

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

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

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

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

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

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

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



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

1 BY MR. KEMP:

2 Q. And can you explain to the jury whether  
3 that's good or that's bad aerodynamic design on the  
4 FedEx truck, using the same principles we've been  
5 discussing.

6 A. Well, there are lot of good feature. Notice  
7 the top of that faring, how rounded that is. That will  
8 correspond to very little drag in that area.

9 Q. Okay. And this is a larger radii?

10 A. Radius, yeah. It's really big radius in this  
11 case.

12 Q. And do other companies do the same thing?

13 A. Oh, yeah.

14 MR. KEMP: Can I have another one.

15 BY MR. KEMP:

16 Q. Can you explain the -- the aerodynamic  
17 features that are prominent in this UPS truck?

18 A. Yeah. It's probably easiest seen at the top  
19 again, although you -- there are also nice rounding on  
20 the sides, you see at the top front --

21 Q. Here?

22 A. Yes, that big generous curvature.

23 Q. And then the side curvature?

24 A. And the side curvature as well. That's --  
25 that's good aerodynamic design.

1 Q. So would Mr. Terry be correct that FedEx and  
2 UPS is still in the aerodynamic stone age, so to speak?

3 A. No. These are -- these are getting more and  
4 more streamlined. And we're seeing that in general.

5 Q. Let's wrap it up, because the jury is giving  
6 me a look.

7 I can see. I can see.

8 All right. This is your opinion. This is a  
9 summary of your opinion; correct?

10 A. Yes.

11 Q. And this is your opinion to a reasonable  
12 degree of aerodynamic certainty; correct?

13 A. Oh, yes.

14 Q. Okay. Let's go through it one more time.

15 What's the first opinion?

16 A. There are two major problems with the J4500.  
17 The general corner radii are too sharp. And, in  
18 particular, the window frame molding, also establishes  
19 the corner radius when it's in the corner, is placed at  
20 the wrong place.

21 MR. KEMP: I think Mr. Terry is giving me one  
22 of these too.

23 Can I just have that exhibit marked next in  
24 order, please.

25 THE CLERK: Yes.

1 BY MR. KEMP:

2 Q. Rather than go through it again, Doctor, does  
3 Exhibit 260 state your opinion?

4 A. Yes.

5 MR. KEMP: Your Honor, we move to admit 260.

6 MR. TERRY: Objection. Demonstrative summary  
7 of testimony.

8 MR. KEMP: I thought you just said --

9 MR. TERRY: I didn't say anything.

10 MR. KEMP: Okay. All right. I  
11 misunderstood.

12 Let's do it the hard way, Doctor.

13 BY MR. KEMP:

14 Q. Again, what's your first opinion?

15 A. The J4500 has two major aerodynamic problems.  
16 The corner radii in general are too tight, and the  
17 window frame molding in particular is placed at the  
18 wrong place.

19 Q. Second point?

20 A. J4500 is very similar aerodynamically to the  
21 MCI CJ3. In particular the window frame molding is  
22 placed at the wrong place.

23 Q. Third point?

24 A. I estimate the J4500 produces about 10 pounds  
25 of push when the bike is close under those conditions.

1 Q. And by those conditions, 25 miles an hour?

2 A. 25 miles-an-hour bus and 13 1/2-miles-an-hour  
3 bike.

4 Q. And next?

5 A. J4500 causes a push force when the bus comes  
6 about even with the bike and then a pull force as the  
7 bus passes.

8 Q. And the fourth point, that's supported  
9 directly by Kato?

10 A. Correct.

11 Q. Okay. The next point?

12 A. If you round the -- the front corner radii --

13 Q. I think you skipped one.

14 A. Oh, I beg your pardon.

15 Q. Okay.

16 A. Oh, the time variation is approximately  
17 quarter of a second with about 10 pounds of push, and  
18 there's, according to Kato, a lot more pounds of pull.

19 Q. And then the last one?

20 A. If you use the safer aerodynamic design, then  
21 it would be significant less push and less duration and  
22 the pull dropping from the push of 3 -- of 10 pounds to  
23 3. And the pull would virtually vanish.

24 Q. So if a Mercedes 500 had passed this bike,  
25 the push would have been 3 instead of 10?

1 A. Correct.

2 Q. And the pull would have been nothing?

3 A. Correct.

4 Q. And the duration of the push would have gone  
5 from .25 to .06?

6 A. Well, the .25 includes both the push and  
7 pull.

8 Q. There's no pull.

9 A. On the second one, yeah, the total interval  
10 drops to .06.

11 Q. Thank you, Doctor.

12 MR. KEMP: Your Honor, I think this would be  
13 a good time to take a break.

14 THE COURT: Are you trying to admit it?

15 MR. KEMP: I'm done with my direct.

16 THE COURT: Okay. So I just want to know,  
17 are you asking to admit Exhibit 260?

18 MR. KEMP: Yeah, I moved to admit that.

19 MR. TERRY: Your Honor, I object because it  
20 was a demonstrative exhibit, not evidence, and it is a  
21 summary of the testimony that he's given now three  
22 times to the jury. It's hearsay.

23 MR. KEMP: Your Honor, he's here.

24 MR. TERRY: I'm not arguing that he's here.  
25 I'm not arguing that he hasn't read from the list three

1 times. The question is whether or not the list itself  
2 is evidence. I don't think it's evidence.

3 MR. KEMP: Your Honor, this is his opinion.

4 THE COURT: I'm going to allow it. Admitted  
5 as a summary of Dr. Breidenthal's opinion.

6 MR. KEMP: Thank you, Your Honor.

7 (Whereupon, Plaintiffs' Exhibit 260 was  
8 admitted into evidence.)

9 MR. KEMP: Your Honor, I think this would be  
10 a good time to take a ten-minute --

11 THE COURT: Yeah. I think we need to take a  
12 15-minute break.

13 MR. KEMP: 15-minute break. Okay.

14 THE COURT: All right. Ladies and gentlemen,  
15 I am going to admonish you.

16 You're instructed not to talk with each other  
17 or with anyone else about any subject or issue  
18 connected with this trial. You are not to read, watch,  
19 or listen to any report of or commentary on the trial  
20 by any person connected with this case or by any medium  
21 of information, including, without limitation,  
22 newspapers, television, the Internet, or radio.

23 You are not to conduct any research on your  
24 own relating to this case, such as consulting  
25 dictionaries, using the Internet, or using reference

1 materials.

2           You are not to conduct any investigation,  
3 test any theory of the case, re-create any aspect of  
4 the case, or in any other way investigate or learn  
5 about the case on your own.

6           You are not to talk with others, text others,  
7 tweet others, google issues, or conduct any other kind  
8 of book or computer research with regard to any issue,  
9 party, witness, or attorney involved in this case.

10           You're not to form or express any opinion on  
11 any subject connected with this trial until the case is  
12 finally submitted to you.

13           And I do want to remind you that you are not  
14 to discuss any -- anything in this trial amongst  
15 yourselves yet and -- or your notes.

16           Okay. That's a 15-minute break.

17           THE MARSHAL: All rise. 15-minute recess.

18                   (Whereupon a short recess was taken.)

19           THE MARSHAL: We ready to go?

20           THE COURT: Just a moment. I would like to  
21 see a copy of that e-mail again, please, when you have  
22 a moment, the one we were discussing because --

23           MR. KEMP: Mr. Pepperman's e-mail?

24           THE COURT: Yes, the one about the duration.  
25 And we'll talk about it later.



1 All right. We ready?

2 MR. KEMP: Yes, Your Honor.

3 THE MARSHAL: All rise.

4 (The following proceedings were held in  
5 the presence of the jury.)

6 THE MARSHAL: All the jurors are present,  
7 Your Honor.

8 THE COURT: All right. Very good.

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

11 THE COURT: Do the parties stipulate to the  
12 presence of the jury?

13 MR. CHRISTIANSEN: Yes, Your Honor.

14 MR. TERRY: Yes, Your Honor.

15 THE COURT: Are you ready to cross-examine?

16 MR. TERRY: Yes.

17 THE COURT: Mr. Terry, please proceed.

18

19 CROSS-EXAMINATION

20 BY MR. TERRY:

21 Q. Good morning, Doctor.

22 A. Good morning.

23 Q. I'm going to put up Exhibit 262 again, which  
24 is the summary of your opinions.

25 Okay. On the first one up there, when you

1 talk about the J4500, have you been to a J4500?

2 A. No.

3 Q. Have you inspected a J4500?

4 A. No.

5 Q. Have you ridden in a J4500?

6 A. Not to my knowledge.

7 Q. Have you ever seen one, if you will?

8 A. Not to my knowledge.

9 Q. So these aerodynamic problems, then, are not  
10 based on your personal observation of a J4500?

11 A. Correct.

12 Q. You did not go to a J4500 and measure to see  
13 what the radius, or radii, actually was or were?

14 A. Correct.

15 Q. You did not actually go see a J4500 to see  
16 what the window frame molding actually looked like?

17 A. Correct.

18 Q. Now, I've got a picture of the real bus that  
19 I'm going to put up.

20 If you would, sir, the bus front.

21 All right. That is a picture of the bus  
22 front. This is the real bus. Okay? And this is what  
23 you're complaint is, this molding here extends beyond  
24 the A-frame? Is that your complaint?

25 A. Well, I wouldn't call it a complaint; I'd

1 call it an observation. But yes.

2 Q. But this sticks up above the A-frame?

3 A. Yeah. It appeared from the images that I had  
4 seen that it was not smooth and flush.

5 Q. And the images you had seen were the drawings  
6 by Joshua Cohen?

7 A. Among others.

8 Q. Okay. But if we looked at it, we could tell?

9 A. Sure.

10 Q. And what we're looking for is to see whether  
11 or not molding is taller than or sticks out from the  
12 A-frame?

13 A. Or from the glass, yeah, any discontinuity in  
14 the surface.

15 Q. Well, there's going to be a discontinuity  
16 because of the A-frame itself; right?

17 A. Well, not necessarily. But, in this case, it  
18 looks to me like there's a difference between height of  
19 the glass and the height of the molding.

20 Remember, this critical area is exquisitely  
21 sensitive. Small changes have a big effect.

22 Q. Okay. Now, I'm going back to the summary of  
23 your opinions. You made your aerodynamic problems,  
24 radius, radii, window frame. Have you done any  
25 aerodynamic testing of the J4500?

1 A. No.

2 Q. Have you seen any aerodynamic testing of the  
3 J4500?

4 A. No.

5 Q. Are you aware of anyone actually going out  
6 and testing the J4500 to see if this was true?

7 A. No.

8 Q. No. 2, you talk about "the J4500 commits the  
9 same aerodynamic sin as the MCI CJ3."

10 Have you been to see an MCI CJ3?

11 A. Not to my knowledge.

12 Q. Have you inspected it?

13 A. No.

14 Q. Have you measured it?

15 A. No.

16 Q. Have you seen any measurements or any  
17 drawings that indicate what the lines are, what the  
18 marks are, of the MCI CJ3?

19 A. No.

20 Q. My recollection of your testimony is you  
21 thought the J4500 was equivalent to the standard MCI  
22 CJ3 that was tested in 1993. Did I hear that  
23 correctly?

24 A. I didn't say the word "equivalent"; I said  
25 something to the effect of "very close to."

1 Q. Okay. If you've never seen, examined,  
2 tested, measured an MCI CJ3 and no one has provided you  
3 with any pictures, drawings, or measurements of the MCI  
4 CJ3, how do you reach that conclusion?

5 A. Well, I have seen pictures of the CJ3 in the  
6 MCI wind tunnel report of '93.

7 Q. Did you see the CJ3 or models?

8 A. Oh, I take your point. Yeah, wind tunnel  
9 models. That's true.

10 Q. Okay. So do you know how accurate the wind  
11 tunnel models were?

12 A. No, I do not.

13 Q. Did the wind tunnel models, for example, even  
14 have window molding?

15 A. It looked like it from the images, that there  
16 was some discontinuity where the molding was.

17 Q. Okay. Do they have -- were they that  
18 precise, or do you know?

19 A. I don't have measurements or information on  
20 the height of those steps, if that's what you're  
21 asking.

22 Q. Okay. I've got four models that were taken  
23 that are -- that are out from the report, the 1993  
24 report. I'm going to show you up here on the ... four  
25 models. Fronts. Okay. Without the ...

1           Okay. You recognize this as coming from our  
2 1993 wind tunnel study?

3           A. Yes.

4           Q. Can you identify these fronts?

5           A. No, not from memory. I'd have to look at the  
6 caption.

7           Q. Okay. Look at this one down here. Do you  
8 see window molding?

9           A. I see lines, yes.

10          Q. Do you know whether or not they actually had  
11 molding that they used when they tested the buses in  
12 the wind tunnels?

13          A. Yeah, all I have are the images in that  
14 report.

15          Q. Okay. Going back, I'm going to show you the  
16 names of the actual -- can you -- okay.

17               This is the standard and this is the  
18 proposed; right?

19          A. Yes.

20          Q. Okay. Going up to the standard, are there  
21 any moldings indicated?

22          A. All I can see is what you see, which are  
23 those lines.

24          Q. Those lines?

25          A. Correct.

1 Q. All right. So you have never seen an MCI CJ3  
2 to know whether or not it has what you call "raised  
3 frame molding" placed at the corner?

4 A. I believe that's true, yes.

5 Q. And you do not have any measurements of the  
6 rounding that occurred on the MCI CJ3?

7 A. Correct.

8 Q. Were you told the genesis of the J coach,  
9 where it came from?

10 A. I don't recall seeing that.

11 Q. Were you told that there was an E coach that  
12 was designed brand new from scratch, where they  
13 actually changed the rounding in the front and raked  
14 the top back? Were you told that?

15 A. Not that I recall, no.

16 Q. Were you told that the J coach was a  
17 derivative not of the MCI CJ3 but a derivative of the E  
18 coach?

19 A. I don't recall that. No, I don't recall  
20 hearing that.

21 Q. And in real terms, you have never compared  
22 the J4500 with the MCI CJ3, have you, in real life,  
23 where you actually had the buses that you looked at?

24 A. That's correct.

25 Q. Now, in the rest of your opinions up here

1 that we're going to display -- okay.

