

Case No. 78701

In the Supreme Court of Nevada

MOTOR COACH INDUSTRIES, INC.,

Appellant,

vs.

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

Respondents.

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APPEAL

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

**APPELLANT'S APPENDIX
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26	Motion for Summary Judgment on Punitive Damages	12/01/17	3	642–664
117	Motion to Retax Costs	04/30/18	47 48	11743–11750 11751–11760
58	Motions in Limine Transcript	01/29/18	12 13	2998–3000 3001–3212
61	Motor Coach Industries, Inc.’s Answer to Second Amended Complaint	02/06/18	14	3474–3491
90	Motor Coach Industries, Inc.’s Brief in Support of Oral Motion for Judgment as a Matter of Law (NRCP 50(a))	03/12/18	32 33	7994–8000 8001–8017
146	Motor Coach Industries, Inc.’s Motion for a Limited New Trial (FILED UNDER SEAL)	05/07/18	51	12673–12704
30	Motor Coach Industries, Inc.’s Motion for Summary Judgment on All Claims Alleging a Product Defect	12/04/17	6 7	1491–1500 1501–1571
145	Motor Coach Industries, Inc.’s Motion to Alter or Amend Judgment to Offset Settlement Proceed Paid by Other Defendants (FILED UNDER SEAL)	05/07/18	51	12647–12672
96	Motor Coach Industries, Inc.’s Opposition to Plaintiff’s Trial Brief Regarding Admissibility of Taxation Issues and Gross Versus Net Loss Income	03/18/18	36	8823–8838
52	Motor Coach Industries, Inc.’s Pre-Trial Disclosure Pursuant to NRCP 16.1(a)(3)	01/19/18	12	2753–2777

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

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

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

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

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

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

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

1 that that technology was available to us at that time."

2 Are you objecting to that?

3 MR. PEPPERMAN: No, I'm fine with that. I
4 mean, you know, something that goes to the -- the
5 questions that were asked, but, I mean, the following
6 six full pages of testimony talking about --

7 THE COURT: Let's go now to specifically --

8 MR. PEPPERMAN: -- what was just excluded --

9 THE COURT: Excuse me. Let's go
10 specifically, Mr. Pepperman, to page 105, line 5
11 through 25.

12 "Is there any reason, as we sit here today,
13 that you can think of that" -- excuse me -- "that, if
14 you had wanted to use a proximity sensor in 2007,
15 mechanically, you couldn't have done it?"

16 Mr. Russell objects to foundation.

17 I'm letting you read the rest, so -- you
18 know, through 25 on your own.

19 Okay. I --

20 MR. RUSSELL: And my argument --

21 THE COURT: If this continues, I'm just going
22 to have to -- we're going to have this testimony later.
23 And you'll have to sit down and go through what --
24 what -- what all these issues really are. I'm really
25 making a sincere effort to go line by line in the

1 evenings, but really --

2 MR. RUSSELL: I'd like to -- and to help
3 that, I'd like to make a suggestion, Your Honor,
4 because it appears, on the most recent list that
5 plaintiffs have produced, there's sections that they
6 had not -- had previously been designated that weren't
7 included. And --

8 THE COURT: So I'm not -- I'm working -- I've
9 spent my time working through an old copy?

10 MR. RUSSELL: Right.

11 THE COURT: It's not updated?

12 MR. PEPPERMAN: No, that is absolutely not
13 true.

14 THE COURT: I -- I just -- here's what I'd
15 like.

16 MR. RUSSELL: I'm offering to sit down with
17 Mr. Pepperman.

18 THE COURT: Here's what I'd like: I'm a very
19 patient person. I'm happy to look at everything, but,
20 truly, the most updated copy would be very good for me
21 because it would save me a lot of time and effort which
22 I'm happy to put into other areas of the case instead
23 of doing this.

24 MR. PEPPERMAN: Your Honor, you have an
25 up-to-date copy. We submitted our designations; they

1 submitted objections. We responded to the objections
2 they gave us.

3 THE COURT: But you know what? We're going
4 back and forth on this right now. And I don't feel
5 that I have this in an organized fashion.

6 MR. RUSSELL: And I'm happy to sit down with
7 Mr. Pepperman --

8 THE COURT: In fairness, I am a very patient
9 person, maybe too -- too patient, but I am -- would
10 like us to be a little bit more organized. I think
11 that's a reasonable request by the Court.

12 MR. PEPPERMAN: Absolutely.

13 THE COURT: Okay? So --

14 MR. PEPPERMAN: I'm sorry. I'm just trying
15 to go through some of the broad ones and --

16 THE COURT: I understand. But, truthfully,
17 if you sit down and just clear this up for me a little
18 bit more, it would really save me a tremendous amount
19 of time. Okay? You have to remember that these are
20 coming in daily now and -- and I'm trying to keep up
21 with them. And there's two sets of -- you know, I
22 don't -- I mean, I don't want to break my word. And
23 I'm honored to be here and to hear this case, but you
24 have a team on each side, and there's only one judge
25 that wants to read everything. So --

1 MR. PEPPERMAN: I understand, Your Honor.

2 THE COURT: Okay. There's only one of me.

3 So we -- we still have what I -- what I --
4 I'd like you -- and then 11, it's sort of occurring
5 again. And 10 may or may not be okay.

6 So I'd like -- well, my sections, I'd like
7 you to please look from lines 98, 8-15, I've already
8 gone and give detail what those are in that section.
9 Okay?

10 Then the next section, with respect to lines
11 114, 14 through 25; 115 -- I'm sorry -- page 115, lines
12 1 through 25; page 116, 1 through 25; 1 -- 117, 1
13 through 25; 118, 1 through 25; 119, 1 through 25; and
14 120, I'd like you to review that too and make sure it's
15 organized.

16 And then for the section that I believe is my
17 last section that I've reviewed -- again, I -- I don't
18 think everything is complete here, and that -- it talks
19 about cross-designations and everything else.

20 And I have page 120, 14 through 25; 121, 1
21 through 25; 122, 1 through 22; 127, 3 through 25; 128,
22 1 through 9. And then there may be other pages as have
23 been coming up in our conversations.

24 I want you to straighten that out before --
25 and give me what you've decided and what's accurate

1 before I revisit this. Okay? Please.

2 All right. And then -- is there anything
3 else that we need to discuss right now?

4 MR. RUSSELL: Are guys going to play Ellis
5 today, Eric?

6 MR. BARGER: You got two live witnesses;
7 right? You got Dr. Stokes and --

8 MR. RUSSELL: Yeah.

9 THE COURT: So I think that -- with respect
10 to -- we have two live witnesses. And then if we -- we
11 can do the balance of this maybe at a break, we could
12 play Mr. Lamothe's testimony if --

13 MR. PEPPERMAN: Yeah. Why don't I sit down
14 with Mr. Russell and Mr. Terry and talk about Barron
15 and Lamothe.

16 THE COURT: And -- and the parts that we
17 haven't covered in Lamothe. Okay?

18 MR. PEPPERMAN: Yeah, we're almost done.

19 THE COURT: I think Mr. Ellis should be --
20 I'd like to make sure that you've -- because I -- I --
21 I'd like to make sure that you have a chance to really
22 make sure that everything is cogent and organized in
23 that one as well.

24 MR. PEPPERMAN: I think Mr. Christiansen's
25 office did those.

1 THE COURT: Okay. Just letting you know that
2 I would welcome that.

3 MR. PEPPERMAN: No problem.

4 THE COURT: Okay?

5 All right. So is there anything else? I --
6 I wasn't anticipating anything else right now.

7 MR. HENRIOD: Your Honor, I think it can
8 wait -- especially till your cocounsel gets here --
9 but, before we take Mr. Hubbard, I just had -- I really
10 think -- a five-minute issue as to what we can talk
11 about and what we can't. I don't want to cross any
12 lines, but that can wait.

13 THE COURT: Okay. I will be in my chambers,
14 and just let me know once you've discussed it among
15 yourselves and I'll come out right away.

16 MR. BARGER: Dr. Stokes is first. We can
17 wait till the afternoon.

18 THE COURT: Dr. Stokes is first? And if you
19 have any issue with Dr. Stokes and you need to clear
20 them up, let me know.

21 MR. RUSSELL: Thank you.

22 (Whereupon a short recess was taken.).

23 THE MARSHAL: All rise. Department 14 is now
24 in session with the Honorable Adriana Escobar
25 presiding.

1 Please be seated. Come to order.

2 THE COURT: Is our jury ready?

3 THE MARSHAL: I'll line them up. Are we
4 ready?

5 THE COURT: Just a moment. I believe that --
6 do we -- we need to discuss a matter before the next
7 witness; is that correct?

8 MR. ROBERTS: We had a matter before Hubbard,
9 the bus driver.

10 THE COURT: Yes.

11 MR. ROBERTS: But it's our understanding that
12 they've switched and Stokes is going to go first. So
13 we can do it now or we can do it in between witnesses.

14 MR. KEMP: Let's do in between since the jury
15 has been waiting, Your Honor.

16 THE COURT: All right. Very good.

17 All right. Let's ...

18 THE MARSHAL: Ready, Your Honor?

19 THE COURT: Yes.

20 THE MARSHAL: All rise.

21 (The following proceedings were held in
22 the presence of the jury.)

23 THE MARSHAL: All the jurors are present,
24 Your Honor.

25 THE COURT: Thank you, Marshal.

1 THE MARSHAL: Please be seated. Come to
2 order.

3 THE COURT: Madam clerk, please take roll.

4 THE COURT CLERK: Yes, Your Honor.
5 Byron Lennon.

6 JUROR NO. 1: Here.

7 THE COURT CLERK: John Toston.

8 JUROR NO. 2: Here.

9 THE COURT CLERK: Michelle Peligro.

10 JUROR NO. 3: Here.

11 THE COURT CLERK: Raphael Javier.

12 JUROR NO. 4: Here.

13 THE COURT CLERK: Dylan Domingo.

14 JUROR NO. 5: Here.

15 THE COURT CLERK: Aberash Getaneh.

16 JUROR NO. 6: Here.

17 THE COURT CLERK: Jaymi Johnson.

18 JUROR NO. 7: Here.

19 THE COURT CLERK: Constance Brown.

20 JUROR NO. 8: Here.

21 THE COURT CLERK: Enrique Tuquero.

22 JUROR NO. 9: Here.

23 THE COURT CLERK: Raquel Romero.

24 JUROR NO. 10: Here.

25 THE COURT CLERK: Pamela Phillips-Chong.

1 JUROR NO. 11: Here.

2 THE COURT CLERK: Gregg Stephens.

3 JUROR NO. 12: Here.

4 THE COURT CLERK: Glenn Krieger.

5 JUROR NO. 13: Here.

6 THE COURT CLERK: Emilie Mosqueda.

7 JUROR NO. 14: Here.

8 THE CLERK: Thank you.

9 THE COURT: Do the parties stipulate to the
10 presence of the jury?

11 MR. CHRISTIANSEN: Yes, Your Honor.

12 MR. ROBERTS: Yes, Your Honor.

13 THE COURT: Mr. Christiansen, are you --

14 MR. CHRISTIANSEN: We're ready. Plaintiffs
15 call Dr. Larry Stokes.

16 THE COURT: Okay. Please proceed.

17 THE MARSHAL: Watch your step, sir. Raise
18 your right hand and remain standing.

19 THE CLERK: You do solemnly swear the
20 testimony you're about to give in this action shall be
21 the truth, the whole truth, and nothing but the truth,
22 so help you God?

23 THE WITNESS: I do.

24 THE CLERK: Thank you. Please be seated.

25 And please state and spell your name.

1 THE WITNESS: My name is Larry Stokes.

2 THE CLERK: S-t-o-k-e-s?

3 THE WITNESS: It is, yes.

4

5 DIRECT EXAMINATION

6 BY MR. CHRISTIANSEN:

7 Q. Good afternoon, Mr. Stokes. Tell the ladies
8 and gentlemen of the jury what you do for a living.

9 A. Good afternoon. I'm an economist. I do a
10 lot of consulting that has to do with solving money
11 problems, basically.

12 Q. By way of background, give us a thumbnail
13 sketch of your education if you would, please.

14 A. All my formal education has been in economics
15 and has also been from the University of Illinois. I
16 received my bachelor's in economics there in '71, my
17 master's in 1973, and then the PhD, or doctorate, I got
18 that in 1976.

19 Q. What is the study of economics?

20 A. Basically, it's analyzing and trying to solve
21 problems dealing with the economy and money and how --
22 how it operates within the economy and within the world
23 in general. Basically.

24 Q. I'm sorry. When was it that you got your
25 degree in economics?

1 A. PhD was in '76.

2 Q. 42 years ago?

3 A. Yeah.

4 Q. 42 years ago?

5 A. A little more, right there.

6 Q. Okay. So you've been consistently employed
7 in the field of economics for the past four-plus
8 decades?

9 A. Oh, yes.

10 Q. What is the name of your business?

11 A. It's -- my business is called Beta Business
12 Consulting.

13 Q. And who is employed at your business besides
14 yourself?

15 A. The company's made up just of me and my wife.
16 My wife is a CPA. She deals with a lot of accounting
17 and tax issues. I deal with a lot of economics, and I
18 have worked with my wife on certain projects where we
19 have to do a pro forma for a business start-up or
20 something like that.

21 Q. Where is your business located and do you
22 primarily reside?

23 A. Scottsdale, Arizona. Both the business is
24 there, and I reside in Scottsdale as well.

25 Q. That's in the Phoenix area?

1 A. It is.

2 Q. Have you always been in the field you're in
3 today, or did your career somewhat change early on to
4 get into the sort of litigation type of stuff?

5 A. Well, I have done a lot of different things.
6 I've worked in combination of consulting and teaching.
7 I have taught at the University of Illinois; Canisius
8 College in Buffalo, New York; Arizona State University;
9 Northern Arizona University. I taught one course at
10 Scottsdale Community College. Most recently, Western
11 International University in Phoenix.

12 Q. Okay. When called upon in a litigation case
13 like this to -- or let me ask you directly.

14 What were you called upon to do, in this
15 particular case, by Mr. Kemp?

16 A. I was asked to help estimate the economic
17 losses associated with Dr. Khiabani's death.

18 Q. And how does one -- before we talk about how
19 you did it particular to Dr. Khiabani, how does a
20 person like yourself go about estimating economic loss?

21 A. In a litigation case, it's basically a
22 combination of some personal information, background
23 information on -- on Dr. Khiabani, his earnings, age,
24 those sorts of things. And then we combine that with a
25 lot of government data. We have to -- we have to deal

1 with government data. They're the only entity that's
2 large enough to really collect the data that we use as
3 economists.

4 Q. And when you say government data, what is it
5 that you look to to get guideposts for your analysis?

6 A. Well, there's interest rate data from the
7 Federal Reserve System. There's a lot of earnings and
8 employment information from the Department of Labor and
9 Department of Commerce as well. Work with a lot of
10 Department of Labor data. All your consumer price
11 index data, price index data. Those all come from U.S.
12 Department of Labor.

13 Q. So those statistics aren't something you make
14 up; it's something you get from the government?

15 A. Oh, yeah.

16 Q. For example, what's the statistical average
17 person make in the United States these days?

18 A. It's just a little below 48,000. That's
19 average weekly earnings of people in our economy. I
20 think it's a 2006 number.

21 Q. And this methodology that you employ that
22 uses statistics combined with personal information,
23 such as you got for Dr. Khiabani, is that readily
24 accepted in the field of economics?

25 A. Oh, it is, yes.

1 Q. For how long has it been readily accepted?

2 A. Well, long before I got into it. But that's
3 pretty much standard, really.

4 Q. For the last 40-some years?

5 A. For sure then, yes.

6 Q. What portion of your practice, as an
7 economist, is made up of litigation analysis like
8 you're here to talk about today?

9 A. Right now, most of it -- most of it is. I'm
10 not teaching it any longer, and so most of my
11 consulting is based on the litigation types of cases
12 like we'll be talking about here today.

13 Q. And have you been accepted in courts of law
14 as an expert in the area of economics?

15 A. I have.

16 Q. Have you been offered and ever rejected as an
17 expert?

18 A. No, I have not.

19 Q. And is this testimony something you do
20 frequently? infrequently?

21 A. Far too frequently, it feels like sometimes.
22 Yes.

23 Q. In courts all over the country or just in
24 particular areas?

25 A. All over the country. Most of it, of course,

1 is in the Southwest area.

2 Q. Have you done work for lawyers here in
3 Southern Nevada?

4 A. I have.

5 Q. Mr. Kemp?

6 A. I have, yes.

7 Q. Other lawyers?

8 A. Well, Mr. Pepperman as well and quite a few
9 lawyers in -- in the Las Vegas area, also some in the
10 Reno area. Not very recently up there, but -- but I
11 have.

12 Q. Have you been recognized in that as an expert
13 in the area of economics throughout the Clark County
14 and up in Washoe County?

15 A. I have.

16 Q. Have you ever been not recognized when
17 offered as an expert?

18 A. No.

19 Q. Tell the ladies and gentlemen of the jury how
20 you went about calculating the economic loss or loss of
21 earning capacity for Dr. Kayvan Khiabani.

22 A. I had income tax information for
23 Dr. Khiabani. I had an earnings history that went back
24 to 2011 through 2016. What I have to do is I have a
25 starting figure that I work with, and then you apply

1 different rates of growth over time. We add in some --
2 some fringe benefits that are paid by employers. And
3 then everything is adjusted to what we call present
4 value.

5 So the starting point is -- was -- his -- was
6 Dr. Khiabani's 2016 annual earnings figure. That's
7 used as the base for all the projections into the
8 future.

9 Q. So we can keep it in terms that I understand,
10 you use a whole bunch of growth rates and present
11 value, and you started with what the guy made in a
12 year?

13 A. That's right.

14 Q. All right. What was that for Dr. Khiabani in
15 the most recent year?

16 A. That was \$990,503.

17 Q. And how was Dr. Khiabani employed?

18 A. Well, he was a surgery professor, a professor
19 of surgery. And I don't believe he was practicing in
20 the field of medicine as a practicing physician, but he
21 was an instructor, very good instructor evidently.

22 Q. And so you had, like most of us get, a W-2 or
23 something of that nature that you were able to look at?

24 A. I did.

25 Q. That's from where you extracted the initial

1 number?

2 A. Yes.

3 Q. And you told the jury you went back several
4 years, and you used the term "growth rate."

5 Help -- in layperson's terms, help us
6 understand why you went back a few years and looked at
7 how his salary changed, and give us an understanding
8 for what the growth rate used in this case is.

9 A. Well, just looking back, we found that from
10 2011 up to '16, he consistently grew in his income.
11 Then when you switch over to the statistical levels, we
12 also had to bring the 2016 level to the year that I did
13 this report, 2017. And I used employment cost index
14 information from the U.S. Department of Labor.

15 For long-term projections, I looked at what
16 doctors tend to make in the economy. And so over a
17 period of 2002 to 2016, looked at the average earnings
18 for doctors, applied that pretty much to Dr. Khiabani,
19 made one further adjustment based on something called
20 age earnings factors.

21 And what that is, very briefly, it's not a
22 big factor in this, but when we first start out
23 earning, we make less than the average for whatever --
24 whatever occupation we have. Later on, you get a
25 little smarter, you work a little more productively and

1 get rewarded. Your wages tend to go up.

2 After awhile, if you get old enough, your
3 productivity drops off, sometimes it even -- even
4 declines as we get older, if we go long enough in the
5 labor force.

6 So those factors are also in there. It's not
7 a big factor, but it is something that you need to look
8 at because it's out there. You know, it's data that
9 comes from the U.S. Department of Commerce, so we use
10 it.

11 Q. You also told the ladies and gentlemen of the
12 jury that you considered something called fringe
13 benefits.

14 Help us understand what a fringe benefit is
15 and how you considered it in determining economic loss
16 as it pertains to Dr. Khiabani's situation.

17 A. Fringe benefits in this particular case is a
18 pretty small component. But, basically, what I looked
19 at were the health benefits that are paid by employers.
20 Fringe benefits in general is the things that we get
21 from the employers. You don't get to spend it, but
22 it's things like health benefits, retirement benefits,
23 those -- those kind of things.

24 In this particular case, I looked just at the
25 average health benefit for professionals and management

1 people in the public sector, which would be where
2 Dr. Khiabani fit in.

3 I only calculated health benefits for the
4 time that his kids were under age 18.

5 Q. Help the people on the jury understand why
6 you did that.

7 A. We all know it's not 100 percent true, but
8 the government assumes that, when kids reach age 18,
9 they leave the household. We know that's not quite the
10 case, but we do use that. And so that's why I stopped
11 the fringe benefits in the year that the youngest child
12 reached age 18.

13 Q. Youngest child is Keon?

14 A. Yes.

15 Q. You talked a bit about age-earning profile.
16 Is there a thing called worklife expectancy?

17 A. There is. What -- the start of the analysis
18 is when Dr. Khiabani was killed. The end of the
19 analysis in terms of working is what's called a
20 worklife expectancy. It's kind of like the average
21 number of years that we tend to work actively in the --
22 in the competitive labor market.

23 It's usually less than what you'd consider
24 as, you know, like a full retirement age because there
25 are probabilities associated with building one of these

1 worklife expectancies that cause people to leave the
2 market, to be between jobs, to leave and reenter the
3 labor market, those kinds of things.

4 At any rate, we use worklife expectancy.
5 This all comes out of U.S. Department of Labor data on
6 participation and that sort of thing.

7 So his -- his worklife expectancy was another
8 18 years. That would put him up to about age 69.

9 Q. Age 59 -- or 69. You're correct. My math --
10 that's why you're the economist. He was age 51; right?

11 A. Yes.

12 Q. Up through age 69 is when you calculated
13 statistically his worklife expectancy to end or to slow
14 down?

15 A. No, to end.

16 Q. Okay. So if, in fact, he was somebody that
17 worked past age 69, your calculations would have not
18 included those additional years?

19 MR. ROBERTS: Objection. Speculation.

20 THE COURT: Overruled.

21 THE WITNESS: That's correct.

22 BY MR. CHRISTIANSEN:

23 Q. And do some professions or some
24 occupations -- is a better word -- allow persons to
25 work past the statistical average worklife expectancy?

1 A. Oh, sure. I mean, this is just an average
2 that we're dealing with. And some people work a lot
3 longer, some people work less, of course.

4 Q. Included within the statistical average, help
5 the ladies and gentlemen of the jury understand what
6 type of occupations are lumped in there to get
7 statistical average.

8 A. In this particular set, it would be all
9 people with professional degrees. That would be
10 doctors, lawyers, economists, those type of people.
11 People with lower levels of education tend to work
12 fewer years.

13 Q. Okay. So tell me again what you calculated
14 Dr. Khiabani's worklife expectancy to be.

15 A. It was 18 years.

16 Q. Up to the age of 69?

17 A. Yes.

18 Q. And how is worklife expectancy different than
19 just life expectancy?

20 A. Well, for most of us, after you quit work,
21 you keep on living. And what happens at the end of the
22 worklife expectancy, we do have some income that comes
23 in, partly Social Security, partly private retirement
24 funds, whatever. Anyway, there's a considerable
25 drop-off from the earning years until the income years.

1 But we do calculate the income that's expected from the
2 end of the worklife expectancy to the end of the life
3 expectancy. And that's also included in my analysis.

4 Q. You did that specifically as it pertains to
5 Dr. Khiabani?

6 A. I did.

7 Q. And so make sure I understand what you're
8 doing correctly -- or what you're doing.

9 After somebody gets to their statistical
10 worklife expectancy, your calculations presuppose
11 they've got some sort of income for money they've
12 earned while they were working that sort of affords
13 them for the rest of their life?

14 A. Yes.

15 Q. And you try to account for that in this
16 situation?

17 A. Yes, I did.

18 Q. And is that what you called the income
19 adjustment?

20 A. Yes.

21 Q. You talked about fringe benefits. How about
22 health benefits? What, if any, part of your
23 calculation were those included in?

24 A. That was included in the fringe benefits.
25 And I think I mentioned, that was a relatively small --

1 small factor. It was for a very short period of time.

2 Q. So you take what the doctor was making on a
3 given year, you add in fringe benefits, health
4 benefits, look for some statistical worklife
5 expectancy, and then you get sort of to a total of what
6 he would have earned over his life?

7 A. What he would have earned and what he would
8 have received in terms of retirement income after
9 the -- from the end of his worklife expectancy to the
10 end of the life expectancy.

11 Q. Is that the end of the analysis? You just
12 add up everything you would have brought in from
13 whatever source and say that's the total?

14 A. You could do that. It would be a very large
15 number. I think it would be a very irrelevant number.
16 We have to bring everything with -- to what's called
17 present value. And if you people make a ruling on a
18 loss or something like that, if it's paid, it's paid in
19 the current time, but it has to take care of all these
20 things that we were talking about into the future.

21 And so we have to take adjustments for,
22 basically, the earning power of money itself. If you
23 have a fund of money, you can invest it. You gain
24 interest on that. You can use the money itself, plus
25 the interest on it, for the total of the losses. And

1 so everything I do is in present value terms.

2 Q. Okay. Do you do present value before or
3 after you account for personal consumption?

4 A. Everything is -- I mean, personal consumption
5 and all of the earnings and fringe benefits, everything
6 that I do is in terms of -- of present value. So that
7 adjustment is made across the board.

