checkbox"/> 3) Shipping Papers / Trip Manifest<br><input checked="" type="checkbox"/> 4) State Reg.<br><input type="checkbox"/> 5) Side Of Vehicle<br><input type="checkbox"/> 6) Other  |  |  |  |
| Carrier Name:<br>MICHELANGELO LEASING INC   |  |  |  | I hereby certify this is a full, true and correct copy of the<br>ORIGINAL DOCUMENT<br>(Power Unit GCWR)<br><input type="checkbox"/> 1) 10,000 lbs. <input type="checkbox"/> 2) 10,001 - 26,000 lbs. <input checked="" type="checkbox"/> 3) > 26,001 lbs.<br><input type="checkbox"/> 1) Hazmat <input type="checkbox"/> 2) Released |  |  |  |
| Carrier Street Address:<br>2239 N BLACK CANYON HWY  |  |  |  | City:<br>PHOENIX  |  | State: <input type="checkbox"/> 1) NV Zip Code:<br>AZ 85009  |  |
| Cargo Body Type<br><input type="checkbox"/> 1) Pole <input type="checkbox"/> 6) Van / Box <input type="checkbox"/> 11) Grain, Gravel Chips<br><input type="checkbox"/> 2) Tank <input type="checkbox"/> 7) Concrete Mixer <input type="checkbox"/> 12) Bus, 9—15 Occupants<br><input type="checkbox"/> 3) Flatbed <input type="checkbox"/> 8) Auto Carrier <input checked="" type="checkbox"/> 13) Bus, > 15 Occupants<br><input type="checkbox"/> 4) Dump <input type="checkbox"/> 9) Garbage / Refuse <input type="checkbox"/> 14) Other<br><input type="checkbox"/> 5) Unknown <input type="checkbox"/> 10) Not Applicable   |  |  |  | Haz-Mat ID #:   |  | Type of Carrier<br><input checked="" type="checkbox"/> 1) Single State <input checked="" type="checkbox"/> 2) US DOT<br><input type="checkbox"/> 3) Canada <input type="checkbox"/> 4) Mexico <input type="checkbox"/> 5) None |  |
|   |  |  |  | Hazard Classification #:  |  | NAS Safety Report #:<br>NONE<br>Carrier Number:<br>0990317   |  |
|   |  |  |  |   |  | Page<br>4 of 7   |  |

LVMPD - 00024

|  |  |   |  |   |  |                                      |  |
|--|--|---|--|---|--|--------------------------------------|--|
| Event Number: LLV170418001868  |  | STATE OF NEVADA<br>TRAFFIC CRASH REPORT<br>NON-MOTORIST INFORMATION SHEET<br>REVISED 12/7/15  |  | Crash Number: LVM170418001868   |  | Non-Motorist                         |  |
| Non-Motorist # 1   |  | <input checked="" type="checkbox"/> 1) At Fault<br><input checked="" type="checkbox"/> 2) Non-Contact (person)  |  | Agency Name: LAS VEGAS METRO PD   |  |                                      |  |
| Non-Motorist Type<br><input type="checkbox"/> 1) Pedestrian <input type="checkbox"/> 5) Wheel Chair<br><input checked="" type="checkbox"/> 2) Pedal Cyclist <input type="checkbox"/> 6) Unknown<br><input type="checkbox"/> 3) Skater<br><input type="checkbox"/> 4) Other   |  | Direction of Travel<br><input type="checkbox"/> 1) North <input checked="" type="checkbox"/> 2) South <input type="checkbox"/> 3) East <input type="checkbox"/> 4) West <input type="checkbox"/> 5) Unknown |  |   |  |                                      |  |
|  |  | Highway / Street Name: S PAVILION CENTER DR   |  |   |  |                                      |  |
| Non-Motorist: (Last Name, First Name, Middle Name Suffix)<br>Khibani, Kayvan   |  |   |  | Transported By: <input type="checkbox"/> 1) Not Transported <input checked="" type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown<br><input type="checkbox"/> 5) Other AMR  |  |                                      |  |
| Street Address:  |  |   |  | Transported To: UMC TRAUMA CENTER   |  |                                      |  |
| City:  |  | State/Country <input checked="" type="checkbox"/> 1) NV   |  | Zip Code:   |  | Person Type: 5                       |  |
|  |  |   |  |   |  | Seating Position: 1                  |  |
|  |  |   |  |   |  | Occupant Restraints:                 |  |
| <input checked="" type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown  |  | DOB:  |  | Phone Number:   |  | Injury Severity: K                   |  |
| <input type="checkbox"/> 2) Female   |  |   |  |   |  | Injury Location: 1 7                 |  |
| OLN / ID Card:   |  | State: <input checked="" type="checkbox"/> 1) NV<br>NV  |  | Airbags:  |  | Airbag Switch: Ejected: 1 Trapped: 0 |  |
| Non-Motorist Condition   |  |   |  |   |  |                                      |  |
| <input checked="" type="checkbox"/> 1) Apparently Normal <input type="checkbox"/> 3) Under Influence: Medication / Drugs / Alcohol <input type="checkbox"/> 5) Emotional <input type="checkbox"/> 7) Unknown<br><input type="checkbox"/> 2) Physical Impairment <input type="checkbox"/> 4) Fatigued / Asleep / Fainted <input type="checkbox"/> 6) Illness <input type="checkbox"/> 8) Other  |  |   |  |   |  |                                      |  |
| Alcohol / Drug Involvement   |  |   |  | Method of Determination (Check up to 2)   |  |                                      |  |
| <input checked="" type="checkbox"/> 1) Not involved <input type="checkbox"/> 3) Alcohol <input type="checkbox"/> 5) Unknown<br><input type="checkbox"/> 2) Suspected Impairment <input type="checkbox"/> 4) Drugs  |  |   |  | <input type="checkbox"/> 1) Field Sobriety Test <input type="checkbox"/> 3) Blood Test <input type="checkbox"/> 5) Urine Test Test Results<br><input type="checkbox"/> 2) Preliminary Breath Test <input type="checkbox"/> 4) Evidentiary Breath Test   |  |                                      |  |
| Non-Motorist Action  |  |   |  | Non-Motorist Factors  |  |                                      |  |
| <input checked="" type="checkbox"/> 1) Entering or Crossing at Location <input type="checkbox"/> 8) Standing<br><input type="checkbox"/> 2) Walking, Running, Playing, Cycling <input type="checkbox"/> 9) Unknown<br><input type="checkbox"/> 3) Approaching or Leaving Vehicle <input type="checkbox"/> 10) Going to/from K-12<br><input type="checkbox"/> 4) Playing or Working on Vehicle <input type="checkbox"/> 11) Waiting to Cross Roadway<br><input type="checkbox"/> 6) Pushing Vehicle <input type="checkbox"/> 12) Approaching / Leaving School Bus<br><input type="checkbox"/> 7) Working in Roadway<br><input type="checkbox"/> 5) Other  |  |   |  | <input type="checkbox"/> 1) Improper Crossing <input type="checkbox"/> 6) Wrong Side of Road<br><input type="checkbox"/> 2) Lying / Illegally in Roadway <input type="checkbox"/> 7) Not Visible<br><input type="checkbox"/> 3) Fail to Yield Right of Way <input type="checkbox"/> 8) Darting into Roadway<br><input type="checkbox"/> 4) Fail to Obey Traffic Signs, Signals, or Officer <input type="checkbox"/> 9) Inattentive<br><input checked="" type="checkbox"/> 5) Other FAILURE TO MAINTAIN SINGLE LANE <input type="checkbox"/> 10) Unknown |  |                                      |  |
| Location Prior to Impact   |  |   |  | Safety Equipment  |  |                                      |  |
| <input type="checkbox"/> 1) Marked Crosswalk at Intersection <input type="checkbox"/> 9) On Highway, More than 10' from Travel Lanes<br><input type="checkbox"/> 2) At Intersection, No Crosswalk <input type="checkbox"/> 10) In Roadway<br><input type="checkbox"/> 3) Non-Intersection Crosswalk <input type="checkbox"/> 11) Traffic Island<br><input type="checkbox"/> 4) Driveway Access Crosswalk <input type="checkbox"/> 12) Shoulder<br><input type="checkbox"/> 5) Sidewalk <input type="checkbox"/> 13) Unknown<br><input type="checkbox"/> 6) Median <input type="checkbox"/> 14) Other<br><input type="checkbox"/> 7) Outside Highway <input checked="" type="checkbox"/> 16) Bike Lane<br><input type="checkbox"/> 8) Shared Use Path or Trail <input type="checkbox"/> 17) Ped Safety Zone |  |   |  | <input type="checkbox"/> 1) None <input checked="" type="checkbox"/> 2) Helmet<br><input type="checkbox"/> 3) Protective Pads<br><input type="checkbox"/> 4) Reflective Clothing<br><input type="checkbox"/> 5) Lighting<br><input type="checkbox"/> 6) Unknown<br><input checked="" type="checkbox"/> 7) RIDING SHOES AND HELMET   |  |                                      |  |
| Bike Lane / Path   |  |   |  | I hereby certify this is a true and correct copy of the original document.  |  |                                      |  |
| <input type="checkbox"/> 1) No Bike Lane Path <input checked="" type="checkbox"/> 5) Striped Bicycle Lane - Both Sides<br><input type="checkbox"/> 2) Bicycle Route (Signed) <input type="checkbox"/> 6) Separate Bicycle Path / Trail<br><input type="checkbox"/> 3) Striped Bicycle Lane - Right Side Only <input type="checkbox"/> 7) Unknown<br><input type="checkbox"/> 4) Striped Bicycle Lane - Left Side Only <input type="checkbox"/> 8) Other  |  |   |  | (HARD COPY/COPY OF Vehicle Number(s) Striking Non-Motorist<br>#: 1 #: 0 #: 0  |  |                                      |  |
|  |  |   |  | Non-Motorist Speed Estimate<br>From: 0 To: 0 Limit: 30  |  |                                      |  |
| <input type="checkbox"/> 1) NRS <input type="checkbox"/> 2) CFR <input type="checkbox"/> 3) CC/MC <input type="checkbox"/> 4) Pending  |  |   |  | Violation On file with the Las Vegas Metropolitan Police Department Citation Number   |  |                                      |  |
| (1)  |  |   |  | Violation Citation Number   |  |                                      |  |
| <input type="checkbox"/> 1) NRS <input type="checkbox"/> 2) CFR <input type="checkbox"/> 3) CC/MC  |  |   |  | Las Vegas Metropolitan Police Dept.   |  |                                      |  |
| (2)  |  |   |  |   |  |                                      |  |
| Investigator(s)<br>Lourenco  |  | ID Number<br>5198   |  | Date<br>4 / 18 / 2017   |  | Reviewed By<br>Paul McCullough       |  |
|  |  |   |  | Date Reviewed<br>10 / 6 / 2017  |  | Page<br>5 of 7                       |  |

LVMPD - 00025

|   |                                |   |                          |  |  |   |                |
|---|--------------------------------|---|--------------------------|--|--|---|----------------|
| Event Number:<br>LLV170418001868  |                                | <b>STATE OF NEVADA</b><br><b>TRAFFIC CRASH REPORT</b><br>NON-MOTORIST INFORMATION SHEET<br>REVISED 1/2016   |                          | Crash Number:<br>LVM170418001868   |  | Non-Motorist  |                |
|   |                                |   |                          | Agency Name:<br>LAS VEGAS METRO PD   |  |   |                |
| Non-Motorist: (Last Name, First Name, Middle Name Suffix)   |                                |   |                          | Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other   |  |   |                |
| Street Address:   |                                |   |                          | Transported To:  |  |   |                |
| City:   |                                | State/Country <input type="checkbox"/> 1) NV  |                          | Zip Code:  |  | Person Type:  |                |
| <input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female                       |                                | DOB: / /  |                          | Phone Number:  |  | Seating Position:   |                |
| OLN / ID Card:  |                                | State: <input type="checkbox"/> 1) NV   |                          | Airbags:   |  | Airbag Switch:  |                |
|   |                                |   |                          | Ejected:   |  | Trapped:  |                |
| Non-Motorist: (Last Name, First Name, Middle Name Suffix)   |                                |   |                          | Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other   |  |   |                |
| Street Address:   |                                |   |                          | Transported To:  |  |   |                |
| City:   |                                | State/Country <input type="checkbox"/> 1) NV  |                          | Zip Code:  |  | Person Type:  |                |
| <input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female                       |                                | DOB: / /  |                          | Phone Number:  |  | Seating Position:   |                |
| OLN / ID Card:  |                                | State: <input type="checkbox"/> 1) NV   |                          | Airbags:   |  | Airbag Switch:  |                |
|   |                                |   |                          | Ejected:   |  | Trapped:  |                |
| <b>Non-Motor Vehicle Description</b>  |                                |   |                          |  |  |   |                |
| Make / Manufacturer:<br>SCOTT   |                                |   |                          | Model:<br>SOLACE   |  | Type:<br>PEDALCYCLE   |                |
|   |                                |   |                          |  |  | Color:<br>RED   |                |
| Identification / Serial Number:<br>SGR01F25216020236B   |                                |   |                          | Non-Motor Vehicle Removed By:  |  |   |                |
| Owner Name: <input type="checkbox"/> 1) Same as Non-Motorist  |                                |   |                          | Non-Motor Vehicle Removed To:  |  |   |                |
| Street Address:   |                                |   |                          | City:  |  | State: <input checked="" type="checkbox"/> 1) NV<br>NV  |                |
|   |                                |   |                          |  |  | Zip Code:   |                |
| 1st Contact Area  |                                |   |                          | Damage to Non-Motor Vehicle  |  | Non-Motor Vehicle Damaged Area  |                |
| Pedal Cyclist / Non-Motor Vehicle   |                                | Pedestrian  |                          | <input checked="" type="checkbox"/> 1) Minor<br><input type="checkbox"/> 2) Moderate<br><input type="checkbox"/> 3) Major<br><input type="checkbox"/> 4) Total<br><input type="checkbox"/> 5) None<br><input type="checkbox"/> 6) Unknown  |  | <input type="checkbox"/> 1) Front <input type="checkbox"/> 9) Top<br><input type="checkbox"/> 2) Rear <input type="checkbox"/> 10) Bottom<br><input type="checkbox"/> 3) Right Side <input type="checkbox"/> 11) Unknown<br><input checked="" type="checkbox"/> 4) Left Side <input type="checkbox"/> 12) Other<br><input type="checkbox"/> 5) Right Front<br><input type="checkbox"/> 6) Right Rear<br><input type="checkbox"/> 7) Left Front<br><input type="checkbox"/> 8) Left Rear |                |
|   |                                | <input type="checkbox"/> 1) Right Side<br><input type="checkbox"/> 2) Left Side<br><input type="checkbox"/> 3) Head / Feet<br><input type="checkbox"/> 4) Front<br><input type="checkbox"/> 5) Back |                          |  |  |   |                |
| I hereby certify this is a full, true and correct copy of the<br>ORIGINAL DOCUMENT (HARD COPY/COMPUTERIZED/MICROGRAPHIC COPY) |                                |   |                          |  |  |   |                |
| <b>Sequence Of Events</b>   |                                |   |                          |  |  |   |                |
| Code #  | Description                    | Collision With Fixed Object   | Most Harmful Event       | Non-Motor Vehicle Action   |  |   |                |
| 1st   | 214 MOTOR VEHICLE IN TRANSPORT | <input type="checkbox"/>  | <input type="checkbox"/> | <input checked="" type="checkbox"/> 1) Straight <input type="checkbox"/> 7) Passing<br><input type="checkbox"/> 2) Stopped <input type="checkbox"/> 8) Entering Lane<br><input type="checkbox"/> 3) Left Turn <input type="checkbox"/> 9) Leaving Lane<br><input type="checkbox"/> 4) Right Turn <input checked="" type="checkbox"/> 10) Lane Change<br><input type="checkbox"/> 5) U-Turn <input type="checkbox"/> 11) Unknown<br><input type="checkbox"/> 6) Other |  |   |                |
| 2nd   | 101 OVERTURN/ROLLOVER          | <input type="checkbox"/>  | <input type="checkbox"/> |  |  |   |                |
| 3rd   | 111 OTHER NON-COLLISION        | <input type="checkbox"/>  | <input type="checkbox"/> |  |  |   |                |
| 4th   |                                | <input type="checkbox"/>  | <input type="checkbox"/> |  |  |   |                |
| 5th   |                                | <input type="checkbox"/>  | <input type="checkbox"/> |  |  |   |                |
|   |                                |   |                          |  |  |   | Page<br>6 of 7 |

|                                  |  |   |  |                                     |  |
|----------------------------------|--|---|--|-------------------------------------|--|
| Event Number:<br>LLV170418001868 |  | <b>STATE OF NEVADA<br/>TRAFFIC ACCIDENT REPORT</b><br>Occupant / Witness Supplement<br><small>Revised 1/14/04</small> |  | Accident Number:<br>LVM170418001868 |  |
|                                  |  |   |  | Agency Name:<br>LAS VEGAS METRO PD  |  |

|  |   |   |                   |                      |          |
|--|---|---|-------------------|----------------------|----------|
| V #  | Name: (Last Name, First Name, Middle Name Suffix)<br>BRADLEY, ERIKA MARIE | Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown<br><input type="checkbox"/> 5) Other _____ |                   |                      |          |
| Street Address:  |   | Transported To:   |                   |                      |          |
| City:  | State / Country <input checked="" type="checkbox"/> 1) NV Zip Code:       | Person Type: 3  | Seating Position: | Occupant Restraints: |          |
| <input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input checked="" type="checkbox"/> 2) Female | DOB:  | Phone Number: 7028077564  | Injury Severity:  | Injury Location:     |          |
|  |   | Airbags:  | Airbag Switch:    | Ejected:             | Trapped: |

|  |   |   |                   |                      |          |
|--|---|---|-------------------|----------------------|----------|
| V #  | Name: (Last Name, First Name, Middle Name Suffix)<br>BRADLEY, AARON GREGORY | Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown<br><input type="checkbox"/> 5) Other _____ |                   |                      |          |
| Street Address:  |   | Transported To:   |                   |                      |          |
| City:  | State / Country <input checked="" type="checkbox"/> 1) NV Zip Code:         | Person Type: 3  | Seating Position: | Occupant Restraints: |          |
| <input checked="" type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female | DOB:  | Phone Number:   | Injury Severity:  | Injury Location:     |          |
|  |   | Airbags:  | Airbag Switch:    | Ejected:             | Trapped: |

|  |   |   |                   |                      |          |
|--|---|---|-------------------|----------------------|----------|
| V #  | Name: (Last Name, First Name, Middle Name Suffix)<br>PEREZ, LUIS    | Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown<br><input type="checkbox"/> 5) Other _____ |                   |                      |          |
| Street Address:  |   | Transported To:   |                   |                      |          |
| City:  | State / Country <input checked="" type="checkbox"/> 1) NV Zip Code: | Person Type: 3  | Seating Position: | Occupant Restraints: |          |
| <input checked="" type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female | DOB:  | Phone Number: 7026105740  | Injury Severity:  | Injury Location:     |          |
|  |   | Airbags:  | Airbag Switch:    | Ejected:             | Trapped: |

|  |  |   |                   |                      |          |
|--|--|---|-------------------|----------------------|----------|
| V #  | Name: (Last Name, First Name, Middle Name Suffix)<br>PEARS, ROBERT ANTHONY | Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown<br><input type="checkbox"/> 5) Other _____ |                   |                      |          |
| Street Address:  |  | Transported To:   |                   |                      |          |
| City:  | State / Country <input type="checkbox"/> 1) NV Zip Code:                   | Person Type: 3  | Seating Position: | Occupant Restraints: |          |
| <input checked="" type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female | DOB:   | Phone Number:   | Injury Severity:  | Injury Location:     |          |
|  |  | Airbags:  | Airbag Switch:    | Ejected:             | Trapped: |

|   |  |   |                   |                      |          |
|---|--|---|-------------------|----------------------|----------|
| V #   | Name: (Last Name, First Name, Middle Name Suffix)        | Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown<br><input type="checkbox"/> 5) Other _____ |                   |                      |          |
| Street Address:   |  | Transported To:   |                   |                      |          |
| City:   | State / Country <input type="checkbox"/> 1) NV Zip Code: | Person Type: 3  | Seating Position: | Occupant Restraints: |          |
| <input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female | DOB: / /   | Phone Number:   | Injury Severity:  | Injury Location:     |          |
|   |  | Airbags:  | Airbag Switch:    | Ejected:             | Trapped: |

|                             |                   |                       |                                |                                |                |
|-----------------------------|-------------------|-----------------------|--------------------------------|--------------------------------|----------------|
| Investigator(s)<br>Lourenco | ID Number<br>5198 | Date<br>4 / 18 / 2017 | Reviewed By<br>Paul McCullough | Date Reviewed<br>10 / 6 / 2017 | Page<br>7 of 7 |
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**Occupant / Witness Supplement**

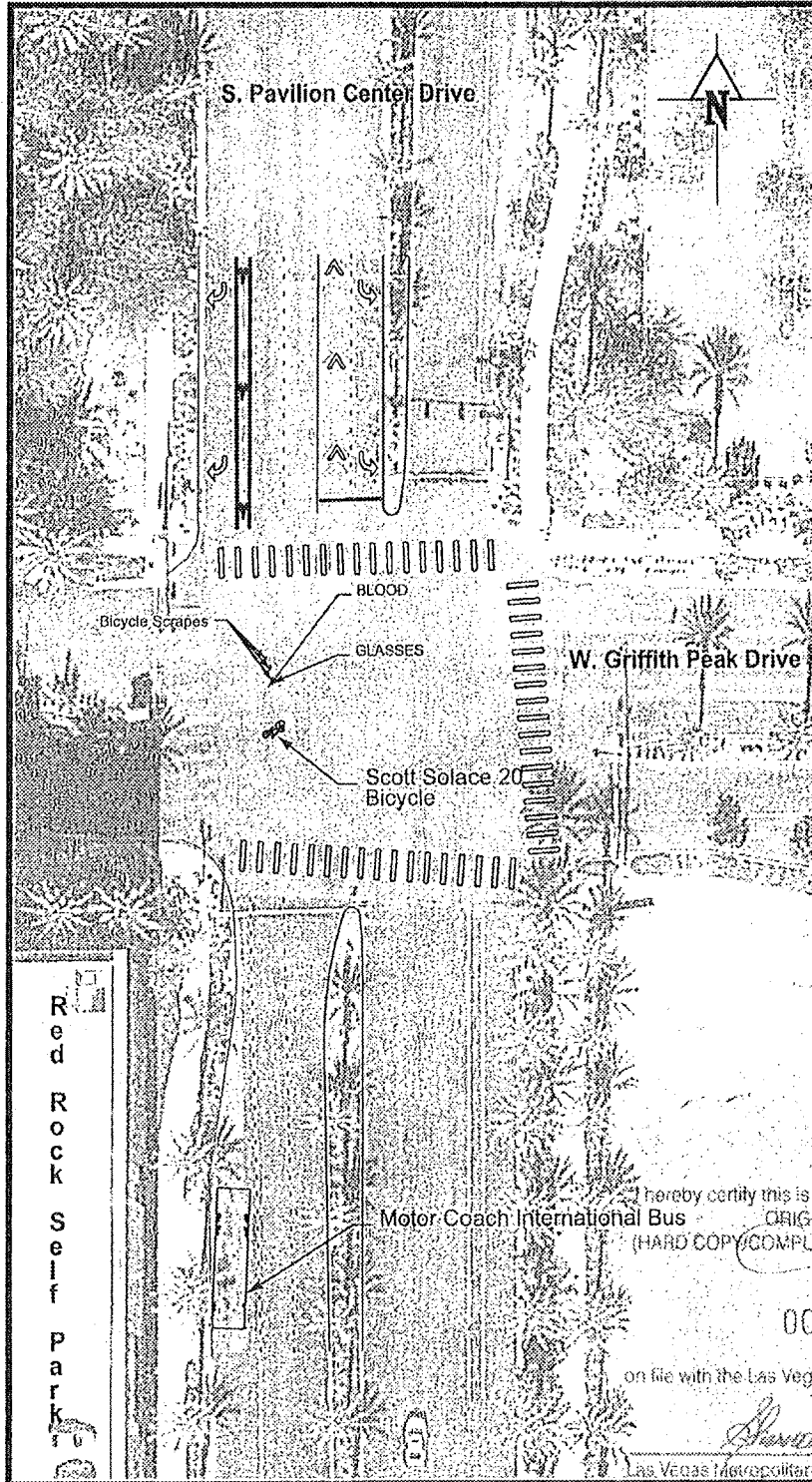
LVMPD - 00027



Joseph Lombardo, Sheriff

Las Vegas Metropolitan Police Department  
Traffic Bureau  
Collision Investigation Section - Fatal Detail  
**SCALE DIAGRAM**

Event #: 170418-1868



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04/11/2017

on file with the Las Vegas Metropolitan Police Department

Las Vegas Metropolitan Police Dept.

Detectives: K. Salisbury, J. Bangle, P. Solomon, N. Hansbarger,  
D. Figueroa, Sgt. P. McCullough

Date:  
04/18/2017

Time:  
10:34AM

Scale:

LVMPD - 00028

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
Interview Transcript

EVENT: 170418-1868

Date and Time of Transcription: April 19, 2017 at 09:40 hours

Transcript By: Rhonda Guthrie, P# 3525

KS: Good morning, this is Detective Ken Salisbury P#8264 conducting a driver interview with Edward Hubbard, date of birth \_\_\_\_\_ as part of an investigation under LVMPD Event #170418-1868. This interview is being conducted at Pavilion Center Drive and Griffith Peak Drive, Las Vegas, Nevada. The date is April 18, 2017 and the time now is 12:28 p.m. Also present for the interview is Trauma Intervention Program Volunteer Jeff Haber H-A-B-E-R. Ed, do you understand this conversation is being recorded?

EH: Yes.

KS: And are you giving your statement freely and voluntarily, without any promises, without any threats or duress to provide information in an investigation being conducted by the Las Vegas Metropolitan Police Department?

EH: Yes.

KS: Alright Ed, can you first start by telling me the vehicle you were operating, the direction you were traveling, and then what happened?

EH: Uh, this is a Motor Coach MCI bus. I was traveling south.

KS: Do you remember what lane you were in?

EH: I was in the first lane right here. There's two lanes...

KS: There's...

EH: (don't understand).

KS: So back there, there's two lanes south. We're in the left lane, or in the right lane?

EH: No I was in the right lane.

KS: Okay and then you're coming up to the intersection, what happened?

EH: I'm coming up to the intersection, the bike um, bike driver came out of the bike lane right into the, like into the bus and I swerved and I, I think that he might have hit this side over here.

KS: Okay, so the gesture you made, you swerved to the left?

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on file with the Las Vegas Metropolitan Police Department

*Rhonda Guthrie*  
\_\_\_\_\_  
Las Vegas Metropolitan Police Dept.