2 The J4500 produces 10 pounds push force to a  
3 bike within 3 feet; right?

4 A. Yes.

5 Q. Third opinion. Okay.

6 A 25-mile-per-hour bus and a  
7 13.5-mile-per-hour bike, did you derive the 25 or the  
8 13.5, or were you given that information?

9 A. I was given that information.

10 Q. Okay. Why did you pick 3 feet?

11 A. The estimate that I based the force on was  
12 for something in the proximity of the bus that's close.  
13 There's nothing sudden and magic that happens exactly  
14 at 3 feet aerodynamically. The aerodynamic forces  
15 increase as you get closer and as the bike and bus get  
16 closer and closer together, but there's no sudden magic  
17 thing that happens exactly at 3 feet.

18 Q. Okay. And they decrease as you move closer  
19 to 3 feet?

20 A. As you move away, they decrease, that's  
21 correct.

22 Q. Do you indicate in here where or what the  
23 forces would be at 1 foot? 2 foot? 2 1/2 foot?

24 A. No, I don't distinguish that.

25 Q. Okay. This 10 pounds, is that at 3 feet or



1 close to 3 feet?

2 A. The 10 pounds is calculated from the assumed  
3 40-mile-an-hour speed of the relative wind at the  
4 cyclist and the 30-degree angle of the flow. I did not  
5 explicitly associate those assumed numbers with any  
6 particular separation between the bike and the bus.

7 Q. Okay. Is it fair to say that it is probably  
8 less if you move beyond 3 feet?

9 A. If what is probably less?

10 Q. The 10 pounds.

11 A. Well, certainly, if you move far enough away,  
12 the force eventually goes to zero. So that would be  
13 the general trend.

14 Q. Is it likely that it would go up if you move  
15 closer to the bus?

16 A. Yes. We already know from Kato that the  
17 force is a very strong function of the distance between  
18 the -- the cyclist and the bus.

19 Q. But these numbers here that you used, 10  
20 pounds push force to a bike within 3 feet, is it likely  
21 the force was higher if the bike was closer than  
22 3 feet?

23 A. The 10 pound number is an estimate, as I said  
24 earlier, based on this assumed velocity. Yes, I would  
25 expect the force to increase as you get closer to the

1 bus. But as I said earlier, I didn't correlate my  
2 assumed velocity with any particular separation between  
3 the bus and the bike.

4 Q. Okay. So this figure here, the 4500 produces  
5 10-pound push, that is an estimate; correct?

6 A. It's a calculation based on an estimated  
7 velocity and -- and flow angle.

8 Q. And you did -- it's nothing you measured;  
9 right?

10 A. That's correct.

11 Q. This down here where you say the push forces,  
12 when the bus comes even with the bike and pull forces  
13 when the bus passes, that's just based on your  
14 understanding, Kato's understanding, of how the forces  
15 work; there's a point at which it ceases to push and  
16 begins to pull?

17 A. Yeah, Kato's measurements.

18 Q. You don't have any numbers in here, though,  
19 do you?

20 A. On that particular bullet no, but Kato --

21 Q. Okay. This bullet right here, this estimate  
22 of the time being .25 seconds, is that an estimate?

23 A. Yes.

24 Q. Okay. And then --

25 A. I should say, in addition, it's -- it's also

1 approximately consistent with Kato as well.

2 Q. And then more pounds of pull; right? And  
3 then is there anyplace in here where you give us your  
4 estimate of what the pull force is?

5 A. I don't think it's written down there. Kato  
6 indicates that the pull is about double the push.

7 Q. But here you don't give us your estimate of  
8 the pull?

9 A. No, I don't think it's listed there.

10 Q. And this one down here, a safer aerodynamic  
11 design, is your conclusion that if you change it, you  
12 get different results?

13 A. Correct.

14 Q. So the first one is based on you never having  
15 seen, inspected, or measured a J4500, a real one? The  
16 second one is you've never seen either the J4500 or the  
17 MCI CJ3; right?

18 A. As far as I know, that's true.

19 Q. 3, 4, and 5 are based on estimates, not  
20 measurements; correct?

21 A. No. The Kato paper -- which is -- as far as  
22 I know, is the best data available on the subject --  
23 made measurements. And even Granat, although they were  
24 flawed, made measurements which showed the push and  
25 pull occurred -- the push and pull has been measured.

1 Q. All right. So do you accept Kevin Granat's  
2 figures in terms of the forcing measure?

3 A. No, they're completely wrong.

4 Q. But you didn't do your own?

5 A. Correct.

6 Q. All right. Taking down that, sir, I want to  
7 ask you some questions so that I understand what we're  
8 talking about.

9 We've got the bike right here. Do you see  
10 it?

11 A. Yes.

12 Q. Okay. So if this is the bike and I represent  
13 the bumper of the overtaking bus, where do I have to be  
14 for there to be the push force?

15 You understand what I'm asking?

16 A. We showed earlier this Figure 7 plot in Kato.

17 Q. Well, just tell me where I should stand. If  
18 I'm the bumper of the bus, where do I stand relative to  
19 the bike for the push force to begin?

20 A. Well, about even with the back of the rear  
21 wheel of the bus.

22 Q. I'm --

23 A. I'm sorry.

24 Q. The bike?

25 A. The bus -- the front of the bus should be

1 about even with the back of the rear wheel of the bike.

2 Q. Okay. So I'm the bumper. Do I stand right  
3 at the rear edge of the rear tire? Is that when the  
4 push force begins?

5 A. Well, there's, of course, an offset between  
6 the bus and the bike. The bike was to the right of the  
7 bus.

8 Q. Right. I understand that.

9 But I'm looking -- just laterally, where do I  
10 have to stand if I'm the bumper for the push force to  
11 begin?

12 A. Well, to where the bumper is approximately  
13 even with the back of the rear wheel of the bike.

14 Q. The actual tire itself?

15 A. Correct, according to Kato.

16 Q. And then where do I go for the pull force to  
17 begin?

18 A. Very near where the front of the bus is even  
19 with the center of the bike, if I remember correctly  
20 from Kato.

21 Q. Where the seat is, or just the middle of the  
22 bike itself?

23 A. I can't recall exactly what Kato specified.  
24 I could take the time to read it if you like.

25 Q. So you've never actually done this yourself

1 to figure out where the forces are, have you?

2 A. Correct.

3 Q. Okay. So we'll just say the middle of the  
4 bike; right? And that's where the pull force begins?

5 A. Correct.

6 Q. All right. Now, do you know -- so if I  
7 understand correctly, then, the push force and the pull  
8 force do not exist at all on the bike until the bike is  
9 overtaken by the bus; right?

10 A. Well, I don't want to get too picky, but when  
11 I said that the front of the bus was passing the back  
12 wheel of the bike, there's already been a little bit of  
13 increase in the push. You might have to go back to  
14 where you're back another foot or so behind it. That's  
15 more or less what Kato said.

16 Q. All right. So about a foot; right?

17 So the front bumper of the bus has to be in  
18 this relation to the rear wheel of the bike before  
19 there's any push force from the aerodynamics, in your  
20 opinion?

21 A. Well, I would say according to Kato's  
22 measurements.

23 Q. Are you adopting those measurements?

24 A. Adopting?

25 Q. I mean, is it your opinion or is it his?

1           A.    Well, I'm referring to his measurements, not  
2 his opinion, his measurements. And, yeah, I think his  
3 measurements are accurate.

4           Q.    So your opinion is that there is no push  
5 force at all until the front bumper is about a foot  
6 behind the rear wheel of the bike?

7           A.    A foot or so, yes.

8           Q.    And there's no pull force until the front  
9 bumper is even with the middle?

10          A.    Correct.

11          Q.    All right. And so there is no aerodynamic  
12 force exercised on Dr. Khiabani on his bicycle until  
13 the bus overtakes him and is about a foot behind -- the  
14 front of the bus is about a foot behind the rear wheel?

15          A.    I would say no aerodynamic force from the bus  
16 on the bike.

17          Q.    Right. But there may be wind, there may be  
18 other things?

19          A.    And -- and the doctor is moving forward, so  
20 of course he has drag.

21          Q.    Got his own wind.

22                But in terms of the air displacement of the  
23 bus causing an impact on Dr. Khiabani, there is no  
24 impact until the front bumper of the bus is about a  
25 foot behind the rear wheel?

1           A.    Yes, that's my interpretation from Kato's  
2 measurements.

3           Q.    Now, do you know how close the bike was to  
4 the bus when that happened?

5           A.    No, I do not.

6           Q.    Do you know where the point of contact was?

7           A.    I don't know exactly. I recall seeing a  
8 picture which showed a witness mark, but I can't  
9 remember the exact dimensions.

10          Q.    Okay. We have a picture that we've been  
11 using before you got here that shows the bike coming in  
12 contact with the bus.

13               MR. CLARK: Which exhibit number?

14               MR. TERRY: The first one.

15 BY MR. TERRY:

16          Q.    Okay. Is this the picture you're talking  
17 about?

18          A.    Either it or a similar that showed some  
19 witness mark on the bus.

20          Q.    Okay. You can barely see it here, but we  
21 know there's a witness mark right about here where the  
22 left handlebar came in contact with the bus.

23          A.    That could be the position. I don't remember  
24 exactly.

25          Q.    Do you know how far the bike is from the bus



1 when it comes in contact with the bus?

2 A. No, I do not.

3 Q. Okay. Would it be a measurement of the width  
4 of the handlebar more or less?

5 A. Oh, I see your question. Yes, approximately.  
6 That's right.

7 Q. Now, we were told -- and you can see depicted  
8 in the picture -- that the bike is not purely vertical;  
9 correct?

10 A. That's what's depicted, yes.

11 Q. We have been told by an expert witness that  
12 that angle is slightly less than 30 degrees. Okay?

13 Can you calculate how much more distance that  
14 is -- do you understand what I'm asking?

15 So if we stand the bike up vertically --  
16 okay? -- and measure the distance from the left  
17 handlebar to the side of the bus, that's not fair if  
18 the bike is actually leaning from someplace outside  
19 30 degrees?

20 A. Yes, I understand.

21 Q. Okay. Can you calculate how far the bike  
22 would have been from the side of the bus if it's  
23 leaning at 30 degrees and makes that witness mark with  
24 the left handlebar?

25 A. Yes.

1 Q. Is it something you can do quickly?

2 A. I don't know how quickly. I'll need pencil  
3 and paper.

4 Q. Have you got that?

5 A. Well, I don't want to write on the backs of  
6 these exhibits.

7 MR. TERRY: May I approach the witness, Your  
8 Honor?

9 THE COURT: Certainly.

10 THE WITNESS: Thank you.

11 BY MR. TERRY:

12 Q. So --

13 A. So I will proceed with the calculation?

14 Q. If you would, Doctor, please.

15 A. Of course. Happy to.

16 Q. Doctor, it seems it is more complex than I  
17 thought. Can you give us an estimate of ...

18 A. I'm just trying to make sure I don't make any  
19 mistakes. If the --

20 Q. If the bike is leaning at 30 degrees, how  
21 much lateral distance does that add from the bus?

22 A. Oh, I calculate it's  $H/2$ , where  $H$  is the  
23 height of the position of the -- height of the part of  
24 the bike that contacted the bus when the bike is in its  
25 normal vertical position.

1 Q. Okay. So if we had that measurement, which  
2 is the height of the bike?

3 A. The height of the bike, when the bike is  
4 oriented normally to whatever point on the bike -- I  
5 suppose it's the end of the handlebar -- that  
6 corresponds to the witness mark.

7 Q. Okay. And 30 degrees lean at some lateral  
8 distance?

9 A. Yeah. 30 degrees -- the sine of 30 degrees  
10 is a half.

11 Q. Now, do you know where this point happens on  
12 the road surface?

13 A. Where what point happens? Where the contact  
14 occurs?

15 Q. We got the contact between the left handlebar  
16 and the bus, and we got a picture here of the road  
17 surface that includes the intersection.

18 Do you know where on this road surface that  
19 contact occurred?

20 A. No, not exactly.

21 Q. Have you used it in any of your estimates?

22 A. No.

23 Q. I want you to assume that Mr. Caldwell, who  
24 was the accident reconstruction expert for the  
25 plaintiff, measured the point as 6.2 feet in from the

1 bus lane. You know what that means?

2 A. You better explain it to me.

3 Q. Okay. We believe the evidence has indicated  
4 that the bus was traveling in this lane, the bike was  
5 traveling -- or I'm sorry -- the bus was in this lane,  
6 the bike was in this lane, and that the impact between  
7 them occurred within this lane, and that the point of  
8 contact was 6 feet inside this lane. Okay?

9 If you assume that, and we put the tape  
10 measure on the bike and we take it out 6 feet --  
11 okay? -- that's how far into the lane -- the bus lane  
12 the bus was when the impact occurred. Okay?

13 A. All right.

14 Q. And, now, we know the bike lane is 4 feet,  
15 4 inches. You see it up there on the picture?

16 A. Yes.

17 Q. So if we add another 2 feet, 2 feet  
18 2 inches -- thank you, sir. Okay. We're out here;  
19 right?

20 A. And why are you adding --

21 Q. Well, I'm adding it because we were told the  
22 evidence is that Dr. Khiabani was in the middle of the  
23 bike lane when the event started. So if he's in the  
24 middle of the bike lane and the point of contact is  
25 6 feet 2 inches into the bus lane, he traveled 8 feet

1 4 inches laterally; right?

2 A. I guess so.

3 Q. And he traveled 8 feet 4 inches laterally to  
4 get to that position before there was any impact from  
5 the aerodynamic effect of the bus; right?

6 A. Well, if you say so. There is an aerodynamic  
7 influence beyond the magic 3 feet number. The 3-foot  
8 number is not magic. There are aerodynamic forces  
9 beyond that. They get progressively weaker.

10 Q. Yes, Doctor. But I thought you told me there  
11 is no push until the bus gets about here, a foot or so  
12 behind the rear wheel.

13 A. Correct.

14 Q. Okay. And we know that the doctor started  
15 8 1/2 feet lateral from where he was when that  
16 occurred; right?

17 A. That's what you've said, yes.

18 Q. Okay. So that -- well, do you know how he  
19 got to the position he was next to the bus, 6 feet  
20 inside the bus lane?

21 A. No, I don't.

22 Q. But -- we do know from the expert witness  
23 retained by the plaintiff that that's where the contact  
24 occurred, 6 feet inside the bus lane.