8 Q. Explain to the ladies and gentlemen of the
9 jury how you reach the total of what Dr. Khiabani's
10 worklife earning capacity would have been. What is --
11 or what do you do with a thing called personal
12 consumption? Tell us what it is and then what do you
13 do from that total with it.

14 A. Personal consumption, that's a value that we
15 estimate based on his income, number of people in the
16 household, those kinds of things. That's the amount of
17 money out of his earnings and income that he would have
18 tended to spend on himself. So this adjustment is
19 taken out. He's no longer here, and so we have to also
20 eliminate the consumption that he would have had.

21 Q. And how is it that you get some of the
22 information? Do you get data particular to Dr. Kayvan
23 Khiabani?

24 A. No. The only data that I have that's really
25 specific to Dr. Khiabani is his earnings, the starting

1 salary that we had, also his date of birth. We knew
2 how old he was and his educational level. Now, beyond
3 that everything is -- you try to zero in as close as
4 you can on the types of government data that are
5 available for professionals, for example. And you just
6 try to match up as much as you can the actuality of
7 Dr. Khiabani with the published information, with the
8 published data. But it's not specific to Dr. Khiabani.
9 It's specific to the different classes or the cohorts
10 which he would be a part.

11 Q. Did you receive, to factor into part of your
12 information -- or your calculations, sort of an
13 informational packet that was completed by Dr. Katy
14 Barin, his wife?

15 A. I did.

16 Q. Help us understand what that is and why you
17 used it or how you used it.

18 A. Well, what I got from Katy Barin was a
19 personal history questionnaire, and it gave me the
20 dates of birth of people in the family, it gave the
21 educational levels, the basic background information
22 that I used for the start-up on this case.

23 Q. Okay. So let's talk specifics before I get
24 too deep. What was the total value of Dr. Kayvan
25 Khiabani's earnings over the course of his life should

1 he have lived to the statistical average life
2 expectancy?

3 A. Okay. The total earnings and income and
4 fringe benefits was \$21,112,263.

5 Q. Just by way of demonstrative, you said
6 21 million -- I'll try to blow that up a little bit --
7 112,263?

8 A. That's correct.

9 Q. Okay. That's the total. From that, did you
10 have to subtract the personal consumption you told the
11 ladies and gentlemen of the jury about?

12 A. I did, yes.

13 Q. And did you do that?

14 A. I did.

15 Q. And what was the personal consumption that
16 you reduced the total by?

17 A. That's a present value. Again, it's
18 \$5,849,846.

19 Q. And, Dr. Stokes, when you say you're doing
20 the present value of these numbers, help us understand
21 specifically. As to these two numbers, once you reach
22 a total, are you having to take that total back to what
23 a present value or the value of that is today?

24 A. No. You don't go for the total because there
25 are all these different growth rates. So each year of

1 the analysis, it's a specific thing. You have the
2 starting figure. You have some growth applied. You
3 have a discounting applied. It all happens
4 simultaneously while we're going through this entire
5 analysis.

6 Q. And is the growth and the reduction something
7 that economists in your field for the past 40 years use
8 regularly all across the country?

9 A. Oh, yes.

10 Q. And are these figures, the initial two, the
11 present value of earnings income and fringe benefits
12 and the present value of personal consumption,
13 calculated to a reasonable degree of economic
14 probability?

15 A. They are, yes.

16 Q. Okay. What do you do next?

17 A. You just look at the difference between those
18 two numbers, and that gives you the present value of
19 the loss of earnings, income, and fringe benefits.

20 Q. And what is that, for the ladies and
21 gentlemen of the jury?

22 A. That loss is, again, a present value,
23 \$15,262,417.

24 Q. So am I to understand you correctly that
25 if -- to fully, in today's money, to provide for the

1 total amount of earnings Dr. Khiabani, had he lived to
2 a statistical average age and worked statistically
3 average to the end of his worklife, you'd subtract from
4 that the present or the personal consumption and come
5 up with today -- in today dollars \$15,262,417?

6 MR. ROBERTS: Objection, Your Honor.
7 Irrelevant and confusing.

8 MR. CHRISTIANSEN: It was confusing. I will
9 admit to that.

10 THE COURT: Sustained. It was confusion.

11 MR. CHRISTIANSEN: Sorry. That's what
12 happens when you make a lawyer ask economists
13 questions.

14 BY MR. CHRISTIANSEN:

15 Q. In shorthand, tell us what the first number
16 is, 21 million and change.

17 A. That's the present value of all
18 Dr. Khiabani's expected earnings and income to the end
19 of his normal life expectancy.

20 Q. From that, you subtract what he would have
21 consumed in his life expectancy?

22 A. That's right.

23 Q. That's the second line, present value of
24 personal consumption.

25 A. Correct.

1 Q. And the third line is the present value --
2 that's today's dollars -- of the loss of earnings
3 income and fringe benefits?

4 A. Correct. It's just the difference between
5 the first two numbers.

6 Q. And that number, the third one, \$15,262,417,
7 is that number calculated to a reasonable degree of
8 economic probability?

9 A. It is, yes.

10 Q. Help the ladies and gentlemen of the jury
11 understand the term "household services." What is it
12 and why do you talk about it?

13 A. Household services, those are the things we
14 all do around the home. Everybody in the household
15 does some household services. We never get paid for
16 it. It has -- it has value.

17 And so we've made an estimate, just over the
18 years that the children would be in the household, of
19 Dr. Khiabani's contribution to all this household work,
20 to the household services.

21 Q. I don't recall if I asked you, Dr. Stokes,
22 what was the statistical worklife -- or the statistical
23 life expectancy of Dr. Khiabani? Not worklife, but
24 life expectancy.

25 A. No, you didn't ask me that one.

1 Q. I'm looking at page 5 of your report right at
2 the top.

3 A. Right. The normal life expectancy was 29
4 years.

5 Q. So he died April the 18th, 2017, and
6 approximately 29 years short of his statistical average
7 life expectancy?

8 A. That's right.

9 Q. Okay. Now -- sorry. I forgot that.

10 So you had explained household services, what
11 it was. And how did your calculation for household
12 services apply to Dr. Kayvan Khiabani specifically?

13 A. Well, if -- if he hadn't been killed, he
14 would have been contributing some of the household
15 services.

16 There's an adjustment in there. Some of the
17 household services that he would produce, he would be
18 using himself. So like we do with the personal
19 consumption, there's a personal production adjustment
20 or allowance. In other words, we take out the part
21 that's -- an estimate at least. We take out a part of
22 the total work that he does that he would be doing for
23 himself. So that's a deduction.

24 Q. When you say "a deduction," do you mean,
25 like, when the oldest boy, Aria, had gone off to

1 school, that somehow the household -- the value of his
2 household services change?

3 A. Well, that -- that is the case because I
4 stopped the analysis of household services when Keon
5 becomes age 18, again. So, yeah, during a normal
6 situation, you continue doing household services clear
7 to the end of your life expectancy.

8 Q. And did you make a calculation to a
9 reasonable degree of economic probability of Dr. Kayvan
10 Khiabani's loss of household services?

11 A. I did.

12 Q. What was that, Doctor?

13 A. The total -- and this is net of the -- the
14 production that he would do for himself -- has a
15 present value of \$53,673.

16 Q. That's the total that -- that I placed the
17 piece of paper underneath, my high-tech demonstrative.

18 You -- you got a present value of household
19 services, and then -- of \$67,319, and then it looks to
20 me like you reduced it by \$13,646?

21 A. Correct.

22 Q. And is that the reduction you explained to
23 the ladies and gentlemen of the jury?

24 A. It is, yes.

25 Q. So what does that in total make the loss of

1 Dr. -- the present value of the total economic loss for
2 Dr. Kayvan Khiabani?

3 MR. ROBERTS: Objection, Your Honor. May we
4 approach?

5 THE COURT: Yes.

6 (A discussion was held at the bench,
7 not reported.)

8 MR. CHRISTIANSEN: May I proceed, Your Honor?

9 THE COURT: Yes.

10 BY MR. CHRISTIANSEN:

11 Q. I'm sorry, Doctor. Tell me again what the
12 total was, for present value of the total economic loss
13 of the life of Dr. Kayvan Khiabani.

14 A. The total of the two numbers that we've dealt
15 with is \$15,316,090.

16 Q. And, Doctor, when you told the ladies and
17 gentlemen of the jury that, on a yearly basis, you did
18 reductions, did you make -- is one of the exhibits to
19 your chart -- or to your report that annual reduction
20 back to present value that you explained to us?

21 A. Yeah. In table page 1 of my report, all of
22 the figures in there are in present value terms.

23 Q. Okay. And table page 1, I'm not going to
24 spend any time on it, just to show that you actually
25 did the calculation for each and every year --

1 A. Yes.

2 Q. -- up through his statistical life expectancy
3 of 29 years?

4 A. Correct.

5 Q. And Table II is -- it looks to me -- a
6 similar calculation for loss of household services up
7 and to the time his youngest boy, Keon, would have
8 matriculated at age of majority?

9 A. Correct.

10 Q. And, without spending any time on it, that
11 just is reflected in Table II; fair?

12 A. It is.

13 Q. That's the 53,000 and change number?

14 A. Correct.

15 Q. Lastly, Doctor, help us understand a thing
16 called a present value discount rate. What is that?

17 A. Well, the discount rate, that's the number
18 that we talked about earlier. That's -- those are the
19 figures that we use to bring everything to present
20 value. That's the part that recognizes the earning
21 power of money itself. It's based on United States
22 Treasury issues.

23 Q. When you say "based on treasury issues," help
24 me understand what it is you're talking about.

25 A. Well, we're looking at treasury bonds,

1 treasury bills, all the different elements in my
2 reports. I use three-month, one-year, five-year, and
3 ten-year types of certificates over a long period of
4 time.

5 I take the average of those. I subtract out
6 just the inflationary part of earnings -- or of the
7 yield rates, and I look at a real yield rate. And in
8 this particular case, the real yield that I use is just
9 over a half a percentage point. In other words, by the
10 time you get the interest, inflation eats all but just
11 a little over a half a percent of that.

12 Q. Okay. And the discount rate you've used and
13 the growth rate you've used, are those readily accepted
14 discount and growth rates used by economists all over
15 the country?

16 A. They are. We may use different time periods,
17 we may use slightly different data sets, but the -- the
18 procedure, the practice is standard.

19 Q. And have you seen a competing -- or an
20 analysis by an economist hired by Motor Coach
21 Industries that refutes or disputes any of your
22 findings?

23 A. I have not.

24 Q. Are there economists available to be hired
25 all over the country?

1 A. Oh, there are. Sure.

2 Q. And have all of your opinions today,
3 including all placed in front of the jury, been
4 rendered a reasonable degree of economic probability?

5 A. They have, yes.

6 Q. Based on 40-plus years of experience?

7 A. Yes.

8 Q. And hundreds of times testifying as an
9 expert?

10 A. Yes.

11 MR. CHRISTIANSEN: That concludes direct
12 examination.

13 Thank you, Your Honor.

14 THE COURT: Thank you.

15 Mr. Roberts?

16 MR. ROBERTS: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. ROBERTS:

19 Q. Good afternoon, Dr. Stokes.

20 A. Afternoon.

21 Q. Lee Roberts. We met at your deposition?

22 A. We did, yes.

23 Q. Have you done any work on this case since
24 your deposition last year?

25 A. No, I have not.

1 Q. Okay. So your opinions today are essentially
2 the same as when you wrote your report and I was able
3 to ask you questions about it?

4 A. Yes.

5 Q. As a preliminary matter, you told
6 Mr. Christiansen that this is most of what you do now,
7 testifying in court and preparing litigation analysis?

8 A. More preparing and less testimony; but, yes,
9 based on those -- those two functions.

10 Q. Okay. And in most lawsuits we've got a
11 plaintiff, the people suing and asking for -- for money
12 damages sometimes?

13 A. Yes.

14 Q. And then you've got the defendant who's
15 defending the case?

16 A. Correct.

17 Q. Is it fair to say that just about 100 percent
18 of your work is for plaintiffs, people seeking money
19 damages?

20 A. Pretty close. 95 percent over the -- over
21 the long haul.

22 Q. So when you told me in your deposition that
23 it was 100 percent for plaintiffs, zero for
24 defendant --

25 A. No, you asked me --

1 Q. -- that was just recently?

2 A. No, that's not right. You asked me about
3 what -- in terms of testimony. In terms of testimony
4 over the last five years, all of the testimony has been
5 on plaintiff cases, none of it on defense.

6 Q. I understand. Thank you for clarifying that
7 for me.

8 What I would like to start with is,
9 initially, you told the jury that you included
10 something for fringe benefits; correct?

11 A. Yes.

12 MR. ROBERTS: And, Pete, if I could display
13 the portions of the same charts that you did.

14 MR. CHRISTIANSEN: No objection.

15 BY MR. ROBERTS:

16 Q. Let's see if I can get it up here.

17 Okay. So fringe benefits is this middle
18 column; right?

19 A. Yes.

20 Q. Okay. And let's see if I can focus this
21 thing. Okay. That's better.

22 So what year did you stop calculating fringe
23 benefits as part of loss?

24 A. 2021 was the last year.

25 Q. And why did you say you stopped fringe

1 benefits at 2021?

2 A. That's the year when Keon became age 18.

3 Q. Okay. Now, Dr. Khiabani, had he lived, would
4 have continued to earn fringe benefits as part of his
5 employment; right?

6 A. Oh, yes.

7 Q. But because you were looking at fringe
8 benefits that might be recoverable by the -- the boys
9 as heirs, you stopped at age 18; is that fair?

10 A. I don't know if I'd put it quite that way,
11 but, basically, I did it because, if you're having a
12 fringe benefit -- these are monies you don't get to
13 spend -- you have to have people that are receiving
14 them. And if there are no more kids legally in the
15 household, or statistically in the household, it seemed
16 appropriate to stop the analysis on fringe benefits at
17 that point.

18 Q. Okay. And as an economist preparing a report
19 and analysis for litigation, you try to prepare it to a
20 more-likely-than-not standard; correct?

21 A. Oh, sure.

22 Q. And that's why you use statistics instead of
23 guessing what might happen; correct? Because once you
24 pass the statistical average, it's not more likely than
25 not going to occur; is that fair?

1 A. That's usually the case, yes.

2 MR. CHRISTIANSEN: Judge, can we approach
3 real briefly with Mr. Roberts?

4 THE COURT: Yeah.

5 (A discussion was held at the bench,
6 not reported.)

7 BY MR. ROBERTS:

8 Q. Okay. Now that we've established why you cut
9 off fringe benefits in 2021, I'd like to talk about
10 household services if I could.

11 And do you have your report with you, sir?

12 A. I do.

13 Q. Okay. Do you recall what year you cut off
14 loss of household services?

15 A. 2021.

16 Q. So the same year you cut off fringe benefits?

17 A. I did.

18 Q. And explain to the jury why you cut off
19 household services in 2021 even though, as you said,
20 Dr. Khiabani, had he lived, would have continued to
21 perform household services until probably his death.

22 A. Well, statistically, the children are gone in
23 2021 or sometime during that year. And so there's no
24 one left in the household to provide these household
25 services to. And so I stopped the analysis at that

1 same point.

2 Q. And just so the jury understands -- I know it
3 can seem insensitive to ask about some of these issues.
4 You understand my duty to do so in a case like this,
5 though; right?

6 A. I do.

7 Q. Okay. When you said there's no one left in
8 the household, at the time you prepared your report
9 last year, was Dr. Katy Barin still alive?

10 A. She was.

11 Q. Okay. But in projecting that there would be
12 no one left in the household in 2021 after the boys
13 reached 18, you were aware that more likely than not
14 she would not still be alive in 2021; correct?

15 A. Yeah. I was aware that she probably wouldn't
16 be alive at a much earlier date, yes.

17 Q. Okay. And, in fact, I think 2018 was the
18 date you had used in that time?

19 A. I did, yes.

20 Q. So what you're saying is, even though
21 Dr. Khiabani would have continued to do things around
22 the house, it would not be benefiting any other member
23 of the household because he would be the only one in
24 the household more likely than not; correct?

25 A. Correct.

1 Q. So if he's not more likely than not going to
2 be providing services to the boys after they turn 18,
3 you're not going to include that in the report as an
4 economist; fair?

5 A. Correct.

6 Q. Now, of the \$53,000, the present value of the
7 household services that you put in your report --

8 A. Yes.

9 Q. -- some of that would have gone to Dr. Barin
10 before she passed; right?

11 A. Sure.

12 Q. Some of that would have gone to Aria
13 Khiabani; correct?

14 A. Yes.

15 Q. And some to Keon Khiabani?

16 A. Yes.

17 Q. Did you break that down?

18 A. No, I didn't.

19 Q. Okay. Can you give the jury any guidance as
20 to how they would divide that up if they were putting a
21 separate number for household services to each of the
22 plaintiffs in this action?

23 A. No, I really can't. The data that I used,
24 it's not specific in terms of which sibling receives
25 more. We know from some other studies that usually the

1 first sibling receives more monies than the second one,
2 just like first kids receive a little bit more
3 attention than the second one.

4 But in terms of the data that I used here,
5 there's no way of breaking it down. That other
6 information is a totally different set of numbers, and
7 you can't really bring the two together.

8 Q. Okay. Thank you, Doctor.

9 In the section of your report discussing
10 value of household services, you indicate that you did
11 not calculate the actual hour -- use the actual hours
12 of household services performed by Dr. Khiabani prior
13 to his death as part of your analysis; right?

14 A. No. Again, it's -- it's a statistical level.

15 Q. Okay. And you write, "Since most family
16 members do not record the amount of time they allocate
17 toward various types of household work, data from the
18 American Time Use Survey are used to estimate the time
19 spent on household work; right?

20 A. That's right.

21 Q. So you used a statistical average?

22 A. I did.

23 Q. And how many hours per week was that? Do you
24 recall?

25 A. It varied from a high of 1,340 hours per year

1 down to 820 -- 829 hours per year.

2 Q. So that's what it varied by, but what did you
3 use? You didn't use --

4 A. Well, I used a different one for each year.

5 Q. Okay. Very good.

6 And was that more or less 27 hours a week on
7 average?

8 A. I didn't look at it that way, but if you say,
9 I would agree. But let me take a look.

10 Q. You can double-check my math. I'm a lawyer,
11 not an economist.

12 A. Well, it goes 16 to \$25, yes.

13 Q. Okay. Now, although in your report you said
14 you used statistics because people don't particularly
15 record their household services, you told
16 Mr. Christiansen that you have your client fill out a
17 questionnaire to assist you in your analysis; is that
18 right?

19 A. Yes.

20 Q. And, in this case, did -- did Dr. Barin fill
21 out the questionnaire before she passed?

22 A. She did.

23 Q. And, in that questionnaire, did you ask
24 Dr. Barin to estimate the amount of household services
25 provided by the deceased person prior to his death?

1 A. I did, yes.

2 MR. ROBERTS: Permission to display to the
3 jury, Pete?

4 MR. CHRISTIANSEN: No objection.

5 MR. ROBERTS: I should have asked you, Your
6 Honor, permission from you.

7 THE COURT: Yes.

8 BY MR. ROBERTS:

9 Q. All right. Okay. Is this the page where you
10 asked Dr. Barin to estimate household services
11 performed by Dr. Khiabani during his lifetime?

12 A. It is, yes.

13 Q. And two to three hours per week for inside
14 maintenance and repair; correct?

15 A. Yes.

16 Q. Four hours per week for shopping and consumer
17 purchases?

18 A. Yes.

19 Q. And eight hours per week for transportation
20 for household members?

21 A. Correct.

22 Q. So that's about 14, 15 hours?

23 A. It is.

24 Q. And that's less than the statistical averages
25 you used?

1 A. It is.

2 Q. And Dr. Barin didn't indicate that
3 Dr. Khiabani spent any time cleaning; correct?

4 A. Correct.

5 Q. No time meal preparation?

6 A. Yes.

7 Q. No time caring or helping household members?

8 A. That's correct.

9 Q. Okay. Did you factor this in any way into
10 your analysis, or did you just use statistical
11 averages?

12 A. No, I just used the statistical averages.

13 Q. Let's move on to your calculations of loss of
14 income, the economic loss that you just went through.

15 Is it fair to say that Mr. Kemp requested
16 that you estimate the present value of the loss of
17 earnings income and fringe benefits resulting from the
18 death of Dr. Kayvan Khiabani?

19 A. Yes.

20 Q. Okay. Were you ever asked to estimate the
21 loss of probable support to either Dr. Barin before she
22 passed, to Aria Khiabani, or to Keon Khiabani?

23 A. No, I was not.

24 Q. And you rendered no opinion on that; is that
25 correct?

1 A. That's correct.

2 MR. ROBERTS: Your Honor, can I move the --
3 the flip chart over?

4 THE COURT: Yes.

5 MR. ROBERTS: Thank you.

6 BY MR. ROBERTS:

7 Q. Here -- okay. If you could get out for me
8 the table that you referred to during your direct
9 examination where income and personal consumption is
10 shown on year-by-year basis.

11 A. (Witness complies.)

12 THE COURT RECORDER: Counsel -- Counsel, you
13 have to put the microphone on.

14 MR. ROBERTS: Oh, sure. Am I not picking up?

15 BY MR. ROBERTS:

16 Q. Okay. Doctor, first of all, you stated that
17 you used 2016 income as sort of a base.

18 A. Yes.

19 Q. Is that fair?

20 A. Yes.

21 Q. And do you have the W-2 income for 2016 for
22 Dr. Khiabani?

23 A. That's that \$990,000 figure that we started
24 with. 900 -- I'm sorry -- \$990,503.

25 Q. 990,503; is that correct?

1 A. Yes. Yes.

2 Q. Okay. And 2018 would be the first full year
3 after Dr. Khiabani's death; right?

4 A. Correct.

5 Q. What did you project Dr. Khiabani's income
6 would have been in 2018 had he lived?

7 A. Be about \$1,013,998.

8 Q. 1,013,000?

9 A. Yes.

10 Q. Okay.

11 A. Well, almost 14,000. It was 998,000.

12 Q. And for 2018, what did you calculate
13 Dr. Khiabani's personal consumption to be, the amount
14 he would have spent on himself?

15 A. About -- let's see -- \$83,148.

16 Q. In your report -- and I think in your
17 deposition -- you said that, statistically, people
18 spend somewhere between about 8 percent and 34 percent
19 of their income on themselves; right?

20 A. Well, not everybody. But in the income
21 bracket where Dr. Khiabani was and with the number of
22 people in the household, yes, the bottom end was the
23 8.2 percent that you mentioned.

24 Q. Okay. And you used the bottom end; correct?

25 A. Well, for this particular year that you

1 asked, yes. The next year, it roughly doubles.

2 Q. And it doubles because, at that time, you
3 factored out that Dr. Barin would no longer be in the
4 household; right?

5 A. That's correct.

6 Q. Now, is it fair to say, Doctor, that
7 individuals can be, you know, the earners and spenders?
8 Some people earn a lot but spend a lot?

9 A. Sure.

10 Q. And some people earn a lot and save a lot;
11 right?

12 A. Yes.

13 Q. You did not make any effort to determine how
14 much Dr. Khiabani actually spent on himself out of his
15 own income; is that correct?

16 A. That's correct.

17 Q. Okay. And you don't know if he was a big
18 spender or not; right?

19 A. I don't.

20 Q. Okay. You know how much he paid for his
21 bicycle?

22 A. No. I have no idea.

23 Q. Okay. Is -- \$3,500 for a bicycle, does that
24 indicate a big spender or a saver?

25 A. It would be a pretty good bicycle.

1 Q. Now, you said that you deducted personal
2 consumption from lost income; right?

3 A. Yes.

4 Q. And if you -- you did that, that would be
5 over \$900,000 available in 2018; right?

6 A. Yes.

7 Q. Okay. Now, you weren't telling the jury
8 that, if the doctor had lived, he would have given
9 \$900,000 to his sons, are you?

10 A. No.

11 Q. Okay.

12 MR. ROBERTS: Your Honor, may I approach?
13 Out of an abundance of caution.

14 THE COURT: Certainly.

15 (A discussion was held at the bench,
16 not reported.)

17 THE COURT: We're just going to take about a
18 five-minute recess, but I'd like the jury to remain.
19 You can stand up, move around if you need to.

20 THE MARSHAL: Please remain seated. Court is
21 in recess five minutes.

22 (Whereupon a short recess was taken.)

23 THE MARSHAL: Please be seated. Come to
24 order. Department 14 is back in session.

25 THE COURT: Counsel, please approach.

1 (A discussion was held at the bench,
2 not reported.)

3 THE COURT: You may proceed, Mr. Roberts.

4 MR. ROBERTS: Thank you, Your Honor.

5 BY MR. ROBERTS:

6 Q. Okay. We were putting a few sample numbers
7 up here for the jury, Dr. Stokes.

8 And in 2018, you assumed that -- that
9 Dr. Barin would -- would still be alive; correct?

10 A. I did.

11 Q. Okay. But, as you know, she passed before
12 2018?

13 A. Oh, yes.

14 Q. Okay. And that doesn't change -- does that
15 change part of your analysis?

16 A. It would have, sure.

17 Q. And the personal consumption number would
18 have -- would have gone up?

19 A. The personal consumption would have gone down
20 with one more person in the household. And so the --
21 the consumption that would be allocated to Dr. Khiabani
22 to Kayvan would be less.