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LVMPD - 00029

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
Interview Transcript

EVENT: 170418-1868

Date and Time of Transcription: April 19, 2017 at 09:40 hours

Transcript By: Rhonda Guthrie, P# 3525

EH: Right to avoid him because he took his hands off these, he went, he was riding like this, and then he took his hands off and the bike swerved out into the where the bus, you know, where the traffic is, so to avoid hitting him with the bus I hit, turned, hit my brakes and turned out like that.

KS: Okay and when you said he took his hands off you did a motion. Are you motioning that he took his hands off the handlebars?

EH: He took both his hands off the handlebars.

KS: And then where did he put them?

EH: To his side.

KS: Um, was he grabbing at anything, or?

EH: No, no just like, it happened very fast. Took his hands off and then the bike just came over.

KS: So when he took his hands off had he started in the bike lane?

EH: He was already in the bike lane and he took his hands off and then he came, and I'm paying attention, I'm not driving fast, and just, it just happened just came right over, and so to make sure I didn't hit him I just, you know, turned the bus to the left, the brakes turned the bus to the left and I thought that I didn't even hit him until I looked in my mirror and saw that he was on the ground. I, I thought that I had avoided him because I turned. You know what I mean?

KS: And you said there were other people on the bus when this happened?

EH: Yes sir.

KS: And did they provide a statement to you?

EH: Yes sir they provided a statement that said it wasn't my fault. They said they saw what happened. He came way out of the bike lane um, took his hands off um, he went no hands.

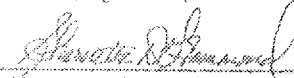
KS: So did you actually see that and they saw that, or is that just what they told you?

EH: I saw it, yes I saw that yes.

KS: You saw him take his hands off the handlebars?

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
Interview Transcript

EVENT: 170418-1868

Date and Time of Transcription: April 19, 2017 at 09:40 hours

Transcript By: Rhonda Guthrie, P# 3525

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EH: Yes sir.

KS: Okay and you're aware that there's possibly video of this incident...

EH: Yes sir.

KS: from the Red Rock?

EH: Yes sir.

KS: And what do you think that video is going to show me?

EH: It's going to show me turning away from him. It's going to show me, it's going to show you incoming into right where his bike is at. That's what I don't understand why he came way out there like that.

KS: Do you have your commercial license?

EH: Yeah somebody has it. First officer on the scene has it.

KS: Okay and you're familiar with the driving laws in the State of Nevada?

EH: Yes sir.

KS: Are you familiar with the three foot laws that pertains to bicyclists?

EH: Right to stay away from them. Yes sir, yes sir.

KS: And do you, what's your understanding of the responsibility of that law?

EH: To stay away from them three feet, right.

KS: Okay.

EH: Which is what, which is what I was doing.

KS: And how many feet do you think you were away from the bicyclist?

EH: Maybe 7, 7, 10 feet, because when you see where he, he drifted, he drifted into, into the vehicle lane.

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on file with the Las Vegas Metropolitan Police Department  
*Rhonda Guthrie*  
Las Vegas Metropolitan Police Dept.



LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
Interview Transcript

EVENT: 170418-1868

Date and Time of Transcription: April 19, 2017 at 09:40 hours

Transcript By: Rhonda Guthrie, P# 3525

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KS: Um, so he starts off in the bike lane, he drifts over, to use your terms...

EH: Ye sir.

KS: How many feet over into the travel lane do you think he drifted?

EH: I don't know, because he came over, I would say he was, how many feet from the bike lane was he maybe?

KS: Um hum.

EH: About maybe 5, 5 feet from the bike lane.

KS: So um, so in your estimation if he's off into the travel lane, he's about 5 feet away from the bike lane?

EH: Yes sir.

KS: Okay and about that time you're coming through, how fast do you think you were going?

EH: Probably 10 miles an hour. That's why I don't understand how he's, how he's hurt so bad. I don't understand. He was going, he was fast, he was going kind of fast. I don't know understand. I was going maybe 10, 12 miles, 15 miles an hour.

KS: And had he passed you?

EH: No, no he didn't pass me.

KS: You were approaching him from the rear?

EH: Right. No I wasn't approaching him. I was, it was something like this.

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KS: So he's offset to your right, but...

EH: He's in the bike lane and then he just came, like I said, just like that.

OCT 11 2017

KS: Where were you coming from?

on file with the Las Vegas Metropolitan Police Department

EH: I'm, I turned off this street, must have turned off of...

  
Las Vegas Metropolitan Police Dept.

KS: Charleston is the next major street down there that the Red Rock is off of.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
Interview Transcript

EVENT: 170418-1868

Date and Time of Transcription: April 19, 2017 at 09:40 hours

Transcript By: Rhonda Guthrie, P# 3525

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EH: Yes sir.

KS: Okay, so you make a right off of Charleston and where were you headed to?

EH: Right here.

KS: Okay.

EH: Like to Hotel, where it says Hotel/Spa.

KS: Okay and is this a normal route for you?

EH: Uh, no, well I've done this before, because we do McCarran, this is uh, you know, sometime we bring people from McCarran to the Red Rock.

KS: Have you ever been involved in anything like this before?

EH: Absolutely not. I'm a safe operator.

KS: Is this a normal schedule for you?

EH: Oh yeah.

KS: What time did you start work this morning?

EH: I got to work today at 8:15 was my yard time.

KS: And had you had any breaks between starting work and when this incident occurred?

EH: Yes, because we was at the airport, which is, they didn't start coming out yet until like, I think I left at um, (inaudible) I think I left at 10:15, 10:30 I'm not sure.

KS: Have you had anything to eat today?

EH: I um, coffee and an egg sandwich.

KS: What time was that?

EH: Um, maybe 8:35.

KS: Anything else today?

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
Interview Transcript

EVENT: 170418-1868

Date and Time of Transcription: April 19, 2017 at 09:40 hours

Transcript By: Rhonda Guthrie, P# 3525

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EH: No sir.

KS: What's a normal sleep patter for you?

EH: Anywhere from 5 to 6 hours.

KS: 5 to 6 hours, starting when and ending when?

EH: Um, depends on when. 1 to 7, 1 to 6.

KS: Is a normal sleep patter for you?

EH: Yes.

KS: And what was your sleep schedule like last night?

EH: About I went to, I think my wife woke me up about quarter to 7, quarter to 7.

KS: Okay. Are you taking any medications right now?

EH: Absolutely not.

KS: When's the last time you had any alcohol?

EH: I don't drink. 21 years, almost 21 years.

KS: 21 years ago.

EH: Yes sir.

KS: Do you smoke?

EH: No sir.

KS: Do you take any illicit drugs?

EH: No sir.

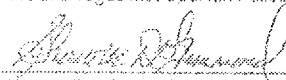
KS: And no prescription medications?

EH: No sir.

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
Interview Transcript

EVENT: 170418-1868

Date and Time of Transcription: April 19, 2017 at 09:40 hours

Transcript By: Rhonda Guthrie, P# 3525

KS: No allergy pills?

EH: No sir.

KS: Anything for blood pressure?

EH: I don't take anything.

KS: Okay.

EH: No medication, no nothing.

KS: Do you wear corrective lenses?

EH: No sir.

KS: Are you required to wear corrective lenses?

EH: No sir.

KS: When was your last accident?

EH: Maybe in, when I was living in New York City.

KS: When was that?

EH: Uh, let see I don't know. Maybe this is 17, maybe 14, 15, 2015, 2014.

KS: When was your last speeding ticket?

EH: I haven't had a speeding ticket.

KS: Have you ever had any traffic infractions? Any traffic tickets?

EH: No.

KS: Not here, anywhere else?

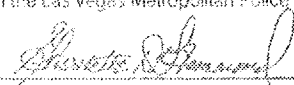
EH: No.

KS: Is your license currently valid?

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LVMPD - 00035

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
Interview Transcript

EVENT: 170418-1868

Date and Time of Transcription: April 19, 2017 at 09:40 hours

Transcript By: Rhonda Guthrie, P# 3525

EH: Yes sir.

KS: Were you wearing a seatbelt?

EH: Yes sir.

KS: And is that a shoulder and lap belt, or just a lap belt?

EH: Lap belt.

KS: Lap belt only. After this all happened, I, I assume you pulled the vehicle over and did...

EH: I, I (inaudible) I saw, like I said I thought I avoided um, I saw them look in the mirror in the side thing and I saw him and I jumped and I ran out (inaudible) and that's when I dialed 9-1-1 immediately.

KS: Did any of those passengers say anything to you?

EH: Yes they said he came into your lane. He came into your lane we saw it. He came into your lane.

KS: And you said they provided their information to your supervisor?

EH: I don't know if they provided it to my supervisor yet, but they provided to the officer, to uh Metro PD.

KS: Okay. Whose fault do you think this incident is?

EH: He came out, he came out, I tried to avoid him that's why his bike hit the side of the bus.

KS: So did the front of the bus hit him, or the side?

EH: Absolutely not. Absolutely not.

KS: What could you have done to avoid this?

EH: Honest to God I went over it in my head and I don't see anything that I could have done, because I, I did what I'm trained to do. I turned, turned the bus to the left to avoid making contact with him and the bike and I hit my brakes. I wasn't even going fast.

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
Interview Transcript

EVENT: 170418-1868

Date and Time of Transcription: April 19, 2017 at 09:40 hours

Transcript By: Rhonda Guthrie, P# 3525

- KS: Is there anything that I have failed to ask you that you would like to add to your statement pertaining to this investigation?
- EH: I just want you to speak to the people who saw it. I mean I'm so sorry that he is not here. That's the thing that is killing me the most, but I swear to you, he came, he came over and that's why, you talk to them and they'll tell you exactly what happened. I did everything I could not to hit that man.
- KS: Anything else you'd like to add?
- EH: I would like to (inaudible) I'm very safe driver. I drove in New York City since 1997. I just got here like a year (inaudible). I'm a very safe driver. I've seen it all. I even seen this, I can't believe it.
- KS: Anything else you wanted to add?
- EH: You guys are going to check the video, right?
- KS: Of course.
- EH: (Inaudible) there's a camera right here.
- KS: Of course. That concludes the interview. The same people are present. The time now is 12:40 p.m. Thank you.

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Las Vegas Metropolitan Police Dept.

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT**  
**Interview Transcript**

EVENT: 170418-1868

Date and Time of Transcription: April 19, 2017 at 12:15 hours

Transcript By: Rhonda Guthrie, P# 3525

KS: Good morning, this is Detective Ken Salisbury, P#8264 conducting a witness interview with Robert Pears R-O-B-E-R-T P-E-A-R-S, date of birth [REDACTED] His address is [REDACTED] His phone number is [REDACTED]. This is part of an investigation under LVMPD Event #170418-1868. This interview is being conducted at South Pavilion Center Drive at the intersection with Griffith Peak Drive. The time now is 2:47 p.m. on April 18, 2017. We are the only persons present for this interview. Is it okay if I call you Robert?

RP: Yes.

(Radio traffic)

KS: Robert, do you understand this conversation is being recorded?

RP: Yes.

KS: And are you making your statement freely and voluntarily...

RP: Yes.

KS: without any promises, without any threats or duress to provide information in an investigation being conducted by the Las Vegas Metropolitan Police Department?

RP: Yes.

KS: Okay I understand you were a possible witness to a collision that happened today.

RP: Yes.

KS: Can you first start by telling me where you were and how you came to know of the incident?

RP: Okay, so I was in the bus on the front passenger seat, the very front seat.

KS: Okay.

RP: I saw, well we were behind the cyclist for quite a while. Um, my...

KS: Can you described quite a while for me?

RP: Um, I would say half a mile. We were coming down, I'm sorry I don't know what street this was, heading to the Red Rock Facility.

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
Interview Transcript

EVENT: 170418-1868

Date and Time of Transcription: April 19, 2017 at 12:15 hours

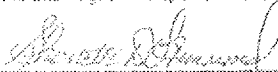
Transcript By: Rhonda Guthrie, P# 3525

- KS: Okay and you motioned this is South Pavilion.
- RP: South Pavilion, yep, going that direction south towards the Red Rock. Um, and we had myself and Mike (don't understand) commented because the driver was going very slow um, being very caution of the cyclist who was in front. When we came close to this junction um, the bus driver was able to pull into the other lane and the cyclist was in the lane beside us. All of a sudden the cyclist pulled towards the bus. He took his hand off the, his steering wheel and swerved right into the side of the bus. The driver swerved to try and pull away um, but it was not, it was too late.
- KS: Okay. You said a few different things in there.
- RP: Yeah sure.
- KS: Was the bicyclist in the bicycle lane, or the travel lane?
- RP: He was in, he was in the bicycle lane, but he came out of it and all of a sudden I don't know if he was planning to turn, but he took his hand off of the left hand part of his...
- KS: Handlebar?
- RP: handlebar and um, seemed like he lost control because he suddenly swerved and he turned into the bus.
- KS: Now when you're gesturing with your hands, you're using your right hand to make it look as if he almost steered his handlebar into the bus.
- RP: Yes. It almost, it looked like I don't know if he hit something, but he swerved, he literally swerved um, and turned into the bus.
- KS: So would you described it as intentional or accidently?
- RP: No I think, I think it looked like something he lost control. In my opinion it looked like something happened and he lost control.
- KS: And you didn't have any opinion or see anything of why he may have lost control?

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LVMPD - 00039



LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
Interview Transcript

EVENT: 170418-1868

Date and Time of Transcription: April 19, 2017 at 12:15 hours

Transcript By: Rhonda Guthrie, P# 3525

RP: No I, my opinion is I was wondering if he was trying to turn. He took his hand off the handlebar and he lost control when he suddenly realized where the bus was. I don't think he realized how close the bus was.

KS: How close was the bus when he took his hand off the handlebar?

RP: A foot and a half, two foot.

KS: Okay.

RP: He was close.

KS: Um, so when the bicyclist and the bus are a foot and a half, two feet apart from each other, is the bicyclist in the travel lane, or the bicycle lane?

RP: I believe he was in the travel lane at that point.

KS: And you said the bus had been following for about a half mile?

RP: So the bus had been following for a half mile and suddenly it had over taken just before this junction and so we were in the traveling lane, he was in the cycle lane, and then just literally that this junction that's where the bicyclist pulled over into the travel lane. He just pulled over right quickly and as I said the bus driver tried to swerve, but just as he was doing that, that's when the cyclist took his hand off the handle wheel and turned.

KS: When you're saying the cyclist pulled over, is that the lost control movement, or is that a separate...

RP: He pulled over, he pulled initially, he pulled over out of that lane, he pulled over and that's where I have an impression he maybe tried to turn, I don't know if you can turn on that street.

KS: Okay, so you thought maybe he was going from the bicycle lane and intending to turn left at this intersection?

RP: I wonder, because he pulls over, he then takes his hand off the handlebar, and loses control and swerves into the bus.

KS: So there's two separate motions there. There's one from the bike lane into the travel lane and then there's a second one of the losing control...

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
Interview Transcript

EVENT: 170418-1868

Date and Time of Transcription: April 19, 2017 at 12:15 hours

Transcript By: Rhonda Guthrie, P# 3525

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RP: Correct.

KS: into the side of the bus.

RP: Correct.

KS: And it was in fact into the side?

RP: Yes he went into the side of the bus.

KS: Um, so the bus is long, the passenger's side of the bus, right front, right rear?

RP: It was just behind the front right tire.

KS: Okay.

RP: So I'm, yeah it was just behind where I was seated.

KS: So if your seat is the very right front seat in the bus, it would have been on your right?

RP: I was looking down and literally behind me he's where he hit.

KS: So you're gesturing again, maybe a foot behind you, two foot behind you?

RP: And I did not see what happened to him, because we moved on. So I just seen him hit the bus, I could not tell you what happened from that point on.

KS: Did you hear it impact the bus?

RP: Yes, yes.

KS: So, so on a scale of 1 to 100, 100 being as sure as you were of anything in your life, how sure are you that the cyclist or bicycle made contact with the bus?

RP: I'm a hundred percent sure that he made contact.

KS: Okay and from there you don't know what happened as far as the dynamics or what he did?

RP: No, no.

KS: What did the bus driver do?

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LVMPD - 00041

Docket 78701 Document 2019-49226

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT**  
**Interview Transcript**

EVENT: 170418-1868

Date and Time of Transcription: April 19, 2017 at 12:15 hours

Transcript By: Rhonda Guthrie, P# 3525

RP: The bus driver pulled over um, grabbed his phone, and called 9-1-1.

KS: Was he making any statements?

RP: He was um, crying out oh my God. I mean I swerved to miss to miss him, I swerved to miss him. I was trying to miss him and he's calling 9-1-1 and he's just, he was um, in a panic state. He was just in shock.

KS: Did you say anything to him?

RP: I said to him, afterwards, at the end, you know, I went over and basically you know, I just prayed with the guy um, you know, but he was, we told him we recommended that he call and get another bus driver to take his, to continue on, and that he sit down, because he was clearly a wreck. He was crying. He was all over the place. He was not, he was not with it.

KS: If you had to determine fault in whose this was with you having the best account of how that happened, who do you think is at fault for this collision?

RP: Sadly I would say the cyclist.

KS: And why would you make that determination?

RP: Because from my perspective he lost control and went into the bus. He pulled over too close to the bus, and the seemed to lost control. Um, the bus driver had, was overtaking him, was clearly in a different lane, and for some reason I don't know why the cyclist would pull over. I'm surprised he was not aware of the bus being behind him because we were there for, I said a good half mile following him. The bus driver was well behind, he was being very, very cautious and careful, which several people commented on the bus regarding that, and then he pulls over to overtake him and goes into the travel lane and the cyclist just suddenly pulled.

KS: So there you said he pulls over to overtake him. Are you saying that the bus driver pulled over to make room to pass the cyclist?

RP: So if you go back further on Pavilion, further north I guess it would be um, we were behind and the bus driver thought he had to turn at that junction and he realized no it's the next one, so he pulls out into the travel lane, and he then goes the cyclist was in that turn lane, bicycle lane.

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Las Vegas Metropolitan Police Dept

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LVMPD - 00042

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
Interview Transcript

EVENT: 170418-1868

Date and Time of Transcription: April 19, 2017 at 12:15 hours

Transcript By: Rhonda Guthrie, P# 3525

KS: So if I set this up correctly by what you just said, further north as you are proceeding south, the bus is actually behind the cyclist...

RP: Yes, yes.

KS: thinking that he's going to make a right.

RP: Correct.

KS: And then pulls back into the travel lane.

RP: Correct.

KS: There's two travel lanes south, the bus in the right travel lane...

RP: Correct.

KS: to go around the bicyclist...

RP: Correct.

KS: and that's when now the bicyclist has made a lane change from the bike lane into the same travel lane.

RP: Correct.

KS: When the bicyclist makes that lane change into the same travel lane, how close is the bus now to the bicyclist?

RP: When he made that change, they came within a couple of feet. They were really close and the bus driver immediately tried to swerve um, but as I said that's when the cyclist took his hand off that left handle and just seemed like he lost control and swerved.

KS: So I'm getting a little bit better of an understanding of how this happened. So, if that bicyclist when he's changing lanes from the bike lane into the travel lane that the bus is occupying, would you have said that that was a safe lane change for the bicyclist to pull in front of the bus at that proximity?

RP: Because he was not in front at that time. He was not in front.

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Las Vegas Metropolitan Police Dept.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
Interview Transcript

EVENT: 170418-1868

Date and Time of Transcription: April 19, 2017 at 12:15 hours

Transcript By: Rhonda Guthrie, P# 3525

KS: So when he's making that lane change, he's, he's changing into the side of the bus?

RP: Correct.

KS: So do you think that the bicyclist knew that the bus was in that lane?

RP: Based on his reaction I don't think he did. I don't recall mirrors being on the bike. I may be wrong, but I don't, that's where I think when he took his hand off and he looked and saw the bus, I think that's why he lost control, I think he was not expecting the bus, but that's my opinion.

KS: Sure. Um, I understand you're with a partner Michael?

RP: Yeah.

KS: And Michael also works at Thermal Fisher Scientific?

RP: Correct.

KS: And have you had a chance to talk to him since this occurred?

RP: No. We talked, I said we texted briefly I told him the guy died, that's why it's on my phone, and he basically, I can show you but there's no comment. I just told him this is a cop thing and the guy died.

KS: Perfect. Is there anything that I have failed to ask you that you would like to add to your statement pertaining to this investigation?

RP: Nope I feel sorry for both parties. Nobody wins in this one.

KS: Did you notice anything from the driver at all that would make you think that um, he was impaired, or that he wasn't driving safe before this incident occurred?

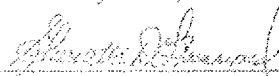
RP: No I mean I said he was, and there was a lot of people on the bus commenting he was driving very slow behind that bus um, or behind sorry, behind the bike, so he did not in any way appear, he seemed he was taking extra care and caution behind that bike. Um, and I said several people commented on the bus.

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LVMPD - 00044

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
Interview Transcript

EVENT: 170418-1868

Date and Time of Transcription: April 19, 2017 at 12:15 hours

Transcript By: Rhonda Guthrie, P# 3525

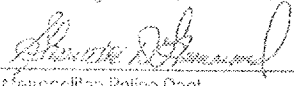
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- KS: Alright that's all the questions I have. I appreciate you coming back to the scene and giving me that statement that really helps my investigation a lot.
- RP: Okay.
- KS: That concludes the interview. The time now is 3:00 p.m. and the same persons are present. Thank you.

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**Wendi Frehner**

**From:** Plantz, Michael R.  
**Sent:** Friday, April 21, 2017 10:07 AM  
**To:** Kenneth Salisbury  
**Subject:** fatal bicycle / buss accident new Red Rock Casino

Dear Detective Salisbury-

I was provided your card by a coworker (Robert Pears) that I believe you spoke to regarding this event on Tuesday, April 18. I also witnessed the cyclist prior and during the accident as Robert also did. Please contact me if you need any information or clarifications. Below are a few of the notes that I can share from my perspective on the accident.

1. I was on the transfer bus from LAS to the Red Rock Casino, traveling to attend my company's sales meeting on 4/18-21. I was sitting in the first row of the bus, directly behind the driver of the bus. My sitting position was up higher than the driver's level. Robert Pears was sitting directly across from me in the right front seat of this bus.
2. The bus exited the highway onto eastbound Charleston Blvd. As the bus neared the right turn lane approaching the traffic light at Pavilion Center Dr., the bus driver slowed as cyclist was coasting in this turn lane. Both Robert and I commented to each other that the cyclist was going slow at this point, and the buss driver made a passing comment something to the effect that the driver saw the cyclist and ws watching him.
3. The bus driver turned right (south) onto Pavilion Center after the cyclist performed the same turn. The cyclist initially pulled ahead on Pavilion Center due to the bus slowing for the turn, but just before the next intersection the bus caught up with the cyclist. The bus driver was showing significant awareness of the cyclist, and the cyclist slowed to the point where the bus started to pass the cyclist near the interception. Both the cyclist and the bus were in their appropriate lanes. I cycle quite a bit myself, and was watching the cyclist as he slowed about a 50 yards before the intersection. The bus driver was also providing significant clearance from the cyclist, as the cyclist was in his appropriate lane to the far right of the road.
4. Right at the next intersection on Pavilion Center (near the Red Rock Casino), the cyclist appeared to remove at least one of his hands from the handlebars and unexpectedly veered left into the side of the bus. I watched from my vantage point thru the window in the door, and saw the cyclist almost hit the door as he neared the bus. The bus driver observed the cyclist veering towards the bus and attempted to miss the cyclist by moving over to the far left side of the right lane. I was surprised that the cyclist made this quick direction change toward the bus without looking over his left shoulder. I remember looking at the cyclist as we neared this intersection, and did not see a mirror on the bicycle. I think that I was looking for this because of my cycling experience and that the cyclist was slowing and appeared to be either recovering from his ride or was not sure of his direction.
5. The cyclist hit the bus right next to my coworker Robert Pears. We could not see the cyclist at this point, as he was below the level of the coach bus windows. But we heard an impact that indicated to us that the cyclist had hit the side of the bus, at or just behind the right front wheel.
6. From my perspective, the bus driver was driving very slow and was providing ample space for this unfortunate cyclist. The driver commented that he had notice the slow and somewhat erratic movements of the cyclist. The driver did everything he could to then try to avoid the impact, and stopped the bus after the impact and immediately called 911. When he got out to approach the cyclist, it appeared that security staff from the Red Rock were already approaching the cyclist on the ground and trying to attend to him. I don't believe that the bus driver could have done anything different; he was watching the cyclist and sharing the road very well prior to the cyclist quickly changing direction and impacting the side of the bus.

Please feel free to contact me with any questions. I am flying out of LAS this morning, but I can be reached at my cell phone number listed below if you'd like to speak directly.