25 Can you assume that?

1 A. Sure, I can assume it.

2 Q. And we know from witnesses that before that,  
3 he was halfway, you know, in the bike lane. And  
4 halfway in the bike lane is 2 feet 2 inches; right?

5 A. That's what you have said, yes.

6 Q. Now, the -- the -- whatever occurs over here,  
7 when he gets the bus comes up behind him and pushes him  
8 and then pulls him, it does not suck him 8 feet over,  
9 does it? I mean, the aerodynamic effect that you're  
10 talking about does not affect him if -- if that's the  
11 bus, the bar is the bus, and the bike is over here,  
12 does it?

13 A. Well, there will be some aerodynamic effect.  
14 As I said, it gets weaker the further you are away.

15 Q. Do you think at 8 1/2 feet the aerodynamic  
16 effect would have impacted Dr. Khiabani on his bicycle?

17 A. Well, I'm not an accident reconstruction guy.  
18 I -- I'm no expert at human reactions.

19 Q. Okay. Can you estimate the force 8 1/2 feet  
20 away as opposed to 1 1/2 or 3?

21 A. I think the answer is, yes, you can make an  
22 estimate, and it will certainly be less than estimates  
23 you would make if it was closer.

24 Q. Do you have an opinion as to whether or not  
25 that less value would have affected Dr. Khiabani?

1           A.    No.

2           Q.    And do you have an opinion as to whether or  
3 not it would have been enough pull to pull him into the  
4 bus from 8 1/2 feet?

5           A.    No.

6           Q.    All right. So he has to get there from the  
7 bike lane plus 6 1/2 feet into the bus lane before  
8 there's any impact from the aerodynamic air  
9 displacement put out by the J4500; right?

10          A.    I'm not sure I quite track that.

11          Q.    Okay. We know that the impact between the  
12 bike and the bus occurred here. You are of the opinion  
13 that there was some impact from the air displacement;  
14 right?

15          A.    Some impact from the --

16          Q.    To Dr. Khiabani from the air displacement.  
17 He felt wind.

18          A.    Yes. Correct.

19          Q.    All right. But he doesn't feel any wind from  
20 the bus that's overtaking him until the bus gets here;  
21 right?

22          A.    According to the Kato vision, that's right.

23          Q.    So he's got to get over there, from 8 1/2  
24 feet away, because he's not in the bus lane when this  
25 starts and he's in the bike lane. Okay?

1           A.    Well, that's what you've said, yeah.

2           Q.    It seems like simple logic to me, Doctor. Do  
3 you disagree?

4           A.    I don't know about disagree. The aerodynamic  
5 forces get weaker the further you get away. I don't  
6 know about exactly how far he was away before and  
7 after, so I can't express an opinion about how he would  
8 react to those forces. The forces will be nonzero.  
9 They're not exactly zero if he's off to the side. They  
10 get progressively weaker, however.

11          Q.    Okay. But there are no forces exerted on  
12 Dr. Khiabani until he gets over there; right? From  
13 wherever he starts?

14          A.    I'm not quite sure.

15          Q.    Okay. This is what I'm talking about. The  
16 bus is in this lane right here and overtakes the bike;  
17 right?

18          A.    Yes.

19          Q.    And it's not until it overtakes the bike that  
20 the aerodynamic or air displacement from the bus has  
21 any effect on the bike?

22          A.    Yeah, until the rear bumper is within a few  
23 feet, say, of the back of the bicycle.

24          Q.    And by the time the rear bumper is a few feet  
25 behind the bicycle, Dr. Khiabani is 6 feet in the bus



1 lane; right?

2 A. I don't know. I don't have any independent  
3 knowledge of any of that that you've been saying.

4 Q. Caldwell says -- plaintiffs' expert Caldwell  
5 says impact occurred 6 feet 2 inches within the bus  
6 lane.

7 Can you accept that as true?

8 A. Sure.

9 Q. If that is true, then, no displacement from  
10 the MCI bus affects Dr. Khiabani until Dr. Khiabani is  
11 in the bus lane 6 feet 2 inches, at the location where  
12 the impact occurs?

13 A. No displacement? There would be some force.  
14 Initially, it will be very, very small; and as the  
15 proximity is reduced, the force gets bigger and bigger.  
16 It's not -- you don't have to wait until the bicycle  
17 hits the bus for there to be a force on the bike.

18 Q. It's got to get within 3 feet?

19 A. There's nothing magic about 3 feet. The  
20 force doesn't suddenly go to zero at 3 feet.

21 Q. But all your estimates have been at 3 feet?

22 A. No. Again, my estimates didn't associate the  
23 force with any particular distance. My job was to make  
24 an estimate for the magnitude of the force that you  
25 would expect for the bike to be in close proximity to

1 the bus, but I didn't specify precisely that offset for  
2 the particular force.

3 Q. Well, let me come at it a different way. Can  
4 you agree that the air displacement from the MCI,  
5 whatever it is, does not affect Dr. Khiabani until the  
6 overtaking bus is at or near his rear wheel?

7 A. Yes. That's consistent with Kato.

8 Q. And you don't know anything about what  
9 happened before and have not considered it?

10 A. I think when the bus and the bike are very  
11 far apart, there's no effect on the bicycle from the  
12 bus, aerodynamically.

13 Q. And you don't know whether or not  
14 Dr. Khiabani turned left?

15 A. Correct.

16 Q. But if he turned left before he got here, his  
17 turn had nothing to do with air displacement from the  
18 MCI J4500?

19 A. Well, I wouldn't go that far. The forces on  
20 the bike from the bus, as I've said several times, are  
21 strongest when they're very close and they decrease  
22 as -- as the separation increases.

23 Q. Are you -- are you prepared to express an  
24 opinion as to what lateral separation between the bus  
25 and the bike would put out significant force on the

1 bike to upset a bike rider who weighs about 186 pounds?

2 A. No.

3 Q. Okay. So if we just limit it to within  
4 3 feet, which is what your estimates have done, can you  
5 agree with me that nothing from the air displacement of  
6 the MCI J4500 affects Dr. Khiabani until the front  
7 bumper of the bus gets to about a foot behind the rear  
8 wheel within 3 feet?

9 A. No. I wouldn't say within 3 feet.

10 Q. 3 feet. I mean, where -- how much lateral  
11 separation does the bus have to get before its air  
12 displacement, if any, affects the bike?

13 A. Well, it drops off gradually. The Kato paper  
14 shows this drop-off. And he doesn't extend the  
15 separation beyond what he calls 100 millimeters. I'm  
16 looking at Figure 9 of Kato's paper, which we haven't  
17 shown yet, but -- so we don't have data from Kato  
18 beyond that separation. But I would expect the force  
19 to gradually fall off with separation, just as  
20 intuition.

21 Q. And you can't associate that with any  
22 particular force that would or would not affect a bike  
23 rider?

24 A. That's right.

25 Q. Okay. Now, just as you don't know how he got

1 laterally 8 1/2 feet from the middle of the bike lane  
2 to the point of impact, do you know how far down the  
3 road that left move started?

4 A. No.

5 MR. TERRY: All right. That is a good  
6 stopping point, Your Honor.

7 THE COURT: Yes, it is. We're going to take  
8 our lunch recess. And I'm going to admonish you again.

9 You're instructed not to talk with each other  
10 or with anyone else about any subject or issue  
11 connected with this trial. You are not to read, watch,  
12 or listen to any report of or commentary on the trial  
13 by any person connected with this case or by any medium  
14 of information, including, without limitation,  
15 newspapers, television, the Internet, or radio.

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

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

24 You are not to talk with others, text others,  
25 tweet others, google issues, or conduct any other kind

1 of book or computer research with regard to any issue,  
2 party, witness, or attorney involved in this case.

3 You're not to form or express any opinion on  
4 any subject connected with this trial until the case is  
5 finally submitted to you.

6 Let's take an hour and 20 minutes. So that  
7 would be about -- let's say 1:20 if you want to back at  
8 1:20.

9 MR. KEMP: Your Honor, that's --

10 MR. BARGER: That's 50 minutes.

11 THE COURT: Sorry. 2:00. 2:00 o'clock.

12 THE MARSHAL: All rise.

13 (The following proceedings were held  
14 outside the presence of the jury.)

15 THE COURT: You are excused for now.

16 Mr. Pepperman, do you have a copy of that  
17 e-mail?

18 MR. CHRISTIANSEN: Judge, should I close that  
19 door real quick? That's all right. It just didn't  
20 close automatically. Marshal beat me to it.

21 THE COURT: All right. Was that a yes or no?

22 MR. PEPPERMAN: I have the e-mails, between  
23 myself and Mr. Russell and Ms. Lesani, general  
24 associate general counsel for The Venetian. But we  
25 discussed the arrangement over the phone, so it wasn't

1 in an e-mail that I sent to her that said that.

2 We -- The Venetian asked for some sort of  
3 agreement to memorialize it, and I have -- we haven't  
4 signed the agreement yet, but I have the draft that's  
5 been going back.

6 And the draft does say that to pay the jurors  
7 for the remainder of the trial, which is expected to  
8 last four to six weeks. But, again, I think that was  
9 based on my misunderstanding of the agreement that was  
10 on the record.

11 So I'm -- I have no doubt that I communicated  
12 or may have communicated to the Court that we had a  
13 deal for -- to pay half of what The Venetian was going  
14 to pay for the remainder of the trial; but, again, that  
15 was a mistake on my part because I wasn't aware of the  
16 two-week agreement on the record. So I think that's  
17 where the confusion comes from.

18 THE COURT: I understand the confusion. The  
19 problem is I relied on his confusion in making certain  
20 decisions. So I'm going to take a lunch hour to think  
21 about that. Okay? Thank you.

22 MR. KEMP: Judge, like I said, we don't have  
23 to decide this today, but let's try to get him paid  
24 today for the two weeks.

25 THE COURT: Right.

1 (Whereupon a luncheon recess was taken.)

2 THE MARSHAL: Please remain seated.

3 Department 14 is now in session.

4 THE COURT: Are we ready for the jury?

5 MR. KEMP: Yes, Your Honor.

6 THE COURT: All right. So I think we'll  
7 address that other issue after -- after --

8 MR. KEMP: Just so you know, Your Honor, we  
9 went to the back, and we have cash. They have cash.

10 MR. BARGER: Wait. Time out. How much cash  
11 do I need?

12 MR. KEMP: We have enough cash.

13 MR. BARGER: I've got a lot, but I can go get  
14 some more.

15 THE COURT: Well, I'm very happy, because  
16 that -- we can be on the record right now, because  
17 however you've decided to do it, I think the timing is  
18 appropriate. It's -- it's necessary.

19 MR. KEMP: Yeah, Judge. I don't think this  
20 is the best way to go, but if a juror has extreme  
21 hardship.

22 THE COURT: You did speak something about a  
23 cashier's check. I was reading the --

24 MR. KEMP: We can go get a cashier's check.

25 THE COURT: I was reading the transcripts

1 during lunch.

2 MR. KEMP: Yeah, we can go get a cashier's  
3 check.

4 THE COURT: That's what you had agreed on.

5 MR. BARGER: Why don't we do this?

6 MR. KEMP: What about -- would you like to --

7 THE COURT: I don't know.

8 MR. KEMP: See, I don't know either.

9 THE COURT: Well, Mr. Pepperman, do you know?  
10 I'm not trying to put you on the spot.

11 MR. PEPPERMAN: No, I've e-mailed Ms. Lesani,  
12 copying Mr. Russell, and advised her of the situation  
13 and asked her to look into it.

14 THE COURT: I hope we are on the record;  
15 right?

16 THE COURT RECORDER: Yes, we are.

17 THE COURT: Good.

18 MR. PEPPERMAN: And based on what she tells  
19 us, if The Venetian can pay his payment or if not  
20 today, then we can work out the best way to make sure  
21 that it gets paid today.

22 THE COURT: Today?

23 MR. PEPPERMAN: And in a manner that the  
24 Court feels comfortable.

25 THE COURT: Keep in mind that what you pay



1 him -- I'm worried that, if it's overpaid, that he may  
2 have to -- you know what I mean? How they deduct  
3 things from people's paychecks and so forth.

4 MR. KEMP: Yeah, Judge --

5 THE COURT: So I want you to keep that in  
6 mind.

7 MR. KEMP: Yeah, but, I mean, I have to go  
8 get a cashier's check by 5:00. The bank closes at  
9 5:00.

10 THE COURT: You will or someone will?

11 MR. KEMP: Well, I won't do it, but we will  
12 get it.

13 MR. PEPPERMAN: I think the Court's  
14 inclination to maybe wait a little while longer to see  
15 if I hear back from Ms. Lesani, and then maybe we can  
16 finish this witness. And then, after that, address it  
17 maybe with Mr. Lennon if we haven't heard back.

18 THE COURT: And then we should also speak to  
19 the other juror, Mr. Tuquero, because apparently he has  
20 been paid.

21 MR. KEMP: He has been paid. That's our  
22 understanding.

23 THE COURT: And I don't understand --

24 MR. KEMP: Judge, this is The Venetian.

25 It's --

1 THE COURT: The agreement's in place, why one  
2 has been --

3 MR. PEPPERMAN: Because it's an  
4 administrative issue. They're in different  
5 departments. And we had to work with the departments  
6 on this, so --

7 THE COURT: All right. Let's get going.

8 Mr. Terry, you're still on cross-examination?

9 MR. TERRY: Yes, Your Honor.

10 THE COURT: Very good. Let's have the  
11 marshal bring the jury in.

12 MR. KEMP: Judge, just out of an abundance of  
13 caution, we're going to go get a \$1,000 cashier's check  
14 now, and five 100s. And we'll figure out what we need.  
15 That way, we'll be ready if we need it. If we don't  
16 need it, great.

17 THE COURT: Okay. You might want different  
18 denominations. I don't want to get involved in that.  
19 That's up to you.

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.

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

3 THE COURT: Good afternoon, ladies and  
4 gentlemen.

5 Do the parties stipulate to the presence of  
6 the jury?

7 MR. TERRY: We do.

8 MR. KEMP: Yes, Your Honor.

9 THE COURT: Okay. Mr. Terry, please proceed.  
10

11 CROSS-EXAMINATION (continued)

12 BY MR. TERRY:

13 Q. Good afternoon, Doctor. Are you ready?

14 A. Yes, sir.

15 Q. Earlier, you had looked at what has been  
16 marked as Plaintiffs' Exhibit No. 126 that I tendered  
17 to you. And this is the aerodynamic study that MCI  
18 commissioned with Dr. Cooper's organization; correct?