23 Q. Okay. So maybe I'm confused. Is this 83,000
24 the number in your report?

25 A. No.

1 Q. So the number in your report -- could you
2 double-check personal consumption in the chart attached
3 to your report.

4 A. What you need to -- to consider is you are
5 asking me now in terms of what the numbers would have
6 been, the estimated earnings, the estimated -- you
7 know, just on the basis of -- of the numbers. All the
8 things that you're looking at in this chart are in
9 present value. So there's another adjustment that's
10 not included in the numbers that -- that we just
11 derived.

12 Q. Your report indicates the present value of
13 personal consumption in 2018 would be how much?

14 A. It's present value here. \$82,829.

15 Q. And you assumed that Dr. Barin would still be
16 alive at the time you prepared these numbers?

17 A. I did.

18 Q. The 2019 numbers, what did you have the
19 present value of Dr. Khiabani's personal consumption?

20 A. \$164,058.

21 Q. Okay. So at the time you did the report, you
22 assumed that, when Dr. Barin passed, Dr. Khiabani's
23 personal consumption would go up by about half?
24 Double.

25 A. Yeah. There are two things happening. One

1 of the children has become age 18 as well, so it's --
2 it's a double whammy in this year between 2018 and '19.
3 It's not just because of the absence of Katy Khiabani.

4 Q. Okay. Now that you know Dr. Barin passed a
5 year earlier, you would want to make an adjustment to
6 your report; right?

7 A. You could, sure.

8 Q. Okay. But the numbers you have there are off
9 a little?

10 A. Sure.

11 Q. Okay. But you also made an adjustment to
12 personal consumption when the children were soon to
13 move out of the house; right?

14 A. I did.

15 Q. Why do you assume that personal consumption
16 of Dr. Khiabani would go up when the children left the
17 house at 18?

18 A. Well, the fewer number of people in the house
19 to spread the earnings over, then the consumption moves
20 in a commensurate way.

21 Q. Because Dr. Khiabani can't be assumed, more
22 likely than not, to continue supporting his children
23 after they're 18; right? At the same levels.

24 A. You know, I don't know about that, but in
25 terms of the consumption that we do in one of these

1 analyses, the assumption is always that the kids leave
2 the home. And that doesn't come out in terms of
3 support necessarily. So, yeah, I guess that's -- what
4 you say is correct.

5 Q. Okay. Thank you.

6 What year did you assume that Dr. Khiabani
7 would retire at age 69?

8 A. You know, it's a little different for
9 retirement. The end of the worklife expectancy, that
10 could be different than a retirement age. When he
11 would actually retire, we really don't know. But that
12 average, it's a combination of the desire to retire,
13 the necessity to leave the labor market, a number of
14 different things. So it's not just -- it's not just my
15 assumption of would he have retired, but if you
16 leave -- would he leave the competitive labor market
17 for whatever reason. That's the end of the worklife
18 expectancy.

19 Q. And you used age 69?

20 A. It was, yes.

21 Q. And is that a statistical average for when
22 professionals -- that's the end of their worklife as a
23 professional?

24 A. Well, if you start out at his age at the time
25 of the analysis, the worklife expectancy is there.

1 Now, as you become older, the worklife expectancy moves
2 out a little bit, but not, you know, one-to-one basis.

3 Q. Because if you managed to keep working
4 another year, then you may be a little ahead of the
5 curve?

6 A. You may be, yes.

7 Q. But at the time that you did the analysis,
8 based on his age at the year of his death, the
9 statistics say, more likely than not, he's going to
10 stop working at age 69?

11 A. Correct.

12 Q. And I believe Mr. Christiansen asked you if
13 some occupations maybe have a longer worklife than
14 others?

15 A. Sure.

16 Q. And you used a professional standard, not
17 everyone, but what's the average work expectancy of a
18 professional; right?

19 A. I did.

20 Q. And if there are specific worklife
21 expectancies for surgeons, you didn't use that?

22 A. You know I've never -- I've seen some limited
23 studies on some professions. They're really limited,
24 and I wouldn't count on them for, you know, universal
25 validity.

1 Q. Okay. So very limited and, I think, probably
2 not reliable enough to meet the more-likely-than-not
3 standard, to a reasonable degree of economic certainty;
4 right?

5 A. That's right.

6 Q. All right. Very good.

7 So when the jury's applying a
8 more-likely-than-not standard, if they reach the issue
9 of damages, they -- they stop at 69 for when they're
10 looking at lost income because, more likely than not,
11 based on the statistics, that's the last year he works;
12 correct?

13 A. I didn't understand your whole question, but
14 the last part is true, yes.

15 Q. So -- but you continue to put income in your
16 report after, statistically, he's not going to be
17 working; correct?

18 A. Correct.

19 Q. And what is the income before reduction of
20 present value for the first year? Say, when he's age
21 70.

22 A. It's in real terms \$382,823. And that would
23 be for 2036.

24 Q. So your report indicates that he's going to
25 have income of 382,000 a year but he's not going to be

1 working.

2 A. Correct.

3 Q. Okay. And did you say that he -- that income
4 could be coming from savings that he managed to put
5 away in his prior income earning years?

6 A. Sure.

7 Q. Okay. And then his personal consumption is
8 going up at that point about what? 34 percent?

9 A. It is.

10 Q. Okay. So 34 percent of the 382, you're
11 saying is -- would be personal consumption. You're
12 subtracting that and you come up with a new number.

13 You're not here to tell the jury that's the
14 number that would go to the boys, are you, as a matter
15 of law?

16 A. No, I'm not making that.

17 Q. And that's beyond the scope of your report;
18 right?

19 A. It is.

20 MR. ROBERTS: Okay. Thank you very much,
21 Doctor. I appreciate it.

22 REDIRECT EXAMINATION

23 BY MR. CHRISTIANSEN:

24 Q. Doctor, you sat through 40 minutes of
25 questioning by Mr. Roberts. Did any of those questions

1 change your conclusions?

2 A. No.

3 MR. CHRISTIANSEN: Judge, may I move the
4 tripod back?

5 THE COURT: Yes.

6 THE MARSHAL: Got it.

7 MR. CHRISTIANSEN: Hope so. Thank you.

8 BY MR. CHRISTIANSEN:

9 Q. Have you found in your time, Doctor, doing
10 litigation that sometimes lawyers conflate issues?

11 A. Lawyers do what?

12 MR. ROBERTS: Objection, Your Honor.

13 THE COURT: Sustained.

14 BY MR. CHRISTIANSEN:

15 Q. Well, let me ask it to you directly.

16 Mr. Roberts voiced some complaints about your
17 calculations relative to your assumption that Katy was
18 going to live to the year 2018.

19 A. Yes.

20 Q. And you told the jury, you know, I was wrong;
21 she passed in 2017.

22 A. Yes.

23 Q. That assumption that she lived to 2018 inured
24 to the benefit of the defendant in your calculation,
25 did it not?

1 A. It did.

2 Q. So he's complaining about you saving his
3 client money?

4 A. It appears that that's the case, yes.

5 Q. Okay. And he talked about -- he showed you
6 this chart where Katy -- this chart was completed, it
7 looks to me, to be August the 10th of 2017?

8 A. Yes.

9 Q. If I told you Katy Barin passed away 58 days
10 later, would you have any reason to disagree with me?

11 A. I would not.

12 Q. And so 58 days from pass, and she filled out
13 a chart that Mr. Roberts wants to take issue with the
14 amount of time she attributed to her husband working
15 around the house?

16 A. It appears that that's the case, yes.

17 Q. Okay. Did Mr. Roberts or MCI hire an
18 economist to come in here and give alternative
19 theories?

20 A. Not to my knowledge, no.

21 Q. And how many cases have you been in in
22 litigation?

23 A. Several thousand.

24 Q. And on virtually every one, does the other
25 side have an economist?

1 A. No, but in a good number, you certainly do
2 see other economists on the other side. I work
3 sometimes on defense as well.

4 Q. And you heard some questions about "Are you
5 here to tell the people on the jury what Dr. Khiabani
6 would have provided for his children?"

7 Remember those questions?

8 A. Yes.

9 Q. You're not here to say one way or another how
10 much time he devoted or love he had for his children or
11 money he would spend; correct?

12 A. That's correct, yes.

13 Q. That's the jury's job.

14 A. I believe so.

15 Q. And when you have Dr. Khiabani statistically
16 ending his worklife at age 69, that presupposes he's
17 not able to work past it; correct?

18 A. Well, it -- that's a little bit strong. All
19 it does is it supposes that he's not in the labor
20 market for whatever.

21 Q. For example, lawyers are in that
22 profession -- or in that; right?

23 A. Yes.

24 Q. We look over here, Mr. Barger is older than
25 69. He's working full-time, isn't he?

1 A. I don't --

2 THE WITNESS: Do you work full-time?

3 MR. BARGER: Half.

4 BY MR. CHRISTIANSEN:

5 Q. He's working full-time in here.

6 And your assumption benefited the defendant;
7 correct?

8 A. Well, the worklife expectancy I used, that
9 was the statistical level for the age of a professional
10 at the time of the analysis.

11 Q. Were there any criticisms of your total
12 number of 15-plus million?

13 A. No.

14 MR. CHRISTIANSEN: Nothing else. Thank you.

15 MR. ROBERTS: Nothing further, Your Honor.

16 THE COURT: Anything from the jury?

17 THE MARSHAL: Yes, Your Honor.

18 THE COURT: Oh, we do? Okay.

19 (A discussion was held at the bench,
20 not reported.)

21 THE COURT: All right. We have a question
22 from the jury.

23 THE WITNESS: Sure.

24 THE COURT: All right. The first question is
25 "With the projections, are we taking into consideration

1 of where children would go to college (in regards to
2 personal consumption)?"

3 THE WITNESS: No, we're not. I mean, we know
4 that there's some costs associated with that, but, like
5 I said, the government data indicate that the children
6 are no longer a part of the household after age 18.
7 And so don't look at the -- don't look at the cost of
8 college at all in my analysis.

9 THE COURT: Okay. And the second question is
10 not going to be asked because of the answer to the
11 first question.

12 Thank you very much.

13 THE MARSHAL: Any other questions?

14 THE COURT: Do you have any follow-ups?

15 MR. ROBERTS: No, Your Honor.

16 MR. CHRISTIANSEN: No, Your Honor.

17 THE COURT: Any other questions from the
18 jury?

19 All right. I think that's a no. Right?

20 Okay. You're excused. Thank you very much.

21 MR. ROBERTS: Your Honor, we were going to --
22 may we approach?

23 THE COURT: Yes.

24 (A discussion was held at the bench,
25 not reported.)

1 THE COURT: All right. We were going to take
2 a ten-minute break.

3 And I'd like you to wait, please. Okay.

4 THE WITNESS: Okay.

5 THE COURT: Ladies and gentlemen, you're
6 instructed not to talk with each other or with anyone
7 else about any subject or issue connected with this
8 trial. You are not to read, watch, or listen to any
9 report of or commentary on the trial by any person
10 connected with this case or by any medium of
11 information, including, without limitation, newspapers,
12 television, the Internet, or radio.

13 You are not to conduct any research on your
14 own relating to this case, such as consulting
15 dictionaries, using the Internet, or using reference
16 materials.

17 You are not to conduct any investigation,
18 test any theory of the case, re-create any aspect of
19 the case, or in any other way investigate or learn
20 about the case on your own.

21 You are not to talk with others, text others,
22 tweet others, google issues, or conduct any other kind
23 of book or computer research with regard to any issue,
24 party, witness, or attorney involved in this case.

25 You're not to form or express any opinion on

1 any subject connected with this trial until the case is
2 finally submitted to you.

3 We're going to take a 15-minute break, and I
4 would like you to stay on this floor, please.

5 THE MARSHAL: All rise. Follow me this way,
6 please.

7 (The following proceedings were held
8 outside the presence of the jury.)

9 THE MARSHAL: Please be seated. Come to
10 order.

11 THE COURT: Okay.

12 MR. BARGER: Do you want the witness?

13 MR. ROBERTS: No. We've got to keep him.

14 We're going to put on the income tax after the
15 presence; then the Court's going to decide later.

16 THE COURT: Will there be another issue we
17 need to take before the next witness? That's why I
18 gave them five more minutes.

19 We're on the record now.

20 MR. ROBERTS: Okay. Your Honor, may I
21 proceed to make a proffer outside the presence of the
22 jury?

23 THE COURT: Yes.

24 MR. ROBERTS: Thank you, Your Honor.

25 Let me get my chart again, Dr. Stokes.

OFFER OF PROOF

1
2 BY MR. ROBERTS:

3 Q. Okay. A few minutes ago when we were
4 talking, you told me that the year 2016 was the base
5 year that you used for your calculations; correct?

6 A. Correct.

7 Q. And you gave me an income number of \$909,503;
8 right?

9 A. Correct.

10 Q. Okay. Did you have Dr. Khiabani's W-2 from
11 the board of regents at the time you did your report?

12 A. Not sure. What's -- for this year? For
13 2016?

14 Q. For 2016.

15 A. I must have, yes.

16 Q. And I'm going to show you a copy of the W-2
17 for 2016 from your work file that you provided in this
18 matter.

19 Does this W-2 indicate the total reported
20 income from the board of regents?

21 A. It appears to, yes.

22 Q. And what is the amount of that income as
23 reported on the W-2?

24 A. \$990,503.12.

25 Q. Okay. So is it fair to say that the number

1 that you previously gave to the jury as the base number
2 for calculations was a gross income number?

3 A. Yes.

4 Q. Okay. It was before taxes?

5 A. Yes.

6 Q. Okay. And does the W-2 indicate the amount
7 of taxes that were withheld before the money was paid
8 to Dr. Khiabani?

9 A. It shows -- it shows reductions, yes.

10 Q. Okay. And what -- what's the amount of tax
11 up on that top line, "Federal tax withheld"?

12 A. 300 -- pardon me. \$332,302.91.

13 Q. Okay. So is it fair to say that the amount
14 of income that Dr. Khiabani was receiving throughout
15 the year was his gross income of 952 and some change
16 less the taxes, or approximately just -- \$619,777?

17 A. I'll take your word for it.

18 Q. Okay. Sounds about right?

19 A. It does.

20 Q. You work with numbers a lot. I got close.

21 Now, we know that the amount withheld isn't
22 the amount finally paid. Even though that's the amount
23 he would have had in his hand that year, he would have
24 had an opportunity to file tax returns and either get
25 some back or pay extra; right?

1 A. Yes.

2 Q. And you have the 2016 income tax returns in
3 your file showing the actual amount of tax paid by
4 Dr. Khiabani's family; correct?

5 A. I believe that's the case, yes.

6 MR. ROBERTS: If I could approach, again,
7 Your Honor?

8 THE COURT: Certainly.

9 MR. ROBERTS: Thank you.

10 BY MR. ROBERTS:

11 Q. Here's one page from the 2016 tax return
12 showing the summary of the total income to the family
13 and the total amount paid. Do you see that?

14 A. Yes.

15 Q. And am I correct that that's just a little
16 bit over 35 percent of the gross income that the
17 Khiabanis paid in taxes?

18 A. Looks like it, yes.

19 Q. Okay. So the amount withheld from taxes is
20 actually a little less than the actual tax Dr. Khiabani
21 had to pay; right?

22 A. For 2016, yes.

23 Q. Okay. So we can use that number as a pretty
24 safe number of the maximum amount he would have had to
25 spend after he paid his federal taxes?

1 A. For that -- for -- yes. For 2016?

2 Q. Okay.

3 A. Correct.

4 Q. And Mr. Christiansen said that it's up to the
5 jury to determine how much he would have provided to
6 his children in lost support; correct?

7 A. I believe so, yes.

8 Q. All right.

9 A. Oh, yes, he did.

10 Q. He couldn't have given his children any more
11 than he had left in his pocket after he paid his
12 federal taxes, could he?

13 A. Not in any current sense, no, he could not.

14 MR. ROBERTS: Okay. Thank you very much
15 Doctor.

16 That's all I have, Your Honor. I appreciate
17 the opportunity.

18 THE COURT: Okay. Thank you.

19 Mr. Christiansen, anything? Okay.

20 Thank you very much. You're excused. Thank
21 you.

22 MR. KEMP: Mr. Stokes is excused?

23 THE COURT: Yes, he's excused.

24 I'm going to start using my mic. I'm also
25 too soft-spoken at times. All right.

1 It was my understanding that before -- it's
2 Mr. Hubbard next; correct?

3 MR. CHRISTIANSEN: Yes, Your Honor,
4 Mr. Hubbard is next.

5 THE COURT: Okay. And there's something
6 counsel wanted to discuss?

7 MR. HENRIOD: Yes, Your Honor. Joel Henriod.
8 We just want to make sure we don't cross a
9 line, and we think the -- we understand the Court's
10 order on contributory negligence -- or I'm sorry -- on
11 the comparative negligence of Mr. Hubbard or any third
12 parties deferred the decision on what could be asked in
13 terms of bias.

14 Perhaps I'm wrong. We're just asking for
15 clarification. Here's what we want to do.

16 THE COURT: Okay.

17 MR. HENRIOD: We want to go with him into the
18 fact that he was being personally blamed for this
19 death. That goes to his motive to deflect
20 responsibility, and I even think we should be able to
21 get into the fact that at that point he had been sued
22 because the interest in self-exoneration only becomes
23 higher when that's the case.

24 And I don't think the fact that the case has
25 settled needs to come in or is even relevant because at

1 this point he has an incentive to testify consistently
2 with what he said before. We know that whoever is --
3 he's likely going to be asked, "Isn't this what you
4 said in your deposition and is that your testimony
5 today?"

6 So he had a bias to protect himself when he
7 testified before, and he has an incentive to testify
8 consistently with that today to avoid being accused of
9 perjury. And I don't think that we have to get into
10 either the existence of settlement or the amount of
11 settlement to be able to do that.

12 Thank you.

13 MR. KEMP: Well, Judge, the damage is done
14 when they say the plaintiff --

15 THE COURT: Speak louder, please.

16 MR. KEMP: Your Honor, they want to say to
17 the jury, "The plaintiff sued you and blamed you for
18 this accident."

19 That is exactly what is precluded by the
20 motion in limine. And, you know, oh, sure they don't
21 want to say it settled and it's over. They don't want
22 to say that. They want to say the ultimate sin, that
23 the plaintiffs took the position that he was at fault.
24 And the only reason they're doing that is to try to
25 impute some negligence that's foreseeable -- Court's

1 already ordered -- on the part of the driver.

2 So none of that should come in. None of that
3 should come in. He's a settled defendant. Our case
4 law is crystal clear that they can't say anything about
5 a settled defendant. Can't say he settled and
6 certainly can't say you sued him first.

7 So for that reason, Your Honor, we would
8 vehemently object to this. I'm glad they brought it up
9 because I would have been ballistic if they started
10 asking these questions in front of the jury.

11 And, you know, with regards to motive to
12 deflect and personally blame, you know, any time a
13 driver's in an accident, you know, you can argue that
14 they were worried about being personally blamed.

15 But what they want to do is go farther than
16 that and say that we sued them to get into the
17 negligence issue, Your Honor, and I am vehemently
18 against that.

19 MR. HENRIOD: I don't have anything to add to
20 the point I've already made or the briefing that's been
21 submitted.

22 THE COURT: Okay. Mr. Henriod, I'm glad you
23 asked about this now because, consistent with my
24 orders, and also even before that came up, I think I
25 had discussions about not discussing -- that there had

1 been other parties that were involved in this
2 litigation before. So -- so I do not want that to be
3 asked. I don't think it's -- I think it's more
4 prejudicial than probative, and I think that's a
5 problem.

6 MR. HENRIOD: Okay. And then that extends
7 even just to -- to being blamed at all?

8 THE COURT: Yes. There's -- I -- I --
9 there's an order that's very clear that comparative or
10 contributory negligence is -- specifically the driver
11 is not to be discussed.

12 MR. HENRIOD: Very well, Your Honor. Thank
13 you.

14 THE COURT: Thank you.

15 MR. KEMP: Your Honor, I was in the room --

16 THE COURT: Excuse me. Just for the record,
17 Mr. Henriod, that has to do with the consumer
18 expectation test? No. Let me think right now. Strict
19 liability and product defect and so forth.

20 MR. HENRIOD: Okay.

21 THE COURT: Okay. I just wanted to make sure
22 I -- I stated that.

23 MR. KEMP: Your Honor, what time was the jury
24 coming back?

25 THE COURT: 3:00 o'clock. Do you want to

1 take a quick break?

2 MR. KEMP: Yeah.

3 THE COURT: Okay. Yes. Thank you.

4 (Whereupon a short recess was taken.)

5 THE MARSHAL: Please remain seated. Come to
6 order. Department 14 is back in session.

7 THE COURT: Ready for the jury?

8 MR. CHRISTIANSEN: Can I have just one
9 second, Your Honor?

10 THE COURT: We are off the record.

11 (Whereupon a short recess was taken.)

12 THE COURT: Ready?

13 THE MARSHAL: Yes, whenever you are.

14 THE COURT: Mr. Christiansen, are you ready?

15 MR. CHRISTIANSEN: One quick second.

16 THE MARSHAL: All rise.

17 (The following proceedings were held in
18 the presence of the jury.)

19 THE MARSHAL: All the jurors are present,
20 Your Honor.

21 THE COURT: Okay. Welcome back, ladies and
22 gentlemen.

23 THE MARSHAL: Please be seated. Come to
24 order.

25 THE COURT: Do the parties stipulate to the

1 presence of the jury?

2 MR. KEMP: Yes, Your Honor.

3 MR. ROBERTS: Yes, Your Honor.

4 THE COURT: Thank you.

5 Plaintiffs, please proceed.

6 MR. CHRISTIANSEN: Plaintiff calls Edward
7 Hubbard.

8 Can I approach while he's coming up, Your
9 Honor?

10 THE COURT: Yes.

11 (A discussion was held at the bench,
12 not reported.)

13 THE MARSHAL: Watch your step, and step up
14 there. And you're going to raise your right hand.

15 THE COURT: Okay. Please swear --

16 MR. CHRISTIANSEN: May I proceed, Your Honor?
17 Oh, I'm sorry. You got to swear him in first, I guess;
18 right?

19 THE CLERK: You do solemnly swear the
20 testimony you're about to give in this action shall be
21 the truth, the whole truth, and nothing but the truth,
22 so help you God?

23 THE WITNESS: I do.

24 THE CLERK: Thank you. Please be seated.

25 And please state and spell your name.

1 THE WITNESS: Edward Hubbard; E-d-w-a-r-d,
2 H-u-b-b-a-r-d.

3 THE CLERK: Thank you.
4

5 DIRECT EXAMINATION

6 BY MR. CHRISTIANSEN:

7 Q. Mr. Hubbard, what is it that you do for a
8 living, sir?

9 A. I'm a bus operator.

10 Q. And do you work here in Las Vegas?

11 A. Yes.

12 Q. How long have you operated buses?

13 A. Since 1997.

14 Q. Where did you -- at what point in time did
15 you come here to Las Vegas?

16 A. Two years ago next month, April.

17 Q. April the 18th, 2016?

18 A. April 9th, 2016.

19 Q. Okay. Were you operating a bus April 18th of
20 2017?

21 A. Yes.

22 Q. And who were you working for? Who -- who is
23 your employer?

24 A. Michelangelo.

25 Q. What were you doing that day, sir?

1 A. I was operating --

2 Q. Do you have a cell phone in your jacket?

3 THE COURT: You need to speak louder.

4 THE MARSHAL: Do you have a cell phone?

5 Someone have a cell phone near the mics?

6 Not sure, Your Honor.

7 THE COURT: You need to speak a little bit
8 louder, please, sir.

9 THE WITNESS: Yes.

10 THE COURT: Thanks.

11 Go on.

12 BY MR. CHRISTIANSEN:

13 Q. I think the last thing I asked you was who
14 were you employed by, and you told me Michelangelo?

15 A. Yes.

16 Q. Okay. Since 2016?

17 A. Yes.

18 Q. Prior to that, where did you work and what
19 did you do?

20 A. New York City Transit Authority in New York
21 City.

22 Q. And what did you --

23 A. Bus operator.

24 Q. You were a bus operator for the transit
25 authority in New York City?

1 A. Yes.

2 Q. And when did you begin that occupation,
3 Mr. Hubbard?

4 A. November of 2004.

5 Q. When was it that you obtained your commercial
6 driver's license?

7 A. 1997. I don't know the exact month, but
8 1997.

9 Q. And if I refer to your commercial driver's
10 license from this point forward as a CDL, will you know
11 what I'm talking about?

12 A. Yes, sir.

13 Q. That's sort of the shorthand for a commercial
14 driver's license?

15 A. Yes.

16 Q. Okay. What time -- what was your shift back
17 in April of 2017? What time did you get up and go to
18 work?

19 A. I was -- I think our yard time was 10:00 a.m.
20 I'm really not sure at that time of the -- but I think
21 10:00 a.m. I had to pick up at the McCarran Airport.