Respectfully,

Michael Plantz  
Elemental Technical Sales Specialist  
Thermo Fisher Scientific

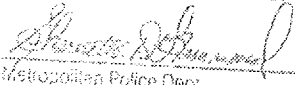
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| ITEM INFORMATION  |                                  | DESCRIPTION  | \$     |
|---|----------------------------------|--|--------|
| AC# 17024344<br>CS#<br>EV# 1704181868   | Item 1<br>Qty 1<br>Type Bicycles | <br>SCOTT SOLACE ROAD BIKE - ORG/BLK<br>SER #: SGR01F25216020236B<br>Pkg/Itm: 1/1<br>Sec Bg: 1/1 | \$0.00 |
| AC# 17024476<br>CS#<br>EV# 1704181868   | Item 1<br>Qty 1<br>Type Bicycles | <br>BLK LUMINA 750 BOOST HEADLIGHT<br>Pkg/Itm: 2/2<br>Sec Bg: 2/2                                | \$0.00 |
| AC# 17024476<br>CS#<br>EV# 1704181868   | Item 2<br>Qty 1<br>Type Bicycles | <br>RED/BLK NR BICYCLE TAIL LIGHT<br>Pkg/Itm: 2/3<br>Sec Bg: 2/3                                 | \$0.00 |
| AC# 17024476<br>CS#<br>EV# 1704181868   | Item 3<br>Qty 2<br>Type UNCLASS  | <br>WHI CAMEL BACK WATER BOTTLES<br>Pkg/Itm: 2/4<br>Sec Bg: 2/4                                  | \$0.00 |
| AC# 17024476<br>CS#<br>EV# 1704181868   | Item 4<br>Qty 1<br>Type UNCLASS  | <br>BLK PRO CYCLERY BIKE REPAIR KIT<br>Pkg/Itm: 2/5<br>Sec Bg: 2/5                             | \$0.00 |
| <p>RELEASED BY EVIDENCE      EVID SANDRA MILANO, EVID [006655]      </p> <p><b>- RECEIPT -</b></p> <p><b>SIGNATURE:</b> <br/>KAYVAN KHIABANI<br/>11546 MORNING GROVE DR • LAS VEGAS, NV 89135</p> <p></p> <p>ID PROVIDED: Drivers License      NV 1602293835 EX 4/23 E ESPINOZA</p> <p>I hereby certify this is a full, true and correct copy of the ORIGINAL DOCUMENT (HARD COPY/COMPUTERIZED/MICROGRAPHIC COPY)</p> <p>OCT 11 2017</p> <p>on file with the Las Vegas Metropolitan Police Department</p> <p><br/>Las Vegas Metropolitan Police Dept.</p> <p style="text-align: right;">rRELCRcp</p> |                                  |  |        |

LVMPD - 00048

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**CRIME SCENE INVESTIGATION REPORT**

|  |  |                          |                                    |
|--|--|--------------------------|------------------------------------|
| Incident<br><b>Fatal Traffic Accident</b>      |  | Sector/Beat<br><b>R1</b> | Event Number<br><b>170418-1868</b> |
| Requesting Officer<br><b>K. Salisbury 8264</b> | Division<br><b>TSD</b>   | Date<br><b>4/18/2017</b> | Time<br><b>1200</b>                |
| Victim(s)<br><b>Kayvan Khiabani,</b>           | Location(s)<br><b>Griffith Peak Dr. and S. Pavilion Center Dr.</b> |                          |                                    |

**Connecting Reports and Related Event Numbers**

☐ Evidence Impound Report    
 ☐ Firearms Report    
 ☐ Officer's Report    
 ☐ \_\_\_\_\_  
☐ Related Event Number(s): \_\_\_\_\_

**DOCUMENTATION**

☒ Crime Scene Photography    ☐ Comparative Photography  
☐ Aerial Photography           ☐ Diagram(s)  
☐ \_\_\_\_\_

**LATENT PRINT EVIDENCE**

☐ Processing Conducted  
☐ Lift(s) / Cast(s)  
☐ Photograph(s)  
☐ Eliminations  
☐ Negative Results  
☐ \_\_\_\_\_

**FIREARMS EVIDENCE**

☐ Bullet(s) / Fragment(s)  
☐ Cartridge Case(s)  
☐ Cartridge(s)  
☐ Weapon(s)  
☐ \_\_\_\_\_

**FOOTWEAR AND TIRE EVIDENCE**

☐ Footwear                      ☐ Tire  
☐ Lift(s) / Cast(s)           ☐ Original Surface(s)  
☐ Photograph(s)              ☐ Exemplar(s)

**BIOLOGICAL EVIDENCE**

☐ Apparent Blood              ☐ Apparent Semen  
☐ Possible DNA                ☐ Unknown Substance(s)  
☐ Swab(s)                      ☐ Original Surface(s)  
☐ Buccal Swabs                ☐ \_\_\_\_\_

**TOOL MARK EVIDENCE**

☐ Cast(s)                      ☐ Original Surface(s)  
☐ Photograph(s)              ☐ Tool(s)

**OTHER**

**VEHICLE(S):**

1. 2008 Motorcoach Industries J4500 diesel bus, UT: Z044712, VIN: 2M93JMHA28W064555

**GENERAL INFORMATION:**

The scene was located in the intersection of Griffith Peak Dr. and S. Pavilion Center Dr. The intersection was controlled by a traffic light and consisted of two lanes in all directions. Dedicated left and right turn lanes were also noted in the intersection. In addition, a bike lane extended in the north and southbound directions.

Vehicle 1 was located in the bus lane located south of the intersection. The front of the vehicle faced south. No obvious areas of damage or disturbance were noted to the vehicle.

A red Scott Solace bicycle was located on its side in the southbound lanes of the intersection. The front of the bicycle faced northeast. Damage was noted to the left handle bar, left bicycle pedal, left bicycle seat, and left rear wheel screw. Apparent blood was located on the asphalt north of the bicycle. Apples and water bottles were located on the asphalt near the bicycle. Scratches were noted in the roadway north of the bicycle. A plaid shirt was located on the gravel rock bed at the northwest corner of the intersection.

on file with the Las Vegas Metropolitan Police Department

|                                    |                   |                                 |  |                   |
|------------------------------------|-------------------|---------------------------------|--|-------------------|
| Crime Scene Analyst Supervisor<br> | P#<br><b>5546</b> | Date Approved<br><b>4-22-17</b> | Crime Scene Analyst<br><b>Megan Ross-Lynch</b> | P#<br><b>9976</b> |
|------------------------------------|-------------------|---------------------------------|--|-------------------|

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Revised 5/15

Page 1 of 2

LVMPD Crime Scene Investigations Section/5555 W. Sadure Ave. Suite #180/ Las Vegas, Nevada 89118

LVMPD - 00049

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
CRIME SCENE INVESTIGATION REPORT  
CONTINUATION

Incident: Fatal Traffic Accident  
Griffith Peak Dr. and S.  
Location: Pavilion Center Dr.

Event Number: 170418-1868

Date: 4/18/2017

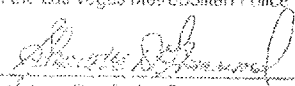
I recorded digital images of the location of the scene; the intersection for layout and overall condition; vehicle 1 for identification and overall location, position, and condition; the bicycle for location, position, and overall condition; and cones placed in the roadway by Fatal Traffic Detectives for location and condition.

No further action was taken.

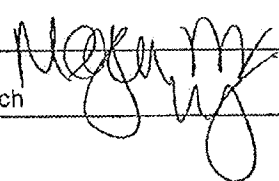
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Las Vegas Metropolitan Police Dept.

Crime Scene Analyst  
Megan Ross-Lynch

  
P# 9976

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**CRIME SCENE INVESTIGATION REPORT**

|   |  |  |  |
|---|--|--|--|
| Incident<br><div style="text-align: center;">Fatal Traffic Collision</div>      |  | Sector/Beat<br><div style="text-align: center;">W7</div>         | Event Number<br><div style="text-align: center;">170418-1868</div> |
| Requesting Officer<br><div style="text-align: center;">K. Salisbury #8264</div> | Division<br><div style="text-align: center;">TSD</div> | Date<br><div style="text-align: center;">4/18/2017</div>         | Time<br><div style="text-align: center;">1250</div>                |
| Victim(s)<br><div style="text-align: center;">Khiabani, Kayvan T</div>          |  | Location(s)<br><div style="text-align: center;">UMC Trauma</div> |  |

**Connecting Reports and Related Event Numbers**

☐ Evidence Impound Report    
 ☐ Firearms Report    
 ☐ Officer's Report    
 ☐ \_\_\_\_\_  
☐ Related Event Number(s): \_\_\_\_\_

**DOCUMENTATION**

☒ Crime Scene Photography    ☐ Comparative Photography  
☐ Aerial Photography            ☐ Diagram(s)  
☐ \_\_\_\_\_

**LATENT PRINT EVIDENCE**

☐ Processing Conducted  
☐ Lift(s) / Cast(s)  
☐ Photograph(s)  
☐ Eliminations  
☐ Negative Results  
☐ \_\_\_\_\_

**FIREARMS EVIDENCE**

☐ Bullet(s) / Fragment(s)  
☐ Cartridge Case(s)  
☐ Cartridge(s)  
☐ Weapon(s)  
☐ \_\_\_\_\_

**FOOTWEAR AND TIRE EVIDENCE**

☐ Footwear                            ☐ Tire  
☐ Lift(s) / Cast(s)                ☐ Original Surface(s)  
☐ Photograph(s)                  ☐ Exemplar(s)

**BIOLOGICAL EVIDENCE**

☐ Apparent Blood                  ☐ Apparent Semen  
☐ Possible DNA                    ☐ Unknown Substance(s)  
☐ Swab(s)                           ☐ Original Surface(s)  
☐ Buccal Swabs                    ☐ \_\_\_\_\_

**TOOL MARK EVIDENCE**

☐ Cast(s)                            ☐ Original Surface(s)  
☐ Photograph(s)                  ☐ Tool(s)

**OTHER**

**VEHICLE(S):**

**GENERAL INFORMATION:**

On 4-18-17, at approximately 1250 hours, I responded with SCSA M. McIntyre #13207 to the above listed location at the request of Fatal Detail Detective K. Salisbury #8264 regarding a fatal traffic collision investigation. The following people were also present: Coroner Investigator T. Brown #342 and representatives from Davis Mortuary.

**THE SCENE:**

The scene was in the "negative pressure isolation room" at UMC Trauma.

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**VICTIM:**

The victim, a male adult, was laying on his back on a gurney with his head facing east and his feet facing west. A blue plastic sheet was wrapped around his body with his feet sticking out at the bottom. There was a bag of personal items in between his legs on the gurney.

On file with the Las Vegas Metropolitan Police Department  
 #13207

|                                    |            |                          |                                 |             |
|------------------------------------|------------|--------------------------|---------------------------------|-------------|
| Crime Scene Analyst Supervisor<br> | P#<br>5946 | Date Approved<br>4-22-17 | Crime Scene Analyst<br>K. Biwer | P#<br>16190 |
|------------------------------------|------------|--------------------------|---------------------------------|-------------|

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 Revised 9/16

Page 1 of 2

LVMPD Crime Scene Investigations Section 5555 W. Badura Ave. Suite #1801 Las Vegas, Nevada 89118

LVMPD - 00051

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**CRIME SCENE INVESTIGATION REPORT**  
**CONTINUATION**

Incident: Fatal Traffic Collision  
 Location: UMC Trauma

Event Number: 170418-1868  
 Date: 4/18/2017

Coroner Investigator T. Brown #342 removed the blue plastic sheet to examine the victim and injuries. The victim had medical intervention devices on his face and body and was wearing a yellow metal ring on his left ring finger. He was wearing a medically cut spandex type body suit and was on a pink back board. There were injuries to his left knee, left hip, left inner arm area, back and head.

In a pocket of the body suit, a brown wallet style phone case was located. Inside of the case there was a phone and the back of the case contained several cards, a driver's license (bearing the name of the above listed victim) and cash.

**PHOTOGRAPHY:**

Digital images were taken showing the location, the above listed victim for identification, overall condition, position and location, and the scene as described above.

**ADDITIONAL INFORMATION:**

Coroner Investigator T. Brown #342 collected a bicycle helmet with damage and a watch from the bag of personal items which was located on the gurney between the victim's legs.

The victim was placed in a body bag and transported by representatives from Davis Mortuary.

SCSA M. Ross-Lynch #9976 responded to the original scene. Refer to her report for further details.

SCSA M. McIntyre #13207 and I cleared the scene at approximately 1330 hours.

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 Las Vegas Metropolitan Police Dept

|  |             |
|--|-------------|
| Crime Scene Analyst<br>K. Biwer <i>[Signature]</i> | P#<br>16190 |
|--|-------------|

*[Signature]* #13207

Las Vegas Metropolitan Police Department  
Collision Investigation Section / Fatal Detail  
**COLLISION INVESTIGATION NARRATIVE**

**Event #170418-1868**

On April 18, 2017, at approximately 10:34 a.m., a fatal traffic collision occurred on S. Pavilion Center Dr at W. Griffith Peak Dr. Evidence at the scene and witness statements indicated a Bus was traveling south on S. Pavilion Center Dr in the right lane. A bicyclist was traveling south in the bike lane. The cyclist lost control before veering to the left into the passenger's side of the bus. The 51-year-old cyclist, Kayvan Khiabani, was transported to the University Medical Center Trauma hospital where he died despite all resuscitative efforts. The driver of the bus, Edward Hubbard, pulled the bus to the side of the road and remained at the scene. Hubbard did not display any signs of impairment. The cyclist's death marked the 39th traffic related fatality in the Las Vegas Metropolitan Police Department's jurisdiction for the year 2017.

I, Detective Kenneth Salisbury, was assigned as the primary investigator due to the fatality. I reviewed a Las Vegas Metropolitan Police Department (LVMPD) dispatch log through the course of my investigation. "Aaron Bradley" called from \_\_\_\_\_ and reported himself as a witness at 10:36 a.m. Aaron told the dispatcher an accident with injury occurred on W. Charleston Blvd & S. Pavilion Center Dr. The details of the collision were of a Bus versus a bicyclist. Emergency responders were dispatched to the scene. LVMPD Traffic Officer Lourenco and Harvey responded to the scene and started a preliminary collision investigation. Several LVMPD patrol officers responded to secure the scene and preserve evidence.

The Clark County Fire Department (CCFD) and an American Medical Response (AMR) ambulance responded to the scene. AMR unit 202 transported the bicyclist to the University Medical Center Trauma hospital. The bicyclist had a Nevada driver's license bearing Kayvan Khiabani. Despite all resuscitative measures, Khiabani died at 11:09 a.m. A notification was made to the LVMPD Fatal Detail.

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died at 11:09 a.m. DA notification was  
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*[Signature]*  
Las Vegas Metropolitan Police Dept.

LVMPD - 00053

001643

Las Vegas Metropolitan Police Department  
Collision Investigation Section / Fatal Detail  
**COLLISION INVESTIGATION NARRATIVE**

**Event #170418-1868**

The LVMPD Fatal Detail responded to the scene to document details of the collision. I was notified of the incident on April 18th and got to the collision scene at approximately 11:47 a.m. I assumed primary responsibility for the investigation upon my arrival. Detectives Bangle, Solomon, Hansbarger, and Figueroa responded to the scene to assist my investigative efforts. Sergeant McCullough responded to supervise the investigation. I surveyed the scene. The intersection was closed to vehicular traffic in all three directions at the "T" intersection of S. Pavilion Center Dr and W. Griffith Peak Dr.

I spoke with Officers Lourenco and Harvey who provided me with the details learned during the preliminary stages of the investigation. Officer Lourenco identified two witnesses whom were still at the scene Aaron and Erika Bradley. Both witnesses had completed written statements. Aaron wrote, "My wife was driving, while I was on my phone. I heard her gasp and I looked up. A bicyclist was laying on the ground, and a white bus/coach was attempting to slow down. As the bus continued to break, the rear tires ran over the bicyclist. I immediately called 9-1-1 to alert them. Since I was not looking up and paying attention to the street ahead of us, I was unable to see if the bus ran into the bicyclist, or vice versa." Erika wrote, "Driving south on Pavilion Center, almost to the stop light @ Pavilion Center and Red Rock / Griffith Peak, saw the bicyclist struck by a white bus. The bicyclist was struck on the left side by the right side / front of the bus. The bicyclist spun around and fell and was rolled under the bus. We pulled over immediately. I can't specifically recall which direction the bus was going, but it appeared as though the bicyclist didn't see it and was attempting to pull out or cross the intersection.

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The Fatal Detail members and I walked the collision scene to familiarize ourselves with the roadway evidence and collision dynamics. We started from north of the intersection and

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LVMPD - 00054

Las Vegas Metropolitan Police Department  
Collision Investigation Section / Fatal Detail  
**COLLISION INVESTIGATION NARRATIVE**

**Event #170418-1868**

walked south through the apparent path of travel the two units made leading up to the area of initial contact. Crime Scene Analyst Ross-Lynch started documentation of the collision by capturing digital images of the intersection, evidence, bus, bicycle, roadway layout and design. Sergeant McCullough used a Sokkia GNSS GPS Receiver to record measurements of the roadway and evidence locations.

The only identifiable evidence in the roadway was a series of scrapes, a pool of apparent blood, and items from the bicycle and rider. The Scott Solace bicycle was in the roadway south of the scrapes and apparent blood. The Motor Coach International Bus was parked south of the intersection adjacent to the west curb. I did not find any signs of tire mark evidence I could attribute to the incident I was investigating.

I met with the driver of the bus, Edward Hubbard, and conducted a recorded interview. The following is the transcribed text from the recorded interview:


KS: Good morning, this is Detective Ken Salisbury P#8264 conducting a driver interview with Edward Hubbard, date of birth 2-10-67, as part of an investigation under LVMPD Event #170418-1868. This interview is being conducted at Pavilion Center Drive and Griffith Peak Drive, Las Vegas, Nevada. The date is April 18, 2017 and the time now is 12:28 p.m. Also present for the interview is Trauma Intervention Program Volunteer Jeff Haber H-A-B-E-R. Ed, do you understand this conversation is being recorded?

EH: Yes.

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LVMPD - 00055



Las Vegas Metropolitan Police Department  
Collision Investigation Section / Fatal Detail  
**COLLISION INVESTIGATION NARRATIVE**

**Event #170418-1868**

KS: And are you giving your statement freely and voluntarily, without any promises, without any threats or duress to provide information in an investigation being conducted by the Las Vegas Metropolitan Police Department?

EH: Yes.

KS: Alright Ed, can you first start by telling me the vehicle you were operating, the direction you were traveling, and then what happened?

EH: Uh, this is a Motor Coach MCI bus. I was traveling south.

KS: Do you remember what lane you were in?

EH: I was in the first lane right here. There's two lanes...

KS: There's...

EH: (don't understand).

KS: So back there, there's two lanes south. We're in the left lane, or in the right lane?

EH: No I was in the right lane.

KS: Okay and then you're coming up to the intersection, what happened?

EH: I'm coming up to the intersection, the bike um, bike driver came out of the bike lane right into the, like into the bus and I swerved and I, I think that he might have hit this side over here.

KS: Okay, so the gesture you made, you swerved to the left?

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**Event #170418-1868**

EH: Right to avoid him because he took his hands off these, he went, he was riding like this, and then he took his hands off and the bike swerved out into the where the bus, you know, where the traffic is, so to avoid hitting him with the bus I hit, turned, hit my brakes and turned out like that.

KS: Okay and when you said he took his hands off you did a motion. Are you motioning that he took his hands off the handlebars?

EH: He took both his hands off the handlebars.

KS: And then where did he put them?

EH: To his side.

KS: Um, was he grabbing at anything, or?

EH: No, no just like, it happened very fast. Took his hands off and then the bike just came over.

KS: So when he took his hands off had he started in the bike lane?

EH: He was already in the bike lane and he took his hands off and then he came, and I'm paying attention, I'm not driving fast, and just, it just happened just came right over, and so to make sure I didn't hit him I just, you know, turned the bus to the left, the brakes turned the bus to the left and I thought that I didn't even hit him until I looked in my mirror and saw that he was on the ground. I, I thought that I had avoided him because I turned. You know what I mean?

KS: And you said there were other people on the bus when this happened?

EH: Yes sir.

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KS: And did they provide a statement to you?

EH: Yes sir they provided a statement that said it wasn't my fault. They said they saw what happened. He came way out of the bike lane um, took his hands off um, he went no hands.

KS: So did you actually see that and they saw that, or is that just what they told you?

EH: I saw it, yes I saw that yes.

KS: You saw him take his hands off the handlebars?

EH: Yes sir.

KS: Okay and you're aware that there's possibly video of this incident...

EH: Yes sir.

KS: from the Red Rock?

EH: Yes sir.

KS: And what do you think that video is going to show me?

EH: It's going to show me turning away from him. It's going to show me, it's going to show you incoming into right where his bike is at. That's what I don't understand why he came way out there like that.

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KS: Do you have your commercial license?

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EH: Yeah somebody has it. First officer on the scene has it. on file with the Las Vegas Metropolitan Police Department

KS: Okay and you're familiar with the driving laws in the State of Nevada?

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EH: Yes sir.

KS: Are you familiar with the three foot laws that pertains to bicyclists?

EH: Right to stay away from them. Yes sir, yes sir.

KS: And do you, what's your understanding of the responsibility of that law?

EH: To stay away from them three feet, right.

KS: Okay.

EH: Which is what, which is what I was doing.

KS: And how many feet do you think you were away from the bicyclist?

EH: Maybe 7, 7, 10 feet, because when you see where he, he drifted, he drifted into, into the vehicle lane.

KS: Um, so he starts off in the bike lane, he drifts over, to use your terms...

EH: Ye sir.

KS: How many feet over into the travel lane do you think he drifted?

EH: I don't know, because he came over, I would say he was, how many feet from the bike lane was he maybe?

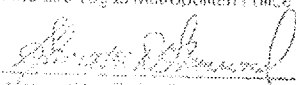
KS: Um hum.

EH: About maybe 5, 5 feet from the bike lane.

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KS: So um, so in your estimation if he's off into the travel lane, he's about 5 feet away from the bike lane?

EH: Yes sir.

KS: Okay and about that time you're coming through, how fast do you think you were going?

EH: Probably 10 miles an hour. That's why I don't understand how he's, how he's hurt so bad. I don't understand. He was going, he was fast, he was going kind of fast. I don't know understand. I was going maybe 10, 12 miles, 15 miles an hour.

KS: And had he passed you?

EH: No, no he didn't pass me.

KS: You were approaching him from the rear?

EH: Right. No I wasn't approaching him. I was, it was something like this.

KS: So he's offset to your right, but...

EH: He's in the bike lane and then he just came, like I said, just like that.

KS: Where were you coming from?

EH: I'm, I turned off this street, must have turned off of...

KS: Charleston is the next major street down there that the Red Rock is off of.

EH: Yes sir.

KS: Okay, so you make a right off of Charleston and where were you headed to?

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EH: Right here.

KS: Okay.

EH: Like to Hotel, where it says Hotel/Spa.

KS: Okay and is this a normal route for you?

EH: Uh, no, well I've done this before, because we do McCarran, this is uh, you know, sometime we bring people from McCarran to the Red Rock.

KS: Have you ever been involved in anything like this before?

EH: Absolutely not. I'm a safe operator.

KS: Is this a normal schedule for you?

EH: Oh yeah.

KS: What time did you start work this morning?

EH: I got to work today at 8:15 was my yard time.

KS: And had you had any breaks between starting work and when this incident occurred?

EH: Yes, because we was at the airport, which is, they didn't start coming out yet until like, I think I left at um, (inaudible) I think I left at 10:15, 10:30 I'm not sure.

KS: Have you had anything to eat today?

EH: I um, coffee and an egg sandwich.

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KS: What time was that?

EH: Um, maybe 8:35.

KS: Anything else today?

EH: No sir.

KS: What's a normal sleep patter for you?

EH: Anywhere from 5 to 6 hours.

KS: 5 to 6 hours, starting when and ending when?

EH: Um, depends on when. 1 to 7, 1 to 6.

KS: Is a normal sleep patter for you?

EH: Yes.

KS: And what was your sleep schedule like last night?

EH: About I went to, I think my wife woke me up about quarter to 7, quarter to 7.

KS: Okay. Are you taking any medications right now?

EH: Absolutely not.

KS: When's the last time you had any alcohol?

EH: I don't drink. 21 years, almost 21 years.

KS: 21 years ago.

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EH: Yes sir.

KS: Do you smoke?

EH: No sir.

KS: Do you take any illicit drugs?

EH: No sir.

KS: And no prescription medications?

EH: No sir.

KS: No allergy pills?

EH: No sir.

KS: Anything for blood pressure?

EH: I don't take anything.

KS: Okay.

EH: No medication, no nothing.

KS: Do you wear corrective lenses?

EH: No sir.


KS: Are you required to wear corrective lenses?

EH: No sir.

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KS: When was your last accident?

EH: Maybe in, when I was living in New York City.

KS: When was that?

EH: Uh, let see I don't know. Maybe this is 17, maybe 14, 15, 2015, 2014.

KS: When was your last speeding ticket?

EH: I haven't had a speeding ticket.

KS: Have you ever had any traffic infractions? Any traffic tickets?

EH: No.

KS: Not here, anywhere else?

EH: No.

KS: Is your license currently valid?

EH: Yes sir.

KS: Were you wearing a seatbelt?

EH: Yes sir.

KS: And is that a shoulder and lap belt, or just a lap belt?

EH: Lap belt.

KS: Lap belt only. After this all happened, I, I assume you pulled the vehicle over and did...

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EH: I, I (inaudible) I saw, like I said I thought I avoided um, I saw them look in the mirror in the side thing and I saw him and I jumped and I ran out (inaudible) and that's when I dialed 9-1-1 immediately.

KS: Did any of those passengers say anything to you?

EH: Yes they said he came into your lane. He came into your lane we saw it. He came into your lane.

KS: And you said they provided their information to your supervisor?

EH: I don't know if they provided it to my supervisor yet, but they provided to the officer, to uh Metro PD.

KS: Okay. Whose fault do you think this incident is?

EH: He came out, he came out, I tried to avoid him that's why his bike hit the side of the bus.

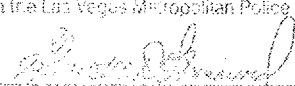
KS: So did the front of the bus hit him, or the side?

EH: Absolutely not. Absolutely not.

KS: What could you have done to avoid this?

EH: Honest to God I went over it in my head and I don't see anything that I could have done, because I, I did what I'm trained to do. I turned, turned the bus to the left to avoid making contact with him and the bike and I hit my brakes. I wasn't even going fast.

KS: Is there anything that I have failed to ask you that you would like to add to your statement pertaining to this investigation?

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EH: I just want you to speak to the people who saw it. I mean I'm so sorry that he is not here. That's the thing that is killing me the most, but I swear to you, he came, he came over and that's why, you talk to them and they'll tell you exactly what happened. I did everything I could not to hit that man.

KS: Anything else you'd like to add?

EH: I would like to (inaudible) I'm very safe driver. I drove in New York City since 1997. I just got here like a year (inaudible). I'm a very safe driver. I've seen it all. I even seen this, I can't believe it.

KS: Anything else you wanted to add?

EH: You guys are going to check the video, right?

KS: Of course.

EH: (Inaudible) there's a camera right here.

KS: Of course. That concludes the interview. The same people are present. The time now is 12:40 p.m. Thank you.

While I was investigating the scene, I was given a disc with a video surveillance file from the Red Rock Hotel and Casino. The video showed the bus traveling south through the intersection. After the bus passes through the intersection, the bicyclist and bicycle can be seen in the intersection on the asphalt. The video did not capture the actual contact made between the two units or the pre-impact behaviors. The trajectory of the bus through the intersection appeared that the driver made a steering maneuver to the left, from south to southeast, as it continued through

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the intersection. As the bus entered the frame of the camera, it appeared to originate from the right travel lane. The area where the bicycle and rider came to rest fell within the prolongation of the middle of the right southbound travel lane. The bicycle was moved from its final rest location while the bicyclist was being treated by medical personnel.

I examined the bicycle. There was contact damage on the left handlebar, left pedal, and the left side of the seat. The bicycle appeared to have overturned onto its left side. The contact damage was consistent with the severity of the scratches on the asphalt. I did not find any mechanical deficiencies with the bicycle that could be attributed to the causation of the collision.