19 A. Yes.

20 Q. And this is one that we commissioned for the  
21 purpose of testing aerodynamic drag; correct?

22 A. Drag, and I think they also looked at side  
23 force as well, but drag in particular.

24 Q. Now, to refresh my recollection, what is  
25 drag?

1       A.    Drag is simply the force that the air exerts  
2 on the vehicle.

3       Q.    Okay. Is it a force that shows up in the  
4 fuel bill?

5       A.    It does.

6       Q.    How does it show up in the fuel bill?

7       A.    Let me just clarify my previous.

8            It's the force that the air exerts on the  
9 vehicle in the direction of the airflow.

10       Q.    And so that's against the direction the  
11 vehicle goes?

12       A.    Correct.

13       Q.    So how does it show up in the fuel bill?

14       A.    Your engine in a vehicle, your own car or a  
15 bus, has to overcome the rolling friction of the tires,  
16 internal friction in the engine and the transmission,  
17 and the aerodynamic drag. So the greater the  
18 aerodynamic drag, the worse the fuel economy and the  
19 more money you have to spend for fuel.

20       Q.    Is there a ratio between drag and velocity  
21 and the power that the engine has to use?

22       A.    No, not exactly. Because the drag is only  
23 part of the total force that's resisting the vehicle  
24 motion -- I mentioned the rolling resistance of the  
25 tires and also internal friction in the engine and the

1 transmission -- it's not a direct proportionality.

2           The component of the total force that's drag  
3 is directly related to the drag coefficient and air --  
4 and the air speed and so forth.

5       Q.   How is the drag related to the fuel?

6       A.   The power required to overcome the  
7 aerodynamic drag is the drag force times the speed of  
8 the vehicle.

9       Q.   Okay. So it's velocity of the vehicle times  
10 the drag force tells you the engine power that is  
11 necessary to overcome movement through the wind?

12      A.   Correct.

13      Q.   So as the speed goes up, so does the drag --  
14 or so does the engine power required to overcome it?

15      A.   That's exactly right.

16      Q.   Okay. It would be in the best interest of  
17 the people running the vehicles to reduce drag as much  
18 as possible?

19      A.   All else being the same, that's true.

20      Q.   Because it would reduce the cost of  
21 operations?

22      A.   Yes.

23      Q.   It would reduce the fuel bill?

24      A.   It would.

25      Q.   Okay. Now, in this testing that was

1 performed in 1993, MCI requested Dr. Cooper to test  
2 some bus fronts; correct?

3 A. Yes.

4 Q. And the bus fronts that he asked -- we asked  
5 him to test are shown on page 13 of that -- that I've  
6 showed you, put up on the board. Four of the fronts  
7 are the ones labeled MCI CJ3, the smooth MCI CJ3, MCI  
8 Proposed 3, and MCI Proposal 1 -- is that -- I'm  
9 sorry -- Proposal 2 and Proposal 1; correct?

10 A. Yes.

11 Q. And then we also tested the fronts of three  
12 other production buses. And what were the names of the  
13 production buses?

14 A. Well, the Prevost, the Mercedes, and the  
15 Setra.

16 Q. What is the number or numerical designation  
17 of the Setra?

18 A. S315.

19 Q. We've heard some discussion about the Setra  
20 500 or a Mercedes 500. Did you talk about that  
21 earlier?

22 A. I don't remember the exact number, but I may  
23 have.

24 Q. But there was a 500 that you talked about?

25 A. I believe that's correct.

1 Q. Do you know whether or not the 500 that you  
2 talked about is legal in this country?

3 A. No.

4 Q. All right. Now, when we tested those fronts,  
5 we tested them for a purpose. And that purpose, I  
6 believe, is set out at page 1 of "general purpose."

7 I'm going to put the general purpose up on  
8 the board.

9 8, 8 -- it's 1.0. Did we have that already?  
10 Okay.

11 MR. CLARK: Exhibit 126, page 7.

12 BY MR. TERRY:

13 Q. Have you got it there?

14 A. Yes, sir.

15 Q. And, here, there's a section here about  
16 aerodynamics generally, which is what you described to  
17 us earlier. And there's -- it affects fuel  
18 consumption, passing acceleration, and then there's  
19 something else called side force, rolling moment,  
20 yawing moment. That's the effect of wind on the bus;  
21 correct?

22 A. Correct.

23 Q. Not the bus wind affecting anyone else?

24 A. Correct.

25 Q. Okay. And so the purpose that we set out

1 here is here, where we're setting out four things that  
2 we're looking for to investigate the rear ends, the  
3 front ends, that sort of thing. What is the purpose  
4 for these studies, Doctor, as we're -- I have big feet.  
5 I'm sorry.

6 What is the purpose of the test set out?

7 A. You're asking me to read from this or  
8 paraphrase?

9 Q. Yes. Yes.

10 A. I want to make sure I read the paragraph you  
11 want.

12 Q. It's the ones with the numbers.

13 A. I see.

14 "The purposes of the wind tunnel test were to  
15 investigate alternative front end and rear end designs  
16 to determine which provided the lowest aerodynamic  
17 drag, to determine the effect of mirrors and other  
18 detail modifications on the best front and rear  
19 combination from one, to compare the aerodynamic  
20 performance of the best combination with several  
21 competitive buses to estimate the fuel savings provided  
22 by the new design relative to the current production  
23 bus and to the competition."

24 Q. Okay. And so it was focused essentially on  
25 fuel consumption?



1           A.    Well, they refer to aerodynamic performance,  
2 and that could include these other matters like side  
3 force, rolling moment, yawing moment.

4           Q.    Okay. But that's wind on the bus; correct?

5           A.    Yes.

6           Q.    All right. Okay. I think that at 3.1 in  
7 that, they talk about fuel consumption.

8                    You got it?

9           A.    No. What page are you at?

10          Q.    It's right up there on the ...

11                   And this is where they talk about where  
12 they're going to study for the fuel consumption; right?

13          A.    Yes.

14          Q.    And then they also, at 3.2, talk about  
15 crosswind handling; correct?

16                   Correct? That's crosswind handling?

17          A.    That's what the title says. I didn't know if  
18 you wanted me to read the whole thing.

19          Q.    No, I didn't know if you had gotten to the  
20 right location.

21                   This is where you're talking about the  
22 deflection or the movement of the bus from its path  
23 because of the influence of side winds and that sort of  
24 thing?

25          A.    Correct.

1 Q. And that's what they're studying; right?

2 A. Yes.

3 Q. Did you find anything in the testing that was  
4 done by Dr. Cooper in response to our request for fuel  
5 consumption and side wind or crosswind handling where  
6 he studied whether or not the air coming into the front  
7 of any one of these buses separated when it went around  
8 the sides?

9 A. I'm not sure if you're asking me if -- if  
10 they looked for flow separation explicitly?

11 Q. Well, I'm looking to see whether or not, as  
12 part of these tests, these experts actually looked at  
13 what we're talking about, which is flow -- or air  
14 hitting the front of the bus, coming around the sides,  
15 and separating and reattaching.

16 A. Yeah, I'll have to refresh my memory about  
17 exactly what they looked at in terms of flow  
18 separation. This may take a few minutes.

19 Q. You had not looked before?

20 You hadn't looked before?

21 A. Oh, I have, but I don't have perfect recall.

22 Q. Well, we did look at Figure 18A and 18B. Do  
23 you remember that?

24 A. Oh, yes. Thank you for reminding me. Yeah,  
25 the smoke visualization, correct.

1 Q. Okay.

2 Can you put up 18A and 18B, please, 18A and  
3 18B from this morning's presentation, the flow  
4 separation -- the smoke on the top of the bus.

5 They were Figures 18A and -- you got it?

6 All right. So this is Figures 18A and 18B  
7 that we looked at this morning?

8 A. Yes, I believe so.

9 Q. And this is smoke going over the top of the  
10 bus?

11 A. Correct.

12 Q. Okay. Is there anyplace where they did smoke  
13 going around the sides of the bus?

14 A. I recall one picture with the mirror. There  
15 was some attention paid to mirrors. Yeah, on the next  
16 page, Figure 18 Delta.

17 Q. Okay.

18 Can you get to that, sir.

19 Okay. So where is the smoke?

20 A. Well, this is 19. I was referring to  
21 Figure 18 Delta.

22 Q. Oh, 18D. May I see it?

23 MR. TERRY: You got it?

24 MR. CLARK: Yep.

25 /////

1 BY MR. TERRY:

2 Q. Is this the one?

3 A. Yes.

4 Q. Okay. And where is the smoke that we're  
5 looking at here?

6 Okay. So was this designed to look at the  
7 mirror weight?

8 A. Well, yes, to visualize the flow of the  
9 mirror.

10 Q. Earlier when we looked at the general  
11 purposes, one of them included studying the impact of  
12 mirrors, right, on the fuel economy?

13 A. One of them? You mean one of the tests in --

14 Q. No, one of the purposes. When I had you read  
15 the four purposes, did one of them involve the mirrors?

16 A. I'd have to refresh my memory, but it could  
17 well be.

18 Q. Okay.

19 Can you go back, sir, to "purpose," 1.0.

20 A. I found it on my hard copy. Yeah, No. 2 in  
21 that list was having to do with mirrors.

22 Q. Okay. And that was part of the study into  
23 fuel consumption; right?

24 A. Fuel consumption and possibly other things  
25 like these other dynamic forces like roll and yaw.

1           Q.    Okay.  And so what we're looking at in the  
2 picture of the smoke, we're looking at smoke being  
3 blown at the mirror?

4           A.    Yes.  It's -- it's standard in wind tunnel  
5 testing -- you see that vertical line to the right of  
6 the bus model?  And I believe smoke is being injected  
7 through that vertical line.

8                   And then it is -- that vertical line turns to  
9 the left.  And you see issuing from the -- the end of  
10 that tube or pipe a stream of smoke which expands and  
11 flows past the mirror.

12          Q.    Okay.  So what we're looking for, then, this  
13 is where the smoke comes out of the tube and that's  
14 where it impacts the mirror; right?

15          A.    Yes.

16          Q.    Okay.  So here's the tube -- here's the tube,  
17 and it impacts the mirror; right?

18          A.    Yes.

19          Q.    Any separation shown?

20          A.    Well, not from this picture.  You can't see  
21 separation in this picture.

22          Q.    All right.  Any other picture that you're  
23 aware of where they looked at separation from air or  
24 smoke hitting the center of the vehicle going around  
25 the sides?

1           A.    I don't recall any in this report.  I don't  
2 think that was a focus of this report for some reason.

3           Q.    Okay.  So in terms of this report, where we  
4 commissioned Dr. Cooper to look at fuel efficiency or  
5 fuel economy in our bus, suggested -- proposed and our  
6 competitors, they did not look for smoke hitting the  
7 center of the bus and going around the sides?

8           A.    That's my recollection.  That's right.

9           Q.    So there's nothing in this study that you can  
10 refer to that shows how there is or is not separation  
11 on any of these bus fronts, air going around the sides?

12          A.    There's no visualization.  The drag  
13 coefficient measurements are indicative of separation,  
14 as I described earlier this morning.

15          Q.    But there's no place where they actually  
16 determined that there was separation?

17          A.    I think that's true.

18          Q.    There's no point -- part where they actually  
19 determined how much separation, how far out to the  
20 sides, it went?

21          A.    Correct.

22          Q.    And there's no point where they determined  
23 where it reattached?

24          A.    Not in this report.  That's right.

25          Q.    So there's nothing from this report that we

1 can use to answer the question in this case, was there  
2 separation of the J4500 at 25 miles an hour? How far  
3 out did it extend? How much force did it exert? And  
4 what -- where did it reattach?

5 A. I wouldn't quite agree with that. The fact  
6 that the drag coefficients are very high on certain  
7 models tells me that there's separation at these  
8 corners. So ...

9 Q. So which model, in your opinion, is high  
10 enough drag that you think it tells you some  
11 information about separation and air displacement?

12 A. Well, I'd say all the ones whose drag  
13 coefficients are well above .3, for example, the one  
14 that had a value of .6 and so forth.

15 Q. Are there any that are less than .3?

16 A. Not in this test.

17 Q. Okay. So you think there was separation in  
18 all of them?

19 A. Well, there will always be very small regions  
20 of separation in the lead of mirrors and hinges and in  
21 the wheel wells and so forth. When I'm referring to  
22 separation, I'm talking about the thing that I  
23 described this morning, this massive separation at the  
24 front edges and the sides and top of the buses.

25 Q. Do you think that kind of separation occurred

1 in all the fronts that were studied, even though it  
2 wasn't measured or evaluated?

3 A. Certainly for the ones with high drag  
4 coefficients, that is the reason why the drag  
5 coefficients are high, yes.

6 Q. Okay.

7 A. The ones that --

8 Q. Is there more than one that has a high drag  
9 coefficient?

10 A. Well, we can go back and look at the list.

11 Q. Where is the list?

12 Where is the list? I'll put it up so we can  
13 all see it.

14 A. Okay. I'll hunt for it.

15 It was one of the slides from this morning.

16 Q. Give us a moment, Doctor. We're pulling it  
17 up.

18 Okay. I've got over here and -- can you see  
19 it? We're going to highlight this block right here.

20 Is that the list you were talking about?

21 A. Yes, that's one of them. There are several  
22 lists for different flow conditions, but that one will  
23 be illustrative.

24 Q. And so what is a high drag coefficient?

25 A. Well, these numbers, the top one is -- let's



1 just look, for simplicity, at the columns underneath  
2 the 90-kilometer-per-hours. That's the one on the left  
3 of that kind of -- yeah, near that pointer.

4 And you see where it says "CD bar"? I guess  
5 is highlighted in yellow there. And that column of  
6 numbers for the different configurations -- yeah.

7 Thank you.

8 You see the top number is .584. I would  
9 regard that as a relatively large number. Certainly,  
10 there has to be massive separation on the front of that  
11 bus.