22 Q. Okay. So you had to get to work at the yard
23 sometime before 10:00 if you needed to be at McCarran
24 at 10:00?

25 A. Correct.

1 Q. What time do you think you got to the yard
2 that morning?

3 A. Would probably be about 8:30, 9:00 o'clock.

4 Q. So the ladies and gentlemen of the jury are
5 sort of oriented into what part of town the yard is,
6 you work out sort of off of Craig Road and the 15?
7 That's where the yard is?

8 A. Yes, North Las Vegas.

9 Q. Near, like, Republic Services, which is more
10 west?

11 A. Yes.

12 Q. That's where the buses stay?

13 A. Yes.

14 Q. What did you do that morning when you got to
15 work?

16 A. I got to work, checked in, got my paperwork,
17 saw which bus I had, went and pretripped my bus, turned
18 my paperwork in saying that I had pretripped my bus,
19 and went to McCarran Airport.

20 Q. What were you supposed to do that day,
21 Mr. Hubbard? What was your job -- your drive and
22 pickup and drop-off?

23 A. Right. I was taking some customers from
24 McCarran Airport to Red Rock Casino -- Hotel & Casino.

25 Q. I assume they were tourists?

1 A. I'm not sure.

2 Q. Okay. Was this your first run of the day?

3 A. Correct.

4 Q. The morning run?

5 A. Correct.

6 Q. And what time -- I think you said maybe about
7 10:00 o'clock, you were supposed to pick up the folks
8 at McCarran Airport?

9 A. Somewhere around there, yes.

10 Q. And what kind of bus were you driving?

11 A. MCI.

12 Q. A Motor Coach Industries 2008 J4500?

13 A. Sounds about right.

14 Q. Okay. Had you driven that bus before?

15 A. Yes, sir.

16 Q. Have you driven that bus since, or a bus like
17 that since?

18 A. A bus like that since? Absolutely, yes.

19 Q. Okay. What route would you have taken from
20 the yard to McCarran Airport?

21 A. What route would I have taken? The 215 to
22 Charleston and to Red Rock.

23 Q. You got ahead of me a little bit.

24 So you went from the yard out at --

25 A. You said from the yard to where?

1 Q. The yard to McCarran Airport.

2 A. Oh, from the yard to McCarran. Just the 15
3 to Trop, and then Trop to McCarran.

4 Q. And I gather you picked up some persons at
5 McCarran Airport?

6 A. Correct.

7 Q. From out of town?

8 A. Yes.

9 Q. About how many passengers did you pick up?

10 A. I believe it was 18 people.

11 Q. That got on this MCI J4500?

12 A. Correct.

13 Q. And you were the operator?

14 A. Yes.

15 Q. And you're supposed to take them to where?

16 A. Red Rock Hotel & Casino.

17 Q. Is that the hotel and casino up off of West
18 Charleston?

19 A. Yes.

20 Q. If I turn you to the map to your right we all
21 have been using -- I actually have a better aerial, if
22 I could show it, put up on the overhead.

23 If this here, Mr. Hubbard, is the Red Rock
24 Casino and this is Pavilion Center and this is
25 Charleston, are you sort of --

1 A. Yes.

2 Q. Are you oriented in space as to where
3 everything was?

4 A. Yes.

5 Q. So you would have left McCarran, gone sort of
6 around the southwest part of town to the Charleston
7 exit just west of the Red Rock Casino somewhere off the
8 map up here by my finger?

9 A. Yes.

10 Q. What did you do then? Just tell the ladies
11 and gentlemen of the jury what route you took from that
12 point forward.

13 A. I proceeded up to -- up Charleston to South
14 Pavilion, and I made a right on South Pavilion.

15 Q. Okay. And so the record's clear, when you
16 say you proceeded up, you were going eastbound on
17 Charleston from the 215; is that right?

18 A. I'm not familiar with the north, south, and
19 east.

20 Q. If you think about the mountains out there
21 being on the west side of town, you were driving away
22 from the mountains, away from Red Rock Canyon down
23 towards the casino?

24 A. Yes.

25 Q. If I tell you that's east, you believe me?

1 A. We're under oath, so I believe you.

2 Q. Okay. And you proceeded down eastbound on
3 Charleston. And I think you told us you made a right
4 on -- I did it the wrong way -- eastbound on
5 Charleston, you made a right on Pavilion Center?

6 A. Yes.

7 Q. So you would have been heading southbound?

8 A. Yes.

9 Q. When you were on Charleston, did you observe
10 a cyclist?

11 A. Yes.

12 Q. And see that map down, Mr. Hubbard, to your
13 right? It's a little more of a close-up view. Can you
14 see Charleston there on the right of the map and
15 Pavilion Center sort of going across the middle?

16 A. Yes.

17 Q. And if I gave you a sticky -- if I can find
18 one -- could you put on that map on Charleston where
19 your bus would have been when you think you first
20 observed the bicycle.

21 With the Court's permission?

22 THE COURT: Go on.

23 THE WITNESS: Where I was; correct?

24 BY MR. CHRISTIANSEN:

25 Q. Yes, sir.

1 A. (Witness complies.)

2 THE COURT: For the record, will you please
3 describe that.

4 MR. CHRISTIANSEN: Sure.

5 BY MR. CHRISTIANSEN:

6 Q. So you placed the -- the Post-it just west of
7 the Pavilion Center intersection and eastbound
8 Charleston?

9 A. Right.

10 Q. And that's where you were driving the MCI
11 J4500 when you first observed the cyclist?

12 A. Yes.

13 Q. And --

14 MR. BARGER: May I make a suggestion? Pardon
15 me. Can we write "bus" on that?

16 THE COURT: Yes.

17 MR. CHRISTIANSEN: Is that okay with the
18 Court if I write that?

19 THE COURT: Yes. Absolutely.

20 BY MR. CHRISTIANSEN:

21 Q. And was the bicyclist in the designated
22 bicycle lane?

23 A. Yes.

24 Q. What, if anything, happened next? What did
25 you observe next?

1 A. I proceeded to make my right turn onto South
2 Pavilion.

3 Q. Before you turned right, did you have a
4 chance to observe the cyclist turn right onto
5 southbound --

6 A. Yes.

7 Q. -- Pavilion Center?

8 A. Yes.

9 Q. It's not like normal conversation when we're
10 in a courtroom. So I have to wait for you to finish
11 your answer. If you'll wait for me to finish our
12 question so -- the court reporter has a tough time if
13 we both talk. Okay?

14 A. Yes.

15 Q. Okay.

16 So you -- you did observe the bicyclist turn
17 south onto southbound Pavilion Center?

18 A. Yes.

19 Q. After he turned right, or southbound, did you
20 turn right?

21 A. Correct.

22 Q. And was the cyclist still in front of you at
23 that point?

24 A. Yes.

25 Q. And was the cyclist still in the marked

1 bicycle lane on South Pavilion Center?

2 A. Yes.

3 Q. And you -- which lane -- there are two travel
4 lanes we can see on that map there to your right.

5 Which lane were you in?

6 A. I was in the -- I was in this lane right here
7 (indicating).

8 Q. Is that the lane closest to the bicycle lane?

9 A. Yes, it is.

10 Q. Or closest to Red Rock Casino?

11 A. Yes.

12 Q. So it would be the most western -- it would
13 be the most western southbound lane, the one
14 immediately adjacent to the bicycle lane on South
15 Pavilion Center?

16 A. Yes.

17 Q. And do you see that little cutout there on
18 the map to your right, sir --

19 A. Yes.

20 Q. -- on South Pavilion Center?

21 Do you know what that is?

22 A. I believe that's for the city bus.

23 Q. Okay. Is that about the -- the spot where
24 you went past or overtook the bicycle?

25 A. Yeah. Yeah, on -- a little bit after that,

1 right near that area. Right.

2 Q. So between the time the bike -- you turn on
3 Pavilion Center and the time you pass the bicycle at
4 the city cutout, is the bicyclist always in the bicycle
5 lane?

6 A. Yes.

7 Q. And are you always in your -- the westernmost
8 southbound lane?

9 A. Yes.

10 Q. And from -- well, let's just say from the
11 city cutout all the way to the intersection at Griffith
12 Peak where the incident takes place, do you stay -- up
13 until the moment of the incident, do you stay in that
14 same lane?

15 A. Yes.

16 Q. Okay. Do you ever see the bicyclist
17 before -- the cutout there north of the intersection,
18 the city transit bus stop, from the time he turns
19 south, do you ever see him leave the bicycle lane?

20 A. No -- no.

21 Q. All right. You pass him without incident at
22 the city cutout?

23 A. Correct.

24 Q. And then do you remember having your
25 deposition taken, sir?

1 A. Yes.

2 Q. Do you remember having this big map with all
3 the -- look, we painted the bike since last time you
4 were here -- with the bus and the bike? And this
5 gentleman, Mr. Kemp, asked you lots of questions. Do
6 you remember that?

7 A. Correct.

8 Q. And had you place the bus in a variety of
9 places relative to your memory of that day, April the
10 18th, 2017.

11 A. Yes.

12 Q. Okay. We've had those photos marked as
13 plaintiffs' proposed -- proposed 230 through 237.

14 MR. CHRISTIANSEN: And I don't believe
15 there's an objection to their admission, Your Honor.

16 MR. BARGER: If they're being offered, I have
17 no objection.

18 MR. CHRISTIANSEN: They're being offered.

19 THE COURT: Okay. That's fine.

20 (Whereupon, Plaintiffs' Exhibits 230
21 through 237 were admitted into
22 evidence.)

23 MR. CHRISTIANSEN: Thank you, Your Honor.
24 That was 230 through 237 are admitted, Judge?

25 Are they admitted?

1 THE COURT: Yes, they are admitted.

2 There's no objection; correct?

3 MR. BARGER: No objection, Your Honor.

4 THE COURT: Okay. You may approach.

5 MR. CHRISTIANSEN: May I have permission to
6 publish, Your Honor, as I question Mr. Hubbard?

7 THE COURT: Yes, you may.

8 BY MR. CHRISTIANSEN:

9 Q. Now, Mr. Hubbard, the map that you put the
10 Post-it on up there to your right is a bit further back
11 than this big giant to-scale map we've got down here in
12 front of jury; is that fair?

13 A. Yes.

14 Q. The to-scale map doesn't show the city bus
15 cutout. Do you remember that?

16 A. I do.

17 Q. And when -- showing the jury Exhibit 230.
18 When Mr. -- at your deposition that was held on
19 September the 20th, 2017 -- does that sound about right
20 to you?

21 A. Yes.

22 Q. You were first asked to place the bus at that
23 initial yellow line on the giant map. And you placed
24 it about -- well, I can't do it all the way because it
25 will fall off. But you placed it somewhere about

1 there, recognizing that I'm limited by not wanting to
2 drop the thing off; is that right?

3 A. Yes.

4 Q. And you stayed in that lane all the way up
5 until the intersection at Griffith Peak; fair?

6 A. Correct.

7 Q. And you saw the bicycle -- well, let me just
8 ask you, where -- at this point, the city bus -- if we
9 look down at the big map, the city bus is already --
10 the city bus cutout is already behind you; is that
11 correct?

12 A. Right.

13 Q. So could you show -- if I gave you another
14 one of those Post-its -- what did I do with the blue
15 ones? Right here.

16 And if I write "bike" on this one -- if I
17 write "bike" on the -- what color is that? I'm
18 color-blind. Pink.

19 All right. On this pink -- will you put this
20 pink Post-it on the map where you passed the bike on
21 Pavilion Center, where you passed the bike in the bus.

22 A. (Witness complies.)

23 Q. Do you remember in your deposition,
24 Mr. Hubbard, it being explained to you that each one of
25 these lines was 50 feet apart from each other?

1 A. Yes.

2 Q. With the furthest line out here being
3 300 feet?

4 A. Yes.

5 Q. And by 300 feet, I mean 300 feet from the
6 stop line at the intersection in Griffith Peak. Is
7 that your understanding?

8 A. Yes.

9 Q. Where you passed the city bus is probably
10 another -- what? -- for the city bus cutout, 200 feet
11 north of there?

12 A. I don't know.

13 Q. Give me your best estimate.

14 A. I really don't know. I would say -- I don't
15 know, sir. I really don't know.

16 Q. All right. Well, we can see -- you see on
17 this map how the right turn lane cuts into Red Rock
18 Casino?

19 A. Right.

20 Q. If we look for it on the same thing up here,
21 you see where it happens right here, the right turn
22 lane goes into Red Rock Casino?

23 A. Correct.

24 Q. Would you say that's another 100, 150 feet?

25 A. Yes.

1 Q. Okay. And so if I'm trying to make the
2 distance as accurate as you can for me, from where you
3 pass the bicycle to the zero line at the intersection,
4 it's about 400, 450 feet north that you overtake and go
5 past the doctor on the bicycle.

6 A. Okay.

7 Q. Is that right?

8 A. Yes.

9 Q. Okay. And if I just go back and start
10 placing -- remember Mr. Kemp had you place the bus
11 every 50 feet all the way up until the intersection.
12 Do you recall that?

13 A. Yes.

14 Q. And I could do that with you for Exhibit 231.
15 And that's still you in that westernmost southbound
16 lane; correct?

17 A. Mmm-hmm.

18 Q. Is that a yes?

19 A. Yes.

20 Q. Sorry. You just have to answer audibly.

21 MR. BARGER: May I ask Mr. Christiansen
22 something real quick?

23 THE COURT: Yes.

24 BY MR. CHRISTIANSEN:

25 Q. Mr. Hubbard, on my maps and on these -- the

1 big map and on these pictures I'm showing you, you
2 understand that the cars on here weren't the cars
3 present that day; right? They're just Google Maps, so
4 we've tried to do our best to scale.

5 A. Right.

6 Q. Just want to make sure everybody knew.

7 So I think that's a 250 mark, Exhibit 231.

8 Exhibit 232, back in September you place the
9 bus at the 200-foot mark. You were still on that same
10 right-hand southbound lane; is that fair, sir?

11 A. Yes.

12 Q. Exhibit 233, at the 150-foot mark, you're
13 still in that right-bound -- right-hand lane. I did
14 that upside down. Sorry about that. Is that right?

15 A. Yes.

16 Q. 234, same thing? This is a 100 feet. Is
17 that right?

18 A. Yes.

19 Q. 235, at 50 feet?

20 A. Yes.

21 Q. You're still in that lane. And 236 is the
22 zero markers. And that still reflects you're in the
23 right lane, although it does look like a kind of crazy
24 angle in this picture. Is that right, sir?

25 A. Yes.

1 Q. This turn-in here would be to Red Rock
2 Casino?

3 A. That's one entrance, yes.

4 Q. And to the right of the bus would be the
5 bicycle lane?

6 A. Correct.

7 Q. And to the right of the bicycle lane would be
8 a turn-in lane to turn into Red Rock?

9 A. Correct.

10 Q. And then there's a through lane to the left
11 of the bus, another through lane; is that right?

12 A. Yes.

13 Q. Then there's what we've heard called a
14 painted or a nonraised median and then a left turn
15 lane.

16 A. Yes.

17 Q. And then after the median, there's two
18 northbound lanes on Pavilion Center; is that right?

19 A. Yes.

20 Q. And Mr. Kemp actually had you go at each
21 point -- and that's why we all have pictures of it --
22 and set the bus down where it was at the various
23 markers until you got to the 100 or -- I'm sorry -- the
24 zero marker right at the intersection.

25 A. Yes.

1 Q. And it's my recollection your testimony was
2 that, from the point at the city bus cutout, which is,
3 to your best estimate, 450ish feet from the
4 intersection, where you put the red Post-it up there on
5 that map --

6 A. Yes.

7 Q. -- from that point when you pass the bike up
8 through the zero line, you did not see a cyclist?

9 A. Correct. Not in the bike lane, no, sir.

10 Q. Not only did you not see the cyclist in the
11 bike lane, you didn't see the cyclist in this turn
12 lane; correct?

13 A. Correct, yes.

14 Q. You didn't see the cyclist at all?

15 A. Correct.

16 Q. From the moment you passed him here at the
17 city bus cutout, what you've done your best to estimate
18 for me is about 450 feet north of the zero line at the
19 intersection.

20 A. Correct.

21 Q. And during this time, you were paying
22 attention, was your testimony?

23 A. Yes, sir.

24 Q. You had operated this bus before?

25 A. Yes, sir.

1 Q. You knew this bus had blind spots?

2 A. Correct.

3 Q. And because you knew that, you were -- you
4 used a term, and I don't want to mess it up, but you
5 were moving?

6 A. Yes. Moving in your seat, rocking, rocking
7 to eliminate the blind spots.

8 Q. Okay. And you were doing that to be aware of
9 your surroundings?

10 A. Right.

11 Q. And for 450 feet after passing the cyclist at
12 the city cutout, you never saw the cyclist again?

13 A. No, sir.

14 Q. Okay. And then my recollection of your
15 testimony is that you had entered the intersection.
16 Fair?

17 Just from this point forward, sir, just from
18 the zero line.

19 A. Oh, yes, yes.

20 Q. You're not stopping. I'm just -- it's kind
21 of disjunctive because I have to do it every 50 feet.
22 But you're just driving southbound?

23 A. Correct.

24 Q. It's a clear day?

25 A. Yes.

1 Q. There's nothing -- no objects impeding your
2 view of the street in front of you?

3 A. No.

4 Q. And once you got into the intersection --
5 and, well, I'm going to have you do that so I put it --
6 you put it exactly where you want it, and I'll show you
7 the picture you showed us at your deposition.

8 Out of your -- my words not yours. Out of
9 your peripheral vision, out of the side of your eye,
10 you saw the bike -- a bicyclist drift into your lane;
11 fair?

12 A. Yes.

13 Q. And "drift" is your word; correct?

14 A. Yes, sir.

15 Q. And you saw that out -- not out of the
16 windshield, as I understand it?

17 A. No. Not the front windshield, no.

18 Q. Out of sort of the side of your eye?

19 A. Correct.

20 Q. And for you to be seeing something out of the
21 side of your eye, the bicycle had to be -- the nose of
22 the bus had to have passed the bicycle; correct?

23 A. Well, approaching it, yes.

24 Q. Okay. And I recall -- here's, let's just
25 show -- at your deposition you placed this -- sort of

1 tough to see, but this is 237, Mr. Barger.

2 And this is where you placed the bicycle --
3 try to blow it up, because I hadn't thought to paint a
4 bike at this point in my life.

5 This is where you placed the bicycle just to
6 the right of the bus.

7 A. Yes.

8 Q. And the bus looks to be about halfway through
9 that crosswalk where you placed it?

10 A. Yeah.

11 Q. So you can see down here, Mr. Hubbard, if I
12 put it about halfway through, maybe a little more, you
13 had the bike just to the right of the bus; is that
14 correct?

15 A. Right. More -- yes, to the door area right
16 over here. Yeah.

17 Q. More to the door area. And in that
18 particular bus, I understand there's a window in the
19 door. Is that your memory?

20 A. I'm not -- I'm not familiar with the window.
21 I know some of them do have a window on the door. I
22 don't remember if that one did or not.

23 MR. CHRISTIANSEN: Judge, can I pull up what
24 we call a CAD drawing and let Mr. Barger look at it
25 before --

1 THE COURT: Yes.

2 MR. CHRISTIANSEN: Judge, just as a
3 demonstrative, without any objection from Mr. Barger,
4 I'd like to show the witness a computerized drawing
5 from the inside of the bus.

6 MR. BARGER: At this time, if being used as a
7 demonstrative, I have no objection.

8 THE COURT: Is this the particular bus?

9 MR. CHRISTIANSEN: Yes, Your Honor, it is.

10 THE COURT: Okay. That's fine.

11 BY MR. CHRISTIANSEN:

12 Q. So that's a computerized drawing of the
13 actual inside of this particular bus. And I'm not
14 telling you one way or another where the cyclist was.
15 I just am focusing you on that door because you
16 couldn't recall whether there are windows on that door.
17 But can you now see there are --

18 A. Yes.

19 Q. -- windows on this particular door?

20 A. Yes.

21 Q. And so when you told the jury, out of your
22 peripheral vision, you would have seen the bicyclist
23 drifting, think it could have been in that door that
24 you saw that?

25 A. It could have been, yes.

1 Q. And if it was in the door, just physics would
2 dictate that the nose of that bus had passed the
3 bicyclist; correct?

4 A. Yes. Yes.

5 Q. All right. I remember questions being posed
6 to you, Mr. Hubbard, in your deposition about your
7 knowledge of aerodynamics and air blast. And my
8 recollection is you didn't have any particularized
9 knowledge?

10 A. No, sir.

11 Q. You never been trained relative to air blast?

12 MR. BARGER: Objection. Leading.

13 THE COURT: Sustained.

14 BY MR. CHRISTIANSEN:

15 Q. Had you ever been trained as to a possible
16 hazard of an air blast?

17 A. No.

18 Q. And in terms of your personal habits, if
19 you're trained about something relative to safety, do
20 you heed those training warnings?

21 A. Absolutely.

22 Q. And you've never been told that a bus could
23 create air displacement?

24 A. No, sir.

25 Q. You don't know, as you sit here today, you

1 know, ten-plus months later, Mr. Hubbard, what caused
2 that bike, using your words, to drift into your lane?

3 A. I do not know.

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

5 A. I've heard of it, yes.

6 Q. This bus did not have a proximity sensor?

7 A. No.

8 Q. Anything that would have warned you earlier
9 about the cyclist would have caused you to take evasive
10 action earlier; fair?

11 MR. BARGER: Objection. Form.

12 THE COURT: Sustained.

13 BY MR. CHRISTIANSEN:

14 Q. Well, I'll ask it to you differently.

15 The second -- what did you do the second you
16 saw the bicycle drifting in your peripheral vision?

17 A. I proceeded to (witness indicating) turn my
18 steering wheel to the left to avoid hitting him,
19 because he was that close to --

20 Q. You were --

21 A. -- the bus.

22 Q. You were close to him when you saw him?

23 A. Yes.

24 Q. You took -- I'll use your words again from
25 your deposition -- evasive action?

1 A. Yes.

2 Q. And had you been alerted to the cyclist
3 earlier, you would have taken evasive action earlier?

4 MR. BARGER: Objection. Leading.

5 THE COURT: Sustained.

6 BY MR. CHRISTIANSEN:

7 Q. I'll ask it differently.

8 If you -- if you would have been alerted to
9 the bicyclist earlier, earlier than your peripheral
10 vision, would you've taken evasive action earlier?

11 A. Yes.

12 Q. And there are no proximity sensors on this
13 bus?

14 A. No.

15 Q. But there are blind spots on this bus?

16 A. Yes.

17 Q. And so I'm understanding you correctly, sir,
18 the bus that you were operating and driving for that
19 400 feet between the pink Post-it on the map and the
20 zero line, you were -- you did not, at any point in
21 time before this intersection, between that 450 feet
22 that we're discussing, see the cyclist?

23 A. You mean from the cutoff -- cutout?

24 Q. Yes, sir.

25 A. No, sir, I did not.

1 Q. Yes. You said you took evasive maneuvers and
2 you moved your hands. Did you -- I understood you to
3 mean you were sort of turning the bus to the left the
4 best you could?

5 A. Right. I'm turning the steering wheel, which
6 in turn is turning the wheels on the bus to go away
7 from the bicyclist.

8 Q. Okay. And did the bus end up somewhere in
9 this left lane? I put it on the island because I'm not
10 great at it, but ...

11 A. Correct. Yes, it did.

12 Q. And I have a picture that's been admitted
13 into evidence. And if I show you, maybe that will help
14 refresh your recollection. This is 218.

15 This is a photo taken by one of the gentlemen
16 that was on the bus. If I back it all the way out,
17 this is northbound on Pavilion Center.

18 Does that help you orient yourself,
19 Mr. Hubbard?

20 A. Yes.

21 Q. That's -- is that the rear of the Motor Coach
22 Industries J4500 you were operating on the day in
23 question?

24 A. Yes.

25 Q. And if I zoom it in, you see law enforcement,

1 sir? Is there law enforcement there?

2 A. Yes.

3 Q. And first responders, like ambulance -- I
4 mean, like a fire truck?

5 A. Yes.

6 Q. If I zoom it in real tight on this angle, do
7 you see a maintenance worker up here standing by his
8 maintenance truck?

9 A. Yes.

10 Q. Do you recall a maintenance worker actually
11 approaching the doctor after the collision took place?

12 A. No, sir.

13 Q. Do you see the bicycle that was being
14 operated by the doctor?

15 A. Yes.

16 Q. Is that about in the location, to the best of
17 your recollection, where the bicyclist came to rest
18 after the collision?

19 A. Yes.

20 Q. I'll show you just a more of a close-up
21 version. It looks like the photographer got a little
22 closer. This is 219. That's been admitted into
23 evidence.

24 Is that that same view, sir?

25 A. Yes.

1 Q. Sir, once the bicycle -- if I just put this
2 back, and let me put the picture back up so you can see
3 how you showed Mr. Kemp you did it in your deposition
4 so I can try to be accurate.