I summoned the assistance of the Nevada Highway Patrol for a level 1 commercial vehicle inspection. Officer Conlin, badge number 29284, responded and completed the inspection. The only violation listed on the report of his examination was violation 396.3A1 (Inspection, repair and maintenance of parts & accessories: Oil leaks from engine area). I spoke with Officer Conlin who told me he did not find any evidence of contact with the bicycle or rider underneath the bus. I inspected the bus and found a black transfer mark on the right side of the bus behind the right front tire wheel well. The transfer mark appeared fresh and was consistent in appearance with what I would expect from the handlebars of a bicycle. The transfer mark on the bus was lower than the handlebar height of the bicycle in the upright position. The bicycle appeared to have started to overturn prior to the transfer mark being created. I took four pictures of the transfer mark to show its position and appearance on the bus. I rubbed my finger over the transfer mark in the middle and the black transfer started to roll as my finger passed over it. The rolling of the material lead me to believe that the transfer was both recent and caused by contact with the bicycle handlebar.

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Detective Hansbarger transported the bicycle back to our office where he impounded it for safekeeping. I had Criminalistics Analyst McIntyre meet with Clark County Coroner Investigator Brown at the hospital to inspect and document the decedent's body and helmet. I released the bus to Don Hadden. Hadden was the operations manager for Silverado Stages. After I released the bus, I was approached by Robert Pears. Pears identified himself as a witness so I conducted a recorded interview.

The following is the transcribed text from the recorded interview:

KS: Good morning, this is Detective Ken Salisbury, P#8264 conducting a witness interview with Robert Pears R-O-B-E-R-T P-E-A-R-S, date of birth 1-4-68. His address is

His phone number is

This is part of an investigation under LVMPD Event #170418-1868. This interview is being conducted at South Pavilion Center Drive at the intersection with Griffith Peak Drive. The time now is 2:47 p.m. on April 18, 2017. We are the only persons present for this interview. Is it okay if I call you Robert?

RP: Yes.

(Radio traffic)

KS: Robert, do you understand this conversation is being recorded?

RP: Yes.

KS: And are you making your statement freely and voluntarily...

RP: Yes.

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KS: without any promises, without any threats or duress to provide information in an investigation being conducted by the Las Vegas Metropolitan Police Department?

RP: Yes.

KS: Okay I understand you were a possible witness to a collision that happened today.

RP: Yes.

KS: Can you first start by telling me where you were and how you came to know of the incident?

RP: Okay, so I was in the bus on the front passenger seat, the very front seat.

KS: Okay.

RP: I saw, well we were behind the cyclist for quite a while. Um, my...

KS: Can you described quite a while for me?

RP: Um, I would say half a mile. We were coming down, I'm sorry I don't know what street this was, heading to the Red Rock Facility.

KS: Okay and you motioned this is South Pavilion.

RP: South Pavilion, yep, going that direction south towards the Red Rock. Um, and we had myself and Mike (don't understand) commented because the driver was going very slow um, being very caution of the cyclist who was in front. When we came close to this junction um, the bus driver was able to pull into the other lane and the cyclist was in the lane beside us. All of a sudden the cyclist pulled towards the bus. He took his hand off the, his steering wheel and swerved right into the side of the bus. The driver swerved to try and pull away um, but it was not, it was too late.

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KS: Okay. You said a few different things in there.

RP: Yeah sure.

KS: Was the bicyclist in the bicycle lane, or the travel lane?

RP: He was in, he was in the bicycle lane, but he came out of it and all of a sudden I don't know if he was planning to turn, but he took his hand off of the left hand part of his...

KS: Handlebar?

RP: handlebar and um, seemed like he lost control because he suddenly swerved and he turned into the bus.

KS: Now when you're gesturing with your hands, you're using your right hand to make it look as if he almost steered his handlebar into the bus.

RP: Yes. It almost, it looked like I don't know if he hit something, but he swerved, he literally swerved um, and turned into the bus.

KS: So would you described it as intentional or accidentally?

RP: No I think, I think it looked like something he lost control. In my opinion it looked like something happened and he lost control.

KS: And you didn't have any opinion or see anything of why he may have lost control?

RP: No I, my opinion is I was wondering if he was trying to turn. ~~He took his hand off the~~  
handlebar and he lost control when he suddenly realized where the bus was. I don't think he realized how close the bus was.

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KS: How close was the bus when he took his hand off the handlebar?

RP: A foot and a half, two foot.

KS: Okay.

RP: He was close.

KS: Um, so when the bicyclist and the bus are a foot and a half, two feet apart from each other, is the bicyclist in the travel lane, or the bicycle lane?

RP: I believe he was in the travel lane at that point.

KS: And you said the bus had been following for about a half mile?

RP: So the bus had been following for a half mile and suddenly it had over taken just before this junction and so we were in the traveling lane, he was in the cycle lane, and then just literally that this junction that's where the bicyclist pulled over into the travel lane. He just pulled over right quickly and as I said the bus driver tried to swerve, but just as he was doing that, that's when the cyclist took his hand off the handle wheel and turned.

KS: When you're saying the cyclist pulled over, is that the lost control movement, or is that a separate...

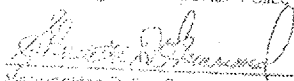
RP: He pulled over, he pulled initially, he pulled over out of that lane, he pulled over and that's where I have an impression he maybe tried to turn, I don't know if you can turn on that street.

KS: Okay, so you thought maybe he was going from the bicycle lane and intending to turn left at this intersection?

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RP: I wonder, because he pulls over, he then takes his hand off the handlebar, and loses control and swerves into the bus.

KS: So there's two separate motions there. There's one from the bike lane into the travel lane and then there's a second one of the losing control...

RP: Correct.

KS: into the side of the bus.

RP: Correct.

KS: And it was in fact into the side?

RP: Yes he went into the side of the bus.

KS: Um, so the bus is long, the passenger's side of the bus, right front, right rear?

RP: It was just behind the front right tire.

KS: Okay.

RP: So I'm, yeah it was just behind where I was seated.

KS: So if your seat is the very right front seat in the bus, it would have been on your right?

RP: I was looking down and literally behind me he's where he hit.

KS: So you're gesturing again, maybe a foot behind you, two foot behind you?

RP: And I did not see what happened to him, because we moved on. So I just seen him hit the bus, I could not tell you what happened from that point on.

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KS: Did you hear it impact the bus?

RP: Yes, yes.

KS: So, so on a scale of 1 to 100, 100 being as sure as you were of anything in your life, how sure are you that the cyclist or bicycle made contact with the bus?

RP: I'm a hundred percent sure that he made contact.

KS: Okay and from there you don't know what happened as far as the dynamics or what he did?

RP: No, no.

KS: What did the bus driver do?

RP: The bus driver pulled over um, grabbed his phone, and called 9-1-1.

KS: Was he making any statements?

RP: He was um, crying out oh my God. I mean I swerved to miss to miss him, I swerved to miss him. I was trying to miss him and he's calling 9-1-1 and he's just, he was um, in a panic state. He was just in shock.

KS: Did you say anything to him?

RP: I said to him, afterwards, at the end, you know, I went over and basically you know, I just prayed with the guy um, you know, but he was, we told him we recommended that he call and get another bus driver to take his, to continue on, and that he sit down, because he was clearly a wreck.

He was crying. He was all over the place. He was not, he was not with it.

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KS: If you had to determine fault in whose this was with you having the best account of how that happened, who do you think is at fault for this collision?

RP: Sadly I would say the cyclist.

KS: And why would you make that determination?

RP: Because from my perspective he lost control and went into the bus. He pulled over too close to the bus, and the seemed to lost control. Um, the bus driver had, was overtaking him, was clearly in a different lane, and for some reason I don't know why the cyclist would pull over. I'm surprised he was not aware of the bus being behind him because we were there for, I said a good half mile following him. The bus driver was well behind, he was being very, very cautious and careful, which several people commented on the bus regarding that, and then he pulls over to overtake him and goes into the travel lane and the cyclist just suddenly pulled.

KS: So there you said he pulls over to overtake him. Are you saying that the bus driver pulled over to make room to pass the cyclist?

RP: So if you go back further on Pavilion, further north I guess it would be um, we were behind and the bus driver thought he had to turn at that junction and he realized no it's the next one, so he pulls out into the travel lane, and he then goes the cyclist was in that turn lane, bicycle lane.

KS: So if I set this up correctly by what you just said, further north as you are proceeding south, the bus is actually behind the cyclist...


RP: Yes, yes.

KS: thinking that he's going to make a right.

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RP: Correct.

KS: And then pulls back into the travel lane.

RP: Correct.

KS: There's two travel lanes south, the bus in the right travel lane...

RP: Correct.

KS: to go around the bicyclist...

RP: Correct.

KS: and that's when now the bicyclist has made a lane change from the bike lane into the same travel lane.

RP: Correct.

KS: When the bicyclist makes that lane change into the same travel lane, how close is the bus now to the bicyclist?

RP: When he made that change, they came within a couple of feet. They were really close and the bus driver immediately tried to swerve um, but as I said that's when the cyclist took his hand off that left handle and just seemed like he lost control and swerved.

KS: So I'm getting a little bit better of an understanding of how this happened. So, if that bicyclist when he's changing lanes from the bike lane into the travel lane that the bus is occupying, would you have said that that was a safe lane change for the bicyclist to pull in front of the bus at that proximity?

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Collision Investigation Section / Fatal Detail  
**COLLISION INVESTIGATION NARRATIVE**

**Event #170418-1868**

RP: Because he was not in front at that time. He was not in front.

KS: So when he's making that lane change, he's, he's changing into the side of the bus?

RP: Correct.

KS: So do you think that the bicyclist knew that the bus was in that lane?

RP: Based on his reaction I don't think he did. I don't recall mirrors being on the bike. I may be wrong, but I don't, that's where I think when he took his hand off and he looked and saw the bus, I think that's why he lost control, I think he was not expecting the bus, but that's my opinion.

KS: Sure. Um, I understand you're with a partner Michael?

RP: Yeah.

KS: And Michael also works at Thermal Fisher Scientific?

RP: Correct.

KS: And have you had a chance to talk to him since this occurred?

RP: No. We talked, I said we texted briefly I told him the guy died, that's why it's on my phone, and he basically, I can show you but there's no comment. I just told him this is a cop thing and the guy died.

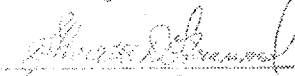
KS: Perfect. Is there anything that I have failed to ask you that you would like to add to your statement pertaining to this investigation?

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RP: Nope I feel sorry for both parties. Nobody wins in this one.

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KS: Did you notice anything from the driver at all that would make you think that um, he was impaired, or that he wasn't driving safe before this incident occurred?

RP: No I mean I said he was, and there was a lot of people on the bus commenting, he was driving very slow behind that bus um, or behind sorry, behind the bike, so he did not in any way appear, he seemed he was taking extra care and caution behind that bike. Um, and I said several people commented on the bus.

KS: Alright that's all the questions I have. I appreciate you coming back to the scene and giving me that statement that really helps my investigation a lot.

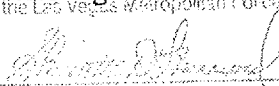
RP: Okay.

KS: That concludes the interview. The time now is 3:00 p.m. and the same persons are present. Thank you.

During the interview, Robert Pears said that the bicyclist took his hand off the handlebar and swerved into the side of the bus. Pears believed the cyclist may have been trying to cross the intersection. This thought was consistent with Erika Bradley's. After reading Erika's written statement earlier in the day, she explained to me that the bicyclist looked like it was trying to pull out or cross the intersection. The accounts of both of these witnesses were consistent with each other, and consistent with the bicycle starting to overturn before the transfer mark was made on the side of the bus. Pears seemed to have had the best vantage point and recollection of the sequence of events.

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I had Logistical Solutions respond to the scene for biohazard removal and sanitization. I ensured the roadway was free from collision debris before restoring normal vehicular traffic

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operations. I went to my office where I created a case file and conducted records checks on the persons and vehicle(s) involved in the incident.

I received a typed statement from Michael Plantz during the follow-up portion of my investigation. Plantz was the additional witness identified by Pears. Plantz statement read the following verbatim:

Dear Detective Salisbury-

I was provided your card by a coworker (Robert Pears) that I believe you spoke to regarding this event on Tuesday, April 18. I also witnessed the cyclist prior and during the accident as Robert also did. Please contact me if you need any information or clarifications. Below are a few of the notes that I can share from my perspective on the accident.

1. I was on the transfer bus from LAS to the Red Rock Casino, traveling to attend my company's sales meeting on 4/18-21. I was sitting in the first row of the bus, directly behind the driver of the bus. My sitting position was up higher than the driver's level. Robert Pears was sitting directly across from me in the right front seat of this bus.

2. The bus exited the highway onto eastbound Charleston Blvd. As the bus neared the right turn lane approaching the traffic light at Pavilion Center Dr., the bus driver slowed as cyclist was coasting in this turn lane. Both Robert and I commented to each other that the cyclist was going slow at this point, and the bus driver made a passing comment something to the effect that the driver saw the cyclist and was watching him.

3. The bus driver turned right (south) onto Pavilion Center after the cyclist performed the same turn. The cyclist initially pulled ahead on Pavilion Center due to the bus slowing for the

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turn, but just before the next intersection the bus caught up with the cyclist. The bus driver was showing significant awareness of the cyclist, and the cyclist slowed to the point where the bus started to pass the cyclist near the interception. Both the cyclist and the bus were in their appropriate lanes. I cycle quite a bit myself, and was watching the cyclist as he slowed about a 50 yards before the intersection. The bus driver was also providing significant clearance from the cyclist, as the cyclist was in his appropriate lane to the far right of the road.

4. Right at the next intersection on Pavilion Center (near the Red Rock Casino), the cyclist appeared to remove at least one of his hands from the handlebars and unexpectedly veered left into the side of the bus. I watched from my vantage point thru the window in the door, and saw the cyclist almost hit the door as he neared the bus. The bus driver observed the cyclist veering towards the bus and attempted to miss the cyclist by moving over to the far left side of the right lane. I was surprised that the cyclist made this quick direction change toward the bus without looking over his left shoulder. I remember looking at the cyclist as we neared this intersection, and did not see a mirror on the bicycle. I think that I was looking for this because of my cycling experience and that the cyclist was slowing and appeared to be either recovering from his ride or was not sure of his direction.

5. The cyclist hit the bus right next to my coworker Robert Pears. We could not see the cyclist at this point, as he was below the level of the coach bus windows. But we heard an impact that indicated to us that the cyclist had hit the side of the bus, at or just behind the right front wheel.

6. From my perspective, the bus driver was driving very slow and was providing ample space for this unfortunate cyclist. The driver commented that he had noticed the slow and somewhat erratic movements of the cyclist. The driver did everything he could to then try to avoid the impact,

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and stopped the bus after the impact and immediately called 911. When he got out to approach the cyclist, it appeared that security staff from the Red Rock were already approaching the cyclist on the ground and trying to attend to him. I don't believe that the bus driver could have done anything different; he was watching the cyclist and sharing the road very well prior to the cyclist quickly changing direction and impacting the side of the bus.

Please feel free to contact me with any questions. I am flying out of LAS this morning, but I can be reached at my cell phone number listed below if you'd like to speak directly.

Respectfully,

Michael Plantz

Elemental Technical Sales Specialist

Thermo Fisher Scientific

During the follow-up portion of my investigation, Detective Figueroa used measurements from the data recorded at the scene to create a scaled diagram within a computer assisted drafting program. I received the autopsy reports from the Clark County Office of the Coroner Medical Examiner for Khiabani. Forensic Pathologist Lisa Ann Gavin M.D., MPH determined Khiabani died of blunt force injuries of head and chest due to being struck by a bus. The manner of death was ruled as an accident. The autopsy reports included a toxicological analysis which revealed Khiabani did not have any impairing substances in his blood at the time of his demise. In my

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*Michael Plantz*  
Las Vegas Metropolitan Police Dept.

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experience of investigating fatal traffic collisions and reviewing reports of forensic pathologist's findings, the manner of death for pedestrians and bicyclists is commonly attributed to blunt force injuries due to being struck by a motor vehicle. While this may be true in most cases, I do not feel it accurately depicts the manner of death in this incident.

The contact made between the right side of the bus and the cyclist did not have enough force to cause the type of head and chest injury described in the autopsy report. However, the injuries were consistent with the right side rear tires rolling over Khiabani. The reason this dynamic is especially important in this case is because Khiabani's center of mass had to have lateral momentum towards the right side of the bus for his body to go underneath the side of the bus and have the rear tires roll over the top of him. This lateral momentum could have been created by Khiabani steering the bicycle toward the side of the bus as described by two of the witnesses.

An alternative causation to Khiabani's lateral movement into the side of the bus has been suggested that the design of the bus created an aerodynamic force pulling Khiabani toward the bus. I do not have access to any such study or reports of aerodynamic forces related to the bus in this incident. However, the amount of force needed to displace a 191 pound man traveling 6 to 15 miles per hour would have to be enough to influence the cyclist's velocity vector at 1910 to 4200 foot pounds of force.

I analyzed the speed of the bus using a time and distance analysis from the video of the incident. The bus appeared to have been traveling 30 to 35 miles per hour. The proposed aerodynamic forces created by the design of the bus would have to influence a velocity vector of 1910 to 4200 foot pounds of force with the bus traveling at 30 to 35 miles per hour. The aerodynamic forces would have to have created a vortex spanning the distance Khiabani was from

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the bus as it passed. According to witnesses Plantz and Pears, the bus was passing at a reasonable distance. Unless a study was provided showing otherwise, I find it improbable that aerodynamic forces pulled Khiabani toward the bus.

According to Fricke, L. B. (2010). Traffic Crash Reconstruction (2nd Ed). Evanston, Illinois: Northwestern Center for Public Safety, "The word proximate means close or near. Used with Cause, it implies that there are other causes; that the event, for example a traffic collision, has other causes that the "proximate" one, perhaps a simultaneous contributing factor of some kind. The idea of multiple causes is contrary to the concept that an event has a single cause, which is a combination of contributing factors required to produce the resultant event. Proximate cause is a legal rather than a scientific concept. It corresponds roughly to what we have been calling a contributing factor. Proximate, meaning near, seems to signify necessary and understandable."

According to Cooley, Peter, "A Manual For Evaluating the Performance of the Electrical Circuitry of the General Motors Air Cushion Restraint System", DOT-HS-4-00890, NHTSA, 1977, To . . . "be held criminally responsible for injury or homicide arising from his negligent operation of a vehicle or in violation of law, it is uniformly held that it must be shown that such . . . was the proximate cause of such death or injury. This means that there must have been a causal connection between the act and the resulting harm." Proximate cause is a phrase frequently encountered . . . Its meaning is somewhat elastic and there is no simple or mechanically precise method by which the difference between proximate and remote causes can be made clear . . . " " . . . For centuries, the phrase proximate cause, has been understood as indicating a cause of which the law will take notice. It means substantially the same as 'efficient cause' or 'legal cause.' 'Legal cause' is perhaps a more accurate phrase . . . " "One usually reliable test in such matters is whether

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the act or omission assigned as the cause constituted a substantial factor in bringing about the particular harm. This is on the theory that law does not concern itself with trifles."

While there are a chain of factors that result in the causation of any incident, I determined Khiabani contributed to the causation of this collision by unintentionally steering toward the bus. The steering maneuver resulted in contact between the right side of the bus and the handlebars of the bicycle as Khiabani overturned onto his left side. As the bus continued to pass, Khiabani went under the bus where the rear passenger side tires rolled over him resulting in injuries causing his death.

In regards to NRS 484B.270, some may have proposed that the driver of a vehicle must change lanes to the left lane when they are passing a bicycle traveling in the same direction as long as there is more than one lane. This concept is correct and seems to apply to this case under one context. However, this law specifies what a driver must do when passing a bicycle traveling in the same lane. In this case, the bicycle rider has a designated lane of safe operation. Vehicular traffic may lawfully pass a bicycle in a bicycle lane when that vehicle is occupying a lane adjacent to the bicycle lane as long as there is more than three feet of clearance. This case is applicable to NRS 484B.763 which states, a bicycle rider "upon a roadway has all of the rights and is subject to all of the duties applicable to the driver of a vehicle." The rider in this case, has the duty to yield the right-of-way to the bus in the adjacent lane while attempting to change lanes. Khiabani left the bicycle lane, which was a designated safe place in the roadway, and entered the lane occupied by the bus. In doing so, he failed to yield the right-of-way to the bus and caused the collision. I did not find any criminal violations of law on behalf of Edward Hubbard and I did not file any

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charges related to this incident. The investigation of this collision is closed and the cited statutes are provided below for reference.

NRS 484B.270 Vehicles, bicycles, electric bicycles and pedestrians: Driver's duty of due care; additional penalty if driver is proximate cause of collision with person riding bicycle.

1. The driver of a motor vehicle shall not intentionally interfere with the movement of a person lawfully riding a bicycle or an electric bicycle.

2. When overtaking or passing a bicycle or electric bicycle proceeding in the same direction, the driver of a motor vehicle shall exercise due care and:

(a) If there is more than one lane for traffic proceeding in the same direction, move the vehicle to the lane to the immediate left; if the lane is available and moving into the lane is reasonably safe; or

(b) If there is only one lane for traffic proceeding in the same direction, pass to the left of the bicycle or electric bicycle at a safe distance, which must be not less than 3 feet between any portion of the vehicle and the bicycle or electric bicycle, and shall not move again to the right side of the highway until the vehicle is safely clear of the overtaken bicycle or electric bicycle.

3. The driver of a motor vehicle shall yield the right-of-way to any person riding a bicycle or an electric bicycle or a pedestrian as provided in subsection 6 of NRS 484B.297 on the pathway or lane. The driver of a motor vehicle shall not enter, stop, stand, park or drive within a pathway or lane provided for bicycles or electric bicycles except:

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- (a) When entering or exiting an alley or driveway;
- (b) When operating or parking a disabled vehicle;
- (c) To avoid conflict with other traffic;
- (d) In the performance of official duties;
- (e) In compliance with the directions of a police officer; or
- (f) In an emergency.

4. Except as otherwise provided in subsection 3, the driver of a motor vehicle shall not enter or proceed through an intersection while driving within a pathway or lane provided for bicycles or electric bicycles.

5. The driver of a motor vehicle shall:

- (a) Exercise due care to avoid a collision with a person riding a bicycle or an electric bicycle; and
- (b) Give an audible warning with the horn of the vehicle if appropriate and when necessary to avoid such a collision.

6. If, while violating any provision of subsections 1 to 5, inclusive, the driver of a motor vehicle is the proximate cause of a collision with a person riding a bicycle, the driver is subject to the additional penalty set forth in subsection 4 of NRS 484B.653.

7. The operator of a bicycle or an electric bicycle shall not:

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(a) Intentionally interfere with the movement of a motor vehicle; or

(b) Overtake and pass a motor vehicle unless the operator can do so safely without endangering himself or herself or the occupants of the motor vehicle.

(Added to NRS by 1991, 2228; A 1997, 739; 1999, 1664; 2009, 398; 2011, 294, 1633; 2015, 1196) — (Substituted in revision for NRS 484.324)

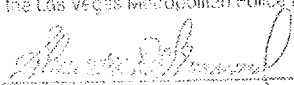
NRS 484B.763 Application of traffic laws to person riding bicycle or electric bicycle. Every person riding a bicycle or an electric bicycle upon a roadway has all of the rights and is subject to all of the duties applicable to the driver of a vehicle except as otherwise provided in NRS 484B.767 to 484B.783, inclusive, and except as to those provisions of chapters 484A to 484E, inclusive, of NRS which by their nature can have no application.