12 Q. And which one is that?

13 A. That's the standard CJ3 No. 19, it says.

14 Q. Okay. Are there any that are similar?

15 A. Well, the bottom two, the Setra No. 35 and  
16 the Mercedes 22, also have high numbers.

17 Q. Are those three, then, high enough numbers  
18 that you think there was separation?

19 A. Oh, yes.

20 Q. Even though the separation was not studied  
21 in -- as part of the work that was done?

22 A. Yeah. Just because they didn't look for the  
23 separation doesn't mean it wasn't there.

24 Q. Have you made a determination as to whether  
25 or not the J4500 is equivalent to any one of these

1 three, the Setra, the Mercedes, or the top one, the  
2 standard No. 19?

3 A. It's -- it's very similar to the standard  
4 CJ3. I'd have to look to see if the No. 19 is one that  
5 was particularly special.

6 One thing to note about this particular table  
7 we pulled up is that it has -- if you look at the  
8 caption where it says "Table 6.1," it says "Front-end  
9 shape effects with the CJ3 rear."

10 These tests also had different rear ends to  
11 the models as well. So it's important to compare  
12 apples with apples and always keep the rear end the  
13 same when comparing these numbers.

14 Q. Okay. Are all these comparing the bus front  
15 with the same rear end?

16 A. Yes, I believe so.

17 Q. Okay. And three of them -- the Mercedes, the  
18 Setra, and the standard MCI bus -- have high numbers,  
19 high enough that you surmise there was separation?

20 A. Oh, yes.

21 Q. Okay. Do you have any similar test for the  
22 MCI J4500?

23 A. No, I'm unaware of any wind tunnel testing of  
24 that -- that model.

25 Q. Okay. So, if I understand correctly, then,

1 is it fair to say that the drag coefficient is not the  
2 same thing as air displacement at the front end?

3 A. Well, an aerodynamicist wouldn't use the term  
4 "air displacement." If you mean flow separation, then  
5 there is a direct correspondence between the drag  
6 coefficient and what we call forebody drag, drag at the  
7 front end due to this flow separation.

8 Q. Okay. Can you conclude just from these  
9 numbers that there was, in fact, separation even though  
10 they didn't test for it, measure for it, or report on  
11 it?

12 A. Oh, yeah. My experience said there's no  
13 doubt there's massive separation in these high drag  
14 coefficients. Remember, these all have exactly the  
15 same back end, so all the changes in drag coefficient  
16 are purely due to changing the front end.

17 Q. Okay. So the Mercedes and the Setra, which  
18 were in production, had this kind of separation  
19 problem?

20 A. Oh, yeah.

21 Q. Okay. And then the standard MCI or CJ1 also  
22 had the same problem, in your opinion?

23 A. Whatever No. 19 is. I'd have to look that  
24 up.

25 Q. Okay. But in terms of the study itself,

1 there is no section or block or table where Dr. Cooper  
2 and his people evaluated, measured, tested, and showed  
3 us separation around the sides of any of the buses?

4 A. Yes, I think that's correct.

5 Q. All right. Now, I want to turn now to the  
6 actual claim -- or opinion that you have in turning the  
7 air displacement around the front of the J4500. Okay?

8 All right. Did you prepare for me at your  
9 deposition a sketch, if you will, showing displacement  
10 around a bluff body and displacement around a perfect  
11 form?

12 A. I did.

13 Q. I'm going to hand you what has been marked as  
14 Exhibit No. 3 at your deposition, which is now marked  
15 as Exhibit 193. Ask you to take a look at that.

16 Is that the diagram that you drew?

17 A. It is.

18 Q. And, in your opinion, does it enable us to  
19 discuss intelligently separation streams and that sort  
20 of thing?

21 A. Yes.

22 Q. May I have it back, sir.

23 MR. TERRY: Your Honor, I would offer 193.

24 MR. KEMP: No objection, Your Honor.

25 THE COURT: Exhibit 193 is admitted.

1 (Whereupon, Defendant's Exhibit 193 was  
2 admitted into evidence.)

3 BY MR. TERRY:

4 Q. Exhibit 193. Yes. Okay. So I'm going to  
5 put it up here on the board so everyone can see it.  
6 All right. The one on the left looks like a brick.

7 A. Yes.

8 Q. It's got square corners.

9 A. Yes.

10 Q. And so -- and I understand this is just for  
11 demonstration purposes, because you know that the J4500  
12 is not shaped like a brick.

13 A. Correct.

14 Q. It's got rounded corners.

15 A. To a certain extent, yes.

16 Q. Did you know it was tapered at the front end?

17 A. It's not exactly the shape of a brick.

18 That's true.

19 Q. Did you know it was tapered; that is, that it  
20 goes from 94 inches to 104?

21 A. I don't remember those numbers, but I recall  
22 there was some tapering. These two shapes that are  
23 illustrated here are shapes that I studied in this  
24 '94 -- in this '74 Cal Tech test.

25 Q. I understand. Very good, Doctor. But this

1 is not -- so there's no one confused, the one on the  
2 left is not intended to be a replica of the J4500?

3 A. Correct.

4 Q. Nor is the one on the right?

5 A. That's right. I was trying to illustrate the  
6 aerodynamic principles with this.

7 Q. Okay. And so looking to the one on the left,  
8 the area we are concerned with is the wind comes around  
9 and separates, it goes out, and then reattaches?

10 A. Correct.

11 Q. And that happens for more than one stream, if  
12 you will.

13 A. I would put it this way, that when you have  
14 that large-scale separation, it makes the effective  
15 width of the body wider because things can come around.  
16 So there are many streamlines that are deflected.

17 Q. But it's only one area that is created, if  
18 you will?

19 A. What an aerodynamicist would call that area  
20 where the arrow reverses, they would call that a  
21 separation bubble.

22 Q. Is that this?

23 A. Yes.

24 Q. Okay. And then what's over here? Is it the  
25 same or different?

1           A.    That's outside the separation bubble.

2           Q.    Okay.  But it is still the wind, if you will,  
3 where the air is being displaced?

4           A.    Correct.  These are all streamlines of the  
5 wind flow.

6           Q.    So this is the place where the separation  
7 occurs, but all the wind is affected and comes out?

8           A.    I would put it -- sorry -- slightly different  
9 way.  Sorry to keep correcting you.

10                   Separation occurs right at that lower left  
11 corner where the flow that was hugging the front  
12 surface, which is now on the bottom of this image --

13           Q.    Right here.

14           A.    Right.  Instead of turning sharply and  
15 following the body, it decides to lift up, in this  
16 case, to the left of the body.  That's the point of  
17 separation.

18           Q.    Okay.  Now, the other one that you have, the  
19 one on the right, this is the shape that you've  
20 determined in your -- master's?

21           A.    Master's, yes.

22           Q.    -- master's work is the perfect shape for  
23 this issue with the .125 radius?

24           A.    Well, there's no single perfect.  This one is  
25 sufficient to almost completely eliminate the drag from

1 the front of the body, but there -- there are an  
2 infinite number of shapes that would do the job. You  
3 don't have to have this shape to get the low drag.

4 Q. Okay. But the purpose of this is to put up a  
5 shape that looks like the one on the left that has the  
6 appropriate radius and what that means?

7 A. No, I wouldn't put it that way. I was trying  
8 to contrast the one on the left, where there's massive  
9 separation, and the one on the right, where there's no  
10 separation. And you achieve the separation by putting  
11 that generous corner radius in there, which I've  
12 labeled with an R, which is leaning on its side.

13 Q. So this is the radius you're talking about  
14 right here?

15 A. Yes, sir.

16 Q. And so these lines, streams, still come  
17 around. This is the stagnation point in the center of  
18 the bus?

19 A. Yes, sir.

20 Q. And this is the air that has to be displaced  
21 and come around; right?

22 A. Yes.

23 Q. And it still comes around?

24 A. Yes.

25 Q. Only this time, there's no separation.



1           A.    Correct.

2           Q.    So someone standing here would still feel the  
3 wind?

4           A.    Oh, yes.

5           Q.    And the wind would be the same wind they  
6 would feel over here?

7           A.    No.

8           Q.    What's different?

9           A.    Well, the whole shape of the trajectories are  
10 different. Remember --

11          Q.    But if you're in the wind, whatever the  
12 trajectory, the wind is the same here and here?

13          A.    No.

14          Q.    What's the difference about the wind?

15          A.    Speed and direction. Everything.

16          Q.    Okay. So is it faster over here?

17          A.    It depends on where you're talking about. If  
18 you're inside the separation bubble, the speeds are low  
19 and actually reversed. That's what I indicate by that  
20 curlicue arrow. So there are big variations in the  
21 speed and direction you see on that image on the left.  
22 As I was describing this morning, the flow gets  
23 deflected, of course, out away from the bus even more  
24 than in the image on the right because of this  
25 additional separation of a width. And then the flow

1 then turns and -- and reattaches downstream of the  
2 separation bubble.

3 Q. Okay. Now, this here represents the lateral  
4 force of the streamline from the perfect -- from close  
5 to perfect? This line right here.

6 A. I don't understand your question.

7 Q. What is this line here that you drew?

8 A. That's -- that's one streamline.

9 Q. Okay. Why have you got the line with an  
10 arrow pointed off to the left?

11 A. I was illustrating -- the arrow represents  
12 what we call the velocity vector. The direction of the  
13 arrow tells you which way the wind is blowing at that  
14 point, and the length of it is proportional to how  
15 fast.

16 Q. So this tells me the wind is not blowing  
17 parallel to the bus.

18 A. At that point there's a small angular  
19 deviation. That's true.

20 Q. Okay. Now, the problem that we have here is  
21 that we are dealing with an event that occurred where  
22 Dr. Khiabani encountered the bus; right?

23 A. Yes.

24 Q. And when he encountered the bus, he came in  
25 contact with the bus, he fell to the ground, and he was

1 injured; right?

2 A. He was killed, yeah.

3 Q. Okay. So, now, Dr. Khiabani is a -- or  
4 was -- a man with a certain weight; right?

5 A. Yes.

6 Q. How much did he weigh?

7 A. I don't remember exactly. The figure of  
8 around 191 pounds comes to mind from the Granat  
9 experiment where they tried to exactly match the  
10 weight.

11 Q. Okay. So -- and is he moving forward?

12 A. With respect to the ground, yes.

13 Q. How fast is he moving?

14 A. I was told it was according to some analysis  
15 between 13 and 14 miles an hour, and my estimates  
16 picked the middle of that, 13.5.

17 Q. All right. At 13.5 miles an hour, does  
18 Dr. Khiabani have momentum?

19 A. Oh, yes.

20 Q. And is his momentum his mass times his  
21 velocity?

22 A. Yes, it is.

23 Q. And so the wind coming off the bus has to be  
24 large enough to change his momentum if it's going to  
25 have an effect?

1           A.    It has to be big enough to change his  
2 momentum if it changes his momentum. But, of course,  
3 he's a sentient being and he can react to the  
4 environment as well.

5                   So even if the wind caused a perturbation  
6 that would cause him to put a steering input in, that  
7 would have an impact on his trajectory by itself.

8           Q.    How long does the event take from the first  
9 push force to the pull force?

10          A.    I think I put that up in my summary slide. I  
11 estimated it was approximately a quarter of a second.

12          Q.    If we go back to the summary slide where we  
13 began, the time duration that you estimate here is .25  
14 seconds?

15          A.    Yes, approximately.

16          Q.    Do you know what the reaction time for a  
17 human being is?

18          A.    I think in one of my opinion letters, I gave  
19 a comment about that. I looked it up on the internet.  
20 It's that order, depending on how prepared the person  
21 is and so forth.

22          Q.    Do you know if it's more than one second  
23 reaction time?

24          A.    I think it can be under some circumstances.

25          Q.    Okay. But, in any event, the incident

1 happens in .25 seconds; correct?

2 A. That's -- an approximate value, yes.

3 Q. Okay. Now, all of us -- or I assume all of  
4 us -- have ridden bikes. You ride bikes?

5 A. Correct.

6 Q. And when we learn bikes, there is a point in  
7 time when we realize we are safer moving than trying to  
8 balance.

9 A. Safer moving than not moving, you mean?

10 Q. It's easier to maintain the balance if the  
11 bike is moving forward than if it is stationary?

12 A. Correct.

13 Q. Why is that?

14 A. Well, it has to do with the gyroscopic  
15 effect, the angular momentum of the wheels rotating.

16 Q. Okay. Okay. Do you know how much force or  
17 power or momentum that is? How much has to be overcome  
18 to have the bike move left or right?

19 A. No, not off the top of my head.

20 Q. But that force would be in play here if  
21 Dr. Khiabani's traveling at 13.5 miles an hour on a  
22 bike and he's pedaling?

23 A. Right.

24 Q. Okay. So we have got that force or that --  
25 is "force" the right term for that?

1       A.   Well, it's actually more subtle and  
2 complicated than just the force. It turns out -- and I  
3 don't want to dive down too much into the weeds, but it  
4 turns out a rotating body has what's called angular  
5 momentum.

6       Q.   So you've got the angular momentum from the  
7 rotating body; you've got his momentum because he is  
8 moving forward at a particular velocity.

9       A.   Right.

10      Q.   And those have to be overcome before the  
11 force affects the bike, blows the bike over, if you  
12 will?

13      A.   I wouldn't use the word "overcome." They  
14 would have to be modified either by direct forces or by  
15 the rider's inputs.

16      Q.   All right. Now, are you familiar with what  
17 we call the scientific method?

18      A.   Yes.

19      Q.   And do you use the scientific method?

20      A.   Of course.

21      Q.   Do you teach the scientific method?

22      A.   Of course.

23      Q.   Is it what separates us from people who  
24 believe in magic, if you will?

25      A.   Yes.

1           Q.    And that's how we know things following this  
2 method?

3           A.    Following what?  I'm sorry.

4           Q.    Scientific method.  That's how we, as a  
5 society, as a culture, as a discipline, know things  
6 because we apply the scientific method and get valid  
7 answers?

8           A.    I guess a philosopher would say the  
9 scientific method is one path of trying to understand  
10 our world.

11          Q.    What is the scientific method?  How do you  
12 apply it?

13          A.    It involves generating a hypothesis, testing  
14 the hypothesis by conducting experiments, and  
15 evaluating the utility of the hypothesis in  
16 successfully explaining the experimental observations.

17          Q.    So when you talk about generating the  
18 hypothesis, don't you first have to have a problem that  
19 you are looking at?