5 This is the picture from your deposition; is
6 that right?

7 A. Yes.

8 MR. CHRISTIANSEN: That's, for the record,
9 Your Honor, Exhibit 237.
10 BY MR. CHRISTIANSEN:

11 Q. And that was about halfway through the
12 cross -- over the crosswalk right here?

13 A. Yes.

14 Q. And that crosswalk is the crosswalk that goes
15 east-west over the lanes that go north-south on
16 Pavilion Center?

17 A. Correct.

18 Q. That's when the bicyclist -- you see the
19 bicyclist out of the side of your eye?

20 A. Yes.

21 Q. Once you see the cyclist and do your evasive
22 maneuver you described for us, you don't see -- or do
23 you see him make contact with -- do you see him make
24 contact with the bus?

25 A. No, sir.

1 Q. What is it that you observed if you're
2 looking through your rearview mirror, that right
3 rearview mirror?

4 A. As I did the evasive movement into the left
5 lane and bus finally came to a stop, I looked in the
6 rearview mirror.

7 Q. Whereabouts do you think you were when you
8 looked through your mirror when you -- stopped up here?

9 A. Yes.

10 Q. Okay. So -- and when you looked in your
11 rearview mirror, did you see what was depicted in
12 Exhibits 28 and 219, the cycle -- the bicycle on the
13 ground in that location?

14 A. Yes.

15 Q. With the difference, obviously, being the
16 cyclist was still attached to the bike when you first
17 looked at it?

18 A. I don't know.

19 Q. I'm sorry?

20 A. I don't know if he was still on the bike.

21 Q. He was near this area where the bicycle is?

22 A. Correct, yes.

23 Q. Okay. So the bike -- if I -- the bike was
24 somewhere right here but on its side.

25 A. Yes.

1 Q. And do you know, sir, where the bike and the
2 bus that -- we'll call it the area of initial contact,
3 where they first touched?

4 A. I don't. Only by what was told to me, but I
5 don't.

6 Q. I don't want -- I don't want to know about
7 what was told to you about it by anybody, just your own
8 personal knowledge. Do you know?

9 A. No, I don't.

10 Q. Did you feel the bus run over the cyclist
11 between the time you took the evasive maneuver and the
12 time you stopped up here?

13 A. No, sir.

14 Q. Did you hear any noise like contact noise?

15 A. No, sir.

16 Q. Or a thump or anything of that nature?

17 A. No.

18 Q. Okay. Once you stopped the bicycle, what is
19 it -- the bicycle. I apologize.

20 Once you stopped the bus, what is it you did,
21 Mr. Hubbard?

22 A. Like I said, I looked in the rearview mirror
23 and saw that he was down. I immediately dialed 911 and
24 got off the bus. As I was dialing 911, I was getting
25 off the bus, see if he was okay. And I was just

1 calling 911 to explain what happened.

2 Q. The rearview mirrors on my little pretend bus
3 aren't so great, but would you have been able, you
4 think, looking in the rearview mirror from sitting in
5 the driver's seat, to see the bicyclist, you know, on
6 the pavement before you even got off the bus?

7 A. I'm sorry?

8 Q. Once you stopped the bus, just from looking
9 in your rearview mirror on the right side, were you
10 able to see that the cyclist was on the pavement?

11 A. Yes.

12 Q. Then you got off the bus?

13 A. Right. Yes. I dialed 911, got off the bus,
14 yes.

15 Q. And do you know now -- I know you didn't
16 then -- that there was a video camera, I think right
17 about here on the top of the parking structure at Red
18 Rock?

19 A. Okay. I didn't.

20 Q. Have you seen the video?

21 A. Of course. Yes.

22 MR. CHRISTIANSEN: Can I have that video,
23 Shane?

24 Just want to see if you can help us figure
25 out --

1 Ms. Court Recorder, can we have control to my
2 side, please.

3 (Whereupon video deposition was played.)

4 MR. GODFREY: It's Exhibit 3.

5 MR. CHRISTIANSEN: It's Exhibit 3, Your
6 Honor, for the record.

7 THE COURT: Okay.

8 BY MR. CHRISTIANSEN:

9 Q. Is that your bus, Mr. Hubbard?

10 A. Yes.

11 Q. Proceeding through the intersection?

12 A. Yes.

13 Q. Do you see that water bottle in between the
14 fronds there on the ground?

15 A. Uh-huh. Yes.

16 Q. And did you see the two young folks from the
17 motorcycles there on east -- westbound Griffith Peak
18 approach the cyclist?

19 A. Yes.

20 Q. And then this white box truck, do you see it
21 come in and block off, and then I think the driver gets
22 out as well?

23 A. Yes.

24 Q. Then at some point, I think we're going to
25 see you. You actually go back, and I think you're on

1 the phone with 911 maybe?

2 A. Yes.

3 Q. You go back and see what's going on. And you
4 can see that gardener we talked about earlier there in
5 the green, can't you?

6 A. I have seen it. I have seen it already.
7 Yes.

8 Q. I'm sorry, sir. You just have to go through
9 and answer the questions with me.

10 A. Yes.

11 Q. Is that you, sir, in the white top with the
12 phone to your right ear?

13 A. Yes.

14 Q. Yes, sir. Sorry. You just have to answer
15 audibly, Mr. Hubbard.

16 A. Yes.

17 MR. CHRISTIANSEN: Okay. Shane, that's good.

18 Judge, can we approach on a quick matter?

19 THE COURT: Yes.

20 (A discussion was held at the bench,
21 not reported.)

22 BY MR. CHRISTIANSEN:

23 Q. As you sit here today -- well, when you
24 approached the cyclist, Mr. Hubbard, did he have his
25 helmet on still?

1 A. I don't recall. I don't remember.

2 Q. Did he appear to be injured?

3 A. Absolutely.

4 Q. And you were calling first responders to come
5 help him?

6 A. Yes, sir.

7 Q. Mr. Hubbard, I want to show you what's been
8 entered as Exhibit 216. And this is from one of the --
9 one of the passengers on your bus. His recollection
10 was that at that intersection, what we called the zero
11 line, that the bicycle was over in this right turn lane
12 to turn into Red Rock Casino. Okay?

13 Now, sir, if I backed your bus up to the
14 50-foot line and I put this bicyclist over in this
15 red -- right on that red bike in the right turn lane,
16 you'd have seen him if that's where he was?

17 A. Correct.

18 Q. And it has been your testimony, sir, that
19 before he drifted, to use your word, into your lane, he
20 had to have been in the bike lane; correct?

21 A. Yes.

22 Q. But that you were unable to see him from the
23 intersection --

24 A. I'm sorry. What did you just say?

25 Q. That you were unable to see him?

1 A. No, the question before that.

2 BY MR. CHRISTIANSEN:

3 Q. I don't remember. I think I said -- I'll
4 paraphrase.

5 THE COURT: Would you like it read back?

6 MR. CHRISTIANSEN: Sure. You know what? I
7 can read it. I got the same thing.

8 BY MR. CHRISTIANSEN:

9 Q. The question I said, "And it has been your
10 testimony, sir, that before he drifted -- to use your
11 words -- into your lane, he had to have been in the
12 bike lane; correct?

13 A. No, I -- I never said that.

14 Q. You never said he was in the bike lane before
15 you saw him?

16 A. No, I never said that.

17 Q. So we're clear, when you see him on the map
18 that you've put the pink Post-it, he was in the bike
19 lane at the city bus cutout.

20 A. Correct. Yes.

21 Q. And then you don't see him at all until he
22 drifts into your peripheral vision --

23 A. That's correct.

24 Q. -- in that intersection?

25 A. That's correct.

1 Q. And you agree with me, he couldn't have been
2 in the right turn lane, because you'd have seen him,
3 this lane over here where I've got him placed?

4 A. Yes, he could have been over there. He could
5 have came from over there, yes.

6 Q. Did you see him?

7 A. No, I did not.

8 Q. So I don't want you to guess. Okay?

9 A. Right. But he was not in the bike lane
10 because I would have seen him riding beside me.

11 Q. You would have?

12 A. Of course. I'm -- that's the whole reason
13 why I'm in my mirrors. You know --

14 Q. Sir, you just got done telling us you
15 traveled for 450 feet southbound on Pavilion Center and
16 never once saw that bicyclist; correct?

17 A. Correct. But there's other lanes over. He
18 could have been out of the bike lane over further
19 right -- to the right.

20 Q. Sir, do you remember me asking in your
21 deposition -- just so we give everybody a good
22 orientation, when your deposition was taken, this nice
23 young man over in the corner hiding, Mr. Terry, he
24 took -- he asked questions first.

25 Do you remember that?

1 A. Yes.

2 Q. And then Mr. Kemp asked some questions?

3 A. Yes.

4 Q. And then I asked you some questions?

5 A. Yes.

6 Q. And I asked you specifically, did you ever
7 see anybody on a bike in the 250-plus feet of that
8 right turn lane, and you said no.

9 A. No, I did not.

10 Q. All right. So that's still your testimony?

11 A. Yes, sir.

12 Q. Did this particular bus have a side camera on
13 it?

14 A. No, sir.

15 Q. Have you operated buses with 360-degree
16 cameras?

17 A. No, sir.

18 Q. Have you operated buses that have cameras on
19 them that show the outside of the bus?

20 A. No, sir.

21 Q. Have you operated buses with proximity
22 sensors?

23 A. I have, yes.

24 Q. No backup cameras on any bus?

25 A. No.

1 Q. Okay. Mr. Kemp asked you questions about --
2 back at your deposition in September of this year --
3 about protective barriers that go in front of or over
4 the top of the rear tires of buses.

5 Do you remember those questions?

6 A. Yes.

7 Q. This bus didn't have any such protective
8 barrier?

9 A. No, sir.

10 Q. But you have seen wheel covers on buses?

11 A. I have.

12 Q. They exist?

13 A. Yes.

14 Q. They're used on coaches?

15 A. I don't know. I haven't seen them -- I've
16 seen them on city buses; I don't know about -- I
17 haven't seen ...

18 Q. You just know that there wasn't any type of
19 safety device on this particular bus?

20 A. No -- no covers, no.

21 MR. CHRISTIANSEN: Can I have the Court's
22 indulgence?

23 THE COURT: Yes.

24 MR. CHRISTIANSEN: Your Honor, I believe that
25 concludes direct examination.

1 Thank you, Mr. Hubbard.

2 May I approach the clerk, Your Honor, just to
3 give this stuff back?

4 THE COURT: Sure.

5

6 CROSS-EXAMINATION

7 BY MR. BARGER:

8 Q. Mr. Hubbard, do you want some water?

9 A. No, thank you.

10 MR. BARGER: I think I need a microphone.

11 THE COURT RECORDER: Right here.

12 BY MR. BARGER:

13 Q. Good afternoon, sir.

14 A. Hello.

15 Q. We've never met.

16 We've never met; correct?

17 A. Not to my knowledge.

18 Q. Okay. My name is Darrell Barger, sir, and I
19 represent MCI. Okay?

20 A. Yes.

21 Q. Hi.

22 And I want to go back over a little bit, you
23 were asked about your background. You drove city buses
24 in New York City, in Brooklyn, for how many years?

25 A. Almost 12 years.

1 Q. Okay. And you -- before that, you obtained
2 your CDL license, and you studied to get that; correct?

3 A. Yes.

4 Q. And when the -- you went to work for the
5 New York City Transit, I assume that you went through
6 some effort to learn about driving buses?

7 A. Yes.

8 Q. And you worked there for -- for how many
9 years?

10 A. 2004 until 2016.

11 Q. Okay. So you drove -- and you worked, I
12 guess, full time?

13 A. Absolutely.

14 Q. All right. So you drove -- you've driven a
15 lot of transit, city buses even in New York City and
16 Brooklyn; right?

17 A. Yes.

18 Q. And I'm going to assume, 'cause I've been to
19 both, that it's much more heavy traffic in New York
20 City and Brooklyn than it is out by the Red Rock
21 Casino?

22 A. Absolutely.

23 Q. All right. And when you drove those buses
24 for 10 or 12 years, at some point, you came to
25 Las Vegas; correct?

1 A. Yes.

2 Q. All right. Now, the jury has heard some
3 questions about transit buses and motor coaches.
4 There's a difference, is there not?

5 A. Yes.

6 Q. Could you tell them in your own words some of
7 the differences in a transit bus that you operate on
8 city streets that stops and goes as opposed to a motor
9 coach, which is an over-the-road bus; correct?

10 A. Right.

11 Q. Okay. Could you tell them kind of what
12 you've observed as the differences.

13 A. Well, you just said it. One is -- one is
14 made for local travel, stop and go, which is the city
15 bus. And one is made for long distance, more comfort,
16 which is the -- like, the coaches, the charter buses.

17 Q. And the transit buses usually, quite often,
18 are longer; right? Some are?

19 A. Some of them are, yes.

20 Q. And it's lower to the ground; right?

21 A. Yes.

22 Q. The -- the motor coaches like this that
23 travel across the country are higher off the ground?

24 A. Yes.

25 Q. All right. And a lot of transit buses have

1 front door and back door, and they had two sets of
2 doors on the side; right?

3 A. Some, yes.

4 Q. And most motor coaches have the front doors;
5 right?

6 A. Correct.

7 Q. All right. So there is a difference in your
8 own mind in driving the two; correct?

9 A. Correct.

10 Q. Now, when you came to Las Vegas, you went --
11 you worked for Michelangelo; correct?

12 A. Yes.

13 Q. And Michelangelo's has all kinds of buses;
14 right?

15 A. Charter buses, yes.

16 Q. Charter buses and -- excuse me. Not only did
17 they have MCI buses, but they had other people's buses
18 as well; right? So you've driven several types;
19 correct?

20 A. I have.

21 Q. Okay. You were driving that day an MCI bus;
22 right?

23 A. Yes.

24 Q. You don't work for MCI or anything; you are
25 employed by Michelangelo, which now is called a

1 different name; right?

2 A. Yes, sir.

3 Q. All right. What I want to talk with you --
4 and I want to go over a little bit -- I'm going to ask
5 the Court's permission for you to come down, and I
6 think you have to bring a microphone. And I want to
7 ask you a few questions about the accident. Okay?
8 And, you know -- and I don't want to pry; I just want
9 to ask a few questions from you. Is that okay?

10 A. Yes.

11 Q. Okay.

12 THE COURT: That's fine.

13 Mr. Barger, do you want him --

14 MR. BARGER: Yes, Your Honor, if that's okay.

15 THE MARSHAL: Step down. Watch your step and
16 speak into the mic.

17 MR. BARGER: And can we show the big blowup
18 first of -- that has Charleston.

19 BY MR. BARGER:

20 Q. I'm going to ask you, if you can, just to
21 look behind you first. I'm going to sneak right by you
22 if that's okay. And we'll do this with both this
23 chart. You see this is the one you used over here?

24 A. Yes.

25 Q. So, as I understand it, you left the airport,

1 and you came around what's called 215, and you exited
2 at the Charleston exit; is that correct, sir?

3 A. Yes.

4 Q. Okay. And then you came -- that would be
5 heading east on Charleston.

6 A. Yes.

7 Q. And you've driven that area a lot; right?

8 A. I have.

9 Q. Yeah. That's not the first time you were
10 there; you drove it a lot. Fair?

11 A. Yes.

12 Q. And as you came east on Charleston, you were
13 in the right-hand travel lane; is that right?

14 A. I was in this lane right here (indicating).

15 Q. Okay. This lane -- see that little white car
16 I'm taking right there? You were in this lane right
17 here?

18 A. No, sir, I was in this lane.

19 Q. I'm sorry. Where the black car is, you were
20 in that lane?

21 A. Yes.

22 Q. Is there a bicycle lane next to that lane?

23 A. I believe it's right here.

24 Q. Okay. And you're pointing to what you say is
25 a bicycle lane just to the right of the lane you were

1 in; right?

2 A. Yes.

3 Q. And I think we both have to step back just a
4 little. I'm sorry.

5 As you were coming down, you saw the bicycle;
6 right?

7 A. Yes.

8 Q. All right. And when you saw the bicycle, do
9 you know where the bicycle was when you saw the bicycle
10 for the first time?

11 A. Right where the blue sticker is.

12 Q. Okay. So you're in the right travel lane,
13 and there's a bike lane, and the bike is in the
14 right -- excuse me -- in the bike lane?

15 A. Correct.

16 Q. Both of you turn right, which would be going
17 south on Pavilion; correct, sir?

18 A. Yes. I turned after him.

19 Q. Yeah, I was going to ask you. Who turned
20 first?

21 A. The bicyclist.

22 Q. So the bicycle turned first, and then he
23 turned into the bike lane on Pavilion?

24 A. Correct.

25 Q. And then you turned secondly?

1 A. Correct.

2 Q. All right. And you made your turn. And then
3 the bicyclist, is he in front of you when you make the
4 turn?

5 A. Yes.

6 Q. And when you make the turn, you stay -- as I
7 heard your testimony -- in the right-hand travel lane.

8 A. Correct.

9 Q. And that would be the lane next to the
10 bicycle?

11 A. Correct.

12 Q. And you initially saw him; right?

13 A. I did.

14 Q. Now, do you remember the speed limit on that
15 particular road? I think it's 30 to 35.

16 A. Yes.

17 Q. All right. And I've read your deposition,
18 and you said you thought you were going somewhere --
19 what? -- obviously, you have to speed up -- but at some
20 point you were going about 25 or 30 miles an hour;
21 right?

22 A. About 20, 25, yes.

23 Q. Now, just for the -- just for -- we got it
24 straight, you -- where you were actually going to
25 take -- drop off the passengers is the entrance to Red

1 Rock, right, not the back door, but the actual front
2 door entrance; right?

3 A. No, that's not correct.

4 Q. Okay. Help me, then. I'm sorry.

5 A. I was going to this entrance right here,
6 which is the hotel entrance.

7 Q. Okay. That's what I meant. I thought that
8 was the front door. Is that not the front door?

9 A. I think this might be the front area. This
10 is for the hotel entrance, back here where you take
11 people who are checking in.

12 Q. There's a hotel and a casino?

13 A. Correct.

14 Q. And what you were doing, you were coming down
15 here, you were going to go in here and drop your
16 passengers off right there so they could go check into
17 the hotel?

18 A. Correct.

19 Q. You weren't going over here?

20 A. No, sir.

21 Q. All right. Now, as you turn the corner and
22 the bicycle is out in front of you, you saw it; right?

23 A. Correct.

24 Q. About how far do you think he was out in
25 front of you?

1 A. Not very far, because as -- as I come out the
2 turn, as you say, I sort of pass him, which is what I
3 did.

4 Q. What? 10 or 15 feet out in front of him?

5 A. Yes.

6 Q. So when you made the turn, the bicyclist is
7 in the bike lane, the -- you're in your right-hand
8 travel lane?

9 A. Yes.

10 Q. And the bicyclist is out in front of you 10
11 or 15 feet?

12 A. Yes.

13 Q. And you saw him, and then what you wanted to
14 do was -- obviously, you were going to go faster than
15 the bicyclist; right?

16 A. Correct.

17 Q. And you passed the bicyclist?

18 A. Yes.

19 Q. All right. And you have -- you didn't have
20 any trouble passing the bicyclist; right?

21 A. No, sir.

22 Q. And when you passed the bicyclist, did you
23 change lanes or did you just go right past him?

24 A. Just stayed in the same lane.

25 Q. Okay. And about how far was the bicyclist to

1 your right in that bicycle lane when you passed him?

2 A. How far was he to -- oh, 5, 7 feet over.

3 Q. Okay. In the bicycle lane as you went by?

4 A. Correct.

5 Q. Okay. And now I want to step to here if you

6 can. Sorry. I don't mean to step in front of you.

7 Please go ahead.

8 Now, at some point, you passed the bicyclist

9 back here, right, because it's not on this map?

10 A. Yeah, the cutoff is somewhere in here.

11 Q. Okay. And I think the testimony earlier was

12 maybe it was about 450 feet back from this

13 intersection; right?

14 A. Correct.

15 Q. All right. So the first time -- I mean, when

16 you went past him, did you ever see him again till we

17 get to the very end?

18 A. No, sir.

19 Q. And you were going about 25 or 30 miles an

20 hour at that point?

21 A. Yes.

22 Q. You know how fast the bicyclist was going?

23 A. I don't know.

24 Q. I want you to, if you can, maybe assume that

25 there's been testimony you were going about twice as

1 fast as the bicyclist. In other words, for every
2 36 feet you went, he went about 17 feet. Does that
3 make sense to you, or am I --

4 A. I understand what you're saying.

5 Q. So, in other words, you passed the bicyclist
6 and you just kept going?

7 A. Correct.

8 Q. And you never saw the bicyclist speed up? In
9 fact, you -- he'd have to be going 40 to 50 miles an
10 hour on a bicycle to catch up to you, wouldn't he?

11 A. Right.

12 Q. And that didn't happen, did it?

13 A. No.

14 Q. As you're going -- and I -- I've read your
15 deposition -- I didn't go to it -- but at the 300 feet
16 mark, 300-foot mark, by then you had passed the
17 bicyclist; correct?

18 A. I would --

19 Q. Yeah, let me show you -- let me assure you
20 that back here is the bus -- the transit bus turn-in
21 lane; right? It would be back here off the map.

22 So you've already passed that, and you've
23 passed the bicyclist?

24 A. Right.

25 Q. And at 300 foot, you -- I assume that you

1 drive, what you do is -- you told the jury, you look
2 forward, you look to the right, to the left, you look
3 in your mirrors, and you do the rock-and-roll issue?

4 A. Correct.

5 Q. Okay. Now, rock and roll is not a dance when
6 you're driving a bus, is it?

7 A. No, sir.

8 Q. Would you tell the ladies and gentlemen what
9 you mean by rock and roll. What does that mean?

10 A. It means moving in your seat, moving around
11 in your seat so that you can eliminate blind spots so
12 that you can see more of your mirror.

13 Q. Okay. Is that how -- is that how you drive
14 buses?

15 A. That's how I was trained.

16 Q. That's how you learned? Okay.

17 And so, in addition to, obviously, looking
18 ahead, which you have to do, you're looking to the
19 right and you're looking to the left, you're looking in
20 your mirrors, and you're doing the rock and roll just
21 to do --

22 A. Yes.

23 Q. -- because you talk about a blind spot?

24 A. Yes.

25 Q. And you agree with me, every bus you've ever

1 driven has a blind spot, doesn't it?

2 A. They do.

3 Q. And every -- have you driven big trucks?

4 Have you ever -- like 18-wheelers and that?

5 A. No, sir.

6 Q. Okay. But even your car has a blind spot,
7 doesn't it?

8 A. Yes.

9 Q. There's not a vehicle on earth that doesn't
10 have a blind spot, is there?

11 A. Correct.

12 Q. That's why you, as you told us, you were
13 looking in the mirrors, but you're also rocking and
14 rolling to make sure; right?

15 A. Yes.

16 Q. And that blind spot is really for a
17 split-second, isn't it? Because if you're driving and
18 you get past somebody, you're no longer in a blind spot
19 at all, is it?

20 A. Correct.

21 Q. Just -- just a split-second, there might be a
22 blind spot; right?

23 A. Correct.

24 Q. All right. So I want to ask you -- I'm going
25 to put the bus at 250 -- at 250. And I'm -- and the

1 angle isn't meant to be an angle. It's just the way
2 I've set it down. Okay?

3 At 250, you, I presume, would be looking
4 forward in your mirrors and doing the rock and roll?

5 A. Yes.

6 Q. All right. And you did not see a bicyclist?

7 A. No, sir.

8 Q. Clearly, when you passed him, he was in the
9 bike lane, but, after that, you really don't know what
10 he did; isn't that fair?

11 A. That's correct.

12 Q. And am I too close to you? I don't mean to
13 get too close. I promise you I don't have the flu.

14 A. All right.

15 Q. So you drive on to 200, and you do not see
16 the bicyclist; correct?

17 A. Correct.

18 Q. And without being repetitious, you're still
19 watching, rocking, rolling, and looking in the mirrors?

20 A. Yes, sir.

21 Q. And you don't see him anywhere behind you,
22 and you're going over twice as fast as he is; right?

23 A. Correct.

24 Q. So he's not catching up to you at all, is he?

25 A. I really don't know what he's doing. I know

1 he's not in the bike lane.

2 Q. That's fair. You know he's not in the bike
3 lane?

4 A. Correct.

5 Q. But you didn't see him in the bike lane?

6 A. No, sir.

7 Q. Now, let's go to 150 feet. Same question: I
8 assume you're doing your driving, you're looking. You
9 did not see him at all?

10 A. No, sir.

11 Q. He certainly wasn't in any blind spot, was
12 he?

13 A. I don't know where he was. I can't answer
14 whether he was in a blind spot.

15 Q. He certainly wasn't up here in the bike lane
16 next to you; right?

17 A. No, sir.

18 Q. All right. You don't know where he was. And
19 that's fair?

20 A. Correct.

21 Q. All right. Now, as you go to the 100 feet,
22 did you see him?

23 A. No.

24 Q. Are you again looking in your mirrors, you're
25 going twice as fast as he was, and you're doing the

1 rock and roll movement?

2 A. Well, I don't know if I'm going twice as fast
3 as -- when I'm getting near, because I'm -- the -- if
4 I'm not mistaken, there's a light up there. So I don't
5 remember whether it was green or what, but I'm
6 approaching an intersection. So, therefore, I'm not
7 going to be going faster; I may be starting to
8 decelerate.