(Added to NRS by 1957, 504; A 1997, 1728; 2009, 113, 399) — (Substituted in revision for NRS 484.503)

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
PROPERTY REPORT

TRAFF

|                          |                          |         |
|--------------------------|--------------------------|---------|
| Date of LVMPD Possession | Time of LVMPD Possession | Page(s) |
| 04-18-17                 | 1200                     | 1 OF 1  |

Incident  
COLLISION W/INJURY

APR 25 2017

Event # 170418-1868

## EVIDENCE

☐ Felony ☐ Gross Misd ☐ Misdemeanor  
List Other Related Event #'s (if any):

## NO EVIDENTIARY Value:

☐ No Owner Identified  
☐ Destroy  
☐ Return To DMV

## SAFEKEEPING

Must provide Owner Info in  
Persons Section AND Identify  
Owner # for each Item Listed

## FIREARM IMPOUNDED DUE TO:

☐ Temporary Protective Order (TPO)  
☐ Extended Order of Protection

Impounding Officer (Print Name):

N. HANBARGER  
Supervisor Approving (Signature):

A#5965

Unit  
T422

P# / Initials

N5965TH

Task Force Officers from Other Jurisdictions:  
PRINT LVMPD SGT Name & P#

## PERSONS - (S)USPECT / (V)ICTIM / (O)WNER / (F)INDER

| SO OZ<br>VO FO<br># | Last Name | First Name, MI | DOB   | Phone #  | Charge(s)       |
|---------------------|-----------|----------------|-------|----------|-----------------|
| 1                   | KHABANI   | KAYVAN         |       |          |                 |
| Street Address      |           | City           | State | Zip Code | Arrest Date ID# |
|                     |           |                |       |          |                 |
| SO OZ<br>VO FO<br># | Last Name | First Name, MI | DOB   | Phone #  | Charge(s)       |
|                     |           |                |       |          |                 |
| Street Address      |           | City           | State | Zip Code | Arrest Date ID# |
|                     |           |                |       |          |                 |
| SO OZ<br>VO FO<br># | Last Name | First Name, MI | DOB   | Phone #  | Charge(s)       |
|                     |           |                |       |          |                 |
| Street Address      |           | City           | State | Zip Code | Arrest Date ID# |
|                     |           |                |       |          |                 |

| FIELD<br>RELEASE<br>ONLY | Released Item(s)<br># | By Officer P# & Initials | Date Released | Released to Owner<br>(Above Person)<br># | Owner's Signature |
|--------------------------|-----------------------|--------------------------|---------------|--|-------------------|
|                          |                       |                          |               |  |                   |

(Relating to Impound)  
OWNER I TRANSPORTED TO UMC TRAUMA AND  
DID NOT SURVIVE. BELOW LISTED BICYCLE AND  
COMPONENTS REMAINED AT SCENE OF  
COLLISION

| PKG | ITEM | OWNER | MAKE         | MODEL   | COLOR | Serial # / VIN     | State Gov Issued ID # | PROPERTY DESCRIPTION              |
|-----|------|-------|--------------|---------|-------|--------------------|-----------------------|-----------------------------------|
| 1   | 1    | 1     | SCOTT SOLACE | ORG     | BLACK | SGR01FAS21-6020366 |                       | 1 SCOTT SOLACE BICYCLE            |
| 2   | 2    | 1     | LUMINA       | 750     | BLK   |                    |                       | 1 LUMINA 750 BOOST HEADLIGHT      |
| 2   | 3    | 1     | NR           | RED     | BLK   |                    |                       | 1 BICYCLE TAILLIGHT               |
| 2   | 4    | 1     | CAMEL        | BACK    | WHT   |                    |                       | 2 WATER BOTTLES                   |
| 2   | 5    | 1     | PRO          | CRUISE  | BLK   |                    |                       | 1 BICYCLE REPAIR KIT              |
| 2   | 6    | 1     | UE           | S-0015R | BLK   |                    |                       | 1 ULTIMATE EARS BLUETOOTH SPEAKER |

LVMPD 67-A (Rev. 9/12)

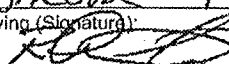
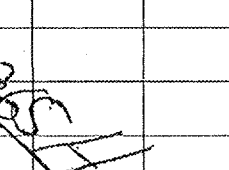

↑ Corresponds to # Listed in PERSONS section  
(Suspect / Victim / Owner / Finder)

Distribution: White: Records/Onbase | Yellow: Evidence Vault | Pink: Citizen

LVMPD - 00087



LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
PROPERTY REPORT

| Incident<br><b>COLLISION W/INJURY</b>  |        | Date of LVMPD Possession<br><b>04-18-17</b>   |               | Time of LVMPD Possession<br><b>1200</b>  |             | Page(s)<br><b>1 OF 1</b>   |      |   |
|--|--------|---|---------------|--|-------------|--|------|---|
| <input type="checkbox"/> <b>EVIDENCE</b><br><input type="checkbox"/> Felony <input type="checkbox"/> Gross Misd <input type="checkbox"/> Misdemeanor<br>List Other Related Event #'s (if any): |        | <input type="checkbox"/> <b>NO EVIDENTIARY Value:</b><br><input type="checkbox"/> No Owner Identified<br><input type="checkbox"/> Destroy<br><input type="checkbox"/> Return To DMV |               | <input checked="" type="checkbox"/> <b>SAFEKEEPING</b><br>Must provide Owner info in Persons Section AND Identify Owner # for each Item Listed |             | <b>FIREARM IMPOUNDED DUE TO:</b><br><input type="checkbox"/> Temporary Protective Order (TPO)<br><input type="checkbox"/> Extended Order of Protection |      |   |
| Impounding Officer (Print Name):<br><b>N. HANBARGER</b>  |        | Unit<br><b>T422</b>   |               | P# / Initials<br><b>N5965H</b>   |             | Task Force Officers from Other Jurisdictions:<br>PRINT LVMPD SGT Name & P#   |      |   |
| Supervisor Approving (Signature):<br>   |        | Unit<br><b>580T</b>   |               | P# / Initials<br><b>R 52075</b>  |             |  |      |   |
| <b>PERSONS - (S)USPECT / (V)ICTIM / (O)WNER / (F)INDER</b>   |        |   |               |  |             |  |      |   |
| <input type="checkbox"/> SO <input type="checkbox"/> VO <input type="checkbox"/> FO<br># <b>1</b>  |        | Last Name<br><b>KHABANI</b>   |               | First Name, MI<br><b>KAYVAN</b>  |             | Charge(s)<br>Arrest Date<br>ID#  |      |   |
| Street Address   |        | City  |               | State  |             | Zip Code   |      |   |
| <input type="checkbox"/> SO <input type="checkbox"/> VO <input type="checkbox"/> FO<br>#   |        | Last Name   |               | First Name, MI   |             | Charge(s)<br>Arrest Date<br>ID#  |      |   |
| Street Address   |        | City  |               | State  |             | Zip Code   |      |   |
| <input type="checkbox"/> SO <input type="checkbox"/> VO <input type="checkbox"/> FO<br>#   |        | Last Name   |               | First Name, MI   |             | Charge(s)<br>Arrest Date<br>ID#  |      |   |
| Street Address   |        | City  |               | State  |             | Zip Code   |      |   |
| FIELD RELEASE ONLY   |        | Released Item(s) #  |               | By Officer P# & Initials   |             | Date Released  |      |   |
|  |        |   |               |  |             | Released to Owner (Above Person) #   |      |   |
|  |        |   |               |  |             | Owner's Signature  |      |   |
| (Relating to Impound)<br><b>OWNER I TRANSPORTED TO UMC TRAUMA AND DID NOT SURVIVE. BELOW LISTED BICYCLE AND COMPONENTS REMAINED AT SCENE OF COLLISION</b>                                      |        |   |               |  |             |  |      |   |
| PKG #  | ITEM # | OWNER #   | Make or Brand | MODEL  | COLOR       | Serial # / OAN State & Gov. Issued ID #'s  | Qty. | PROPERTY DESCRIPTION<br>*If firearms MUST list:<br>1) Barrel Length<br>2) Country Made/Importer<br>3) Caliber<br>4) Action Type (S/A, Auto, Bolt, Revolver, Etc.) |
| 1  | 1      | 1   | SCOTT SOLACE  |  | ORG / BLACK | SGROIF2521-6020366   | 1    | SCOTT SOLACE BICYCLE  |
| 2  | 2      | 1   | LUMINA        | 750  | BLK         |  | 1    | LUMINA 750 BOOST HEADLIGHT  |
| 2  | 3      | 1   | NR            | RED  | RED         |  | 1    | BICYCLE TAILLIGHT   |
| 2  | 4      | 1   | CAMEL         | BACK   | WHIT        |  | 2    | WATER BOTTLES   |
| 2  | 5      | 1   | PRO           | SECRET   | BLK         |  | 1    | BICYCLE REPAIR KIT  |
| 2  | 6      | 1   | UE            | S-0015A  | BLK         |  | 1    | ULTIMATE EARS BUE TOOTH SPEAKER   |
|                          |        |   |               |  |             |  |      |   |
| OCT 11 2017  |        |   |               |  |             |  |      |   |
| on file with the Las Vegas Metropolitan Police Department  |        |   |               |  |             |  |      |   |

LVMPD 67-A (Rev. 9/12)

↑ Corresponds to # Listed in PERSONS section  
(Suspect / Victim / Owner / Finder)

Distribution: White: Records/Onbase | Yellow: Evidence Vault | Pink: Citizen

LVMPD - 00088

Página 1 de 1

DEPARTAMENTO DE POLICIA METROPOLITANA DE LAS VEGAS

## DECLARACION VOLUNTARIA

Incidente #

170418-1868

## ESTA SECCION DEBE SER LLENADA POR UN OFICIAL

|  |                  |  |                      |  |                       |
|--|------------------|--|----------------------|--|-----------------------|
| Delito<br><u>ACCIDENT</u>  |                  | Fecha de los Hechos<br><u>1036</u>               |                      | Hora de los Hechos<br><u>04-18-17</u>  |                       |
| Lugar de los Hechos<br><u>PAULTON CENTER DR &amp; GRIFFITH PEAK DR. LV, NV 89135</u> |                  | Sector/Beat<br><u>R1</u>                         |                      | <input type="checkbox"/> Ciudad<br><input checked="" type="checkbox"/> Condado             |                       |
| Nombre (Apellido/Nombre/Segundo Nombre)<br><u>LOIS PEREZ</u>                         |                  | Fecha de Nacimiento                              |                      | Número de Seguro Social  |                       |
| Raza<br><u>M</u>   | Sexo<br><u>M</u> | Eslatura<br><u>5.1</u>                           | Peso<br><u>200lb</u> | Cabello<br><u>NEGRO</u>  | Ojos<br><u>NEGROS</u> |
| Horario de Trabajo (Días Libres)<br><u>6:30 A 3PM</u>                                |                  | Empleado/Escola                                  |                      |  |                       |
| Dirección: (Número y Calle)<br><u>R</u>  |                  | Edif/Depto. # Ciudad                             |                      | Estado Código Postal   |                       |
| Dirección (Local) Trabajo: Número y Calle  |                  | Edif/Depto. # Ciudad                             |                      | Estado Código Postal   |                       |
| Lugar para comunicarnos con ud. durante el día                                       |                  | Horario para comunicarnos con ud. durante el día |                      | Puede identificar <input type="checkbox"/> Si<br>al Sospechoso <input type="checkbox"/> No |                       |

## DESCRIPCION DETALLADA

el SEÑOR IVA EN SU CARRIL  
y el del bus Al pararse No lo vio  
y se Metio y con las llantas traseras  
lo agarro y le PASO ENSPMA

I hereby certify this is a full, true and correct copy of the  
ORIGINAL DOCUMENT

(HARD COPY/COMPUTERIZED/MICROGRAPHIC COPY)

OCT 11 2017

on file with the Las Vegas Metropolitan Police Department

Las Vegas Metropolitan Police Dept.

HE LEIDO ESTA DECLARACION Y CONFIRMO LA VERACIDAD Y EXACTITUD DE LOS HECHOS ANTES MENCIONADOS. ESTA DECLARACION SE  
REALIZO EN (LUGAR) PAULTON CENTER DR & GRIFFITH PEAK DR LV, NV 89135

EL DIA 18TH DE APRIL DE 2017 ALAS 1056 (PM).

Testigo/Oficial:

(Firma)

Testigo/Oficial:

A. LOURENCO 5196  
(Con Letra de Moide)

Firma del Declarante

LVMPD - 00089

Page 1 of 1LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT

Event #

170118-1868

## THIS PORTION TO BE COMPLETED BY OFFICER

|  |                                 |   |
|--|---------------------------------|---|
| Specific Crime<br><u>FATAL TRAFFIC COLLISION</u>                         | Date Occurred<br><u>4/12/17</u> | Time Occurred<br><u>10:36 AM</u>  |
| Location of Occurrence<br><u>S. PAULSON CENTER / W. GRIFFITH PEAK DR</u> | Sector/Beat<br><u>R1</u>        | <input type="checkbox"/> City<br><input checked="" type="checkbox"/> County |

|  |                 |                        |                      |  |                          |   |                          |
|--|-----------------|------------------------|----------------------|--|--------------------------|---|--------------------------|
| Your Name (Last / First / Middle)<br><u>Bradley, Aaron Gregory</u> |                 |                        |                      |  |                          |   |                          |
| Race<br><u>White</u>   | Sex<br><u>M</u> | Height<br><u>5'10"</u> | Weight<br><u>220</u> | Hair<br><u>Brown</u>                                     | Eyes<br><u>Blue</u>      | Work Sched. (Hours)<br><u>Various</u>   | (Days Off)<br><u>W/R</u> |
| Residence Address: (Number & Street)<br><u>1874</u>                |                 |                        |                      | Bldg./Apt.#<br><u>0</u>                                  | City<br><u>Las Vegas</u> | State<br><u>NV</u>  | Zip Code<br><u>89102</u> |
| Bus. (Local) Address: (Number & Street)<br><u>1874</u>             |                 |                        |                      | Bldg./Apt.#<br><u>0</u>                                  | City<br><u>Las Vegas</u> | State<br><u>NV</u>  | Zip Code<br><u>89102</u> |
| Best place to contact you during the day<br><u>personal phone</u>  |                 |                        |                      | Best time to contact you during the day<br><u>12p-5p</u> |                          | Can You Identify the Suspect? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |                          |
| Business / School<br><u>Hexx Chocolate</u>                         |                 |                        |                      |  |                          |   |                          |
| Occupation<br><u>Manager</u>                                       |                 |                        |                      | Depart Date (if visitor)<br><u></u>                      |                          |   |                          |

DETAILS My wife was driving, while I was on my phone. I heard her gasp and I looked up. A bicyclist was laying on the ground, and a white bus/coach was attempting to slow down. As the bus continued to break, the rear tires ran over the bicyclist. I immediately called 9-1-1 to alert them. Since I was not looking up and paying attention to the street ahead of us, I was unable to see if the bus ran into the bicyclist, or vice versa.

I hereby certify this is a full, true and correct copy of the  
ORIGINAL DOCUMENT  
(HARD COPY/COMPUTERIZED/MICROGRAPHIC COPY)

OCT 11 2017

On file with the Las Vegas Metropolitan Police Department

Las Vegas Metropolitan Police Dept

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT (LOCATION) ON SCENE ON THE 18TH DAY OF APRIL AT 2017 (AM / PM).

Witness/Officer: [Signature] (SIGNATURE)Witness/Officer: K. S. BUB (PRINTED) PH 9267

LVMPD 65 (REV. 6-08)

Aaron G. Bradley  
SIGNATURE OF PERSON GIVING STATEMENT

LVMPD - 00090

Página \_\_\_\_\_ de \_\_\_\_\_

DEPARTAMENTO DE POLICIA METROPOLITANA DE LAS VEGAS

**DECLARACION VOLUNTARIA**

Incidente # \_\_\_\_\_

**ESTA SECCION DEBE SER LLENADA POR UN OFICIAL**

|                     |                     |   |
|---------------------|---------------------|---|
| Delito              | Fecha de los Hechos | Hora de los Hechos  |
| Lugar de los Hechos | Sector/Beat         | <input type="checkbox"/> Ciudad<br><input type="checkbox"/> Condado |

|  |      |                      |      |  |      |                    |               |  |                         |
|--|------|----------------------|------|--|------|--------------------|---------------|--|-------------------------|
| Nombre (Apellido/Nombre/Segundo Nombre)        |      |                      |      |  |      |                    |               | Fecha de Nacimiento  | Número de Seguro Social |
| Raza   | Sexo | Eslatura             | Peso | Cabello  | Ojos | Horario de Trabajo | (Días Libres) | Empleador/Escuela  |                         |
| Dirección: (Número y Calle)                    |      | Edif/Depto. # Ciudad |      | Estado   |      | Código Postal      |               | Teléfono Casa:   |                         |
| Dirección (Local) Trabajo: Número y Calle      |      | Edif/Depto. # Ciudad |      | Estado   |      | Código Postal      |               | Teléfono Trabajo:  |                         |
| Lugar para comunicarnos con ud. durante el día |      |                      |      | Horario para comunicarnos con ud. durante el día |      |                    |               | Puede Identificar <input type="checkbox"/> SI<br>al Sospechoso <input type="checkbox"/> No |                         |

**DESCRIPCION DETALLADA**

I hereby certify this is a full, true and correct copy of the  
ORIGINAL DOCUMENT  
(HARD COPY/COMPUTERIZED/MICROGRAPHIC COPY)

OCT 11 2017

on file with the Las Vegas Metropolitan Police Department

Las Vegas Metropolitan Police Dept.

HE LEIDO ESTA DECLARACION Y CONFIRMO LA VERACIDAD Y EXACTITUD DE LOS HECHOS ANTES MENCIONADOS. ESTA DECLARACION SE  
REALIZO EN (LUGAR) \_\_\_\_\_

EL DIA \_\_\_\_\_ DE \_\_\_\_\_ DE \_\_\_\_\_ A LAS \_\_\_\_\_ (AM/PM).

Testigo/Oficial: \_\_\_\_\_  
(Firma)

Testigo/Oficial: \_\_\_\_\_  
(Con Letra de Molde)

Firma del Declarante

LVMPD - 00091

Page 1 of 1LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT

Event #

170418-1853

## THIS PORTION TO BE COMPLETED BY OFFICER

|  |                                 |   |
|--|---------------------------------|---|
| Specific Crime<br><u>FATAL TRAFFIC COLLISION</u>                           | Date Occurred<br><u>4/18/17</u> | Time Occurred<br><u>10:36 AM</u>  |
| Location of Occurrence<br><u>S. PAVILLION CENTER / W. GRIFFITH PEAK DR</u> | Sector/Beat<br><u>R1</u>        | <input type="checkbox"/> City<br><input checked="" type="checkbox"/> County |

Your Name (Last / First / Middle)

Bradley Erika Marie

|   |                 |                       |                      |                    |                     |   |                               |   |
|---|-----------------|-----------------------|----------------------|--------------------|---------------------|---|-------------------------------|---|
| Race  | Sex<br><u>F</u> | Height<br><u>5'7"</u> | Weight<br><u>250</u> | Hair<br><u>Red</u> | Eyes<br><u>Blue</u> | Work Sched. (Hours)<br><u>Thurs-Mon 8-2</u>                 | (Days Off)<br><u>Tues/Wed</u> | Business / School<br><u>The Son of Dad Bniz</u>   |
| Residence Address: (Number & Street),<br><u>Red Rock Resort</u>   |                 |                       |                      |                    |                     | Bldg./Apt.# City<br><u>Las Vegas</u>                        |                               | State Zip Code<br><u>NV</u>   |
| Bus. (Local) Address: (Number & Street)<br><u>Red Rock Resort</u> |                 |                       |                      |                    |                     | Bldg./Apt.# City<br><u>Las Vegas</u>                        |                               | State Zip Code<br><u>NV</u>   |
| Best place to contact you during the day<br><u>cell phone</u>     |                 |                       |                      |                    |                     | Best time to contact you during the day<br><u>After 4pm</u> |                               | Can You Identify the Suspect? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

## DETAILS

Driving South on Pavillion Center, almost to the stop light @ Pavillion Center and Red Rock / Griffith Peak, saw the bicyclist struck by a white bus. The bicyclist was struck on the left side by the right side front of the bus. The bicyclist spun around and fell and was rolled under the bus. We pulled over immediately. I can't specifically recall which direction the bus was going, but it appeared as though the bicyclist didn't see it and was attempting to pull out or cross the intersection.

I hereby certify this is a full, true and correct copy of the  
ORIGINAL DOCUMENT  
(HARD COPY/COMPUTERIZED/MICROGRAPHIC COPY)

OCT 11 2017

on file with the Las Vegas Metropolitan Police Department

Las Vegas Metropolitan Police Dept.

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT (LOCATION) ON SCENE

ON THE 18<sup>TH</sup> DAY OF APRIL AT                      (AM / PM), 2017.

Witness/Officer:

[Signature]  
(SIGNATURE)

Witness/Officer:

R. SAUNDERS  
(PRINTED)

PH 9264

LVMPD 85 (REV. 6-08)

Erika Bradley  
SIGNATURE OF PERSON GIVING STATEMENT

LVMPD - 00092

# EXHIBIT 3

# EXHIBIT 3



1621 Quail Run  
Charlottesville, Virginia 22911  
210-240-4237  
jfunk@biocorellc.com

October 19, 2017

Mr. David Dial  
Weinberg Wheeler Hudgins Gunn & Dial  
3344 Peachtree Road NE  
Suite 2400  
Atlanta, GA 30326

Re: **Khiabani vs. MCI**

Dear Mr. Dial:

At your request, I have performed a biomechanical analysis in this matter. The purpose of this report is to set forth my general qualifications and preliminary opinions regarding the manner in which Dr. Khiabani was injured in the accident at issue in this case. My qualifications to perform this analysis are based on my education, training, and experience. I have a B.S.E. degree in Biomedical Engineering from Duke University, and M.S.E. and Ph.D. degrees in Biomedical Engineering from the University of Virginia. I am Research Faculty at the Center for Applied Biomechanics at the University of Virginia and Adjunct Faculty in biomedical engineering at Virginia Tech. I am a licensed professional engineer in the fields of biomedical and mechanical engineering (Texas P.E. #104623, Virginia P.E. #0402053704). I have specific training in accident reconstruction, and I am accredited as a traffic accident reconstructionist (ACTAR #1705). In my 20+ years of professional experience, I have authored more than fifty peer-reviewed scientific papers in the areas of orthopaedics, biomechanics, accident reconstruction, and injury risk analysis. My billing rate for work on this case is \$400 per hour. My professional background and publications are documented in more detail in the attached copy of my curriculum vitae.

I have been provided the following items relating to this case:

- State of Nevada Traffic Crash Report (preliminary and final versions)
- Photographs
  - 159 color photographs taken by the police (jpg)
  - 5 color photographs of bus (jpg)
  - 5 color photographs of left and right seat views (jpg)
  - 180 color photographs from inspection of Mr. Caldwell (jpg)
  - 5 color photographs of 360-degree view inside bus (jpg)
  - 2 color photographs from Robert Pears (jpg)

- 96 color photographs of bicycle and helmet taken by KJC (pdf)
  - 85 color stills of video of truck sideswiping a bike (jpg)
- Videos
  - Surveillance video from Red Rock Casino
  - Cell phone video
  - 11 GoPro inspection videos
  - Bicyclist sideswiped by truck
  - Simple bus in wind tunnel simulation
  - Duluth barge heading out
- Depositions
  - Mark Barron
  - William Bartlett (with exhibits)
  - Aaron Bradley
  - Erica Bradley (with exhibits)
  - Tiffany Brown (with exhibits)
  - Robert Cunitz (with exhibits)
  - Lisa Gavin, MD (with exhibits)
  - Shaun Harney (with exhibits)
  - Dale Horba (with exhibits)
  - Edward Hubbard (with exhibits)
  - Zack Keift
  - Samantha Kolch (with exhibits)
  - Andrew Louis
  - Terry McAfee (with exhibits)
  - Robert Pears (with exhibits)
  - Michael Plantz (with exhibits)
  - Luis Sacarias
  - Robert Wesson (with exhibits)
  - Mary Witherell
- Witness statements
  - Robert Pears
  - Michael Plantz
- Clark County Coroner/Medical Examiner materials
  - Report of Investigation
  - Autopsy report
  - Medical records
  - 76 color photographs of autopsy (jpg)
  - 99 color photographs of scene (jpg)
  - 18 x-ray images (jpg)
- Medical records
  - American Medical Response



- Clark County Fire Department
  - University Medical Center
- Legal documents
  - Amended complaint and demand for jury trial
  - Case management order
  - Plaintiff Katayoun Barin as executrix of the estate of Kayvan Khiabani, M.D.'s response to Motor Coach Industries, Inc.'s first set of interrogatories
  - Plaintiffs' 4<sup>th</sup> supplemental expert witness disclosures
  - Plaintiffs' 6<sup>th</sup> supplemental expert witness disclosures
- Plaintiffs' expert reports
  - Robert Breidenthal
  - Robert Caldwell
  - Joshua Cohen
  - Robert Cunitz
  - Thomas Flanagan
  - James Green
  - James Hubbard
  - Geoffrey Loftus
  - Dipak Panigrahy
  - David Roger
  - Brian Sherlock
  - Richard Stalnaker
- Bus download
- S-1 Gard Dangerzone Deflector material
  - Patent
  - Product information
  - Installation instructions
  - 2 videos with stunt man
- Miscellaneous
  - Bus diagrams
  - James M. Green article
  - 5 aerial images (pdf)

In addition, I inspected the subject bus, bicycle, helmet, socks, and shoes on September 26, 2017 and took 317 photographs. I inspected an S-1 Gard on September 27, 2017 and took 26 photographs.

### **Background**

- The subject accident occurred on April 18, 2017 at approximately 10:36 a.m. at the intersection of S. Pavilion Center Dr. and Griffith Peak Dr. in Las Vegas, Nevada. It was

daylight, the weather was clear, and the straight and level asphalt roadway was dry. Dr. Kayvan Khiabani was riding his Scott Solace bicycle southbound on Pavilion Center Dr. when he collided with the right side of a southbound 2008 MCI J4500 Motor Coach driven by Mr. Edward Hubbard. Dr. Khiabani fell down onto the road and his helmeted head was partially run over by the right rear tire of the bus. Dr. Khiabani died as a result of the accident. It has been alleged that various modifications to the MCI bus could have prevented Dr. Khiabani's injuries in this accident.

- Dr. Khiabani's injuries were documented during an autopsy conducted the following day (Figure 1). Radiographs were taken and an external examination was conducted, but no internal examination was conducted. A lateral x-ray of Dr. Khiabani's head showed extensive skull fracturing and a possible atlantooccipital dislocation (separation of the skull base from the top of the cervical spine) (Figure 2). In addition, Dr. Khiabani fractured his left ribs 3 – 9 posteriorly (Figure 3) and abraded the back of his left bicep and the outside of his left knee (Figure 4).

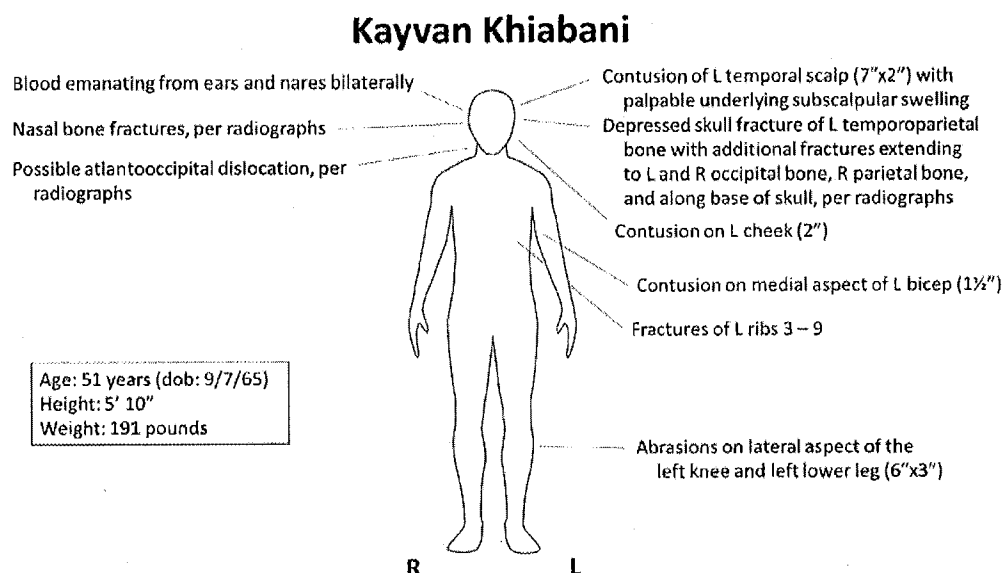


Figure 1. Injury diagram for Dr. Kayvan Khiabani.

### Injury Analysis

- The only part of Dr. Khiabani's body that was run over by the bus wheel was the upper rear portion of his helmeted head. Had the bus wheel run over another part of his body, he would have sustained catastrophic crushing and degloving injuries to that body part. Dr. Khiabani's skull sustained crushing injuries. The skull was fractured extensively, with a high density of fractures in the occipital region (Figure 2). The occipital region of the skull was covered by the rear portion of the bicycle helmet, which was pinched by the rear tire of the bus (Figure 5). Dr. Khiabani's skull was trapped inside the helmet, which was circumferentially strengthened by the webbing in the suspension system, and crushed by the pinching tire.