20          A.    I don't know about problem, but there would  
21 be some physical question that you would be  
22 contemplating.

23          Q.    Okay.  So there is a physical question that  
24 you are contemplating, you look at the available  
25 evidence, and you come up with a hypothesis.

1           A.    That would be the standard approach, yeah.

2           Q.    And then you test the hypothesis.

3           A.    Correct.

4           Q.    And if the test merits, it confirms the  
5 hypothesis?

6           A.    I would say yes, with the caveat that in  
7 science we're -- nothing is ever confirmed in  
8 perpetuity. We always are throwing tomatoes at ideas,  
9 subjecting them to further testing. Nothing is ever  
10 ultimately carved in stone.

11          Q.    But the hypothesis, if validated, is accepted  
12 until disproven?

13          A.    There's probably always a spectrum of  
14 opinions. Some people probably aren't persuaded by  
15 very good correlation between the -- the predictions of  
16 the theory and the experimental observations. But I  
17 think the general scientific community weighs the  
18 accuracy of predictions of the model, the theory, with  
19 what's observed.

20          Q.    All right. Now, in this case, the problem  
21 that we have is that Dr. Khiabani encountered the side  
22 of the moving bus, fell to the ground, suffered injury  
23 and death; right?

24          A.    Yes.

25          Q.    Now, the physical evidence that we have



1 available, which consists of the point of contact, the  
2 bike that we see, is consistent with him simply being  
3 startled by a bus coming up over his left shoulder and  
4 falling as well as your hypothesis; correct?

5           If all that happened is he was startled  
6 because a big bus traveling at 25 miles an hour  
7 suddenly appeared to his left unexpected, he could lose  
8 control.

9           A. I suppose that's right. I'm not an expert on  
10 human behavior or bicycle/vehicle reactions, but I  
11 suppose that's true.

12          Q. And if that's what happened, he'd leave  
13 behind the same evidence, the same telltale mark on the  
14 bus that we deal with now; right?

15          A. I suppose that's theoretically possible,  
16 yeah.

17          Q. All right. So now I have -- I saw you  
18 flinch.

19               THE MARSHAL: Thank you.

20 BY MR. TERRY:

21          Q. Okay. So now I'm going to take this one  
22 right here and isolate it, make it a separate visual  
23 aid. Okay?

24               All right. This is the same one, only it's  
25 isolated; right?

1           A.    Yes.

2           Q.    As you explained to us this morning, your  
3 hypothesis, if you will, is that Dr. Khiabani was in  
4 this area here?

5           A.    The bus is moving faster than the bicycle,  
6 and so in the beginning the bus is behind --

7           Q.    Oh, I'm sorry. So he comes up from the top  
8 of the page to the bottom.

9           A.    No. He -- he comes up from the bottom to the  
10 top with respect to the bus.

11          Q.    Okay. So does the event begin when the rear  
12 wheel of his bicycle gets in this?

13          A.    Gets to be approximately even with the -- the  
14 front bumper of the bus.

15          Q.    And that's where he gets the push?

16          A.    The push.

17          Q.    And then, in less than a quarter of a second,  
18 he gets the pull?

19          A.    Approximately, a quarter of a second, that's  
20 true.

21          Q.    It is your hypothesis that Dr. Khiabani felt  
22 the push, felt the pull, lost control and fell.

23          A.    No, I wouldn't say that's my hypothesis. I'm  
24 an aerodynamicist, and I was asked to estimate the  
25 magnitudes of these forces. I don't know how he

1 reacted. I wasn't there. It's certainly possible, in  
2 my mind, that he could have responded to these forces.  
3 They're -- they're certainly appreciable, and they're  
4 rapidly changing.

5 Q. Did you look to see whether or not there had  
6 ever been any similar occurrence involving a motor  
7 coach?

8 A. No, I didn't.

9 Q. So you don't know if there's ever been a  
10 similar occurrence?

11 A. No.

12 Q. The separation point and the point of  
13 reattachment, okay, is that something that you can  
14 calculate or measure? Or calculate. Is that something  
15 you can calculate?

16 A. From first principles, no. Turbulence is to  
17 too hard.

18 Q. It is something that has to be measured?

19 A. People do numerical simulations with --  
20 which -- with varying degrees of accuracy, and I think  
21 the most believable results are when you -- you make  
22 the measurements of them.

23 Q. The lateral separation at the maximum,  
24 between the side of the bus and the detached boundary  
25 layer, is that something that you can calculate or do

1 you have to measure it?

2 A. Well, again, if you want to know it exactly,  
3 I would trust the measurements. People have looked at  
4 these kind of flows many times in the past, and so it's  
5 possible, as I've done in this case, to make plausible  
6 estimates for the magnitude of the -- and speed and  
7 direction of the flow field.

8 But if you're talking about precisely knowing  
9 something with pinpoint accuracy, then I would say it  
10 needs to be measured.

11 Q. And you have not done that?

12 A. I have not.

13 Q. And you cannot -- you cannot calculate the  
14 speed of the wind at the curve on a J4500 at 25, can  
15 you?

16 A. Not precisely from first principles, that's  
17 right.

18 Q. You have to measure it?

19 A. If you want to know it precisely, you always  
20 have to measure it. If you want to know it  
21 approximately, you can estimate.

22 Q. Okay. So in terms of what you did after you  
23 decided on your hypothesis -- in terms of what you did  
24 when you decided upon your hypothesis is you did not  
25 test for whether or not separation actually occurred,

1 did you?

2 A. I did no tests.

3 Q. You did not test for how far the separation  
4 extended, did you?

5 A. That's correct.

6 Q. You did not test for where the point of  
7 reattachment occurred, did you?

8 A. No, I did not.

9 Q. And you did not test for the speed of the  
10 wind, if it existed, the wind, at any point to the side  
11 of the bus?

12 A. That's all correct.

13 Q. In terms of your hypothesis, then, you didn't  
14 test it; you estimated it?

15 A. That's right. I estimated it. And then, on  
16 the basis of that estimate, I made the calculations  
17 that we described this morning.

18 Q. Okay. So you cannot tell, as a matter of  
19 fact, whether the boundary layer separates on the J4500  
20 moving at 25 miles an hour; you cannot tell us, as a  
21 matter of fact, if it does separate where it separates;  
22 you cannot determine where it reattaches to the side of  
23 the bus; and you cannot determine the speed of the wind  
24 or the side force that is actually created if any of  
25 that occurs; correct?

1       A.    No.  You're conflating two things.  One is  
2 the precise measurement of something to get a pinpoint  
3 accurate number.  I did no measurements.  I can't give  
4 you precise pinpoint numbers.

5       Q.    Doctor, you didn't even test the J4500 --

6       A.    If I could just finish my response.

7       Q.    I apologize.

8       A.    No, that's fine.  I took a long pause.

9            But I've been doing this for four decades.  
10 I've looked at a lot of bluff body flows.  I talked  
11 about the experiments back in '74.  I know what the  
12 overall flow pattern looks like.  I have extremely high  
13 confidence that the estimates that I've made in my  
14 opinion for the magnitude of these forces is  
15 approximately right.

16           It's not pinpoint precision.  I can't give  
17 you that; I haven't made any measurements.  But I am  
18 very confident that there's massive separation on the  
19 subject bus on the basis of its shape and all the  
20 experience of people testing other shapes that are very  
21 closely related.

22           It's that sharp corner at the front of the  
23 bus that really is the -- the smoking gun in terms of  
24 the subsequent aerodynamics.

25       Q.    What is the radius on the J4500?

1           A.    I can only determine it approximately by  
2 looking at an image. And I estimated, away from the  
3 windshield frames, it was, roughly speaking, about  
4 4 percent of the width of the bus.

5           Q.    So you didn't even measure the corner to  
6 determine what the radius was on a J4500?

7           A.    I measured it from the laser scan.

8           Q.    Okay. So if I understand correctly, then, if  
9 you were following the scientific method, you would  
10 have looked at the problem, you would have come up with  
11 a hypothesis based on your experience -- work you'd  
12 done in the past, work done by others -- and then you  
13 would have tested; right?

14          A.    My purpose here was not to conduct a  
15 scientific experiment. I was asked to make an estimate  
16 of the aerodynamic forces on the cyclist near this bus.  
17 You don't have to do a test to know what the  
18 approximate answer is --

19          Q.    All right.

20          A.    -- when you've been doing this for about four  
21 decades.

22          Q.    So what you're giving us, then, is your  
23 opinion based on what you think the corner looked like  
24 and what you think occurred on April 18th, 2017?

25                It's an estimate, is it not, Doctor?

1           A.    It is an estimate.

2           Q.    Okay.  Now, at the time I took your  
3 deposition, I showed you a journal entry -- which has  
4 been marked variously as Exhibit 480 -- which is a  
5 journal article by a man named Green, James Green.

6           A.    Okay.

7           Q.    In that article, does James Green put out  
8 what he considers to be the Bernoulli formula or  
9 principle?

10          A.    Yes.

11          Q.    You should find it on page 2.

12          A.    Thank you for that.  Yes, I think I recall  
13 that, but let me just refresh my memory.  Yes, I see it  
14 there.

15          Q.    Did Mr. Green put down the correct formula  
16 for Bernoulli's?

17          A.    No, he didn't.

18          Q.    Is he even close?

19          A.    He's not even close.

20          Q.    Okay.  Thank you.

21                In terms of your work with Mr. Sherlock --  
22 thank you, Doctor.

23                In terms of your work with Mr. Sherlock, it  
24 is my understanding that he came to you because of a  
25 problem that they were having with the A-pillar on a



1 bus in Seattle?

2 A. That's right.

3 Q. And it was because of the shape of the bus  
4 and the configuration of the bus, there was a reverse  
5 flow that was putting debris on the mirrors?

6 A. Correct.

7 Q. Now, did you do any wind -- wind tunnel  
8 testing for that?

9 A. We used the poor man's wind tunnel. We drove  
10 down the freeway, and I tied a piece of yarn on the end  
11 of a fishing pole and opened the window and leaned out  
12 the window of the bus and stuck the pole in the  
13 sensitive corner region and just aft of it to see the  
14 flow separation that I've described in that previous  
15 illustration. And we got a funny look from a policeman  
16 who drove by.

17 Q. But you determined that there was flow  
18 separation on the left side?

19 A. Massive.

20 Q. And you came up with the vane that corrected  
21 it, at least for the mirror?

22 A. To a large extent, it corrected it, yes.

23 Q. Now -- that's all you did?

24 A. I'm not quite sure what you mean by "that's  
25 all I did."

1           Q.    I mean, did you fix anything else on the bus?  
2 Did you study anything else on the bus other than the  
3 flow separation causing this deposit of debris on the  
4 mirror on the left side?

5           A.    No, we just focused on that left A-pillar and  
6 trying to keep the mirror clean.

7           Q.    Okay. So Mr. Sherlock or the bus company did  
8 not ask you about the separation that would cause air  
9 displacement on either side of the bus?

10          A.    Oh, we talked about that a lot. And I told  
11 them the same thing that I told you, that this  
12 particular model was even worse than the -- the MCI  
13 ones.

14                   Not only did it not have a tight corner  
15 radius, but the windscreen in front of the bus driver  
16 leaned back but the A-pillar stayed vertical. So the  
17 front of the bus was actually concave. So that was  
18 really an aerodynamic sin.

19          Q.    And did you bring that to the attention of  
20 Mr. Sherlock?

21          A.    Sure.

22          Q.    Did you bring it to the attention of the  
23 transit agency that operated the buses?

24          A.    Yes.

25          Q.    Did they do anything about it?

1       A.   Well, eventually, those bus models were  
2 replaced.  So perhaps the answer to your question is  
3 yes.  I don't know if they replaced them earlier than  
4 they otherwise would have.

5           They modified, I think, just about every one  
6 of those buses in the entire fleet -- and I don't know  
7 how many of them there were, a big number -- with these  
8 turning vanes that you mentioned.

9       Q.   That's the one that corrects the problem with  
10 the mirror on the left?

11       A.   Correct.

12       Q.   So in terms of this problem that you brought  
13 to their attention, they did not consider it a problem  
14 significant enough to investigate and correct?

15       A.   Well, again, I don't know if -- if they --  
16 they got rid of those coaches earlier than they would  
17 have otherwise, so I really can't answer what they --  
18 why they did whatever they did.

19       Q.   In terms of the information that was  
20 communicated to you by this bus company operating this  
21 bus -- those buses with that front, did they indicate  
22 to you they had had a series of problems of air  
23 displacement knocking people over?

24       A.   Brian Sherlock and I discussed this problem  
25 of people dying around buses.  As I mentioned, he's

1 the -- he was the union safety officer. And he did a  
2 lot of accident investigation. I was surprised how  
3 many people get killed in Seattle by Seattle buses.

4 Q. That was not the question, Doctor.

5 The question was, did they discuss with you a  
6 problem they had noted with the wind coming off the  
7 sides knocking people over, not whether or not they ran  
8 over people turning left or turning right?

9 A. I recall Brian Sherlock and I discussed that.  
10 I don't know that metro management did. I'd have to --

11 Q. Do you know if they even had a problem with  
12 the wind displacement from their buses knocking people  
13 over in operation?

14 A. I don't have a specific recollection of an  
15 incident. But just like with the J4500, there's  
16 massive flow separation on those buses.

17 Q. But they didn't come to you and ask you to  
18 fix a problem that they had noted because of wind  
19 separation at the corners; correct?

20 A. Correct. And I think Brian Sherlock had a  
21 lot of trouble even getting them to address this  
22 mirror-dirtying problem. He had to push very hard for  
23 that safety matter, even though the drivers were all  
24 complaining that they couldn't see behind them as they  
25 drove down the freeway when it rained.

1 Q. Okay. So I want to go over one more time the  
2 summary that you have -- the summary that you have of  
3 your opinions, two major aerodynamic problems:  
4 radius too sharp, not .125; window frame molding is  
5 placed at corner. Correct?