9 Q. You may be coming down from 35 to a little
10 bit lower?

11 A. Right. I may be -- yes.

12 Q. You may be going 32, then 33. You are aware
13 that there was -- I know there's a light there, but it
14 wasn't red because -- you saw the video; you go right
15 through it. And you didn't run a red light. It didn't
16 happen?

17 A. Yeah.

18 Q. Okay. All right. So I will tell you there's
19 some experts in the case -- and you probably don't know
20 this -- who have said at the time up here that you were
21 going about 25 miles an hour. Okay?

22 A. Okay.

23 Q. Up here close to this area of the zero mark;
24 right?

25 So as you get to 50, you still didn't see

1 him; right?

2 A. Correct.

3 Q. Now -- and as you get to right in here,
4 somewhere between 50 and zero, you still did not see
5 him; right? You --

6 A. Yes. Little bit closer, I saw him, little
7 bit closer to the crosswalk.

8 Q. Before we get to the crosswalk -- I'm back
9 from the crosswalk -- you did not see him, and you were
10 looking?

11 A. Correct.

12 Q. All right. And if he would have been -- if
13 he had been 10 to 15 feet in front of you in the bike
14 lane, you would have seen him, wouldn't you?

15 A. Yes.

16 Q. And when you get up here -- and here's what I
17 want you to do instead of me to do now. Okay? Show
18 me, if you will, where the bus was when you saw him
19 come into the side of the bus. Okay?

20 A. I would say about somewhere right there
21 (witness indicating).

22 Q. Okay. And I want to let the record
23 reflect --

24 A. That might be out a little bit further, but
25 somewhere in there.

1 Q. Why don't you put it your best shot. Okay?

2 A. So this is somewhere like that.

3 Q. Okay. So it's past zero; right?

4 A. Correct.

5 MR. BARGER: And, Your Honor, may I take a
6 photograph of this with the iPhone? Can we have
7 somebody do that?

8 MR. KEMP: I want to watch this, Your Honor.

9 MR. BARGER: Oh, I'll do it. Sure. I'll use
10 your phone.

11 MR. KEMP: No, you won't.

12 MR. BARGER: Let me have my phone.

13 THE COURT RECORDER: Can you hold the
14 microphone closer, please.

15 THE MARSHAL: Is it responding to your voice?

16 MR. BARGER: I'm multitalented.

17 MR. KEMP: I want to see.

18 MR. BARGER: Why don't you come watch me do
19 that. That's fine. Let me take a couple. Can you
20 look past me, over my shoulder to make sure I'm taking
21 this okay? You see that? Okay.

22 I'm going to move over here, with the Court's
23 permission, to take another photograph and then --

24 THE COURT: That's fine.

25 MR. BARGER: And then, Your Honor, with the

1 lawyers present in front of -- we will download these
2 so we can take a print.

3 THE COURT: Okay.

4 BY MR. BARGER:

5 Q. And I'm going to ask you if you can come with
6 me if you don't mind, sir.

7 Now, the bicycle here is not -- I mean,
8 that's not where it was at the time. So I'm going to
9 have you move the bicycle out of the way. We're just
10 talking about where the bus was. I'm going to take a
11 picture. Okay? All right?

12 Thank you.

13 Now what I want you to do next is show me
14 where the bicycle -- put the bicycle in there, if you
15 will, because you said what you did out of your -- was
16 it your peripheral vision you saw the bicycle come in
17 and hit you?

18 A. No. Right here.

19 Q. Somewhere in there?

20 A. Yes, sir.

21 Q. This happened pretty fast; fair?

22 A. Very fast.

23 Q. I mean, faster than we want to realize,
24 didn't it?

25 All right. So, when you saw the bicycle come

1 in, you don't know where it came from, do you?

2 A. No, sir.

3 Q. And what you told Mr. Christiansen was that
4 you didn't see him in the bicycle lane and you would
5 have if he had been in the bike lane because of your
6 looking in the mirrors and your rocking and rolling and
7 your doing that; right?

8 A. Yes, sir.

9 Q. All right. So is it your testimony -- I'm
10 going to move this back.

11 Is it your testimony that, at some point back
12 here, you never saw Dr. Khiabani in the bike lane?

13 A. No, sir.

14 Q. Is that correct?

15 A. That's correct.

16 Q. All right. And then up -- again, I'm going
17 to ask you to move it back so --

18 A. I should have turned this because it was more
19 like -- it was more like this than it was straight.
20 You understand?

21 Q. Yes, sir?

22 A. It was more like (witness indicating).

23 Q. What I want you to do now is move the bus
24 back where it was and put the bicycle at the -- where
25 you thought it was. And you say it's kind of more

1 turned. I don't want to use any words. I want you to
2 show --

3 A. Yeah, because he -- he was -- and he was
4 coming in. He wasn't straight. He was coming in.

5 Q. All right. I'm going to take a picture of
6 that as well.

7 That's when you immediately turned to the
8 left; right?

9 A. Correct.

10 Q. All right. And we've seen the videos and all
11 the pictures, that the bus ended up across over here;
12 right?

13 A. Yes.

14 Q. Right. You can take your seat, sir. Thank
15 you.

16 THE MARSHAL: Thank you, sir.

17 BY MR. BARGER:

18 Q. As you drive the MCI bus -- or any bus, but
19 let's talk about this MCI bus. As you drive that, do
20 you now -- do you now remember seeing the photographs
21 that there -- the right front door where the passengers
22 come in, there are windows there; right?

23 A. Yes.

24 Q. And you can see out; right?

25 A. Yes.

1 Q. All right. And, like I said before, if
2 there's -- if the bicycle is out in front of you 10 or
3 15 feet, there's nothing blocking your view from seeing
4 that; correct?

5 A. Out in -- directly in front of me?

6 Q. Yes.

7 A. No.

8 Q. Okay. And out in front, like, if he was in
9 the bike lane 10 or 15 feet out in front, nothing
10 blocking your view seeing him?

11 A. No, sir.

12 Q. Is that correct?

13 A. Yes, sir.

14 Q. All right. Now, there was a question -- and
15 I'm almost through, because I know you're ready to get
16 out of here. Okay? There's a question asked you about
17 aerodynamics.

18 You're not an aerodynamic engineer, are you?

19 A. No.

20 Q. No. You've driven buses for 20-something
21 years; right?

22 A. I have.

23 Q. And you know when a bus is going down the
24 road, there's some air disturbance. That's not new to
25 you, is it?

1 A. That it -- what -- I don't --

2 Q. When you're going through and you're going,
3 driving a bus, coming towards you, there's air coming
4 at you; right?

5 A. Okay.

6 Q. And, as you said -- you said in your
7 deposition -- and let me just read you a question.

8 MR. KEMP: Your Honor.

9 THE COURT: Is that an objection?

10 MR. BARGER: I will ask it a different way.
11 It's fine.

12 THE COURT: Okay. Sustained.

13 BY MR. BARGER:

14 Q. Let me ask you a question. Is it your
15 understanding that, if a bus is moving at 30 or
16 35 miles an hour, that that will cause air blast or air
17 displacement at the front of the bus? Have you ever
18 heard that?

19 A. No, sir.

20 Q. Do you remember what you said in your
21 deposition?

22 A. Some of it. I don't remember everything.

23 Q. Okay. Let me ask permission to have that --
24 I'll hand you your deposition, the original. They have
25 to open it, though.

1 I will turn to a page for you before I hand
2 it to you, if I may. I'm going to show you something
3 on page 76. Okay?

4 MR. BARGER: I have to show him this, Your
5 Honor?

6 THE COURT: Yes.

7 BY MR. BARGER:

8 Q. You see at the top of the page, it will say
9 the page number? Okay? And these are the line
10 numbers. Okay? You see that?

11 Okay. What I'm going to do is read to you
12 the question that was asked you by Mr. Kemp.

13 If you'll look at line 8.

14 A. Uh-huh.

15 Q. Actually, line 11. I'm sorry. The question:

16 "Do you have any sort of undertaking --
17 understanding" -- I'm sorry -- "that a bus, if
18 it's moving at 30 to 35 miles an hour, will
19 cause air blast or air disturbances at the
20 front of the bus? Have you ever heard of
21 that?"

22 What was your answer?

23 A. "Yes."

24 Q. And then it keeps going, and we'll read that.

25 Let me ask you. When you say yes to that,

1 does that mean that you know there's air coming because
2 the bus is driving into it, and it's called -- whether
3 it's ever called an air blast. You never heard that
4 term before, did you?

5 A. No.

6 Q. But you've heard of air disturbance, because
7 you know a bus going at 35 miles an hour through the --
8 driving down the road, there's a little air; right?

9 A. Correct.

10 Q. Okay. And that's my point. The word "air
11 blast," whatever that means, you know that there's air
12 moving around a bus when you're driving through the
13 air?

14 A. Right.

15 Q. That's nothing new to you?

16 A. No. I think that's what it means when I said
17 yes.

18 MR. BARGER: If I may have one minute?

19 THE COURT: Yes.

20 MR. BARGER: Mr. Hubbard, thank you very much
21 for coming. That's all I have.

22 Pete, let me give up the mic.

23 MR. CHRISTIANSEN: I don't need it.

24 MR. BARGER: Let me give it to the Court,
25 then.

1 THE COURT: Redirect, Mr. Christiansen?

2 MR. CHRISTIANSEN: Please, Your Honor.

3 THE COURT: You may proceed.

4 MR. BARGER: Judge, can we approach the bench
5 for a second? I don't want to admit my phone.

6 MR. KEMP: Okay.

7 MR. BARGER: He's trying to trick me to admit
8 my phone, and I'm not going to do that.

9 MR. KEMP: He needs to move to admit the
10 picture before he sits down.

11 MR. BARGER: You want them printed? Do we
12 have to print them first?

13 MR. KEMP: Doesn't have to be right now, Your
14 Honor. I just wanted to -- okay.

15 THE COURT: I am not certain how many
16 pictures you took.

17 MR. BARGER: I think they were four or five.
18 They'll all be here. I will move to admit the
19 pictures. But, Your Honor, I do not want to admit the
20 phone. My wife wouldn't like that very much.

21 THE COURT: Understood.

22 Any objection?

23 MR. KEMP: No objection.

24 THE COURT: Very good. Those will be?

25 THE CLERK: Next in line is 238. You're

1 saying there's four?

2 THE COURT: No, defense.

3 MR. BARGER: You know what?

4 THE CLERK: Oh, I'm sorry. Yeah. I'm sorry.

5 THE COURT: The next in line is 503.

6 THE CLERK: Yes.

7 MR. BARGER: There are five, Your Honor.

8 THE COURT: Five? So 503. They start at
9 503.

10 THE CLERK: Through 507.

11 THE COURT: So 503 through 507 of defense.

12 MR. BARGER: Five photographs.

13 THE COURT: Exhibits 503 through 507 of
14 defense exhibits. Okay?

15 MR. BARGER: I will print them and have them.

16 THE COURT: Yes.

17 (Whereupon, Defendant's Exhibits 503
18 through 507 were admitted into
19 evidence.

20 THE COURT: There's no objection. They will
21 be admitted. Okay.

22 MR. CHRISTIANSEN: May I proceed, Your Honor?

23 THE COURT: Go on, please.

24

25 /////

REDIRECT EXAMINATION

1
2 BY MR. CHRISTIANSEN:

3 Q. Okay. Mr. Hubbard, just a few follow-up
4 questions.

5 Back in September, on the 20th at your
6 deposition, you got to place on this very same board
7 the same bus and the same bike, but the bike hadn't
8 been painted yet. Is that fair?

9 A. Yes.

10 Q. And Exhibit -- picked up the one. I think
11 this might be 37. I grabbed the ones --

12 MR. CHRISTIANSEN: Ms. Clerk, can I have the
13 last five I marked? 230 through 237, I believe.

14 THE CLERK: Uh-huh.

15 MR. CHRISTIANSEN: Thank you.

16 THE CLERK: Welcome.

17 BY MR. CHRISTIANSEN:

18 Q. Mr. Hubbard, I just want to show you --
19 Mr. Barger had you place the bus a few seconds ago;
20 fair?

21 A. Yes.

22 Q. When you placed it back in September at your
23 deposition at the zero line, you did not see the
24 bicycle; correct? That's Exhibit 236.

25 A. Correct.

1 Q. When you place it halfway through the
2 intersection at Exhibit 237 -- I'll zoom in so the
3 ladies and gentlemen of the jury can see the white
4 bike; we hadn't painted it yet -- you place it where
5 you placed it on that map; correct?

6 A. Right. But it was more to the side, by
7 the -- right where I placed it at.

8 Q. Okay. But my question simply is to you, sir,
9 you placed these items, not anybody else?

10 A. My -- I don't -- I don't know. I -- I don't
11 know when this picture was taken, so I don't know.

12 Q. This was taken in your deposition, and they
13 were -- we took photos every 50 feet. We had you place
14 the bus --

15 A. Right.

16 Q. -- and then we took a picture. You remember
17 that?

18 A. Yes.

19 Q. You were the guy doing the placing?

20 A. Yes.

21 Q. You did this last placing where you place the
22 bus and the bike, and then we took the last picture?

23 A. Correct.

24 Q. Okay. So I just want to make sure.

25 A. That's just about the same. It's just off a

1 little bit on the board. I mean --

2 Q. Understood. And in your deposition, when
3 MCI's attorney, Mr. Terry, the gentleman in the corner
4 here, asked you -- go to page 28 if you would, please,
5 sir, of your deposition. You have it in front of you?
6 Do you have it with you, sir?

7 A. Correct.

8 Q. Look at lines 3. I'm going to read a
9 question and answer to you. Okay?

10 "QUESTION: So as you come up on the
11 intersection of Griffith and Pavilion, you saw
12 the bike turn into what looked like your door
13 area."

14 That's the question posed to you; is that
15 right?

16 A. Yes.

17 Q. Your answer is:

18 "I don't know if it was a turn. I don't
19 know what it was. I know that he just -- he
20 just came into it."

21 Did I read that correctly?

22 A. Yes.

23 Q. So MCI suggested to you that the bicyclist
24 turned. You resisted that suggestion and stuck with
25 your original story, which was that it was a drift.

1 That was your word.

2 A. Correct.

3 Q. And you have never said the bicyclist turned?

4 A. No, I haven't.

5 Q. 'Cause, sir, I asked you earlier, if somebody
6 wanted to turn, into what kind of traffic would they be
7 turning into?

8 A. Correct.

9 Q. Oncoming.

10 A. I'm just telling you how the bike was at --
11 when I saw it, it was on a diagonal. I never said it
12 was turning. I'm just telling you it was like this.

13 Q. Even when suggested to you by MCI that it was
14 turning, you resisted. You said no?

15 A. No. It was just on an angle.

16 Q. It was drifting?

17 A. Correct.

18 Q. After the nose of the bus had passed it?

19 A. Correct.

20 Q. After you hadn't seen it for about 450 feet?

21 A. Correct.

22 Q. After you passed it today, Mr. Barger said
23 when you passed it back at the cutout and you thought
24 you were maybe 5 to 7 feet away from it -- do you
25 remember that?

1 A. Right.

2 Q. At your deposition at page 32, do you
3 remember saying you were actually 3 to 4 feet from the
4 bike when you passed it at the cutout?

5 A. I don't recall.

6 Q. Okay. Well, your memory in September was a
7 little closer to the events in question?

8 A. True.

9 Q. Probably was a little clearer?

10 A. Possible.

11 Q. Okay. Sir, you told me earlier that you'd
12 recently been in an Uber or a Lyft and had seen a
13 proximity sensor or an outside camera for when people
14 change lanes.

15 A. Right.

16 Q. Do you think one of those would be a good
17 idea on buses?

18 MR. BARGER: Excuse me. Objection.
19 Foundation. Invades the province of the jury.

20 THE COURT: Sustained.

21 BY MR. CHRISTIANSEN:

22 Q. Mr. Barger just asked you 20 minutes' worth
23 of questions about all your bus driving experience.
24 Remember?

25 A. Correct.

1 Q. Very experienced on a bus?

2 A. Correct.

3 Q. Would one of those cameras or a sensor, in
4 your opinion with your experience, be helpful?

5 MR. BARGER: Objection. Judge, can we
6 approach again, please?

7 (A discussion was held at the bench,
8 not reported.)

9 BY MR. CHRISTIANSEN:

10 Q. Mr. Hubbard, in your experience, would a
11 proximity sensor or a camera on a bus be a good idea?

12 A. Yes.

13 Q. Do you know -- you know, as you sit here
14 today, that the bus, the rear tires, rolled over the
15 doctor. As you sit here today, you know that?

16 MR. BARGER: Excuse me. Objection, Your
17 Honor. No foundation for that. He said he didn't
18 know.

19 THE COURT: Sustained.

20 BY MR. CHRISTIANSEN:

21 Q. Well, I'll ask you. Do you know?

22 You have to answer out loud, sir.

23 A. I'm sorry?

24 Q. Do you know one way or another if the rear
25 tires ran over the cyclist?

1 A. I don't know.

2 Q. Do you know one way or another if one of the
3 barriers you told me you have seen on other buses would
4 have prevented that?

5 MR. BARGER: Excuse me, Your Honor. Just
6 same objection. No foundation.

7 THE COURT: Sustained.

8 BY MR. CHRISTIANSEN:

9 Q. Sir, you've explained to the ladies and
10 gentlemen of the jury that at the zero line, you were
11 in the most westbound -- western southbound lane and
12 you did not see the bus -- the bike; correct?

13 A. Yes.

14 Q. Did you know there was a lady behind you
15 named Erika Bradley who saw the bus in the bike lane at
16 that very moment?

17 A. I don't know.

18 Q. The bike in the bike lane. I said the bus.
19 I apologize.

20 Did you know there was a gardener,
21 Mr. Sacarias, who at that very moment in time, at the
22 zero mark line, saw the bike in the bike lane right
23 next to you?

24 A. I don't know.

25 Q. Did you know there was Ms. Kolch, nice young

1 lady who was on the motorcycle who you saw on the video
2 run across the street, who also saw the bike in the
3 bike lane right next to you at the zero mark line?

4 A. I don't know.

5 Q. I mean, just looking at angles, they all have
6 a pretty good view of that angle, do they not?

7 A. I don't know.

8 Q. Well, certainly, you can agree that the
9 gardener has a good angle right there, can't you? The
10 gardener's this guy right here, Mr. Sacarias.

11 A. I'm listening to you. I don't -- I don't
12 know either way, sir. I had the best view for me, and
13 I was the one who was operating the bus.

14 Q. And the best view for you for 450 feet didn't
15 see the bicyclist in the bicycle lane; correct?

16 A. Correct.

17 MR. CHRISTIANSEN: Nothing else.

18 MR. BARGER: I have no questions, Your Honor.

19 THE COURT: Okay. Does the jury have any
20 questions?

21 THE MARSHAL: I do believe, Your Honor.

22 Any others? Any others? We have two, Your
23 Honor.

24 THE COURT: Okay.

25 /////

1 (A discussion was held at the bench,
2 not reported.)

3 THE COURT: All right. Mr. Hubbard, I can
4 barely see you, but all right. There's some questions
5 from the jury. And I'm going to ask them to you, and
6 you may answer them if you -- if you know. Okay?

7 THE WITNESS: Yes.

8 THE COURT: All right.

9 Have you ever driven a motor coach with
10 proximity sensors?

11 THE WITNESS: Yes.

12 THE COURT: If so, how many motor coaches
13 have you driven with proximity sensors?

14 THE WITNESS: I don't know how many. We
15 have -- we have a bunch at our depot.

16 THE COURT: Okay. No. 3, are you familiar
17 with any rear tire safety devices?

18 THE WITNESS: I'm not familiar with them. I
19 know about them, but I'm not familiar with them.

20 THE COURT: Okay. So, but you know about
21 them? So I'll just ask you this and see if you can or
22 cannot answer. Okay?

23 If so, have you driven a bus with a rear
24 safety device?

25 THE WITNESS: No.

1 THE COURT: Okay. No. 5, at any time do you
2 recall seeing the light red even though it was green at
3 the time you approached the intersection and begin
4 decelerating, or did you begin slowing down while
5 approaching the intersection?

6 THE WITNESS: I began slowing down while
7 approaching the intersection.

8 THE COURT: Okay. No. 6, if you passed the
9 bicyclist at the transit turn lane, how do you think he
10 got back ahead of you?

11 THE WITNESS: I don't know.

12 THE COURT: Okay. Okay. There are a couple
13 more questions.

14 No. 1, according to testimony, it says he saw
15 a bicyclist before turning onto Pavilion. Was it the
16 same bicyclist that it would appear to be, the --
17 Dr. Khiabani or a different person?

18 THE WITNESS: I'm sorry, ma'am. Can you
19 repeat --

20 THE COURT: I'll repeat the question.

21 According to testimony, he -- meaning, I
22 believe, you -- saw a bicyclist before turning onto
23 Pavilion. Was it the same bicyclist that it would
24 appear to be, Dr. Khiabani, or a different person?

25 THE WITNESS: No, it was the same bicycle.

1 THE COURT: The second question is, what is
2 the approximate distance from the intersection to the
3 hotel entrance?

4 THE WITNESS: From the intersection where the
5 incident happened to the hotel entrance?

6 THE COURT: I imagine it's -- the question
7 says, what is the approximate distance from the
8 intersection to the hotel entrance?

9 THE WITNESS: I don't know the distance, but
10 I was, like, 45 seconds away from dropping the people
11 off.

12 THE COURT: Okay. No. 3, how soon were you
13 looking to steer the bus towards the entrance?

14 THE WITNESS: How soon was I looking to steer
15 the bus towards the entrance?

16 THE COURT: Actually it doesn't say "the,"
17 but I added it. Steer bus -- and it says -- entrance,
18 but I think it means towards the entrance.

19 THE WITNESS: I don't know. Because I wasn't
20 near the entrance yet. The entrance was, like, a
21 little further up.

22 THE COURT: If you knew, could it -- could it
23 be shown on the big board.

24 But you -- you say you don't know?

25 THE WITNESS: Well, the entrance to where I

1 was going was -- was the next driveway, not the
2 driveway at the intersection.

3 THE COURT: So will you please show that on
4 the big board.

5 THE WITNESS: Yes.

6 THE COURT: Okay.

7 THE MARSHAL: Here is your mic, sir. You
8 guys can stand if you need to see him.

9 THE WITNESS: Oh, actually, I'm sorry. It's
10 not in the picture.

11 MR. CHRISTIANSEN: Judge, the board behind
12 him.

13 MR. BARGER: The one on the easel.

14 THE COURT: Okay. If you stand back a little
15 bit so the entire jury can see, Mr. Hubbard.

16 THE MARSHAL: Stand on this side.

17 THE WITNESS: I'm sorry. I'm trying to see
18 where I'm at.

19 THE COURT: Take your time.

20 THE WITNESS: Right.

21 This is the first entrance, but I'm not going
22 here. The entrance I'm going to is right here
23 (indicating). So the -- the incident happened here,
24 but the -- the entrance is here to where I was going.

25 THE COURT: Okay. Thank you, sir. You may

1 sit down.

2 MR. BARGER: Your Honor, I have these
3 photographs.

4 THE COURT: Just a moment.

5 All right. Counsel, do you have any
6 follow-up questions for Mr. Hubbard?

7 MR. BARGER: No, Your Honor.

8 MR. CHRISTIANSEN: No, Your Honor.

9 THE COURT: Mr. Hubbard -- any more jury
10 questions, Jerry?

11 THE MARSHAL: I do believe so, Your Honor.

12 Any other questions, put it in writing,
13 please.

14 No other questions, Your Honor.

15 THE COURT: Okay. Thank you. Anything else
16 from counsel?

17 MR. BARGER: Yes, Your Honor.

18 THE COURT: Go on.

19 MR. BARGER: Judge, the photographs, the five
20 photographs I took, we've now printed. And it's
21 503-001, 504-001, 505-001, 506-001, and 507-001.

22 We offer those at this time, Your Honor.

23 MR. KEMP: No objection, Your Honor.

24 THE COURT: Okay. Very good. So those are
25 admitted into evidence. All right.

1 MR. BARGER: That's all I have. Thank you.

2 THE COURT: Okay.

3 You are excused, Mr. Hubbard. Thank you very
4 much.

5 THE WITNESS: You're welcome.

6 THE MARSHAL: Thank you, sir. Watch your
7 step.

8 THE COURT: I would like to see counsel at
9 the bench, please.

10 (A discussion was held at the bench,
11 not reported.)

12 THE COURT: All right. All right. Ladies
13 and gentlemen, we're going to wrap it up for this
14 evening. I want to thank you for your dedication and
15 for -- for listening so closely and fulfilling your
16 civic duty. We are going to start again tomorrow at
17 9:30 in the morning, and I'm going to admonish you for
18 the evening.

19 During our break, you're instructed not to
20 talk with each other or with anyone else about any
21 subject or issue connected with this trial. You are
22 not to read, watch, or listen to any report of or
23 commentary on the trial by any person connected with
24 this case or by any medium of information, including,
25 without limitation, newspapers, television, the

1 Internet, or radio.

2 You are not to conduct any research on your
3 own relating to this case, such as consulting
4 dictionaries, using the Internet, or using reference
5 materials.