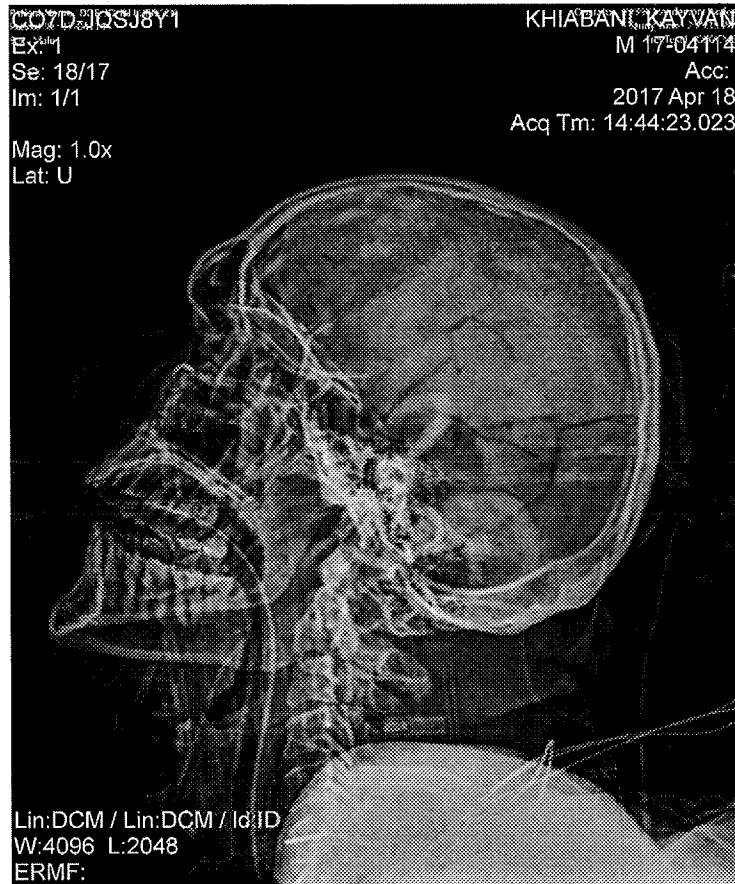


Figure 2. Lateral x-ray of Dr. Khiabani's head and neck.

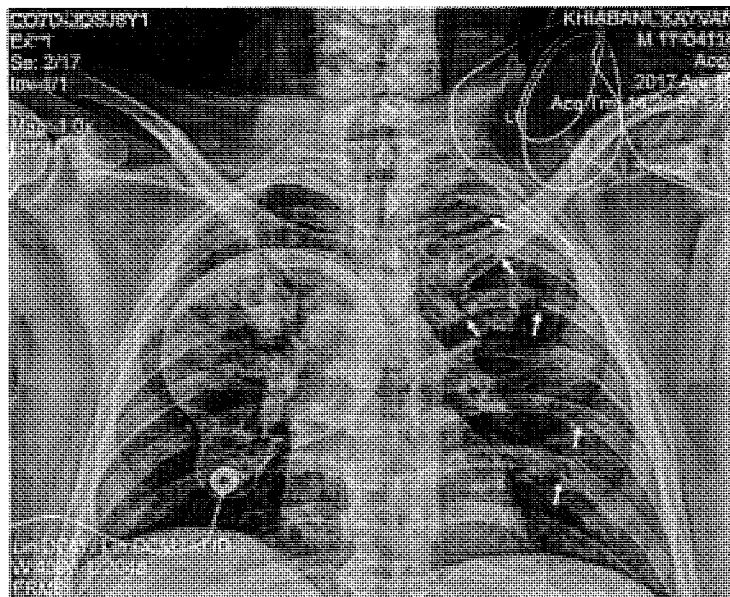


Figure 3. A-P x-ray of Dr. Khiabani's chest. Rib fractures are marked with yellow arrows.



Figure 4. Photographs of abrasions to Dr. Khiabani's left upper arm and left knee.

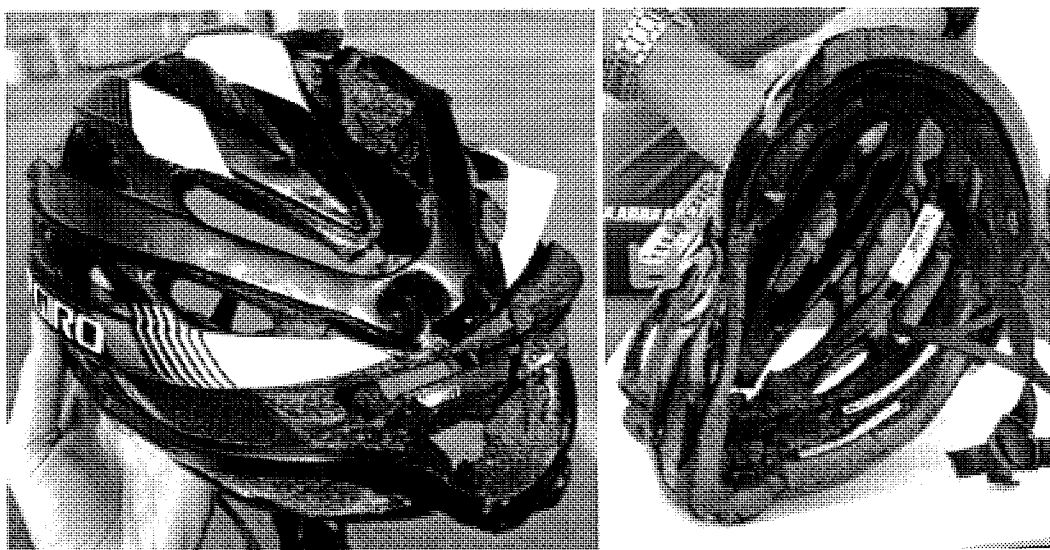


Figure 5. Photographs of Dr. Khiabani's bicycle helmet.

- Dr. Khiabani sustained a possible atlantooccipital (AO) dislocation, which is the result of disruption of the ligaments between the base of the skull and the top of the cervical spine. AO dislocations are caused by tension in the joint, which may result from a variety of forces on the head (Myers and Winkelstein, 1995). Dr. Khiabani may have suffered this neck injury as a result of his helmet and head being suddenly stopped by the pinching tire

while the rest of his body kept sliding down the road. I observed damage to the helmet in the chin strap mounting areas, which is consistent with the chin strap applying tension to Dr. Khiabani's neck during the accident.

- The remainder of Dr. Khiabani's injuries were caused by contact with the road. He sustained pronounced road rash abrasions on his medial bicep and lighter road rash abrasions to his left knee (Figure 5). The bicep abrasions were oriented transversely to the upper arm and the knee abrasions were roughly transverse (but more oblique) to the lower leg. Both of these abrasions, based on their locations on the body and the directions of their scratches, are consistent with Dr. Khiabani falling down onto his side while in a typical bicycle riding posture (torso relatively upright, hip and knees bent). Dr. Khiabani's posterior left rib fractures indicate that the left side of his chest and back struck the ground forcefully, which is also consistent with a fall onto his left side.

### Trajectory Analysis

- Dr. Khiabani's accident was captured by a roof-mounted security camera on the Red Rock Casino parking lot overlooking the intersection. Unfortunately, a palm tree obscured the view of the right side of the MCI bus as it passed through the intersection. Nonetheless, the bus can be seen clearly in all frames, and Dr. Khiabani can be seen in several frames up against the side of the bus and also at rest after the accident.
- By analyzing the video and using principles of photogrammetry, Mr. Rucoba was able to reconstruct the motion of the bus across the intersection with great precision. Mr. Rucoba created a 3-D computer model of the bus and the accident site and determined the exact position of the bus in every frame using a technique called camera matching. He determined that the bus was traveling at a constant speed of 25 mph from the time it first appeared on camera until it crossed to the other side of the intersection.
- Dr. Khiabani appeared on the video as a dark spot on the right side of the bus in several frames. His location was difficult to pinpoint precisely in each frame because of the pixilation of the images, the palm fronds, and the shadow of the bus. Mr. Rucoba determined Dr. Khiabani's location when he first appeared on the video, which was at approximately the time of his first impact with the bus. At that time, the front of the bus was approximately 30 feet in front of the stop bar and Dr. Khiabani was approximately 21 feet in front of the stop bar. I was able to identify Dr. Khiabani's probable location in several subsequent video frames (Figure 6). I also tracked the top of the bus's windshield in each frame. I observed that Dr. Khiabani only covered slightly more than half of the distance as windshield on the bus in the same amount of time. Based on the bus's speed of 25 mph, I estimated that the bicycle speed at the time of first contact with the bus was approximately 13 – 14 mph. These calculations were confirmed by Mr. Rucoba's group. I also observed that Dr. Khiabani's speed appeared to increase slightly after his initial impact with the bus.
- There was physical evidence left by the first contact between Dr. Khiabani's bicycle and the bus. The rubber projection of the brake hood on the top left corner of his handlebar

was smeared in a rearward direction (relative to the handlebar) (Figure 7). This smearing matched an irregular black transfer mark on the right side of the bus just behind the front wheel well (Figure 8). The mark on the bus was lower than the top of the handlebars when the bike was upright. By positioning the bicycle next to the bus and matching up the mark on the bike to the mark on the bus, I determined that Dr. Khiabani's bicycle was leaned over approximately 25 degrees when it first contacted the bus. Mr. Rucoba determined from analysis of the video that the bus was already swerving to the left when it was struck by the bicycle, and that Dr. Khiabani had traveled 6 feet to the left outside of the bike lane when he struck the bus. All of this physical evidence is consistent with the testimony of several eyewitnesses who reported that Dr. Khiabani's bicycle appeared to suddenly turn to the left and strike the right side of the passing bus.

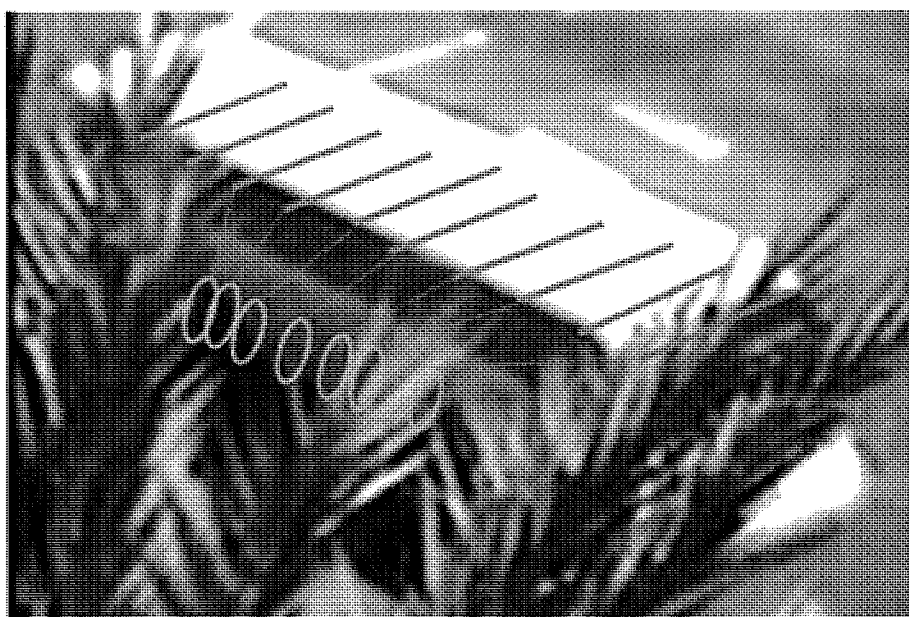


Figure 6. Video capture showing cumulative tracking of the bus windshield (blue lines) and Dr. Khiabani (green ovals).

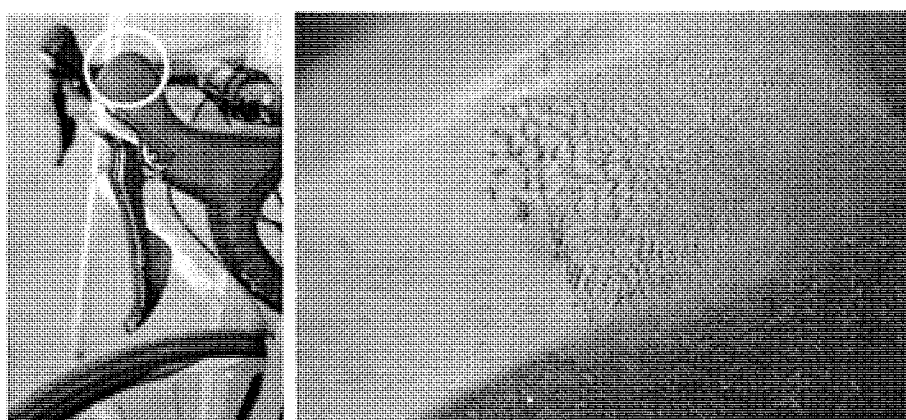


Figure 7. Rearward smearing of the rubber on the left brake hood of Dr. Khiabani's bicycle.

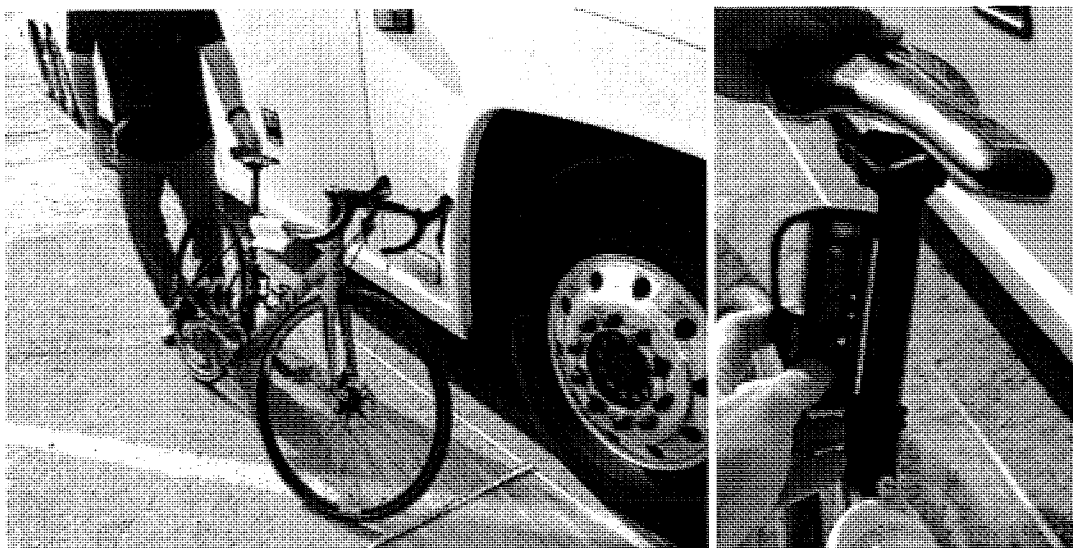


Figure 8. Photographs showing the lean angle of the bicycle at first contact with the bus.

- The initial contact with the handlebar caused the bicycle to suddenly steer to the right and likely rendered it uncontrollable. Dr. Khiabani's body struck the bus and slid down the side of the bus for some distance. When I inspected the bus, there were very faint marks on the left side of the bus that could have been made by Dr. Khiabani.
- Several pieces of evidence indicate that shortly after striking the side of the bus, Dr. Khiabani fell to the pavement on his left side. As explained above, Dr. Khiabani sustained road rash abrasions indicating that he landed on his left side in a seated posture. I also observed a scuff on the lateral aspect of Dr. Khiabani's left bicycle shoe that would be consistent with a fall on his left side. In addition, the damage to Dr. Khiabani's bicycle indicates that it landed on its left side. There were hard abrasions from road contact to several projections on the left side of the bicycle, namely the left axle, left seat edge, left pedal, and left handlebar. The police photographed several fresh scrapes in the road that appeared to have been created by the bicycle. The bicycle most likely struck the road slightly before Dr. Khiabani, so I used the scrapes on the road to help define an upper bound for Dr. Khiabani's slide distance on the road.
- In order to study Dr. Khiabani's path in more detail, I asked Mr. Rucoba's office to prepare a scale diagram for me in which they mapped out the path of the right rear tire of the bus (Figure 9). I observed that when Dr. Khiabani's bicycle was laid on its left side to match the marks on the road, the head of a seated cyclist would be located approximately along the path of the right rear tire of the bus. Given this landing position, the trajectory of Dr. Khiabani's center of gravity after hitting the ground was slightly to the right. However, because he fell to his left, his head fell onto the path of the rear bus tire and became pinched.
- When Dr. Khiabani first became visible on the video after landing, his legs were leading (pointing south) and his body was located 2 feet lateral to the path of the right rear bus tire (Figure 9). The video of the accident shows that Dr. Khiabani then immediately moved about 1 foot west (away from the path of the bus tire) before reaching his final rest position,

which was about 3 feet away from the path of the bus tire. In order to transition from a seated posture while landing to a leg-leading posture at rest, Dr. Khiabani's body must have slid some distance (at least 3 feet) after his helmet was pinched by the bus tire. The pinching of the helmet immediately brought the helmet and head to a stop, but the rest of Dr. Khiabani's body continued sliding. This dynamic cause his body to rotate and resulted in a leg-leading posture at the point of rest.

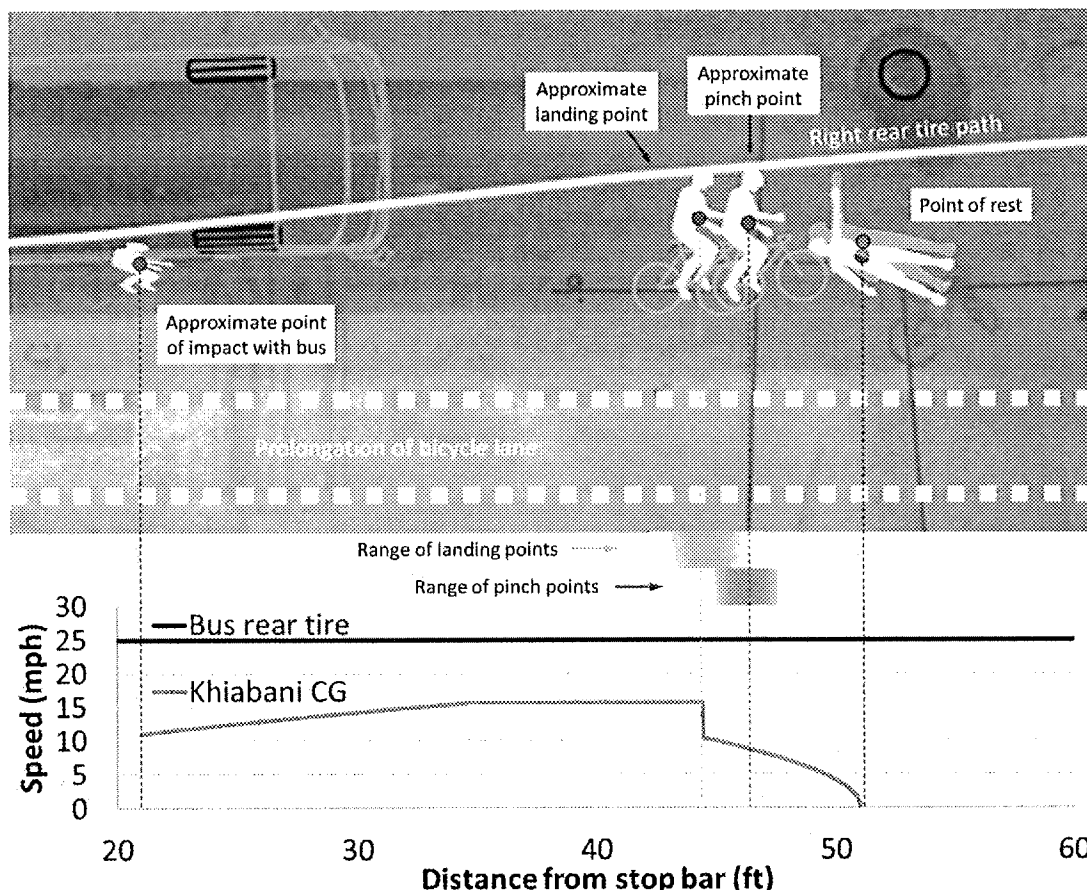


Figure 9. Scale diagram showing Dr. Khiabani's motion after striking the bus. Results of a trajectory calculation are shown scaled to the diagram.

- I determined Dr. Khiabani's likely speed after striking the bus by conducting a trajectory analysis. The trajectory analysis relied on standard physics equations and has been successfully applied to pedestrians struck by vehicles (Searle and Searle, 1983) and occupants ejected in rollover crashes (Funk et al., 2007; Funk et al., 2008; Hovey et al., 2008). The methodology works by breaking up the whole event into small pieces, each of which can be solved using a standard accident reconstruction approach. In this case, I broke Dr. Khiabani's post-impact motion into four phases: acceleration, falling, landing, and sliding. During the initial acceleration phase, I calculated the effect of the frictional force applied to Dr. Khiabani by the side of the bus. During the fall phase, I assumed Dr. Khiabani's center of gravity fell a height of 3 feet in freefall. I modeled landing as an instantaneous loss of velocity. The fourth phase of motion was sliding to rest. Each



trajectory calculation required an assignment of an initial velocity and appropriate drag factors. I varied each of these parameters over an appropriate range and performed multiple trajectory calculations to address all combinations of the ranges of each parameter (Table). The calculations were constrained to ensure that Dr. Khiabani started at the same initial location relative to the bus and came to rest where he was photographed at the scene (if mathematically possible). The calculation was considered plausible if it predicted a post-pinch slide distance of 3 feet or greater. The range of plausible results is listed in the Table. The results of a representative calculation are depicted on the bottom of Figure 9, with the distance in the plot scaled to match the distance in the scale diagram.

Table. Ranges of inputs and outputs of the trajectory analysis for Dr. Khiabani.

| Input ranges        |               | Output ranges             |             |
|---------------------|---------------|---------------------------|-------------|
| Initial velocity    | 13 – 14 mph   | Landing speed             | 15 – 18 mph |
| Travel distance     | 30 ft         | Slide distance            | 4 – 9 ft    |
| Bus drag factor     | 0.1 – 0.2     | Post-pinch slide distance | 3 – 6 ft    |
| Sliding drag factor | -0.55 – -0.75 | Head speed at pinch       | 5 – 8 mph   |

- The trajectory analysis demonstrated that Dr. Khiabani must have traveled at a fairly narrow range of speeds during this accident. He initially struck the bus at a speed of 13 – 14 mph. The friction from the side of the bus then accelerated Dr. Khiabani up to a speed of 15 – 18 mph before he landed and slid to rest. Dr. Khiabani's helmet was run over very shortly after he landed on the roadway. In the trajectory analysis, the range of plausible landing points overlapped the range of possible pinch points (Figure 9). Although in some scenarios the calculated pinch point was as much as 5 feet downstream of the landing point, other scenarios indicated that the helmet could have been pinched immediately after Dr. Khiabani landed on the ground.

### Alternative Designs

- It has been suggested that if the 2008 MCI J4500 Motor Coach involved in this accident had been equipped with an S-1 Gard, Dr. Khiabani would not have been injured. The S-1 Gard is an aftermarket product consisting of a large rounded piece of hard rubber attached to a metal bracket that is mounted to the underside of a bus in front of the wheels (Figure 10). The idea is that if a pedestrian gets a body part underneath the bus, the S-1 Gard will knock that body part out of the way before it is pinched by the rolling tire. Setting aside questions of whether it would be feasible to utilize the S-1 Gard on the subject bus, I evaluated the likely effect the addition of an S-1 Gard would have had in this particular accident from a biomechanical perspective.
- The approximate position of Dr. Khiabani's helmet relative to the bus tire at the time it was pinched can be determined based on the damage to the helmet. I observed that the left rear portion of the helmet shell was pitted (Figure 5 left). The pitting damage indicated that this portion of the helmet was in forceful and stationary contact with the asphalt road surface. I observed black rub marks from the bus tire on the right rear portion of the helmet shell. Together, these findings demonstrate that the rolling bus tire trapped and pinched

the rear portion of the helmet against the asphalt. The tire then rolled over the right side of the helmet at an angle proceeding towards the top of the head. The overlap between the edge of the damage and the edge of the helmet was minimal (Figure 5 right). According to Dr. Michael Carhart, who performed a surrogate study to investigate this issue, the overlap between the outer edge of the tread block of the right rear wheel of the bus and Dr. Khiabani's helmet was only about 1 inch, with the bulging sidewall responsible for additional pinching and loading of the helmet and head. The installation instructions for the S-1 Gard specify that it should be mounted so that the outside face of the Gard is 1.5 ( $\pm 0.5$ ) inches in from the outside edge of the tire tread. Therefore, if the S-1 Gard was installed according to the manufacturer's instructions, it would have missed the helmet, and the outcome of the accident would not have been altered at all.



Figure 10. Photograph of the S-1 Gard.

- Even if a device such as the S-1 Gard had been installed and made contact with Dr. Khiabani's helmet in this accident, it cannot be assumed that that contact would have been harmless. Depending on the height of the Gard over the ground, which varies as the Gard wears out, it may have been able to pass over the helmet, rolling and pinching it in the process. In that scenario, the Gard would have either trapped Dr. Khiabani's helmet and caused injuries itself, or it would have allowed the helmet to pass under it and into the rolling tire, which would have led to the same outcome. If the S-1 Gard had been mounted in such a way that it would have struck Dr. Khiabani's head, the impact speed would have been 17 – 20 mph. A direct blow to the head of that magnitude would likely be sufficient to cause brain and neck injuries (Smith et al., 1994; McIntosh and Patton, 2012).

## Conclusions

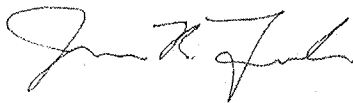
Dr. Khiabani was fatally injured when his bicycle turned to the left and collided with the right side of an MCI bus in an intersection. The collision occurred as the bus was traveling 25 mph and steering to the left. Dr. Khiabani traveled at least 6 feet laterally outside of the marked bike lane before striking the bus. After striking the bus, Dr. Khiabani lost control of his bicycle and fell to the ground. As he was sliding to rest, the rear portion of his helmet was pinched and run over by the right rear tire of the bus. The rolling tire struck Dr. Khiabani's helmet at a relative speed of 17 – 20 mph and rapidly brought the helmet to a stop by pinching it against the road. The pinching

of the helmet by the bus tire snagged Dr. Khiabani's head while the rest of his body continued sliding downstream. As a result of the pinching action of the bus tire, Dr. Khiabani suffered catastrophic head and neck injuries. If the subject bus had been equipped with an S-1 Gard in front of the right rear wheel, it would not have altered the outcome in this accident. Due the small overlap between the right edge of the bus tire and the helmet, the S-1 Gard would have missed Dr. Khiabani's helmet. In a hypothetical scenario in which the S-1 Gard did strike Dr. Khiabani's helmet, that impact would likely have been severe enough to cause brain and neck injuries.

I hold the opinions expressed in this report to a reasonable degree of scientific certainty. However, as additional information is made available to me or as new facts are uncovered during the investigation and discovery process, my professional opinions may change to reflect the newfound information.

Should you require additional information, please do not hesitate to contact me.

Best regards,



James R. Funk, PhD, PE

## References

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# EXHIBIT 4

001698

# EXHIBIT 4

Robert E. Breidenhal  
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Seattle, Washington 98105-2004

Daytime telephone (206) 685-1098  
Home telephone (206) 522-8718  
Fax (206) 543-0217  
E-mail breidenhal77@gmail.com

October 4, 2017

Eric Pepperman, Esq.  
Attorney  
Kemp, Jones & Coulthard, LLP  
Wells Fargo Tower, 17th Floor  
Las Vegas, NV 89169

Dear Eric:

I have reviewed the materials you sent me concerning the bus-bicycle case, which include

- i) Photographs of the bus.
- ii) Brochures relating to the Setra 417 and 500
- iii) Pages from Michelangelo training materials

My opinions are based on these documents.