6 A. Correct.

7 Q. And that's based on no examination of a J4500  
8 at all?

9 A. I just looked at the drawings and the laser  
10 scans --

11 Q. Okay.

12 A. -- and the images.

13 Q. "J4500 commits same aerodynamic sin as the  
14 MCI CJ3, window frame molding placed at corner."

15 No examination or inspection of either the  
16 J4500 or the MCI CJ3; correct?

17 A. Not of the buses themselves; just of images  
18 in this report and so forth.

19 Q. That we looked at?

20 A. We looked at.

21 Q. Items 3, 4, and 5 are estimates by you.

22 A. They're calculations based on estimates.

23 Q. Okay.

24 MR. TERRY: That concludes the  
25 cross-examination, Your Honor.

1 THE COURT: Okay.

2 Mr. Kemp, redirect?

3 MR. KEMP: Yes, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. KEMP:

6 Q. Don't kill me. I'll be brief.

7 You said estimates based upon -- to a  
8 reasonable degree of aerodynamic certainty?

9 A. Oh, yes.

10 Q. Okay.

11 A. Oh, yeah. This stuff, it's not rocket  
12 science. It's very simple, straightforward stuff.

13 This is not even a close call.

14 Q. And do you need to see the actual bus to  
15 determine where the window frame is placed?

16 A. No. If you look at an image of it, it would  
17 show it.

18 Q. Okay. Now, Mr. Terry gave you some sort of  
19 hypothetical with the end of the accident where the  
20 impact of the bike was with the bus. Do you recall  
21 what the -- strike that.

22 Let me just have the placement by -- why  
23 don't we start with Bradley first.

24 Okay. Doctor, this is the placement of the  
25 bus that was done by Erika Bradley when she came and

1 testified. Okay?

2 A. Okay.

3 Q. And can you describe for the jury just  
4 briefly what's happening -- what would happen here in  
5 terms of the bus passing the bike.

6 A. Well, you see the overlap between the front  
7 bumper and the bike. And so the bike would have  
8 already experienced a strong push away from the bus.  
9 And, very shortly thereafter, as the bus continues on  
10 overtaking the bike, there would be the beginning of  
11 this even stronger pull.

12 Q. So the aerodynamic issue occurs where the bus  
13 passes the bike, not where the bike winds up; right?

14 A. Right. Where the bike winds up is totally  
15 separate physics. That's a consequence of what happens  
16 with this initial aerodynamic interaction.

17 MR. KEMP: Can I see the Kolch one, please.

18 BY MR. KEMP:

19 Q. Again, is this the same thing? This is the  
20 bus placement by another witness named Kolch.

21 Okay? Same -- same kind of answer?

22 A. Yep, same answer.

23 Q. Okay. All right. Okay.

24 By the way, it's Bernoulli; correct?

25 Bernoulli?

1 A. Correct.

2 Q. Okay. All right. I think Mr. Terry called  
3 it Bernoulli or something.

4 Now, with regards to the scientific method,  
5 did Dr. Kato test the hypothesis that passing a blunt  
6 object will cause a bicycle to wobble?

7 A. Yes. He did experiments.

8 Q. Is there any reason to redo his experiments?

9 A. No, they're very good. They're the best ones  
10 I know of in the literature.

11 Q. Okay. Thank you.

12

13 RECROSS-EXAMINATION

14 BY MR. TERRY:

15 Q. Do you have Dr. Kato's article there, sir?

16 A. No, not in front of me.

17 Q. Is this the article?

18 A. Yes.

19 Q. Okay.

20 A. Thank you.

21 Q. There is a figure where he identifies this  
22 pull force. I think it's Figure 9, Doctor -- or 7. 9.  
23 Figure 9.

24 A. Yes, I have it. Thank you.

25 Q. Okay. Is that where he estimates the pull



1 force -- or that's where he graphs out the pull force?

2 A. Yes.

3 Q. Now, isn't it true that Kato only tested with  
4 a distance of 2.5 and 4 inches between the bus model  
5 and the bicycle model?

6 A. Well, I'd have to do the conversions, but I  
7 suspect that's right. He used this, of course,  
8 scale-model bike and bus.

9 Q. And isn't it true that his model predicts the  
10 pull force would go away once the bike and the bus are  
11 more than 5 inches apart?

12 A. No, that's not true at all.

13 Q. Well, can you extend the line? Is it linear?  
14 Where does it go to zero?

15 A. Well, it hasn't been measured. So Kato  
16 doesn't answer that question.

17 My professional opinion is that it curves and  
18 it asymptotically approaches zero as you increase the  
19 separation, as I described this morning.

20 Q. Okay. So how many inches before it gets to  
21 zero?

22 A. Well, it gets to zero -- what we say --  
23 asymptotically or gradually. So to get to absolute  
24 zero would be quite a ways away, but it gets close to  
25 zero in a gradual way.

1 Q. So does it get close to zero about 5 inches?

2 A. Well, it depends on what you mean by close.  
3 But it gets closer as you get farther and farther away  
4 between the bus and the bicycle.

5 Q. Okay. So if -- but Kato is just doing scale  
6 models; right?

7 A. Yes.

8 Q. Can you extrapolate from that what happens in  
9 the real world?

10 A. Yes.

11 Q. If it's 5 inches that it reaches a point  
12 where it's no longer -- have any affect, how many feet  
13 does that represent?

14 A. Well, I don't think I said 5 inches didn't  
15 have any effect, but if you want me to assume that  
16 that's the case, I can convert 5 inches into the bus  
17 scale if you'd like me to do it.

18 Q. How many -- how many feet?

19 A. All right. This is going to take, again, a  
20 little bit of paperwork. Could I trouble you for your  
21 paper and pad again, please.

22 Thank you.

23 And the question was, again, 5 inches?

24 Q. Well --

25 A. Could you repeat the question.

1 Q. Yeah, the question is, if you assume that  
2 extending the line that -- on Kato's diagram or chart  
3 to zero or close to zero puts the bike and the bus  
4 about 5 inches apart, and if you assume that the model  
5 is 6 to 1 or 1 to 6, how many feet is 5 inches?

6 A. Well, first of all, I wouldn't make those  
7 assumptions because you can't simply extrapolate this  
8 straight line down to zero. As I said, it has to curve  
9 and approach zero slowly.

10 So maybe you want to rephrase your question  
11 to ask me just simply what one distance in the test  
12 corresponds to in real life.

13 Q. Okay. 4.7 inches. How many feet is that  
14 before, on the bus he tested, the pull force goes to  
15 zero?

16 A. Again, the pull force doesn't go to zero; it  
17 asymptotically approaches it.

18 Q. You told me to pick a number. I picked a  
19 number, 4.7 inches.

20 A. And then you said the force went to zero.  
21 And I objected to that assertion because I don't agree.

22 Q. All right. At 4.7 inches, the pull force is  
23 no longer significant to the bike rider.

24 A. I don't agree with that.

25 Q. Well, how do you know?

1           A.    Because I don't know what is significant to  
2 the bike rider, how big a force is significant.

3           Q.    Okay. So you can't reach the conclusion that  
4 it's not significant after about 2 feet or 2.3 feet,  
5 which is 6 times 4.7?

6           A.    No, I -- I don't have an opinion on how big a  
7 force it takes to affect a bicyclist. I think I said  
8 that earlier.

9           Q.    Okay. Now, we looked at a couple of pictures  
10 just -- with Mr. Kemp.

11                    Could we put those pictures up. It's the  
12 pictures from ...

13           MR. KEMP: Judge, this is kind of beyond the  
14 scope of my redirect. Can we approach?

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

17 BY MR. TERRY:

18           Q.    Do you know what this is, Doctor?

19           A.    Well, not for certain. It looks like it's an  
20 exhibit showing a picture of a bus, but I don't know  
21 anything more than that.

22           Q.    Well, it's got the bike in it, right, up by  
23 the right front?

24           A.    Oh, I see it. Yes. Okay.

25           Q.    And so this is a picture of what Erika

1 Bradley did when she was asked to put down the bus and  
2 the bike, and that's what she did. Okay?

3 A. All right.

4 Q. Now, if this is the place where the air  
5 displacement occurred, would Dr. Khiabani have fallen  
6 right here?

7 A. No, not necessarily.

8 Q. Where would he have gone?

9 A. Well, I can't predict how he would respond to  
10 these perturbations. All I can tell you is what the  
11 aerodynamic forces are acting on him when they're in  
12 close proximity. That could cause wobbling, and it  
13 could send him off in some direction either due to his  
14 own steering inputs or just the dynamics of the bike  
15 and where he ends up.

16 Q. Okay.

17 A. This is the final stage of an event that  
18 takes place aerodynamically here.

19 Q. If what happened here -- if this is what --  
20 this is where it happened, and what happened here is  
21 what we talked about over here about the bike going  
22 left, right, and then falling, where would he have  
23 fallen?

24 A. Oh, I couldn't tell you.

25 Q. If the same thing occurred that we discussed

1 happened right here, where would Dr. Khiabani have  
2 fallen?

3 A. I still couldn't tell you. All I can tell  
4 you is what the forces are on him. I'm not a mind  
5 reader. I never met him. I don't know how he would  
6 react. All I can tell you is the magnitude of those  
7 forces acting on him.

8 Q. Okay. If the magnitude of the forces is the  
9 same and the bike is right there next to the bus here,  
10 and everything else is equal, where does Dr. Khiabani  
11 hit the ground?

12 A. I do not know.

13 Q. All right. We looked at Samantha Kolch.  
14 Okay? Same thing. We're going to highlight the front  
15 of the bus and the bike. Okay. Now, she's got the  
16 bike --

17 MR. KEMP: Judge, I think that's Mr. Plantz's  
18 perhaps. I don't think that's Kolch. I think that's  
19 Plantz.

20 MR. TERRY: I'm sorry. I asked for Plantz --  
21 or Samantha Kolch.

22 THE COURT: Sustained.

23 MR. TERRY: No, this is -- Samantha Kolch.

24 MR. KEMP: You want us to --

25 MR. TERRY: If we can't do it, yes.

1 BY MR. TERRY:

2 Q. This is Samantha Kolch doing the same thing.  
3 Okay?

4 A. Okay.

5 Q. So if she is correct that that's where the  
6 bike was next to the bus when this event occurred --  
7 that is, the bike went into the bus, left the mark that  
8 we talked about -- where would Dr. Khiabani have  
9 fallen?

10 A. I do not know.

11 Q. If everything else remained the same except  
12 you put the bike next to the bus as she had it  
13 depicted, could you tell me where he would have fallen?

14 A. The short answer is no.

15 Q. Okay.

16 MR. TERRY: Thank you, Doctor. I have  
17 nothing further.

18 MR. KEMP: No further questions, Your Honor.

19 THE COURT: Okay.

20 THE MARSHAL: Questions?

21 THE COURT: Do I have any questions from the  
22 jury?

23 THE MARSHAL: No questions, Your Honor.

24 THE COURT: No questions. Okay.

25 Thank you. You're excused.

1 MR. KEMP: Can we take five?

2 THE COURT: Yes. We can take five, but you  
3 have to stipulate to the admonishment.

4 MR. KEMP: I stipulate, Your Honor.

5 THE COURT: Counsel? We're going to take  
6 a -- Mr. Roberts, we want to take a five-minute break.  
7 Do you stipulate to me not reading the admonishment?

8 MR. ROBERTS: Yes, Your Honor, we do  
9 stipulate to that.

10 THE COURT: Very good. Five to ten. Can you  
11 come back here, please.

12 THE MARSHAL: All rise.

13 (The following proceedings were held  
14 outside the presence of the jury.)

15 THE MARSHAL: Please be seated.

16 THE COURT: Did you close the door?

17 Okay. Mr. Kemp?

18 MR. BARGER: Can the lawyers step out too?

19 THE COURT: Sure.

20 MR. KEMP: Judge, I just want to let you  
21 know, Mr. Pepperman has been in communication with the  
22 Venetian attorney, and she said --

23 THE COURT: Okay. I need you to speak just a  
24 little louder.

25 We are on the record; right?



1 THE COURT RECORDER: Yes.

2 MR. PEPPERMAN: I reached out and told Nicole  
3 Lesani, the associate general counsel for The Venetian,  
4 that Mr. Lennon had not been paid. I asked her to let  
5 me know and that Your Honor was very concerned that he  
6 was going to suffer a hardship from this. She  
7 responded that she's looking into it.

8 So I -- I have heard back from her, she is  
9 looking into it, but I don't have a definitive answer  
10 at this point, and I'll let the Court know as soon as  
11 we do.

12 MR. KEMP: And we have cashier's checks now  
13 just in case.

14 THE COURT: So let's discuss this. I mean,  
15 for me, this is a case of first impression, where --  
16 not to belabor it, but, truthfully, it should have been  
17 dealt with sooner. But, in any case, here we are today  
18 where we are. So we need to move forward.

19 My concern is -- I mean, I believe this  
20 gentleman needs to be paid today. Okay?

21 But my concern is, I don't know what they  
22 deduct for social security, for insurance, for this,  
23 for that. If you're going to pay him a certain amount,  
24 it's not necessarily fair he has a windfall, but do you  
25 expect him to reimburse you after you have the

1 information from counsel? Given the fact that it's  
2 taken this long to -- to get the -- you haven't even  
3 signed the agreement yet.

4 MR. PEPPERMAN: Well, we have an agreement.  
5 There's not even necessarily -- for the signature, that  
6 was just The Venetian asked for something in writing  
7 just to memorialize it.

8 MR. KEMP: They did pay the one juror, Your  
9 Honor. I would point that out.

10 MR. PEPPERMAN: And that's the situation.  
11 It's not that this wasn't taken care of; it was. There  
12 was a -- apparently some miscommunication. Because of  
13 the reasons you suggest with payroll taxes, et cetera,  
14 The Venetian was going to pay him that, and we were  
15 going to reimburse The Venetian so that the numbers  
16 added up. He would get his regular pay, minus taxes,  
17 social security, whatever --

18 THE COURT: Correct.

19 MR. PEPPERMAN: -- and then we'd reimburse  
20 The Venetian back. So there was some sort of mixup on  
21 The Venetian, because it's done at the department  
22 level. She's -- Ms. Lesani is looking into that, if --

23 THE COURT: "Looking into it" means what,  
24 Mr. Pepperman? Is she going to give us the figures  
25 that need to be deducted? What is -- what his pay is

1 for two weeks and what deductions come out of that?

2 MR. PEPPERMAN: No. First thing, she's going  
3 to look in to see why he wasn't paid, because he should  
4 have been paid like the other witness -- and I think he  
5 received something -- and then see if they can remedy  
6 that on their end so they can pay him today.