6 You are not to conduct any investigation,
7 test any theory of the case, re-create any aspect of
8 the case, or in any other way investigate or learn
9 about the case on your own.

10 You are not to talk with others, text others,
11 tweet others, google issues, or conduct any other kind
12 of book or computer research with regard to any issue,
13 party, witness, or attorney involved in this case.

14 You're not to form or express any opinion on
15 any subject connected with this trial until the case is
16 finally submitted to you.

17 Have a great evening, ladies and gentlemen.
18 We'll see you tomorrow at 9:30.

19 THE MARSHAL: All rise. This way.

20 (The following proceedings were held
21 outside the presence of the jury.)

22 THE COURT: Did you close the door? Thank
23 you, Jerry.

24 Okay. Very good. We're still on. Do we
25 need to be on the record for this? I don't think --

1 it's just about.

2 MR. CHRISTIANSEN: Just 9:30 tomorrow
3 morning.

4 MR. ROBERTS: I don't think so, Your Honor.

5 THE COURT: That's not everything.

6 Mr. Pepperman and Mr. Russell, let's talk about our
7 plan. We can go off the record.

8 (Thereupon, the proceedings
9 concluded at 4:50 p.m.)

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15 ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF
16 PROCEEDINGS.

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KRISTY L. CLARK, CCR #708

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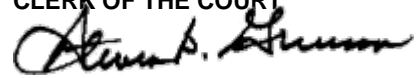
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9/12/2018 11:13 AM

Steven D. Grierson
CLERK OF THE COURT

1 CASE NO. A-17-755977-C

2 DEPT. NO. 14

3 DOCKET U

4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6 * * * * *

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

17 Plaintiffs,)

18 vs.)

19 MOTOR COACH INDUSTRIES, INC.,)
20 a Delaware corporation;)
21 MICHELANGELO LEASING, INC.)
22 d/b/a RYAN'S EXPRESS, an)
23 Arizona corporation; EDWARD)
24 HUBBARD, a Nevada resident, et)
25 al.,)

Defendants.)

21 **REPORTER'S TRANSCRIPTION OF PROCEEDINGS**22 BEFORE THE HONORABLE ADRIANA ESCOBAR
DEPARTMENT XIV

23 DATED FRIDAY, MARCH 2, 2018

24 RECORDED BY: SANDY ANDERSON, COURT RECORDER

25 TRANSCRIBED BY: KRISTY L. CLARK, NV CCR No. 708

1 APPEARANCES:

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3 Kayvan Khiabani, M.D.:

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5 **BY: ERIC PEPPERMAN, ESQ.**
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26 - AND -

27 For the Defendant Motor Coach Industries, Inc.:

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I N D E X

Witness:	Direct:	Cross:	Redirect:	Recross:
Brian Sherlock	8	61	141, 154	150

E X H I B I T S

Number:	Marked:	Admitted:	Joint:
198		30	
508		82	
509		82	
510		82	

1 LAS VEGAS, NEVADA, FRIDAY, MARCH 2, 2018;

2
3 P R O C E E D I N G S

4 * * * * *

5
6 (The following proceedings were held
7 outside the presence of the jury.)

8 THE MARSHAL: All rise. Department 14 is now
9 in session with the Honorable Adriana Escobar
10 presiding.

11 THE COURT: Good morning.

12 MR. BARGER: Judge, can counsel approach the
13 bench real quick? Take about ten seconds.

14 THE MARSHAL: Please be seated. Come to
15 order.

16 (A discussion was held at the bench,
17 not reported.)

18 THE COURT: All right. Let's see.

19 MR. BARGER: So -- so you'll -- Will. Will.

20 (A discussion was held at the bench,
21 not reported.)

22 THE MARSHAL: Are we ready, Your Honor?

23 THE COURT: We are waiting on a couple of
24 counsel.

25 Okay. Are we ready for the jury?

1 MR. TERRY: Yes, Your Honor.

2 THE MARSHAL: All rise.

3 (The following proceedings were held in
4 the presence of the jury.)

5 THE MARSHAL: All the jurors are present,
6 Your Honor.

7 THE COURT: Okay. Very good.

8 THE MARSHAL: Please be seated. Come to
9 order.

10 THE COURT: Call the roll.

11 THE COURT CLERK: Yes, Your Honor.
12 Byron Lennon.

13 JUROR NO. 1: Here.

14 THE COURT CLERK: John Toston.

15 JUROR NO. 2: Here.

16 THE COURT CLERK: Michelle Peligro.

17 JUROR NO. 3: Here.

18 THE COURT CLERK: Raphael Javier.

19 JUROR NO. 4: Here.

20 THE COURT CLERK: Dylan Domingo.

21 JUROR NO. 5: Here.

22 THE COURT CLERK: Aberash Getaneh.

23 JUROR NO. 6: Here.

24 THE COURT CLERK: Jaymi Johnson.

25 JUROR NO. 7: Here.

1 THE COURT CLERK: Constance Brown.

2 JUROR NO. 8: Here.

3 THE COURT CLERK: Enrique Tuquero.

4 JUROR NO. 9: Here.

5 THE COURT CLERK: Raquel Romero.

6 JUROR NO. 10: Here.

7 THE COURT CLERK: Pamela Phillips-Chong.

8 JUROR NO. 11: Here.

9 THE COURT CLERK: Gregg Stephens.

10 JUROR NO. 12: Here.

11 THE COURT CLERK: Glenn Krieger.

12 JUROR NO. 13: Here.

13 THE COURT CLERK: Emilie Mosqueda.

14 JUROR NO. 14: Here.

15 THE COURT CLERK: Thank you.

16 THE COURT: Okay. Do the parties stipulate
17 to the presence of the jury?

18 MR. TERRY: We do, Your Honor.

19 MR. KEMP: Yes, Your Honor.

20 THE COURT: Ladies and gentlemen, I wanted to
21 welcome you back this morning and thank you for your
22 service. And there's also something I wanted to remind
23 you of. It's absolutely great and wonderful if you're
24 coming closer, which is natural.

25 But I want to remind you that you can talk

1 about other subjects when you're together. Absolutely
2 nothing about the testimony or the case that's going on
3 in here or discussing your notes. Okay? So anything
4 that's even mildly or -- or anywhere close to anything
5 that's happening in here or notes you have taken or
6 witnesses, nothing can be discussed. Okay?

7 Does everyone understand that? I just wanted
8 to remind you. All right. Very good.

9 Shall we begin? Go on.

10 MR. KEMP: Your Honor, we call Mr. Sherlock.

11 THE COURT: All right. Very good.

12 THE MARSHAL: Watch your step, sir. Remain
13 standing and raise your right hand towards the clerk.

14 THE COURT CLERK: You do solemnly swear the
15 testimony you're about to give in this action shall be
16 the truth, the whole truth, and nothing but the truth,
17 so help you God.

18 THE WITNESS: Yes.

19 THE COURT CLERK: Thank you. You may be
20 seated.

21 MR. KEMP: Good morning, ladies and
22 gentlemen.

23 THE CLERK: And, sir, would you please state
24 and spell your name.

25 THE WITNESS: Brian Sherlock, B-r-i-a-n,

1 S-h-e-r-l-o-c-k.

2 THE CLERK: Thank you.

3

4 DIRECT EXAMINATION

5 BY MR. KEMP:

6 Q. Mr. Sherlock, will you tell the jury where
7 you went to college.

8 A. University of Washington and North Seattle
9 Community College.

10 Q. And how long did you do that?

11 A. Just under four years.

12 Q. Okay. Did you become a bus driver after
13 that?

14 A. During.

15 Q. Okay. And approximately when did you become
16 a bus driver?

17 A. 1979.

18 Q. Are you a member of the bus driver union?

19 A. Yes.

20 Q. And when did you become a member of the bus
21 driver union?

22 A. 1979.

23 Q. What union is that?

24 A. The Amalgamated Transit Union.

25 Q. And can you explain to the jury what the

1 Amalgamated Transit Union is?

2 A. Yeah. It's the largest of the transit unions
3 in North America, representing roughly 100 different
4 job classifications, basically everybody who does
5 transit up to low-level supervision in some cases.

6 Q. Bus drivers are members of that union?

7 A. Absolutely.

8 Q. And when you were with the union, did you
9 participate in union activities?

10 A. Yes. For a few decades I've been doing
11 health and safety work.

12 Q. Okay. Does the union have a safety
13 committee?

14 A. There are a couple. And yes.

15 Q. And were you involved in the safety
16 committee?

17 A. Yes. Both types. The one that was -- had a
18 base and the one that was overseeing safety issues for
19 the entire organization.

20 Q. Just in -- in what part of the country were
21 you in when you first started driving bus?

22 A. This is King County Metro, so Seattle
23 basically.

24 Q. And what does the safety committee do?

25 A. Oversees all aspects of safety from vehicle

1 characteristics and design choices through operational
2 details.

3 Q. And what was your position with the safety
4 committee?

5 A. At the base level, I was elected to do that,
6 operate -- looking at issues that are particular to
7 that operational base. And then I was appointed to the
8 joint safety committee, which was the general manager
9 and division managers and the union president and his
10 designees, and we'd oversee things that weren't
11 resolved at the local level.

12 Q. Did you hold a position with the safety
13 committee?

14 A. Yeah. I was the chairman of our safety
15 committee, and there -- yeah, just a member of the
16 local committee.

17 Q. And how long were you the safety committee
18 chairman?

19 A. Roughly two decades.

20 Q. 20 years?

21 A. Uh-huh.

22 Q. Yes?

23 A. Yes.

24 Q. Okay. Did you investigate bus accidents in
25 your job as chairman of the safety committee?

1 A. Many.

2 Q. When you say many, how many?

3 A. Hundreds.

4 Q. Okay. And what sort of safety issues did you
5 analyze when you were the chairman of the safety
6 committee?

7 A. It's quite a list. I looked at every single
8 operational control, every aspect of safe vision, air
9 quality, cognitive loading. Just a wide, wide array,
10 about everything that -- the highlight issues of
11 operating safe -- transit safely.

12 Q. And was aerodynamics one of those issues?

13 A. Yes.

14 Q. Were right-side blind spots one of those
15 issues?

16 A. Certainly.

17 Q. Okay. And did there come a time that you
18 changed from a regional position to an international
19 position?

20 A. Yes. My -- the international president
21 noticed the work that I'd been doing and, increasingly
22 over the years, had asked me to represent in various
23 states where there were serious issues.

24 And then in 2015, I came on full-time, moved
25 from Seattle to Washington, D.C., and have been doing

1 health and safety for North America subsequently.

2 Q. Okay. And why did you go to Washington,
3 D.C.?

4 A. It was better to integrate my activities with
5 the other folks that are doing that in the
6 international. Doing it remotely was really a pain,
7 and --

8 Q. Where -- where are ATU headquarters at?

9 A. It's Silver Spring, basically Washington,
10 D.C.

11 Q. Silver Spring, Maryland?

12 A. Yes.

13 Q. That's where the ATU is located at?

14 A. The ATU international, yes.

15 Q. You mentioned the president of the
16 international?

17 A. Yes. Larry Hanley.

18 Q. Okay. All right. Since you moved back to
19 D.C., have you continued to investigate bus accidents?

20 A. Yes.

21 Q. And have you analyzed design issues?

22 A. Yes. We're really actively involved in
23 trying to change the industry to make it safer.

24 Q. When you say "we," you're referring to whom?

25 A. The Amalgamated Transit Union.

1 Q. Are you a member of any industry groups?

2 A. I'm a member of the APTA. That's the
3 American Public Transit Association, the industry
4 association looking out over municipal transit, that
5 sort of thing. I'm a member of their safety committee.

6 Q. And how long have you been a member of that
7 committee?

8 A. Roughly ten years. Something like that.

9 Q. Okay. And, again, are you familiar with
10 right-side blind spot issues?

11 A. Extremely.

12 Q. And you said you're familiar with the
13 aerodynamics issues.

14 A. Yes.

15 Q. Leaving this case aside, have you been
16 involved in other bus accident cases involving
17 aerodynamics issues?

18 A. Yes.

19 Q. Can you tell me about those cases.

20 A. One example was a bicyclist who was -- this
21 is in the city of Seattle, a very dense urban area
22 right next to the university. And a bicyclist was
23 riding along on a two-lane street and a bus was
24 following him and didn't have a good opportunity to
25 pass for a very long time.

1 And then the lanes split as the road became
2 two roads, and that yielded a wide lane. And the bus
3 driver took the opportunity to pass. And even though
4 he had left a large space, the bicyclist ended up
5 running into the side of the bus and reported that he
6 had no idea what happened; he just rode into the side
7 of the bus.

8 Q. And why did that involve aerodynamic issues?

9 A. That was the -- that was driven by what's
10 called leading-edge suction. There's a partial vacuum
11 formed by the poor aerodynamics of the front. These
12 things are very square; they're not slightly rounded on
13 all the surfaces like a car. And that causes a
14 low-pressure zone that pulls people in. It first
15 pushes them, and then it pulls them in.

16 MR. KEMP: Okay. Your Honor, we tender
17 Mr. Sherlock as a bus safety expert with an emphasis on
18 blind spots and aerodynamics.

19 MR. TERRY: No objection, Your Honor.

20 THE COURT: All right. Very good.

21 BY MR. KEMP:

22 Q. How many people are in the ATU again?

23 A. Just under 200,000.

24 Q. And most of them are bus drivers?

25 A. That's the largest classification.

1 Q. Okay. And is the ATU part of any other union
2 federation?

3 A. AFL.

4 Q. What does that stand for?

5 A. American Federation of Labor.

6 Q. Why is the ATU concerned about safety?

7 A. It's a broad array. It's -- it's a common
8 good. Our members benefit. The public benefits. It's
9 sort of a moral thing to do. I actually spend most of
10 my time trying to defend the interests of the public at
11 large.

12 Q. Does the ATU have a description for buses
13 that they believe is poorly designed?

14 A. Yes.

15 Q. What do they call them?

16 A. Oh, they -- the international president,
17 being kind of outraged about this, has called them
18 massive mobile manslaughter machines.

19 Q. Okay. And why is a poorly designed bus a
20 massive -- potentially a massive mobile manslaughter
21 machine?

22 A. These have not progressed in terms of
23 engineering in the way that cars have. They haven't
24 gotten safer over the years in the same way. Enormous
25 blind spots have been allowed, where you can hide a

1 dozen pedestrians across an intersection. And you get
2 these synergies of motion of the pedestrian and the
3 blind spots.

4 So imagine the pillar in your car being
5 1.7 feet wide, for example. And you can reach out and
6 touch this. It's a 3 feet away from you, very roughly.
7 And I've had a couple of fatalities recently. They
8 were 1.7 feet wide at the blind spot, and that just
9 tracked the pedestrian like a cruise missile. High
10 base of the windows. In places like New York --

11 Q. Before -- there are different kinds of vision
12 problems in buses, potentially?

13 A. Yes.

14 Q. And can you just say, in general, what kinds
15 there are?

16 A. Another common one -- you see these
17 fatalities commonly in New York, New Jersey where the
18 high base of the windows on this kind of over-the-road
19 bus will allow jaywalkers -- there's tons of jaywalkers
20 in that area -- to walk right in front of the bus and
21 not be seen because the windows are taller than the
22 pedestrian. It's unnecessary and lethal.

23 Q. Have you looked at the Red Rock video in this
24 case?

25 A. Yes.

1 Q. And have you also looked at the Red Rock
2 stills of the video?

3 A. Yes.

4 MR. KEMP: Okay. Let me just show the stills
5 for me, just going through them real slow, please,
6 Shane. Next one. Next one. Please. That's it.
7 Okay.

8 BY MR. KEMP:

9 Q. Is there anything significant in these
10 stills, to your opinion?

11 A. Absolutely. This is the best evidence for
12 exactly what had occurred as Dr. Khiabani was --
13 contacted the bus.

14 Q. Okay. And what is significant about them?

15 A. It shows the relationships between them. The
16 accident reconstructionist were able to accurately
17 determine the speed of both, the paths of both over
18 this short interval. But it's the critical interval,
19 so this is very valuable information.

20 Q. And what does that indicate as concerning
21 whether the doctor was traveling horizontal or
22 parallel?

23 A. Roughly parallel.

24 Q. And why is that important?

25 A. The question boils down to did the doctor

1 steer into the bus or was he pulled in by aerodynamic
2 forces? And the fact that they're both going roughly
3 parallel argues strongly that the fundamental cause of
4 this was bad aerodynamic design.

5 Q. Okay. And what does this indicate with
6 regards to right-side blind spots, if anything?

7 A. It shows that Dr. Khiabani -- excuse me --
8 was within an area that's an extremely obstructed view.
9 Because of the high base of the window and overly large
10 pillars and an obstructed view out the door, it was
11 very hard for the driver to see very much of the
12 bicyclist at all.

13 Q. Okay. And do you have an opinion as to
14 whether or not the J4500 bus in this case has a
15 right-side visibility problem?

16 A. Yes.

17 Q. What is your opinion?

18 A. It's extremely bad and extremely unnecessary.
19 It takes very little to lower the windshield base so
20 that you can see down better. It takes very little to
21 make the pillars thinner. The structural element in
22 there that you can't change is only about that big
23 (witness indicating), and the rest can be changed,
24 intelligently designed so you have unobstructed vision.
25 Doors are available that are all glass. And you'll see

1 that this has large obstructions.

2 And all of that would help you. Especially
3 off in this peripheral area of your view, it's
4 extremely important to have really unobstructed vision,
5 and it's trivial to do it.

6 Q. Have you investigated other fatality cases
7 involving MCI buses where there were front and side
8 visibility problems?

9 A. Yes.

10 Q. And can you tell the jury about some of those
11 cases.

12 A. One was a elderly woman who jaywalked, as I
13 was talking about the problem in New York and
14 New Jersey. This elderly woman walked in front, came
15 between traffic waiting at a light. And the vehicles
16 were very tall -- 6 feet -- and she wasn't.

17 So she steps from behind these vehicles right
18 in front of the bus, and now she's behind the pillar on
19 the left, which is very similar to the pillar on the
20 right. And the mirror and the high base of the window,
21 she was unseen and crushed.

22 Q. What kind of bus was that?

23 A. MCI.

24 Q. What kind of MCI bus?

25 A. That I believe -- I'm not exactly sure of the

1 model number. I've looked at it and looked at the
2 sight-line issues, measured them and all of that, but I
3 didn't pay attention to the model number on that one,
4 unfortunately.

5 Q. Okay. That's the New York case?

6 A. Yes. Overall, it's extremely similar to this
7 bus.

8 Q. Is there -- have you been involved in other
9 cases with MCI buses where people got killed as a
10 result of the right-side blind spot?

11 A. Not the right side, but similar problems on
12 the left.

13 Q. Okay. What cases were those?

14 A. There's one --

15 MR. TERRY: Objection, Your Honor.
16 Relevance. Left side.

17 MR. KEMP: He just said it was -- we need to
18 argue this, Your Honor?

19 THE COURT: Yes.

20 MR. KEMP: Do you want me to lay more
21 foundation, Your Honor? I can do that.

22 THE COURT: All right. Sustained.

23 BY MR. KEMP:

24 Q. When you have a bus, you have two pillars in
25 the front; right? Right?

1 A. Correct.

2 Q. And what are those called?

3 A. A-pillars. The pillars are labeled A, B, C,
4 D as you go back along the vehicle.

5 Q. So the two in the front would be the A-pillar
6 on the right side and the A-pillar on the left side?

7 A. Correct.

8 Q. Now, in the MCI bus, is the A-pillar the same
9 size as the -- on the left side the same size as the
10 one on the right side?

11 A. Roughly, yes.

12 Q. And are they made out of the same materials?

13 A. Roughly, yes.

14 Q. And have you looked at the A-pillars on this
15 particular bus?

16 A. Yes.

17 Q. Is the left side of the A-pillar the same as
18 the right side?

19 A. The right side has an additional structure
20 from the door, so it's a bit wider.

21 Q. Okay. But, other than that, the left side is
22 the same?

23 A. Correct.

24 Q. And you've actually looked at the
25 structural -- structure of this particular bus?

1 A. Yes.

2 MR. KEMP: Shane, can I have the bus
3 structure picture up, please. The bus structure
4 picture, the one of the bus. I'm jumping ahead on you
5 a little bit. Okay.

6 BY MR. KEMP:

7 Q. Mr. Sherlock, can you point out for the jury
8 what the A-frame is, just so we we're absolutely clear
9 here.

10 THE MARSHAL: Grab the mic for me. Sorry.

11 THE WITNESS: Yes. The A-pillar is this
12 structure here, and --

13 BY MR. KEMP:

14 Q. Now, let's go a little slower. The
15 right-side A-pillar -- let's be real slow so we make
16 sure everyone's got this in their mind.

17 Where is the right-side A-pillar on the J45?

18 A. This is it here.

19 Q. This is an actual J4500 we've got?

20 A. Yes.

21 Q. Okay. Again, you went kind of fast. Why
22 don't you just slowly outline the entire J-pillar --
23 A-pillar.

24 A. This is it here (Witness indicating).

25 Q. Now, with regards to the left-side A-pillar,

1 where would that be?

2 A. It's a little obscured, but it's right here
3 (witness indicating).

4 Q. Okay. And it's in the same location of the
5 bus --

6 A. Yes.

7 Q. -- basically? It's got the same
8 proportionality to the rest of the bus as the right
9 side does?

10 A. Except for the addition of a frame element
11 here that is a part of the door. It's not very easy to
12 see. I think you can see it up here.

13 Q. Okay. All right. You can take a seat again.

14 All right. Back to the Rhode Island case.
15 Can you tell me what happened in the Rhode Island case?

16 A. Pedestrian was decapitated by a J4500. This
17 was a left turn and --

18 MR. TERRY: Your Honor, objection.

19 MR. KEMP: Do you want to approach?

20 THE COURT: Yes. Please approach.

21 (A discussion was held at the bench,
22 not reported.)

23 BY MR. KEMP:

24 Q. Have you been involved in other cases where
25 there's been visibility problems with the MCI buses?

1 A. Yes.

2 Q. And can you tell me about those.

3 A. There's a number where the ill-considered
4 design of vision has resulted in a situation where the
5 driver approaches an intersection and can see out the
6 window; but, then as they get closer, this huge mirror
7 and pillar structure on the left blocks the view of
8 pedestrians, and --

9 MR. TERRY: Objection, Your Honor.
10 Relevance.

11 THE COURT: Overruled.

12 BY MR. KEMP:

13 Q. Where was that case at?

14 A. In New Jersey.

15 Q. And what happened in that case?

16 A. A pedestrian was run over by the rear wheels
17 when the driver couldn't see her behind this pillar and
18 mirror structure. So you've got problems on both sides
19 on this bus. And they're related in that big areas of
20 the space you're driving through are blocked from view,
21 and in both directions you can lose track of
22 pedestrians who are tracking with those blind spots.

23 Q. Okay. And before I forget, in the New Jersey
24 case, did the person that was run over by the rear
25 tires of the bus, did that bus have an S-1 Gard?

1 A. No, it didn't.

2 Q. Okay. All right. In general, do you have an
3 opinion with -- with regards to whether the 2008 J4500
4 is unreasonably dangerous?

5 A. I believe that it is.

6 Q. Okay. And with regards to the right side
7 visibility problems, can you break those down into
8 different areas for me, please.

9 A. Yes. We've discussed the height of the base
10 of the window. It's just way too high. And you can --

11 Q. And so No. 1 is window design. We'll go
12 through them. I just want to identify the four. Okay?

13 A. Oh, okay.

14 Q. No. 1 is window design?

15 A. Pillar design.

16 The door --

17 Q. Door design?

18 A. -- obstruction. And --

19 Q. No. 4?

20 A. Window, pillar, door ...

21 Q. Don't be nervous.

22 A. Yeah.

23 Q. Okay.

24 A. Dash.

25 Q. Okay.

1 Can I have my slide, please, Shane.

2 A. I was thinking of that as part of the window.

3 Q. Okay. So these are the four right-side
4 visibility design problems we're going to talk about;
5 right?

6 A. Yes.

7 Q. Okay. Now, with regards to the dash, can you
8 explain to the jury what the dash is?

9 A. Yeah. Right behind the front surface of the
10 bus, there's a dash that extends on the left where
11 there's a -- a binnacle with all the instruments and
12 that sort of thing, and that's the highest part of it.
13 And that extends over to the right, where it's slightly
14 lower but still very high off the ground. It's nearing
15 6 feet off the ground.

16 Q. And do we have a --

17 Can I have Sherlock Figure 1, please.

18 MR. GODFREY: What is Figure 1?

19 MR. KEMP: The dash -- the dash measurements.

20 MR. GODFREY: Figure 2.

21 MR. KEMP: Okay. Yeah, give me Figure 2.

22 MR. GODFREY: This is Figure 2.

23 MR. KEMP: Well, then give me figure ...

24 Can I have this one?

25 MR. TERRY: Excuse me, Your Honor. I need to

1 object. May we approach?

2 THE COURT: Yes.

3 (A discussion was held at the bench,
4 not reported.)

5 THE MARSHAL: Please remain seated. Come to
6 order.

7 (A discussion was held at the bench,
8 not reported.)