- 1) In response to your request, I briefly describe the physics of air flow around the front of a bluff body like a bus and the physics of bicycling. One streamline approaches the front of the bus and terminates on the body at a stagnation point. On either side of this stagnation streamline, other streamlines approach the bus but turn before reaching it. The streamlines initially near the stagnation streamline are deflected a relatively large amount as they flow around the bus, while more remote streamlines are deflected a relatively small amount. The amount of deflection depends on the effective width of the bus.
- 2) A thin layer of air on the windward face of the bus is retarded by friction with the bus. This layer, called the boundary layer, will remain attached to the surface of the bus as the layer passes over a front corner of the bus if that corner has a sufficiently large corner radius, greater than about 1/8th of the width of the bus. However, if the corner radius is less than this, the boundary layer will separate from the surface. The separating boundary layer forms a free shear layer, which eventually reattaches to the side of a long bus aft of the front corner. Since the effective width of the bus is greater for the separating flow, the outer streamlines are deflected to a greater extent if the boundary layer separates.
- 3) A riding cyclist balances above the contact patches of two tires, with the gyroscopic effect of the rotating wheels aiding his stabilization. In order to counteract the tipping moment of a steady crosswind, a cyclist must lean into that crosswind, such that the moment about the contact patches from the crosswind force is counteracted by the moment from gravity acting through his center of mass. A steady crosswind from the right requires that the cyclist steadily lean to the right.
- 4) When a cyclist is perturbed by a sudden side force, he must deflect the handlebars to rotate the front wheel so as to reposition the tire contact patches with respect to his center of mass to counteract the tip-

ping moment. That requires the front wheel to be steered away from the sudden side force, thereby moving the tire contact patches away from the origin of the force, allowing him to lean into the side force. The physics is sufficiently counterintuitive that it takes some practice for children to learn to ride a bicycle.

- 5) As a bus passes a cyclist, the deflected streamlines near the front corner of the bus suddenly change the direction and magnitude of the relative wind experienced by the cyclist. For a bus passing on the left of a cyclist with an ambient right crosswind, the cyclist will experience a sudden side force from the left.
- 6) To counterbalance the sudden side force from the left, the cyclist would turn his handlebars to the right to shift the contact patches to the right of his center of mass so as to be leaning to the left.
- 7) After the front corner of the bus has passed the cyclist, the airflow becomes parallel to the side of the bus. Then the side force suddenly vanishes. He would then need to turn the handlebar toward the left.
- 8) The magnitude of the instantaneous aerodynamic side force on the cyclist from the bus will depend on the corner radius of the bus, the speed of the bus, the speed of the cyclist, the ambient wind speed, the ambient direction, and the proximity of the bus to the cyclist. The side force will increase with increasing relative speeds and proximity. To get an idea of the magnitude of the side forces, assuming a cyclist ground speed of 8 mph and an ambient wind of 6 mph approaching from the right, the dynamic pressure on the cyclist before encountering the bus is about 0.25 pounds per square foot (psf). For an assumed frontal area of 5.4 square feet, the total aerodynamic force on the cyclist is roughly 0.8 lbs., assuming a drag coefficient of about one. The side force component of that is about 0.8 lbs. from the right.
- 9) Now when the front corner of the bus passes the cyclist, the air flow over the cyclist changes. At that moment, assume the flow inclination angle at the location of the cyclist is 30 degrees from the cyclist's left in the frame of the bus. Assume further a bus ground speed of 25 mph and a local flow speed of 40 mph due to acceleration of the flow around the corner. In the frame of the slower-moving cyclist, the relative wind is approximately 34 mph at an angle of about 37 degrees on the cyclist's left. The momentary side force on him would be about 2.8 psf times his projected frontal area of 5.4 square feet, or 15 lbs. The sideward component of that force is about 9 lbs. from the left. So the magnitude of the total change in the side force on the cyclist from bus passage is about 10 lbs.
- 10) After the front corner of the bus has passed the cyclist, the side forces acting on cyclist from both the ambient wind and the front of the bus will rapidly decline.
- 11) The rapidity of all of these changes in the side force depends on the speed of the bus and its effective width. As a rough estimate, for a bus of a width of 8 feet with a ground speed of 25 mph and a cyclist moving with a ground speed of 8 mph, the characteristic time scale for the changes in the side force on the cyclist is about 0.14 second, roughly comparable to the normal human reaction time. It is not possible for a human to respond faster than their reaction time.
- 12) If the magnitude and/or the rapidity of the changes of the aerodynamic side force on the cyclist exceed his ability to compensate for them, he may lose control of his bicycle.
- 13) If the speeds of the ambient wind, the cyclist and/or the bus are greater than assumed in this example, the magnitude of the side forces on the cyclist will increase. In general, the dynamic pressure and thus the aerodynamic forces increase as the square of the relative wind.
- 14) If the bus passes so close to the cyclist that the flow inclination angle is greater than the assumed angle of 30 degrees in this example, then the magnitude of the side force fluctuations will also increase.
- 15) If the top and side corners at the front of the bus are relatively rounded, then the magnitude of the side force acting on the cyclist will be less than if the front corners are relatively sharp.
- 16) Another approach sometimes used on buses is the installation of a turning vane, which can help keep the boundary layer attached. This was used on certain buses in Seattle a number of years ago to keep the outside rear view mirror clean during wet weather. Turning vanes are a simple retrofit to existing buses.

Enclosed is a recent CV.

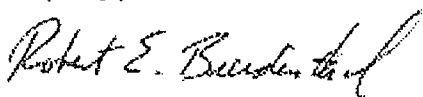
I gave a deposition and testified at trial last year in a lawsuit, *Sierra Club et al. v. Burlington Northern*, involving the two-phase flow of coal dust discharging from open coal cars.

I gave a deposition last year and testified at trial this year in a lawsuit, *Eagle Harbor Condominium Association v. Allstate Insurance et al.*, involving the two-phase flow of wind-driven raindrops.

I wrote an opinion letter in July in a lawsuit, *Evergreen Estates Condo Association v. Admiral Insurance et al.*, involving the two-phase flow of wind-driven raindrops.

My rates are \$225/hour for consulting and \$450/hour for depositions and trial.

Very truly yours,



Robert E. Breidenthal



# EXHIBIT 5

# EXHIBIT 5

1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA

3 KEON KHIABANI and ARIA )  
4 KHIABANI, minors by and )  
5 through their natural ) CASE NO.:  
6 mother, KATAYOUN BARIN; ) A-17-755977-C  
7 KATAYOUN BARIN, )  
8 individually; KATAYOUN )  
9 BARIN as Executrix of )  
10 the Estate of Kayvan )  
11 Khiabani M.D. )  
12 (Decedent), and the )  
13 Estate of Kayvan )  
14 Khiabani, )  
15 M.D. (Decedent), )  
16 Plaintiffs, )  
17 vs. )  
18 MOTOR COACH INDUSTRIES, )  
19 INC. A Delaware )  
20 corporation; )  
21 MICHELANGELO LEASING )  
22 INC. D/b/a RYAN'S )  
23 EXPRESS, an Arizona )  
24 corporation; EDWARD )  
25 HUBBARD, a Nevada )  
resident; BELL SPORTS, )  
INC. D/b/a GIRO SPORT )  
DESIGN, a California )  
corporation; SEVENPLUS )  
BICYCLES, INC. D/b/a Pro )  
Cyclery, a Nevada )  
corporation; DOES 1 )  
through 20; and ROE )  
CORPORATIONS 1 through )  
20. )  
Defendants. )

22 EXPERT DEPOSITION OF ROBERT BREIDENTHAL, JR.  
23 LAS VEGAS, NEVADA  
24 FRIDAY, NOVEMBER 3, 2017

25 REPORTED BY: KAREN L. JONES, CCR NO. 694  
JOB NO.: 430179

ROBERT BREIDENTHAL, JR. - 11/03/2017

Page 2

1 DEPOSITION OF ROBERT BREIDENTHAL, JR., taken  
2 at 6385 South Rainbow Boulevard, Suite 400, Las  
3 Vegas, Nevada, on Friday, November 3, 2017, at 9:16  
4 a.m., before Karen L. Jones, Certified Court  
5 Reporter, in and for the State of Nevada.

6

7 APPEARANCES:

8 For the Plaintiffs:

9 KEMP, JONES & COULTHARD, LLP  
10 BY: WILL KEMP, ESQ.  
3800 Howard Hughes Parkway, 17th Floor  
11 Las Vegas, Nevada 89169  
702.385.6000  
e.pepperman@kempjones.com

12

13

14 For Motor Coach Industries, Inc.:

15

HARTLINE DACUS BARGER DREYER  
16 BY: MICHAEL G. TERRY, ESQ.  
800 N. Shoreline Boulevard  
Suite 2000, North Tower  
17 Corpus Christi, Texas 78401

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25

ROBERT BREIDENTHAL, JR. - 11/03/2017

Page 3

1

## I N D E X

2

WITNESS: ROBERT BREIDENTHAL, JR.

3

## EXAMINATION

PAGE

4

BY: Mr. Terry

4, 91, 95

5

BY: Mr. Kemp

81, 94

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## E X H I B I T S

7

## NUMBER

## DESCRIPTION

PAGE

8

Exhibit 1 10/4/2017 Report

4

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Exhibit 2 10/24/2017 Report

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Exhibit 3 Handwritten Drawing

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Exhibit 4 Motor Coach Industries  
Engineering Test Report

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Exhibit 5 National Academy Forensic Article

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ROBERT BREIDENTHAL, JR. - 11/03/2017

Page 4

1 LAS VEGAS, NEVADA; FRIDAY, NOVEMBER 3, 2017

2 9:16 A.M.

3 -oOo-

4 (Exhibit 1 marked.)

5 (Exhibit 2 marked.)

6 Whereupon,

7 ROBERT BREIDENTHAL, JR.

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

11 EXAMINATION

12 BY MR. TERRY:

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

14 A. Robert Edward Breidenthal, Jr.

15 Q. Are you employed?

16 A. Yes.

17 Q. By whom are you employed?

18 A. University of Washington.

19 Q. What do you do for the University of  
20 Washington?

21 A. I'm a professor in the William E. Boeing  
22 Department of Aeronautics & Astronautics.

23 Q. How long have you been with the  
24 University of Washington?

25 A. Since 1980.

1 Q. Are you tenured?

2 A. Yes.

3 Q. Did you go there right after completing  
4 your own education?

5 A. I was a post-doc at Cal Tech for a year  
6 and a half or so before moving up to Seattle.

7 Q. So when you moved up to Seattle did you  
8 become a teacher at the University of Washington?

9 A. Yes.

10 Q. Where you have been since 1980?

11 A. Correct.

12 Q. Where did you get your education?

13 A. My undergraduate degree in aeronautical  
14 engineering is from Wichita State University, and  
15 then my masters and PhD as well as post-doc were all  
16 at Cal Tech.

17 Q. Did you attend school consecutively or  
18 were there breaks?

19 A. No breaks.

20 Q. Have you ever been employed in the  
21 private sector?

22 A. I've done a lot of consulting, and one  
23 summer I was full-time at Boeing in Seattle. I  
24 can't recall if I was an official employee or  
25 considered a consultant at that time.

1 Q. But in terms of working for a  
2 corporation more than a summertime or more than one  
3 project, have you ever been employed outside  
4 academia?

5 A. No.

6 Q. Have you ever worked for a bus company?

7 A. No.

8 Q. Ever been called upon to consult with a  
9 bus company?

10 A. Yes. A man name Brian Sherlock, who was  
11 the -- Seattle Metro union's safety officer, I  
12 believe, had contacted me about a technical problem  
13 they were having with buses in Seattle, in the  
14 aerodynamics, when the buses would drive through  
15 rain. Sometimes it rains in Seattle.

16 Q. I've heard that.

17 A. There was a flow separation problem --  
18 in fact, it's very similar to this case -- there was  
19 a flow separation problem at the front left A  
20 pillar -- that's redundant -- the left A pillar on  
21 the bus. And the driver's left outside rearview  
22 mirror was getting fogged up very quickly, as soon  
23 as the bus drove over a wet road, and so worked on  
24 that and designed a turning vane which could be  
25 installed on the outside of the bus which largely

1 rectified that problem.

2 Q. So it deflected the flow?

3 A. Helped keep the flow attached so that  
4 you didn't have this reverse flow. The left front  
5 tire was throwing up droplets of water and mud, and  
6 they were being carried forward to that outside  
7 rearview mirror because of the reverse flow. And we  
8 largely got rid of that region of reverse flow.

9 Q. And you would have acted as a  
10 consultant then?

11 A. Correct.

12 Q. Was it to the Metro agency?

13 A. I believe it was -- well, I can't recall  
14 if -- yes, I think it was the agency, not the --

15 Q. Whoever it was that ran the city buses?

16 A. Yes.

17 Q. And how long did the project last?

18 A. Oh, a handful of months. Maybe four,  
19 six, as a guess.

20 Q. Any other projects or consultancies you  
21 have done for buses or bus companies?

22 A. No.

23 Q. In connection with this case, were you  
24 provided certain information?

25 A. Yes.



1 Q. And when were you retained?

2 A. It would have been this fall. I didn't  
3 review my notes to have an exact date, but it was, I  
4 believe, sometime a few months ago.

5 Q. You have prepared two reports in  
6 the case?

7 A. Yes.

8 Q. I'll give you what the court reporter  
9 has marked as Exhibit Number 1. Is that your first  
10 report?

11 A. Yes, 1 is the first.

12 Q. What is the date of the first report?

13 A. October 4th, 2017.

14 Q. How long had you been working on the  
15 matter?

16 A. I'd have to look at my calendar, but I  
17 don't think much -- a month or so, perhaps.

18 Q. So by September 4th you had been  
19 retained?

20 A. Perhaps. I'd have to look at my  
21 calendar to give you an exact date.

22 Q. When you were retained, was there a  
23 written contract between you and the party that  
24 retained you?

25 A. I don't recall signing a contract. They

1 asked for my rates and I told them and --

2 Q. What are your rates?

3 A. I think I say in this, the last line of  
4 this Exhibit 1, \$225 an hour consulting and \$450 for  
5 depositions and trial.

6 Q. Have you submitted a bill?

7 A. I've submitted one and a second  
8 one last night.

9 Q. So what was the first one?

10 A. How much?

11 Q. Uh-huh.

12 A. I don't remember. I'd have to look  
13 it up.

14 Q. How about last night?

15 A. I don't remember the exact number. It  
16 might have been \$4,000 or \$5,000.

17 Q. So how many hours do you think you have  
18 spent working on this project?

19 A. Well, at roughly \$200 an hour, if it  
20 was, say, \$5,000, that's 25 hours, roughly.

21 Q. Is that the total, or --

22 A. Well, for this most recent invoice --  
23 the previous invoice was smaller. I don't remember  
24 the number. And I've been submitting invoices at  
25 the end of each month, and so that implies that I

1 started on this sometime in September.

2 Q. In terms --

3 A. Or perhaps late the month before.

4 Q. In terms of the material that you were  
5 provided, in Exhibit 1 do you identify the material  
6 that you were provided?

7 A. I'm not sure I understand what you mean  
8 by identify.

9 Q. In the report itself you say: "I have  
10 reviewed the materials you sent me concerning the  
11 bus-bicycle case, which include: Photographs of the  
12 bus; brochures relating to the Setra 417 and 500;  
13 pages from Michelangelo training materials."

14 Did you receive anything else before you  
15 prepared the report of October 4th, 2017?

16 A. It's possible I received other things,  
17 but I didn't base my opinions on anything else. I  
18 don't recall the complete list that I received.

19 Q. So the opinions that you reached and  
20 expressed in this report, Exhibit 1, October 4th,  
21 2017, is based on the three items you identify in  
22 the report itself?

23 A. Correct.

24 Q. Did you have a chance to inspect  
25 the bus?

1 A. No.

2 Q. Have you ever inspected the bus?

3 A. No.

4 Q. Did you have a chance to inspect  
5 the bike?

6 A. No.

7 Q. Have you ever inspected the bike?

8 A. No.

9 Q. Have you had a chance to reconstruct the  
10 event itself?

11 A. I'm not quite sure what you mean by  
12 that. I believe the answer is no. I haven't been  
13 to the scene. I haven't looked at any detailed  
14 measurements that were taken there or anything  
15 like that.

16 Q. Do you have any idea what occurred?

17 A. Yes.

18 Q. What do you think occurred?

19 A. My understanding is a bus passed close  
20 to a cyclist headed south, I forget the name of the  
21 road or street, and the bike contacted the bus very  
22 near the left -- the right front corner of the bus,  
23 and subsequently the cyclist fell down and the right  
24 rear wheels rolled over his head.

25 Q. Where did you get that information?

1 A. From subsequent opinion letters that  
2 I've read.

3 Q. What opinion letters have you read?

4 A. Well, on my second rebuttal opinion  
5 letter, Exhibit 2, I list other documents, in  
6 particular the one from Dr. Funk, the first  
7 reference I cite.

8 Q. Okay. So you didn't have Dr. Funk's  
9 letter October 4th, 2017, when you prepared your  
10 initial report?

11 A. Correct.

12 Q. When you prepared your initial report,  
13 did you have any idea of what had occurred?

14 A. Just what I'd been told over the phone  
15 in broad terms. I didn't see any of the detailed  
16 things which were described in Funk's letter.

17 Q. Who was the source of the information  
18 about what occurred?

19 A. Probably Mr. Pepperman, because I was in  
20 telephone communication with him several times.

21 Q. Mr. Pepperman, if I understand  
22 correctly, told you that this event occurred when a  
23 bus passed a bicyclist on the -- bus on the left of  
24 the bicyclist, the bicyclist came in contact with  
25 the bus, and then the bicycle fell over, the driver

1 fell on the ground, and his head was run over?

2 A. Yes.

3 Q. Did you get any specifics about the  
4 event? For example, were you told that the bus  
5 overtook the bike?

6 A. Yes, I was.

7 Q. What were you told?

8 A. At the time of this first opinion letter  
9 I was told that the bus might have been traveling at  
10 25 miles an hour to 40 miles an hour, and that -- I  
11 don't think I was told any information about the  
12 speed of the cyclist, but that the bus did overtake  
13 the cyclist.

14 Q. And the cyclist would have been to the  
15 right of the bus?

16 A. Correct.

17 Q. Were you given any description of the  
18 lanes at all?

19 A. I was told there was a painted bike lane  
20 on the road.

21 Q. Were you told whether or not the cyclist  
22 was in the bike lane?

23 A. No.

24 Q. Were you told whether or not the cyclist  
25 was out of the bike lane?

1 A. No.

2 Q. Were you told where they came together  
3 on the road surface?

4 A. No.

5 Q. Were you told where they came together  
6 in relation to any intersecting streets?

7 A. I was told it was around an  
8 intersection. That's all I knew at the time of this  
9 first report.

10 Q. Were you told what the lateral  
11 separation was between the bus and the cyclist when  
12 the bus overtook the cyclist?

13 A. I was told that there was some issue in  
14 that regard, and it might have been three feet, it  
15 might have been less.

16 Q. In the calculations that you make in  
17 this report, do you make an assumption as to how  
18 close they were together?

19 A. Not explicitly, no.

20 Q. Implicitly?

21 A. Implicitly, yes, because for the  
22 estimate that I make on the aerodynamic load on the  
23 cyclist, I assume a certain velocity magnitude and  
24 vector, and that would depend on the separation  
25 between the bus and the cyclist.

1 Q. Where did you get the information, then,  
2 for the separation between the bus and the cyclist?

3 A. Well, I didn't get any specific  
4 information on exactly how far away the bus was from  
5 the cyclist. Even if I had, you would still need to  
6 figure out what they corresponded to in terms of the  
7 velocity field of the flow around it.

8 I simply selected what I regarded as a  
9 reasonable number to indicate the magnitude of the  
10 forces that might be expected as a rough estimate.

11 Q. Okay. So if I understand correctly  
12 then, what you have done here in Exhibit Number 1 is  
13 come up with a rough estimate, not necessarily what  
14 occurred?

15 A. Correct.

16 Q. In terms of the lateral separation  
17 between the bus and the bike, did you assume that  
18 they were parallel?

19 A. Yes.

20 Q. Did anyone suggest to you that the bike  
21 was coming in from the right at an angle?

22 A. No.

23 Q. Did you assume that the bus deviated or  
24 changed its direction?

25 A. No.



1 Q. Did you assume that he did not?

2 A. No. I was simply making an estimate of  
3 the magnitude of the aerodynamic forces that you  
4 would expect in a reasonably close encounter, and  
5 that estimate didn't depend on any small angular  
6 deviations from the two vehicles. I just assumed  
7 they were parallel.

8 Q. Okay. In terms of the bus itself, did  
9 you do any testing of the aerodynamics of the actual  
10 bus involved?

11 A. No.

12 Q. Did you have access to anyone else who  
13 did testing of the aerodynamics involved?

14 A. Of this particular bus, no.

15 Q. Not the bus itself, but the model, style  
16 and model of the bus?

17 A. I think the answer is no. The only  
18 aerodynamic testing I've seen on this bus is the --  
19 or, sorry, on buses made by Motor Coach Industries  
20 is Reference 3 in Exhibit 2, which I cite in my  
21 report, the aerodynamic wind tunnel measurements by  
22 Cooper.

23 Q. But at the time you prepared Exhibit 1,  
24 your initial report, did you have access to any wind  
25 tunnel studies or information from wind tunnel

1 studies from any source about the bus involved, that  
2 was depicted in the photograph?

3 A. No, I did not.

4 Q. Did you direct or request that any  
5 testing be performed?

6 A. No. I indicated that as an engineer and  
7 scientist more testing is always good, but I didn't  
8 think it was my position to tell people what to do.  
9 So the answer is no, I didn't direct or request  
10 anything. I simply said more testing is always  
11 good, but ...

12 Q. In terms of testing the aerodynamics of  
13 this particular bus, how would you go about testing?

14 A. Build a wind tunnel model and put it in  
15 a wind tunnel, measure the forces on the bus and  
16 measure the velocity field in the vicinity of the  
17 right front corner of the bus. Install a model of a  
18 cyclist, scale model of the cyclist, near the bus to  
19 measure the forces on the cyclist.

20 Q. Okay. And so that the bus and the  
21 cyclist would be stationary in the wind tunnel?

22 A. They would be -- in the absence of the  
23 cyclist, the aerodynamic flow around the bus would  
24 be accurately measured in the wind tunnel test.

25 If you put the stationary cyclist beside

1 the bus, you would want to move the position of the  
2 cyclist progressively around that right front corner  
3 of the bus to get an idea how the forces on the  
4 cyclist would depend on position.

5 Q. But as a scientist, in order to test the  
6 flow around the moving bus you would put it in a  
7 wind tunnel, the bus would be stationary, and you  
8 would blow things at it, smoke or air?

9 A. Correct. It's the relative wind that  
10 matters.

11 Q. And the relative wind is what?

12 A. The speed of the wind with respect to  
13 the speed of the vehicle.

14 Q. Okay. So if the wind is 25 and the bus  
15 is moving 10, the relative speed is 15?

16 A. Well, if they're moving in opposite  
17 directions you would add the numbers, and in the  
18 same direction you would subtract them.

19 Q. And so you can, using the wind  
20 tunnel and a stationary bike, come up with a  
21 substantially similar event to the bus actually  
22 moving through the wind?

23 A. The answer is yes and no. You have to  
24 correct -- any wind tunnel measurement involves  
25 corrections. You have to correct for blockage and

1 other effects.

2 In the case of this formation flying of  
3 the bus and the cyclist, because they're moving at  
4 different speeds, the measurements you make on the  
5 force on the cyclist would still have to be  
6 corrected for the fact that the wind past the bus  
7 and the wind past the cyclist in the wind tunnel  
8 models are the same, whereas in real life they're  
9 different. So you have to make a correction to the  
10 wind tunnel measurements to account for that  
11 relative wind difference.

12 Q. But it could be done, and has been done,  
13 and is being done, using stationary figures, the bus  
14 and the bike?

15 A. I'm unaware of any wind tunnel  
16 measurements which have a bus and a bike in the test  
17 section at the same time. They may exist, but I'm  
18 not aware of them.

19 Q. Can it be done?

20 A. Yes.

21 Q. And if it was done, would the results be  
22 substantially similar for a real-life event with a  
23 bus and a bike moving over a road, sitting in a wind  
24 tunnel?

25 A. I would say yes, after the correction is

1 made for the fact that the bus and the bike have  
2 different ground speeds, as we discussed.

3 Q. To your knowledge, has Mr. Pepperman had  
4 access to any wind tunnel studies of the bus in  
5 question other than what was provided to you before  
6 your second report?

7 A. Yeah, this is the only report that he's  
8 told me about, so to my knowledge he doesn't have  
9 anything else.

10 Q. Now, in making your report of  
11 October 4th, 2017, did you make any assumptions  
12 other than that the bus overtook a bike?

13 A. Yeah, there are a lot of assumptions,  
14 which I list in my report.

15 Q. Where do you list the assumptions?

16 A. It's not a separate list, but imbedded  
17 in the report. For example, in paragraph 8 on the  
18 second page, I assume that the frontal area of the  
19 cyclist is 5.4 square feet, and I assume -- I'm just  
20 trying to find it here -- a ground speed of 8 miles  
21 an hour for the cyclist, an ambient wind of 6 miles  
22 an hour from the cyclist's right; that is to say,  
23 out of the west.

24 And in paragraph 9, I assume that the --  
25 for purposes of illustration, that the plausible

1 flow deflection angle is 30 degrees due to the  
2 displacement of the bus, a bus ground speed of  
3 25 miles an hour, and a local flow speed at that  
4 point where the flow is deflected 30 degrees at  
5 40 miles an hour, due to acceleration of flow around  
6 the corner.

7 Q. Okay. Did you have any source for the  
8 assumptions that you made?

9 A. Nothing specific. I base these on my  
10 experience with bluff body flows.

11 I believe Mr. Pepperman gave me some  
12 indication about the cyclist's ground speed and the  
13 ambient wind. I think I got those numbers following  
14 a phone conversation with him.

15 Q. So Mr. Pepperman supplied you with the  
16 fact there would have been a crosswind from the  
17 right at six miles per hour?

18 A. I think he at the time expressed some  
19 uncertainty, but that was one of the figures he  
20 mentioned, and I picked that to illustrate the  
21 magnitude of these forces.