9 MR. KEMP: Okay.

10 Shane, can I have that back up, please.

11 MR. GODFREY: With or without?

12 MR. KEMP: Let's do it without.

13 BY MR. KEMP:

14 Q. All right. You were discussing dash heights.
15 Do you recall that?

16 Okay. Can you show the jury on this slide
17 what is relevant with regard to dash heights.

18 THE MARSHAL: You need a mic also, sir.

19 THE WITNESS: Yeah.

20 This image is showing the right side of the
21 bus. And the dash is in this area. We can't quite see
22 it. I believe that's -- we can't really see the dash
23 too well in this slide. But the -- the right side of
24 the dash is up -- that's it, right in here
25 (indicating).

1 BY MR. KEMP:

2 Q. Okay. Now, is the right side of the dash
3 higher or lower than the left side of the dash that's
4 in front of the driver?

5 A. Approximately 1 foot lower.

6 Q. And why is that? Why do they do that?

7 A. It's because of the dash binnacle, where the
8 instruments are. You want to have a cowl over that so
9 that the instruments are not subject to reflection and
10 glare. And so that further extends it above just the
11 height of the instruments. But it's about a foot.

12 Q. And with regards to the left side dash, how
13 high is that on a J4500?

14 A. 7-foot-4, approximately.

15 Q. Okay. And the dash on the right side, what
16 was that there?

17 A. It's roughly -- it's roughly a foot shorter.
18 I don't remember the exact number.

19 Q. Okay. And do different buses have different
20 dash heights?

21 A. Oh, certainly. Some of them are quite low.

22 Q. Okay.

23 And can I have Exhibit 198, please. 198?

24 THE COURT CLERK: Is it admitted?

25 MR. KEMP: No, it's not admitted.

1 BY MR. KEMP:

2 Q. Mr. Sherlock, can you take a look at
3 Exhibit 198 and the bus dash depicted therein.

4 A. Yes.

5 MR. KEMP: Your Honor, I'd move to admit 198.

6 MR. TERRY: Your Honor, I have an objection
7 to hearsay, but may we approach the bench?

8 THE COURT: Yes.

9 (A discussion was held at the bench,
10 not reported.)

11 THE COURT: Ready.

12 MR. KEMP: Your Honor, we'd move to admit
13 Exhibit 198 subject to the conversation we had.

14 THE COURT: All right.

15 MR. TERRY: Your Honor, we stand on the
16 conversation that we had.

17 THE COURT: Okay. Very good. I'm going to
18 admit this with respect to all the details we discussed
19 at the bench, Mr. Kemp.

20 (Whereupon, Plaintiffs' Exhibit 198 was
21 admitted into evidence.)

22 MR. KEMP: Thank you, Your Honor.

23 Shane, could you show the slide to the jury
24 of the -- the two dashes. Just the -- just this one.

25 /////

1 BY MR. KEMP:

2 Q. Okay. Mr. Sherlock, could you grab the
3 pointer and show the jury the difference in the dash
4 heights in these.

5 A. Yeah. The MCI is this line here. That's the
6 highest one I know of in the industry. And this, you
7 can see, is quite a bit lower.

8 Q. And do you know what the bus is at the left?

9 A. Yeah, a BCI Falcon.

10 Q. Falcon 45?

11 A. Yes.

12 Q. And do you know the approximate date this is
13 available, the one on the left?

14 A. 2007.

15 Q. Okay. Now, can you explain again to the jury
16 how the -- the dash goes down from right to left on the
17 JCI4500?

18 A. Yeah.

19 Q. MCI 4500 -- MCI J4500. Okay.

20 A. Yes. This is the highest element, and then
21 it slopes and levels off over on this side. It's a
22 little hard to see because of the glare of the sky
23 here. This is sort of similar. In descends.

24 Q. Okay. And why is there a safety concern, if
25 there is, of a high dash as opposed to the lower dash?

1 A. Thank you.

2 If you have pedestrians walking in front or
3 bicycling in front or whatever, it's much harder to see
4 them if this dash is over 7 feet off the ground. The
5 lower you can get this, the better. And there are
6 buses where the base of the window opening in the dash
7 are way down here.

8 Q. Lower than even the -- the BCI Falcon bus?

9 A. Exactly.

10 Q. Now, does the height of the dash affect
11 right-side visibility?

12 A. Absolutely.

13 Q. Can you explain to the jury why the height of
14 the dash would affect right-side visibility?

15 A. Well, Dr. Khiabani, for example, was riding
16 and -- when he made contact in this rough area here.
17 And having a huge dash makes it very hard to see him.
18 There's only a tiny bit of him showing. And if the --
19 this whole area here were designed with visibility and
20 safety in mind, that would not be the case. And there
21 are safe buses out there where you can -- you have
22 essentially no blind spot.

23 Q. Okay. And you said that the JCI -- excuse
24 me -- the MCI J4500 dash is -- is -- how does it
25 compare with the others in the industry?

1 A. It's the tallest I've ever measured, and I've
2 been measuring quite a few of them.

3 Q. Okay. And when you say tallest you've ever
4 measured, have you measured its competitors, the MCI
5 competitors?

6 A. Yes.

7 Q. And can you give the jury some of the
8 competitors you've measured?

9 A. Oh, it's -- I've -- every time I've come
10 across one here and in Europe, I've measured. There's
11 just a huge number of them. Setra, Prevost would be
12 the big competitors here in the states. And there's a
13 wide array of -- some of them, I didn't even recognize
14 in Europe. And they're all lower.

15 Q. Okay. And Setra is made by whom?

16 A. It's a Mercedes division.

17 Q. Okay. And -- and the other one you
18 mentioned?

19 A. Prevost is a Volvo division.

20 Q. And is the Mercedes bus dash higher or lower
21 than the J4500?

22 A. Lower.

23 Q. Okay. And is the Volvo bus dash higher or
24 lower than the 4500?

25 A. Lower.

1 Q. Now, go ahead and take your seat.

2 The second thing you talked about was
3 A-pillar design.

4 Can I have my slide back again.

5 Okay. The first one is dash design. Okay?
6 And -- and it's up to the designer how high or low the
7 dash is; correct?

8 A. Correct.

9 Q. Okay. And with regards to A-pillar design,
10 can you tell the jury what you mean by that?

11 A. That's the opaque structure in the right and
12 left front corners of the vehicle.

13 Q. Okay. And how does that affect vision?
14 Let's just stick with the right-side A-pillar. How
15 does that affect vision?

16 A. Well, anytime that pillar gets wider than the
17 space between your eyes, it forms a widening wedge
18 that's obscure. And across intersections and that sort
19 of thing, it becomes fairly enormous. Many people can
20 be hidden.

21 Q. Okay. Are there ways to make it less wide?

22 A. Absolutely.

23 Q. And can you give me -- can you give me an
24 example?

25 A. It can be designed much like buses in the

1 past, back in the -- even the '20s and '30s, these
2 structures were quite small, but they had roughly
3 similar structural steel elements in them that support
4 the roof and other loads.

5 What's been done is adding window seals that
6 could be eliminated. You can glue in the windows.

7 Q. Let's stick with the metal pillar just for a
8 minute. Okay?

9 A. Okay. If you stick with just the metal, and
10 you don't need to do anything more in terms of width,
11 then it will be a much less hazardous structure. You
12 can ...

13 Q. Okay. In this particular case, is the
14 A-pillar square?

15 Can I have the structural drawing again of
16 the bus.

17 The A-pillar that comes down, is that square
18 or is that rectangular?

19 A. The box section metal tubing inside there
20 is --

21 Q. Show the jury what you mean by box.

22 A. The metal framework that this -- all of this
23 structure is made of is rectangular box section steel
24 tube. And --

25 Q. And what do you mean by that? It's -- it's

1 longer on one side than it is on the other?

2 A. Yeah. It's -- it's a scaled-down version of
3 this kind of a shape.

4 Q. Okay. And which do they put the widest part
5 at? On this bus, where is the widest part of the
6 rectangle on the A-pillar?

7 A. In most of these, it's oriented with the
8 longest dimension this way. So it's across the
9 operator's sight lines. If you orient these radially,
10 as some buses do, so that the various elements are
11 arranged like my fingers pointing away from my face,
12 that doesn't cause a problem. But the same structures
13 arrayed this way makes a bad problem.

14 Q. And does -- is the J4500 arrayed that way?

15 A. Yes, in regard to many of the elements in
16 this frame.

17 Q. Okay. And with regards to the A-pillar, is
18 it arrayed this way?

19 A. Precisely.

20 Q. Okay. And are other buses designed this way,
21 so there's less obstruction?

22 A. Yes. They're arranged radially with respect
23 to the driver's eyes.

24 Q. And can you give the jury an example of a bus
25 that's radially?

1 A. My favorite is a Mercedes product called the
2 Setra. And it has no meaningful blind spots up in that
3 driver's area. All of the elements, even the fairly
4 large ones around the door, have their narrow side
5 facing them so that it's the approximate width of the
6 space between your eyes. As soon as you get wider than
7 that, you start having a problem where the blind spot
8 gets wider and wider with distance and becomes a
9 hazard.

10 Q. And what model of Mercedes is that?

11 A. The Setra.

12 Q. Okay. And, basically, you look -- it's
13 designed so -- so the -- the A-pillar is skinny, not
14 fat, where you look?

15 A. Right. Basically, it's the width of the
16 space between your eyes. So all it can hide at any
17 distance is roughly my tie.

18 Q. So what you're saying is that MCI should have
19 just flipped the A-pillar from this way to that way?

20 A. More or less. You -- there's a series of
21 structures here. There's a wide rubber seal that
22 doesn't need to be there. You can glue the window to
23 the back side of the frame just like it is in your car.
24 It's not actually legal to use this kind of a structure
25 in a car, passenger car, because it threatens tossing

1 out the occupants.

2 And the frame can be turned so instead of
3 being more -- the wide side toward you, it could be the
4 narrow side toward you. And the door structure can be
5 just all glass, so you don't need this structure. And,
6 by the time you're done, you now have a structure
7 that's the same physical strength but has no ability to
8 block both eyes at any angle, meaning you have no blind
9 angle.

10 Q. Okay. And where is the trim on the right
11 A-pillar?

12 A. There's trim particularly around the outside.
13 And I'm not certain of the treatment of the surface
14 here.

15 Q. And trim, that's that black rubber stuff we
16 see?

17 A. No, that's the window seal. The trim is
18 plastic to dress the interior surface.

19 Q. Okay. And do other buses -- are other buses
20 made not using trim -- or different types of trim?

21 A. The best of them use trim that doesn't extend
22 beyond the sides of the metal framework so it doesn't
23 contribute to a blind spot.

24 Q. Okay. And what is a rope seal?

25 A. The rope seal is how they hold in the

1 windows. They're designed to allow you to replace the
2 windshield in ten minutes flat. And you can. It's
3 kind of amazing. You just push on it, and it pops out.

4 And the reason it does that is the seal going
5 all the way around the window holds it in with thin
6 rubber lips. So if you cut that seal in half and look
7 at the end, it's like an H. And the legs of the H go
8 over the -- the bodywork, usually fiberglass. And the
9 arms of the H half run the channel for the glass and --
10 but that extends across your vision.

11 If you glue the window in with a glue line
12 like in your car that's behind the frame structure,
13 that bonding does not contribute to the additional
14 blind spot.

15 Q. What do the European bus manufacturers do?

16 A. They bond them in.

17 Q. And, for example, what does Mercedes do?

18 A. They bond them in. You also can't toss out
19 passengers so readily.

20 Q. What does Volvo do?

21 A. In Europe, they bond them.

22 Q. All right. So are those all your criticisms
23 of the A-frame pillar design?

24 A. Yes.

25 Q. Okay. Now, why is a narrower A-pillar better

1 than a wider A-pillar?

2 A. Well, you can't hide some -- with a proper
3 design, you don't hide anything aside from this narrow
4 little strip about like my tie. But as the -- as the
5 pillar gets wider than that critical distance between
6 your pupils, then you start having really serious
7 problems.

8 Q. Okay. And let's talk about the third point,
9 door design.

10 A. Yes.

11 Q. Can you show the jury how the doors -- okay.
12 Dash design, A-pillar design, door design; right?

13 Okay. Can you tell the jury what -- what
14 you're -- what your criticism is of the door design of
15 the MCI J4500?

16 A. Yeah. To keep this style line looking
17 integrated, they've made this portion opaque. And
18 that --

19 Q. And opaque, that's just a fancy --

20 A. You can't see through it.

21 Q. You can't see through it?

22 A. Yeah.

23 There's glass here and here, but this
24 critical portion is not transparent. And doors are
25 available where the portion that moves is just glass,

1 and that dramatically reduces the blind spots.

2 It also makes this pillar structure which
3 is -- combined the A-pillar of the frame with the door.
4 It makes that smaller because now you can put the door
5 seal on the outside of this frame. And it's just like
6 my fingers are right here. It's behind the framework,
7 so it doesn't contribute anything to the width of that
8 pillar.

9 And when you combine that with doing away
10 with rope seal and all that, this visually disappears
11 because of our having binocular vision.

12 Q. Okay. And with regard to the opaque portion
13 of the door that you just described, how big is that?

14 A. I don't know precise dimensions, but it -- it
15 hit a huge percentage of Dr. Khiabani.

16 Q. Okay. We're talking about 2 feet by 3 feet
17 there? 2 feet by 4 feet? What are we talking?

18 A. I wouldn't want to hazard a guess. You're
19 closer at your last estimate.

20 Q. We're talking feet, not inches?

21 A. Oh, of course. Yeah, it's very large.

22 Q. Okay. Now, with regards to the window
23 design, do you have a criticism about that?

24 A. Yeah. The -- you can see in this engineer's
25 drawing that they've made this part of this structure

1 transparent. They could do that in the actual bus so
2 that you could retain this crash safety structure but
3 you can see through this.

4 If you extend the -- yeah, there you go. If
5 you extend the glass down to here (indicating) and
6 allow vision through this structure, it would greatly
7 improve safety or the visibility of Dr. Khiabani in the
8 critical moments when he was sucked toward the bus.

9 Q. So they could have had more glass on the
10 bottom of the -- bottom and the right-hand side of the
11 window?

12 A. Precisely.

13 Q. Okay. And why would you want to do that?

14 A. For a number of reasons. You've got
15 pedestrians that walk in front of this thing, and they
16 can be very tall and remain unseen with the current
17 design. This simple change would allow even very tiny
18 folks to be seen.

19 Q. Okay. And do other bus makers drop their
20 windows lower on the front and to the right side?

21 A. Yes, some of them are clear down to near your
22 knees.

23 Q. And was that something that some bus makers
24 were doing back in the '50s -- '50s, '60s?

25 A. In the '60s, yes.

1 Q. Can you give the jury an example?

2 A. Some of you might have seen the old GM
3 fishbowls. They were called fishbowls because they
4 looked like they were just all glass, and those things
5 had an extremely low base to the window. And you could
6 actually lean forward and see the front bumper. And it
7 was one of these skinny little metal jobs that didn't
8 stick out like these enormous rubber bumpers they're
9 using today. You could actually see the bumper. So
10 there was no way you could hide a person in front of
11 one of those, for example.

12 Q. So the idea of having more glass for better
13 visibility, is that new?

14 A. It's quite old.

15 Q. Okay. Now, does that finish your -- your
16 four criticisms of the MCI design?

17 A. The only thing we haven't really covered is
18 that if you combine this kind of a low -- daylight
19 opening is what they call this, the -- with a dash that
20 has a shape that allows you to see down here, for
21 instance, if the -- how can we do this?

22 If I'm the driver and I'm sitting here and
23 the dash structure is here, if you lower the front
24 surface of that -- or the top surface of that so that
25 it slopes down, then you're -- from your eyes reference

1 point here, you can see down to the base of the glass.
2 There are also -- it's ubiquitous in Europe,
3 essentially, that the dashboard --

4 Q. And ubiquitous means everywhere?

5 A. Everywhere, yeah.

6 Where the dashboard and the steering column
7 comes back to you, to the driver, and that allows you a
8 much improved sight line down over the dashboard.
9 They're wonderful.

10 Q. Okay. So what you're saying is they could
11 have tapered the -- the dash lower?

12 A. Much.

13 Q. To -- to give the driver a better sight line?

14 A. Yes. If combined with this -- a glass panel
15 this size, you'd have vanishingly little blind spot.

16 Q. Have you looked at the rear tires of the
17 J4500?

18 A. Yes.

19 MR. KEMP: Can I have some rear tires up
20 there?

21 MR. GODFREY: Is that admitted as an exhibit?

22 MR. KEMP: The answer is yes.

23 MR. TERRY: Your Honor, while he's looking
24 for his exhibit, can we take a short break?

25 THE COURT: Certainly.

1 MR. KEMP: Sure, Your Honor. I have no
2 problem.

3 THE COURT: Does the jury need a short break
4 as well?

5 Do you stipulate to my not reading the
6 admonishment if they go straight into the --

7 MR. TERRY: So stipulated.

8 MR. KEMP: Stipulated, Your Honor.

9 THE COURT: Okay.

10 Jerry, they can only go there. No one can
11 leave the front -- that room. Okay?

12 Let's take a ten-minute break.

13 THE MARSHAL: All rise. Ten-minute recess.

14 (The following proceedings were held
15 outside the presence of the jury.)

16 THE COURT: You can go ahead and close the
17 door, Jerry.

18 Mr. Sherlock, do you need to take a comfort
19 break?

20 THE WITNESS: I'm good.

21 THE COURT: Okay. Sure.

22 THE WITNESS: Thank you.

23 THE COURT: All right.

24 MR. KEMP: Ten minutes?

25 THE COURT: Ten minutes.

1 MR. BARGER: Thank you, Your Honor.

2 (Whereupon a short recess was taken.)

3 THE MARSHAL: Please be seated.

4 Department 14 is back in session.

5 THE COURT: Okay. Are we ready for the jury?

6 MR. KEMP: Yes, Your Honor.

7 MR. TERRY: May we approach the bench, Your
8 Honor?

9 THE COURT: Yes.

10 (A discussion was held at the bench,
11 not reported.)

12 THE MARSHAL: Are you ready, Your Honor?

13 THE COURT: Yes, we're ready for the jury.

14 THE MARSHAL: All rise.

15 (The following proceedings were held in
16 the presence of the jury.)

17 THE MARSHAL: All the jurors are present,
18 Your Honor.

19 THE COURT: Okay. Very good.

20 THE MARSHAL: Please be seated. Come to
21 order.

22 THE COURT: Do the parties stipulate to the
23 presence of the jury?

24 MR. KEMP: Yes, Your Honor.

25 THE COURT: Thank you.

1 Please go on.

2 MR. TERRY: I apologize. We do stipulate to
3 the presence of the jury.

4 MR. KEMP: Okay. All right. Okay. Good?
5 Okay. Yeah, can I have the picture of the rear tires,
6 please.

7 BY MR. KEMP:

8 Q. Okay. Mr. Sherlock, have you looked at the
9 rear tires of the J4500?

10 A. Yes, I have.

11 Q. And the bus to the left is a what?

12 A. BCI Falcon 45.

13 Q. I guess that's what the BCI in the back
14 means?

15 A. Yes.

16 Q. All right. And do you see the difference
17 between the -- the way the rear tire assembly, or
18 whatever you want to call it, is designed?

19 A. Yes.

20 Q. And can you explain to the jury what that
21 difference is?

22 A. There's a skirt or a panel that extends down
23 between the wheels in the BCI, and that does not occur
24 in the MCI.

25 Q. Okay. And would this be the -- the area

1 you're calling a skirt?

2 A. Yes.

3 Q. Is it also called a strut?

4 A. It could be.

5 Q. Okay. And what is that made out of?

6 A. I actually don't know with certainty. It's
7 the same material as the side of the bus.

8 Q. Okay. And other than the BCI Falcon 4500 --
9 well, first of all, why do some buses have two wheels
10 in the back rather than one?

11 A. It improves ride quality.

12 MR. TERRY: Excuse me, Your Honor.

13 Objection. I think it's outside the scope of his
14 expertise to discuss why a bus manufacturer would
15 include a certain number of tires.

16 MR. KEMP: I'm not criticizing. I'm just
17 trying to explain it. I don't care. I will withdraw,
18 Your Honor.

19 THE COURT: Lay a foundation. Sustained.

20 BY MR. KEMP:

21 Q. Okay. Assuming for the sake of argument
22 there's a reason, do other bus manufacturers have
23 struts or side skirts?

24 A. Yes.

25 Q. Okay. And can you give the jury some

1 examples?

2 A. You see some here in Las Vegas, I believe.

3 The Icarus has extensive skirt, and --

4 Q. Stop. What is an Icarus?

5 A. It's a bus that's in -- that's been used here
6 in Las Vegas.

7 Q. And Icarus is the name of the bus?

8 A. Yeah, the manufacturer.

9 Q. That's the name of the manufacturer?

10 A. Yeah.

11 Q. Okay. And does that have two tires like the
12 BCI and the J4500?

13 A. I'm assuming so, but I don't want to -- I'm
14 not absolutely certain.

15 Q. Okay. We've talked about right-side blind
16 spots; right?

17 A. Yes.

18 Q. And you've given us your opinion that the
19 J4500's dangerous because of the right-side blind spot
20 problem?

21 A. Correct.

22 Q. Are there safety devices that help overcome
23 right-side blind spot problem?

24 A. Yes.

25 Q. What are those?

1 A. There's an assortment: radar, lidar,
2 ultrasonic, and camera-based.

3 Q. Okay. And, generally, are they all lumped
4 under some terminology?

5 A. Pedestrian detection is one.

6 Q. Okay. We've used the terms lidar. And what
7 was the other one you used?

8 A. Radar.

9 Q. And without getting into a lot of detail, can
10 you tell the jury what lidar and radar are?

11 A. Yeah. Lidar is basically taking a laser,
12 like a laser pointer, and they scan that across the
13 scene, and they measure the amount of time it takes to
14 come back at every angle. And so they can use these
15 things to create maps of the scene. Everything you can
16 see with your eyeball where that thing is, it can map
17 the distance and angle to it.

18 Q. What's radar?

19 A. Radar is very -- it performs a similar task
20 but with a different frequency. It's radio frequency,
21 and it can measure the distances and angles to objects.

22 Q. Okay. And how do these safety devices help
23 overcome the right-side blind spot problem?

24 A. They can determine that there's been
25 established a path of collision between the vehicle

1 you're driving and something else and -- whether it's
2 pedestrian or another vehicle. And it can alert you to
3 that hazard where, if things continue as they are,
4 there will be a collision.

5 Q. And can you give me an example of a
6 radar-type system that could be used with buses?

7 A. Yeah, there's a number of them. Eaton would
8 be an example.

9 Q. Okay. Eaton is spelled E-a-t-o-n?

10 A. Correct.

11 Q. Is that the VORAD system?

12 A. Yes.

13 Q. Okay. And can you tell the jury what the
14 Eaton system is in view of radar or lidar, whatever
15 other words you're using?

16 A. Yeah. It can provide alerts to the presence
17 of other vehicles and objects, like pedestrians, in
18 your path, and it can apply the brakes to improve the
19 time to deceleration. If a person has to wake up to,
20 oh, I'm getting an alert, and then step on the brake,
21 that takes a considerable amount of time. This can
22 speed that process up.

23 Q. Okay. And the Eaton system, have you
24 examined when the patent was filed?

25 A. 1998.

1 Q. And were Eaton systems, side systems
2 available for buses -- when were Eaton -- are Eaton
3 side systems available for buses?

4 A. 2005.

5 Q. Okay. They've been available since that
6 time?

7 A. Yes.

8 Q. Okay. Now, how far does the Eaton system
9 extend in terms of how far its detectability goes out?

10 A. Oh, it's a very long ways. 350 feet.

11 Q. Okay. And with regards to the side system,
12 how far does that go?

13 A. It's at least 20 feet. I don't recall the
14 exact dimension.

15 Q. So if it's 20 feet, the bike lane in this
16 case is how wide, if you know?

17 A. 4 1/2 feet.

18 Q. And the -- the right turn lane is how wide,
19 if you know?

20 A. I believe it's 12 feet.

21 Q. Okay. So 12 and 4 1/2 is 16 1/2?

22 A. Uh-huh, correct.

23 Q. So 20 feet is farther than that?

24 A. Correct.

25 Q. Okay. Now -- and the Eaton system is

1 sometimes referred to as a proximity sensor?

2 A. Correct.

3 Q. Okay. Do other buses, even the J -- first of
4 all, the J4500 does or does not have a proximity
5 sensor?

6 A. This one did not.

7 Q. And do other buses have proximity sensors?

8 A. They could be added to anything.

9 Q. Did other buses have proximity sensors?

10 A. Yeah. Certainly, the BCI did.

11 Q. And when did that come out?

12 A. '07.

13 Q. 2007?

14 A. 2007, correct.

15 Q. Okay. Let's flip over to aerodynamics
16 briefly.

17 A. Uh-huh.

18 Q. Have you studied aerodynamic issues with
19 regards to buses?

20 A. Absolutely.

21 Q. Okay. I don't want to get deep on this
22 because we have an aerodynamic engineer coming.

23 But what have you done with regards to
24 aerodynamics?

25 A. We had a problem in Seattle that's common,