22 Q. Did you do anything to validate the  
23 crosswind that he told you to -- or suggested and  
24 that you assumed?

25 A. No.

1 Q. The square footage of the driver at  
2 5.4 square foot, for the bicyclist, where did you  
3 get that?

4 A. I looked it up on the Internet, just  
5 what's an average cyclist's frontal area.

6 Q. Wikipedia?

7 A. It might have been, actually.

8 Q. So you got some figure off the  
9 Internet of 5.4?

10 A. Right. And that seems like a plausible  
11 number for a reasonably sized human.

12 Q. Did you do any work yourself to  
13 determine whether or not 5.4 was reasonable for a  
14 bicyclist?

15 A. No.

16 Q. Do you remember where you got it on the  
17 Internet?

18 A. I don't. Whatever popped up when I did  
19 a Google search.

20 Q. Now, the angle that you refer to as a  
21 "plausible flow direction," where did you get that?

22 A. Well, based on my experience looking at  
23 bluff body flows, the flow around a bluff body has  
24 to deflect, and if the corner of a bluff body, in  
25 this case the right front corner of the bus, is not

1 sufficiently rounded, the boundary layer will  
2 separate and -- so the effective aerodynamic width  
3 of the bus is wider than the real width, and typical  
4 flow deflections, 30 degrees is a -- is a plausible  
5 estimate.

6 Q. Was the right front corner of this  
7 bus rounded?

8 A. Somewhat.

9 Q. Was it sufficient?

10 A. No.

11 Q. What should it have been rounded to?

12 A. I did a series of unpublished  
13 experiments back in 1974 when I was working on my  
14 master's degree at Cal Tech where we looked at a --  
15 basically a blunt-faced torpedo shape, and we  
16 measured the force just on the front part of the  
17 torpedo in a wind tunnel. So this torpedo shape is  
18 aligned with the flow in the tunnel, and I built --  
19 I can't remember, five or so forebodies, as they're  
20 called. The first one had a sharp edge, so it was  
21 completely flat-faced torpedo shape with a sharp  
22 edge. And then the subsequent ones had  
23 progressively more and more rounded shoulders, we  
24 call them, or corners.

25 And what I found was that the drag



1 coefficient decreased linearly with the increase in  
2 corner radius until you got to a corner radius that  
3 was about one-eighth the diameter of this torpedo  
4 shape, in which case the forebody drag essentially  
5 vanished.

6           The physical reason for that is that  
7 right in the middle of the forebody there's what's  
8 called a stagnation point. The stagnation  
9 streamline comes in and the flow is decelerated  
10 isentropically, and you get very high pressure right  
11 in the middle of this bluff body, right in the  
12 front.

13           As the flow accelerates away from the  
14 stagnation point, the velocity increases and the  
15 pressure drops.

16           If the corner is sufficiently curved and  
17 the boundary layer can hang on and not separate,  
18 then you get what's called leading edge suction,  
19 which is a very strong negative pressure, pressure  
20 blow, free stream, at the corner, all the way around  
21 this axisymmetric body.

22           And it turns out, rather surprisingly,  
23 that the suction at the corner almost perfectly  
24 counterbalances the drag associated with this  
25 high-pressure mound in the center.

1 Consistent with that low drag, when you  
2 have sufficient corner radius, the flow stays  
3 attached and it hugs the surface even as it makes  
4 that turn from the front face to the side of the  
5 torpedo.

6 If the corner is sharper than this magic  
7 number of about one-eighth the diameter, then the  
8 flow doesn't stay attached, but it separates and it  
9 forms this recirculating zone that I mentioned  
10 earlier concerning the Seattle buses driving through  
11 the rain and the front rearview mirror.

12 And so the critical thing to get really  
13 low drag and to avoid that separated region and to  
14 minimize the flow deflection that occurs in the  
15 streamlines to the side of the bluff body is to put  
16 sufficient corner radius there. That's the essence  
17 of the physics.

18 Q. Okay. So in terms of the flow around  
19 the -- you call it bluff body?

20 A. Bluff, yeah.

21 Q. -- if you round the corners, then you  
22 have less chance of the separation of the -- is it  
23 boundary layer?

24 A. Very good.

25 Q. And so if it is -- if a separation of

1 the boundary layer occurs, that means that the flow  
2 extends out beyond the body?

3 A. Well, there's always going to be flow  
4 outside the body. Perhaps what you meant was does  
5 the boundary layer leave the body. And the answer's  
6 yes.

7 If the flow separates, what you mean is  
8 that the boundary layer no longer hugs the surface  
9 during that turn, but it lifts up away from the  
10 body. It eventually reattaches, if the body is long  
11 enough. But beforehand there's this recirculating  
12 zone, and the flow actually goes opposite the  
13 direction of the free stream in this recirculating  
14 bubble.

15 Q. One of the problems that that creates is  
16 called drag?

17 A. Yeah.

18 Q. What is drag? What does that measure?

19 A. Drag is simply the force that the air  
20 flow exerts on the body, or vehicle in this case,  
21 the aerodynamic drag, and it shows up in the fuel  
22 bill you pay when you -- the fuel mileage that you  
23 achieve driving the vehicle.

24 Q. How does drag result in more fuel  
25 consumption?

1           A.           There are many sources of -- or many  
2       causes, I should say, for fuel consumption. There's  
3       rolling friction of the tires. There's internal  
4       friction in the bearings and so forth in the car.

5                   On top of all that, any aerodynamic drag  
6       represents a dissipation, and the drag times the  
7       velocity is the power that the engine has to supply  
8       to overcome that force. And if you ask the engine  
9       to supply more power, that takes more fuel, and that  
10      affects the fuel economy.

11          Q.           So it is in the best interest of the  
12      people running or driving or paying for the  
13      operation of the bus to decrease drag?

14          A.           I would say yes, unless fuel is free.

15          Q.           It was cheap at one time, but I don't  
16      think it's ever been free.

17                   But that would be the consideration for  
18      those that are driving the bus; they want to reduce  
19      the drag so that they can increase fuel efficiency?

20          A.           Correct.

21          Q.           Less fuel for the mile, if you will?

22          A.           Correct.

23          Q.           In terms of the separation that occurs  
24      even at this magic number of one-eighth, is there  
25      some wind, if you will, that comes around the side

1 of the bus?

2 A. I'm not quite sure what you mean by that  
3 question.

4 Q. Let me back up, because I'm a liberal  
5 arts major. Okay.

6 Would you be so kind as to just draw a  
7 bluff body and the flow lines that you're  
8 referring to. A picture that someone as simple as I  
9 am can use.

10 A. So suppose that's the relative wind  
11 approaching the bus, or the bluff body,  
12 (indicating). And I'll draw the first one with  
13 sharp corners.

14 So there's wind streamline that comes in  
15 and hits right smack-dab, right between the eyes in  
16 the middle, the front of the body. And this is this  
17 high-pressure dome that I was talking about  
18 (indicating).

19 And then the flow accelerates as it  
20 moves away from that stagnation region. It's called  
21 a stagnation point because it's stagnant there.  
22 There's no velocity right at that point.

23 But as you move away from that point,  
24 the velocity increases, and I'm indicating that in  
25 the sketch by these increasingly long arrows.

1 In the case of the sharp corner, the  
2 boundary layer, which is the region of fluid that's  
3 been affected or retarded by skin friction with the  
4 surface, that can't make that sharp turn and it  
5 separates tangent to this front face and then it  
6 curves around and eventually reattaches.

7 In between the separation point and the  
8 reattachment point, there's reverse flow along the  
9 surface. The flow is actually going the opposite  
10 direction from the free stream.

11 I'll sketch in some other streamlines.

12 I didn't do a very good job of that.

13 You can tell I wasn't an art major.

14 Q. I can't.

15 A. (Indicating.)

16 MR. TERRY: I'm going have the reporter  
17 mark this so that we can talk about it.

18 (Exhibit 3 marked.)

19 BY MR. TERRY:

20 Q. Your drawing has been marked as Exhibit  
21 Number 3, correct?

22 A. Correct.

23 Q. Now, in this one you are depicting the  
24 flow lines for a squared corner bluff body?

25 A. Correct.

1 Q. And the area that I'm interested in in  
2 the right front is this area right here  
3 (indicating). Is there a name for that area?

4 A. Well, I guess bus people would refer to  
5 these corners as the A pillars or the A columns on  
6 the bus.

7 Aerodynamicists would refer to it  
8 probably as the front shoulder.

9 Q. So the front shoulder on the right-hand  
10 side of the bus is the area that I'm interested in.

11 And what you have depicted is that the  
12 flow coming from the stagnation point goes along the  
13 front of the bus, separates, and then reattaches?

14 A. Correct.

15 Q. Is there a formula that determines when  
16 it reattaches or where it reattaches?

17 A. I would say, in general, no. This whole  
18 business of the turbulence at higher Reynolds  
19 number, high speed, high velocity, high -- large  
20 scale, is not amenable to mathematical calculation.  
21 That's why we still use wind tunnels. We can't  
22 predict everything. We have to go out and measure  
23 things.

24 Q. It's because of the turbulence?

25 A. Turbulence is the big unsolved problem

1 in all of aeronautics.

2 Q. What is the Reynolds number?

3 A. I shouldn't have introduced that term  
4 probably.

5 Reynolds number is just an important  
6 aerodynamic dimensionless parameter which measures  
7 the ratio of inertial forces to viscous forces. And  
8 if things are big and they're moving fast, like a  
9 big truck or like a bus or an airplane, a Reynolds  
10 number is typically big, like 10 million or a  
11 hundred million.

12 It's just a parameter that we  
13 aerodynamicists think about, because when you change  
14 the Reynolds number, you can change the flow  
15 patterns. And our Reynolds number, basically, we  
16 can't solve the equations of motion. We know what  
17 the equations of motion are, but we humans aren't  
18 smart enough to be able to solve them.

19 Q. So then if I understand correctly, the  
20 separation or the point of reattachment is not  
21 something that you can determine by mathematics; it  
22 is something that has to be measured?

23 A. In these high Reynolds number flows, I  
24 would say yes.

25 Q. The bus that we're talking about --



1 you've seen photographs of it -- would you have an  
2 opinion as to whether or not it generates high  
3 Reynolds numbers?

4 A. Yeah, the Reynolds numbers on that bus  
5 are what I would call high.

6 Q. Now, the second thing that I'm  
7 interested in is not just the point of reattachment,  
8 it is the lateral separation at maximum between the  
9 side of the bus and the detached boundary layer.

10 A. Very good.

11 Q. I don't know about that.

12 That dimension, can you calculate that  
13 dimension?

14 A. From first principles, no.

15 Q. Is it something that has to be measured?

16 A. Yes.

17 Q. So in terms of the area where the  
18 boundary layer separates and comes around the corner  
19 of the bus, the distance that it reaches from the  
20 side of the bus is something that has to be measured  
21 and the point where it reattaches is something that  
22 has to be measured, to know where those things occur  
23 or how far out the boundary layer gets?

24 A. Correct.

25 Q. In terms of the speed of the wind as it

1 moves from the stagnation point to the corner, does  
2 it increase in velocity?

3 A. Yes. At the outer edge of the boundary  
4 layer it increases linearly as you move away from  
5 the stagnation point.

6 Q. So the wind, in our example -- for  
7 example, we have a bus sitting in the wind tunnel.  
8 The wind is blowing at it at 25 miles per hour. At  
9 the stagnation point that wind comes to a stop?

10 A. Yes, although --

11 Q. And then -- but the high pressure causes  
12 it to spill out to the edges?

13 A. Yes, you could describe it that way.

14 Q. How would you describe it?

15 A. Well, first of all, if you were doing a  
16 wind tunnel test, you wouldn't necessarily limit the  
17 tunnel speed to 25 miles an hour. In order to get  
18 as close to the real full-scale Reynolds number with  
19 a smaller scale bus, you would increase the tunnel  
20 speed beyond 25 miles an hour, say, in order to try  
21 to match this Reynolds number.

22 But the second aspect of your question,  
23 yeah, the flow accelerates away from this  
24 high-pressure region towards lower pressure regions,  
25 and it does so linearly.

1 Q. Is that something you can calculate on  
2 the basis of dimensions or is it something that has  
3 to be measured?

4 A. There's no turbulence involved in the  
5 flow right in the vicinity of the stagnation point.  
6 So I would say that could be calculated reasonably  
7 accurately, because turbulence isn't rearing its  
8 ugly head right there.

9 Q. Can you calculate the speed of that air  
10 at the corner?

11 A. No, because it critically depends on  
12 whether or not the flow stays attached or not. And  
13 that's one of the things that, when you have a  
14 rounded corner that's smooth, there's no obvious  
15 separation point. And so our ability to calculate  
16 separation when there's not a sharp edge like there  
17 is in this sketch means we don't know exactly where  
18 the separation point is, and, therefore, we don't  
19 know the speed just outside the boundary layer at  
20 that separation point.

21 One of the nice things about first  
22 studying bluff bodies with sharp corners is the  
23 sharp corner fixes the separation point. That  
24 simplifies the problem a little bit. At least we  
25 don't have any uncertainty about what's happening or

1 at least where it's separating. Where it reattaches  
2 is still another question.

3 Q. The one thing you mentioned was, when I  
4 suggested we have the wind blowing at the bus at  
5 25 miles per hour, you would said you would put it  
6 up higher to get to the Reynolds number.

7 A. To try to match Reynolds numbers, or get  
8 as close as possible to the real Reynolds number  
9 that you would have with a real bus.

10 Q. A real bus moving at 25?

11 A. Yeah. Reynolds number is the --  
12 essentially the size of the bus times the air speed  
13 past the bus divided by viscosity, which is  
14 constant.

15 If you shrink the bus model in the wind  
16 tunnel to be smaller, you want to increase the wind  
17 speed by that same factor --

18 Q. Oh, I see.

19 A. -- in order to keep the Reynolds number  
20 as close to constant as possible.

21 Q. As close it would be in the real world,  
22 if you're moving 25?

23 A. Correct.

24 Q. Now, in terms of bus with somewhat  
25 rounded corners, can you calculate the speed of the

1 wind at the point of separation?

2 A. No.

3 Q. You have to measure it?

4 A. I would say in general you're obliged to  
5 measure it, because you don't know for sure where it  
6 separates.

7 Q. And in terms of the point of separation,  
8 does that have to be determined by measurement or  
9 by calculation?

10 A. I'm an experimentalist, so I tend to  
11 have a slightly skeptical view of a lot of  
12 computational approaches. So I would say I would  
13 want to see it measured.

14 It may be under certain conditions --  
15 (Interruption in the proceedings.)

16 BY MR. TERRY:

17 Q. Sorry, sir. I should have let you  
18 continue without getting up to close the door.

19 In terms of the -- this measurement  
20 right here, how far the boundary layer separates  
21 from the vehicle before it reattaches, that  
22 measurement right there, and I'm going to -- do you  
23 mind if I draw?

24 A. Please, be my guest.

25 Q. And I'm going to label that 1

1 (indicating). Okay.

2 In order to determine 1, is that  
3 something that has to be measured, or can you  
4 calculate that at all, when you're dealing with a  
5 somewhat rounded corner?

6 A. I mean, there are calculation  
7 techniques, computational fluid dynamic techniques,  
8 where people use big computers and they try to  
9 calculate these things, with varying degrees of  
10 accuracy. As I said, I'm an experimentalist and I  
11 like to measure things.

12 You could try to model this thing in a  
13 computer and run the calculation and it would -- the  
14 computer would spit out an answer. The question is  
15 what level of faith do you have in the accuracy of  
16 that prediction.

17 Because this shear layer -- once the  
18 boundary layer separates, it's called a free shear  
19 layer and it's intensely turbulent. Its trajectory  
20 depends upon its entrainment rate into both sides.  
21 Entrainment of the outer flow into the shear layer  
22 and entrainment of the flow between it and the  
23 surface, the body.

24 And that entrainment rate I think is  
25 difficult to get accurately in the numerical

1 simulations, so I think experiments would be a lot  
2 more believable.

3 Q. And then, if I understand correctly, you  
4 cannot tell me, for the J bus that was involved in  
5 this occurrence, if it's driving 25 miles an hour,  
6 no other wind effects, no crosswinds, tailwinds,  
7 headwinds, just driving still 25 miles an hour, you  
8 can't tell me where the separation would have  
9 occurred from the boundary layer at the corner, if  
10 it did occur, where it would have reattached, or  
11 what dimension 1 would be; is that correct?

12 A. I would say in general that's correct.

13 I mean, for starters, I haven't been  
14 able to get what the geometry of the bus is. I  
15 mean, the first step would be to figure out what the  
16 geometry is you're talking about, and I haven't seen  
17 any document that gives me precisely that geometry.

18 Even if I had that geometry, I would  
19 much more trust results of a good wind tunnel test  
20 to answer those questions than what we call a  
21 computational fluid dynamics simulation, because the  
22 turbulence models in CFD are still not very good.

23 Q. Now, as the bus is moving along and it  
24 is creating this flow around it as it moves, is  
25 the wind that is traveling around the bus traveling

1 at the same speed of the bus, or is it higher, or  
2 does it depends on how far you are from the side of  
3 the bus?

4 For example, is this 30 miles an hour --  
5 25-mile-an-hour bus. Is this flow 30, this 28, this  
6 25? Is that the way it works (indicating)?

7 A. You ask a very good question. And it's  
8 almost like that.

9 Right around this corner (indicating),  
10 you get big acceleration of the flow. Remember, we  
11 said at the stagnation point the velocity is zero.  
12 Zero is a pretty small number. There's not much  
13 breeze here.

14 Q. It's as small as it gets?

15 A. That's right.

16 But then the flow accelerates along the  
17 surface of the bus at the outer edge of the boundary  
18 layer linearly, as I said, and as you go around this  
19 corner, the velocity can be one and a half or maybe  
20 even two times the speed of the free stream.

21 So if the free stream is approaching the  
22 bus at 25 miles an hour with respect to the bus, you  
23 might have double that here. I think I assumed in  
24 my example -- I believe I assumed -- was it 40 or  
25 45? I have to refresh my memory. 40.



1 Locally, right in the vicinity of this  
2 shoulder, the velocity can be much higher than the  
3 free stream.

4 Q. And then as you move away from the  
5 corner, the velocity goes back down to 25?

6 A. Correct. I'll just draw a few more  
7 streamlines.

8 As you get further from the body, the  
9 streamlines are less perturbed by their displacement  
10 and acceleration around this obstacle. And so the  
11 velocity asymptotically approaches the free stream  
12 velocity as you get further away.

13 Q. What was that adverb that you used?

14 A. Asymptotically. It means gradually.

15 Q. Let's use gradually.

16 A. Sorry.

17 Q. All right. Can you tell me, in terms of  
18 this particular bus, how the speed of the air  
19 surrounding the bus as it goes down the road at  
20 25 miles an hour declines as you move away from the  
21 corner? Can you tell me at 2 feet it's 40, at 3  
22 feet it's --

23 A. No. I cannot tell you that.

24 Q. It has to be measured?

25 A. I would want to see it measured, because

1 the details depends upon the entrainment of this  
2 turbulence.

3 Q. Now, if we put in the bike on the right,  
4 and the bike is moving at its own velocity -- the  
5 bus is 25, the bike is 15, so that the relative  
6 difference between them is 10 miles an hour,  
7 right -- how does that interplay with the  
8 disturbance created by the bus?

9 A. In my drawing, I'm showing things with  
10 respect to the bus, in the coordinate frame of the  
11 bus. So if the free stream with respect to the bus  
12 is 25, and at some point, say here (indicating), the  
13 velocity -- in my example I said it was -- I assumed  
14 it was 40 at a 30-degree angle with respect to the  
15 free stream. So that's all in the coordinate frame  
16 with respect to the bus.

17 If you now convert that to the ground  
18 coordinate frame, somebody just standing on the  
19 ground as the bus drives by, you would subtract off  
20 this velocity vector of 25 miles an hour, so you'd  
21 have to use vector addition or vector subtraction to  
22 get the velocity vector at this point as the bus  
23 drives by in the coordinate frame of the ground.

24 Then the third step is the cyclist is  
25 now moving at some speed. I assumed in my second

1 report, I think 13 and a half miles an hour.

2 Q. Would you do me a favor and use whole  
3 numbers, because it's easier for me.

4 A. Okay. You used the figure 15. Let's,  
5 just for simplicity --

6 Q. I understand that that's not a fact or  
7 something you assumed. It's just easier for me to  
8 deal with whole numbers.

9 A. I appreciate that. Me too.

10 So if we take this vector of 40 miles an  
11 hour and vectorially subtract off a vector of  
12 25 miles an hour, we have a resultant wind vector,  
13 which I'm making on the sketch here, which is the  
14 vector sum of these two arrows. That's in the  
15 ground reference frame.

16 Now, the cyclist is proceeding at a  
17 speed of 15, and so you would now add in a speed  
18 of 15. So you would finally -- I'm making a messy,  
19 complicated drawing here -- you would have a  
20 resultant relative wind vector, with respect to the  
21 moving cyclist, of that arrow. So it's vector  
22 addition or subtraction to get the relative wind on  
23 the cyclist from the passage of the bus.

24 Q. So would the apparent wind on the  
25 cyclist be more than his speed?

1 I mean, he's moving at 15 miles per  
2 hour, generating his own wind. The stuff comes from  
3 around the bus. Using the vector analysis, you can  
4 determine what the apparent wind is on the  
5 bicyclist, right?

6 A. Right.

7 Q. Is the apparent wind on the bicyclist  
8 more or less than the wind he generates himself?

9 A. I think, according to my calculations,  
10 it's more.

11 Q. Can you calculate that sort of thing?

12 A. Yeah. Based on --

13 Q. Just vector analysis?

14 A. Yeah. Once you make these assumptions,  
15 then it's just vector analysis.

16 Q. And the direction of the wind that he  
17 confronts, is that a function of where he is on the  
18 laminar flow that you've identified?

19 A. Well, let me clarify one thing. My  
20 laminar flow in --

21 Q. I understand this is not laminar flow  
22 here. But you've got the flow lines. Okay? And  
23 the flow lines indicate that the wind direction  
24 varies as it comes around the corner and then  
25 reattaches.

1 But from outside the point where it  
2 separates and it just moves a little bit --

3 A. Right.

4 Q. -- it reaches the bicyclist at different  
5 directions. Is that right?

6 A. Yes.

7 Q. So the apparent wind that the cyclist  
8 faces, does it vary depending on where he is lateral  
9 to the bus?

10 A. Yes, it would be -- in real-life it  
11 would, yes. It would depend on the proximity of the  
12 cyclist to the bus.

13 Q. And then it depends on where he is in  
14 the flow that you've indicated, if you will?

15 A. Right. Because the bus is overtaking  
16 the cyclist, you would get a different answer at a  
17 different instance, when the cyclist was at  
18 different relative positions with respect to the  
19 bus.

20 Q. Now, you indicated in your first report  
21 that you expected that the -- if there was  
22 detachment, it would reattach in .14 seconds? Did I  
23 understand that correctly?

24 A. No. I believe that .14 number is the  
25 characteristic time for these transients to occur.

1                   This separation and reattachment  
2   exacerbates the problem, as I said, because it makes  
3   the effective aerodynamic width of the bus wider.  
4   So the side force on the cyclist is greater with  
5   this separation due to the sharp -- relatively sharp  
6   corners than if the bus had really rounded corners  
7   and you didn't have separation.

8                   That figure you mentioned was the  
9   characteristic time associated just with the passage  
10  of the front of the bus. If you take the diameter  
11  of the bus and divide it by the velocity, you get a  
12  characteristic time. I can't remember if I used  
13  diameter or radius. But that was meant to be an  
14  indication of how long you expect these transient  
15  sideways aerodynamic loads to be exerted on the bus.

16           Q.       So from my understanding of what you're  
17  saying, then, is that as the right front corner of  
18  the bus passes a stationary point, and if that point  
19  is within the area of disturbance, that point  
20  experiences the disturbance for .14 seconds, this  
21  bus traveling 25 miles an hour?

22           A.       Almost. You said a stationary object.  
23  I think that .14, if I did it right, would have been  
24  accounting for the relative speed of the cyclist and  
25  the bus. And it's not a precise concept. It's just

1 a characteristic time, roughly how long these  
2 transients occur as the bus passes the cyclist.

3 Q. So when you calculated it at .14,  
4 that took into the account the fact that the bike  
5 was moving?

6 A. I'd have to refresh my memory. It  
7 would change a little bit if you didn't account for  
8 that, yeah.

9 But I did that for paragraph 11 of  
10 Exhibit 1. I assumed the cyclist was moving at 8  
11 miles an hour in this first report. And then in my  
12 second rebuttal report, Exhibit 2, based on, I think  
13 it was data from Dr. Funk's report, I revised the  
14 cyclist's speed to 13 and a half miles an hour.

15 Q. But still the same .14?

16 A. Well, it would be a little bit different  
17 number because the cyclist, instead of going 8 miles  
18 an hour, would be going .14.

19 Q. So is it less?

20 A. It would be longer, because the  
21 cyclist's speed is closer to the bus's. If the  
22 cyclist's speed was identical to the bus, then that  
23 time would be infinite.

24 Q. As long as the bus is driving; as long  
25 as the two of them are together?

1 A. Correct.

2 Q. And if it's stationary, the difference  
3 is it would be a shorter time?

4 A. Correct.

5 MR. KEMP: "It" being the bike? You  
6 said "it."

7 MR. TERRY: Forgive me.

8 BY MR. TERRY:

9 Q. If the point is a stationary point as  
10 opposed to a moving point, the time that that point  
11 is subjected to the airflow you've described is less  
12 than if the point was moving in the same direction  
13 as the bus, up to 10 or 15 miles an hour?

14 A. Right. By stationary, I mean stationary  
15 with respect to the ground.

16 Q. Yes.

17 A. You always have to be clear what  
18 reference frame you're talking about.

19 Q. All right. If the point -- if the point  
20 is stationary relative to the bus, and the bus is  
21 moving the 25 miles per hour as you assumed in your  
22 calculations, how long would the stationary point be  
23 subjected to the effects?

24 A. You used the term stationary with  
25 respect to the bus?



1           Q.           Yes, as opposed to having the point that  
2 we're concerned about moving with the bus at some  
3 particular speed, it's just a guy standing on the  
4 ground next to the bus.

5           A.           So stationary with respect to the  
6 ground.

7                       I want to make sure I understand  
8 your question.

9           Q.           This sounds like Einstein's thoughts.  
10                       Well, what I'm trying to set up is,  
11 instead of trying to describe in words the bike  
12 moving in the same direction as the bus at a  
13 particular speed, now we've just got a guy standing  
14 there watching the bus come by. So he is  
15 stationary, he's not moving, with respect to the  
16 bus. His velocity is zero with respect to the bus.

17          A.           Well, I disagree. If he's standing on  
18 the ground and the bus is moving by, he's stationary  
19 with respect to the ground.

20          Q.           Okay, sorry. You are talking Einstein.  
21                       Yes, I'm talking stationary with respect  
22 to the ground.

23          A.           Got it.

24          Q.           How long would the effect be experienced  
25 by the guy standing on the ground, if the bike would