7 If they can't pay him today, then we have  
8 cashier's checks ready to pay him today, and we'll work  
9 with The Venetian to make sure that the numbers don't  
10 exceed -- what we give him today don't exceed that --  
11 what he would receive from The Venetian as part of his  
12 regular pay, minus --

13 THE COURT: Will this cause any problems with  
14 respect to his tenure there --

15 MR. PEPPERMAN: No, no.

16 THE COURT: -- his insurance or anything like  
17 that?

18 MR. PEPPERMAN: Nothing --

19 THE COURT: I just want to be sure.

20 MR. KEMP: Assuming they recapture the pay  
21 and he pays us back.

22 THE COURT: Well --

23 MR. KEMP: We're trying to -- it would be  
24 better if The Venetian paid him today. That would be  
25 the best thing possible.

1           MR. PEPPERMAN: That's what we're hoping will  
2 work out. If that doesn't work out, then we'll be  
3 prepared to pay him some amount so he doesn't suffer  
4 any hardship. And then, instead of us reimbursing The  
5 Venetian that, it would be credited towards The  
6 Venetian. You know, it would be a credit towards what  
7 we'd otherwise pay.

8           MR. KEMP: What they would otherwise pay.

9           MR. PEPPERMAN: Right.

10          MR. KEMP: In other words, Your Honor, if we  
11 gave him \$1,000 today, they would pay us back 1,000,  
12 deduct it from his check.

13          THE COURT: Mr. Barger?

14          MR. BARGER: I think that's fine. I don't  
15 have problem with that. I think the easiest thing, as  
16 Mr. Kemp says, is we hope that The Venetian can pay out  
17 today.

18          MR. KEMP: I know he's concerned, but I don't  
19 know if he's got some bill that's hanging over his head  
20 today.

21          THE COURT: Why don't we bring him in just  
22 for a moment, because didn't he indicate to you,  
23 Marshal Ragsdale, that he was paid, but --

24          THE MARSHAL: Yes. 300 of the normal 1400.

25          MR. BARGER: So he normally --

1 MR. KEMP: 8 out of 1100.

2 MR. BARGER: -- normally gets 1400 even?

3 THE MARSHAL: Roughly. That's my  
4 understanding.

5 MR. KEMP: Yeah. Your Honor, if we can  
6 confirm what we need to pay him to be even is 1100, if  
7 we can just have the marshal.

8 THE COURT: I think we need to bring him in  
9 because I'm not going to have Marshal Ragsdale tell him  
10 that. I'm not going to talk to him.

11 MR. BARGER: I'm sorry.

12 THE COURT: I mean, we need to confirm that.

13 MR. BARGER: It might be better -- and I  
14 think counsel would agree -- if you'd just do that with  
15 the marshal without us in here at that.

16 MR. KEMP: Can you just have the marshal,  
17 when he's out, when his --

18 MR. BARGER: We're fine with that.

19 THE COURT: You're fine with what, for the  
20 record.

21 MR. KEMP: I'm fine with the marshal asking  
22 him, "Okay. You would have gotten X and you've gotten  
23 Y. So what amount of take home is the difference?"

24 THE COURT: For what weeks? You want to take  
25 a --

1 THE MARSHAL: Sure.

2 THE COURT: Do you want anyone to be with the  
3 marshal?

4 MR. KEMP: No, Your Honor.

5 MR. BARGER: No. We're fine.

6 THE COURT: That's okay?

7 MR. ROBERTS: I concur.

8 THE COURT: Okay. Very good.

9 Jerry, make sure he's out of the presence of  
10 the other jurors and make sure you ask him what dates  
11 he believes he's been paid for, what he hasn't, what he  
12 usually makes, you know, all the pertinent questions.

13 Okay?

14 THE MARSHAL: Got it.

15 THE COURT: All right. Thank you. Off the  
16 record.

17 (Whereupon a short recess was taken.)

18 (The following proceedings were held  
19 outside the presence of the jury.)

20 THE MARSHAL: Please remain seated. Come to  
21 order.

22 THE COURT: Okay. Let's go on the record,  
23 please.

24 Marshal Ragsdale, you have --

25 THE MARSHAL: Yes. Looks like I have his

1 last two check stubs. The check stub on pay date on  
2 the 9th, March 9th, 2018, for the amount of 322.92.

3 THE COURT: That's the most recent one?

4 THE MARSHAL: Yes, that's most recent one.  
5 And I have one for February the 9th, 2018, for the  
6 amount of \$1,408.17.

7 THE COURT: So we started on the 12th.  
8 That's probably usually -- that was his last paycheck  
9 before -- I imagine, before we started.

10 MR. KEMP: Your Honor, can I have that last  
11 one?

12 THE COURT: You will share those with both  
13 counsel, please.

14 THE MARSHAL: Yes, I'll share with both.

15 MR. BARGER: So he's due a thousand bucks.  
16 No less than a thousand.

17 THE COURT: Well, it shows what his  
18 deductions are. I don't know those deductions occur  
19 every single time or every other time. That, I don't  
20 know.

21 (Discussion was held off the record.)

22 MR. ROBERTS: 1085.29.

23 MR. BARGER: But we don't have a -- just 1100  
24 bucks. So do you want to put this in the Court's file?  
25 Y'all want this for the Court?

1 MR. KEMP: Judge, can we have copies of this  
2 in case --

3 THE MARSHAL: Yes.

4 THE COURT: We just received it so that --  
5 but I would like to bring the gentleman in very  
6 quickly. Or if you would like, I can communicate  
7 with --

8 MR. CHRISTIANSEN: Judge, I don't think we  
9 can bring him in by himself and single him out for fear  
10 of him holding it either to one side's detriment or  
11 benefit. And I think Mr. Barger's in agreement with  
12 that.

13 THE COURT: I don't think there's the  
14 detriment going on here. He knows he's being paid by  
15 both parties. It's not an issue.

16 But do you mind, then, if Marshal Ragsdale  
17 talks --

18 MR. KEMP: I'd rather him just give him an  
19 envelope with the \$1100 in it, \$1100 cashier's check.

20 THE COURT: We need to make sure we take a  
21 photocopy of that cashier's check as well.

22 MR. KEMP: Yes, Your Honor.

23 MR. BARGER: And my recommendation is that  
24 you give it to him when he's dismissed as opposed to in  
25 front of other jurors.



1           THE COURT: All right. I do think it's  
2 important, even if Marshal Ragsdale does talk to him  
3 for a second, that he knows he's getting paid today,  
4 because he's not paying attention.

5           MR. BARGER: I agree. He can tell him he's  
6 getting paid today. He'll get it as soon as the  
7 court's dismissed.

8           THE COURT: Yes.

9           All right. So, Jerry, just let him know  
10 quietly that he will be paid today but you will give  
11 him the envelope at the end of the day. And I need  
12 copies of everything for the file. I'll probably  
13 left-side file this.

14          MR. KEMP: Judge, please give to --

15          THE COURT: Sorry. I just don't ever want to  
16 have a problem. I'm 26 years without one.

17          We just need copies of that. For the record,  
18 what is -- may I see the cashier's check?

19          MR. KEMP: We still have an hour and a  
20 half --

21          THE COURT: I know, but I need to make a  
22 record.

23          Mr. Kemp, this is Cashier's Check  
24 No. 3770513606. It's in the amount of \$1,000, and it  
25 is to be paid to the order of Byron Lennon. There's

1 Cashier Check No. 3770513607 in the amount of \$100,  
2 paid to the order of Byron Lennon.

3 These will be left-side filed, and both  
4 parties stipulate to Marshal Ragsdale giving this to  
5 him in an envelope at the end of court today; correct?

6 MR. KEMP: Yes, Your Honor.

7 MR. ROBERTS: Yes, Your Honor.

8 MR. CHRISTIANSEN: Judge, just one more point  
9 to complete the record on those cashier's checks.

10 They're written on the account of Jonathan D.  
11 Crane. His name is on each of them. That's my office  
12 administrator. He's not on my website. There's no  
13 connection to my office. I showed Mr. Barger. I don't  
14 believe the defense has any objection to those  
15 cashier's checks.

16 THE COURT: I'm sorry. Mr. Barger, no  
17 objection?

18 MR. BARGER: No objection.

19 THE COURT: Okay. Very good. So -- and we  
20 are going to make copies of these.

21 MR. BARGER: If I could get a copy of the  
22 check as well.

23 THE COURT: Yeah. We need --

24 All right. Shall we get going? Before --  
25 defendant, who are you calling next?

1 MR. CHRISTIANSEN: Your Honor, by way of  
2 video deposition, we're calling Dr. Katy Barin. And,  
3 Your Honor, so that the Court knows -- I've checked  
4 with Mr. Barger, and if it's okay with the Court,  
5 there's six photographs that are exhibits to  
6 Dr. Barin's deposition that she speaks about over the  
7 next hour and 20 minutes. Prior to starting the  
8 videotaped deposition, without any commentary, I'm just  
9 going to put them up on the ELMO, 1 through 6, take  
10 them down off the ELMO, and then turn on the deposition  
11 and proceed to conclusion.

12 THE COURT: That's fine.

13 Is that stipulated to Mr. Barger?

14 MR. BARGER: That's fine, yes.

15 THE COURT: All right. Very good.

16 Let's get the jury in here.

17 MR. CHRISTIANSEN: Your Honor, while we are  
18 on the record, also Exhibit 259 is a flash drive that  
19 I'm not going to offer to this witness. It was put  
20 together by Aria, the oldest boy, who will testify on  
21 Monday, but the doctor does reference it in her  
22 deposition. So I wanted to mark it and give it to your  
23 clerk ahead of time.

24 THE COURT: Exhibit 259?

25 MR. CHRISTIANSEN: Yes, ma'am. And the other

1 six photographs were 259A through F, Your Honor.

2 THE COURT: Okay. Very good.

3 (Whereupon, Plaintiffs' Exhibits 259A-F  
4 were admitted into evidence.)

5 THE MARSHAL: Ready, Judge?

6 THE COURT: Yes, we're ready.

7 THE MARSHAL: All rise.

8 (The following proceedings were held in  
9 the presence of the jury.)

10 THE MARSHAL: All the jurors were present,  
11 Your Honor.

12 THE COURT: Thank you, Marshal.

13 THE MARSHAL: Please be seated. Come to  
14 order.

15 THE COURT: Do the parties stipulate to the  
16 presence of the jury?

17 MR. KEMP: Yes, Your Honor.

18 MR. BARGER: We do.

19 THE COURT: All right. Very good.  
20 Mr. Christiansen.

21 MR. CHRISTIANSEN: Your Honor, plaintiff  
22 would call, by way of video deposition, Dr. Katy Barin.

23 Prior to doing that, Your Honor, with the  
24 Court's permission and stipulation, the parties have  
25 entered Exhibits 259A through F, which are the photos

1 that are referenced in the video. So I just show them,  
2 and then we'll play the video.

3 THE COURT: Correct.

4 MR. BARGER: And I agree to the admission of  
5 those exhibits.

6 THE COURT: Very good.

7 (Whereupon photos were displayed.)

8 MR. CHRISTIANSEN: 259B, Your Honor.

9 THE COURT: This is B?

10 MR. CHRISTIANSEN: That was B, Your Honor,  
11 yes, ma'am.

12 THE COURT: Okay.

13 MR. CHRISTIANSEN: 259C. 259D. 259E. And  
14 259F, Your Honor.

15 THE COURT: Okay.

16 MR. CHRISTIANSEN: Court recorder, can I have  
17 control on my side now?

18 And, Shane, can you begin when you're ready.

19 Thank you, Judge.

20 THE COURT: Absolutely.

21 (Whereupon video deposition was played.)

22 DIRECT EXAMINATION

23 BY MR. CHRISTIANSEN:

24 Q. And good afternoon, Dr. Barin.

25 A. Good afternoon.

1 Q. Your first name is -- say it the proper way  
2 for me.

3 A. My legal name is Katayoun -- Katy -- Barin.

4 Q. Katy? Is it okay for me to call you Katy?

5 A. Absolutely, yes.

6 Q. All right.

7 A. Yes.

8 Q. And, generally speaking, tell us -- tell the  
9 jury why it is you believe you are here.

10 A. Well, we're here because my husband was  
11 killed in a -- a bus vehicle accident while he was  
12 biking in April.

13 Q. And tell people who may not know, who's your  
14 husband?

15 A. My husband is Dr. Kayvan Khiabani.

16 Q. How long had you and Kayvan been married?

17 A. We'd been married 19 years.

18 Q. Okay. Why don't we, for ease -- tell us  
19 about the rest of your family. You have how many  
20 children?

21 A. I have two children. Aria, who's 16, and  
22 Keon, who's 14.

23 Q. Both sons?

24 A. Both sons, yes. Two boys.

25 Q. And they're in what grades?

1           A.    One is freshman in high school, and the other  
2 one is a junior in high school.

3           Q.    And, Katy, what do you do for a living?

4           A.    I'm a dentist, a general dentist.

5           Q.    How long have you been a dentist?

6           A.    I've been a dentist 20 years exactly this  
7 year.

8           Q.    And where is your practice at?

9           A.    My practice is on Village Center in  
10 Summerlin. I've been in that location for almost 12  
11 years.

12          Q.    And what did Kayvan, Dr. Khiabani, do for a  
13 living?

14          A.    Kayvan was a full professor of plastic and  
15 microsurgery. He was the chief of hand surgery at UMC,  
16 as well as University -- at his university at UNR. He  
17 was both a microsurgeon. He did hand surgery, had  
18 extra training in hand surgery, trauma surgery, as well  
19 as migraine surgery.

20               MR. CHRISTIANSEN: We're going to look at a  
21 number of pictures today. I'm going to have the court  
22 reporter just mark a few for me, and I'll get everybody  
23 copies at the break.

24               In order, Ms. Reporter.

25               /////

1 BY MR. CHRISTIANSEN:

2 Q. Katy, I'm going to hand you some pictures one  
3 at a time. And then later in the deposition, we're  
4 going to look at a video of a whole group of  
5 pictures --

6 A. Okay.

7 Q. -- that we'll later produce and ask you to  
8 identify some of them.

9 I'm going to hand you what's been marked as  
10 Exhibit 1. Can you tell the ladies and gentlemen of  
11 the jury what that picture reflects?

12 A. This is a family picture we took last October  
13 on our anniversary, on our wedding anniversary. And we  
14 very periodically, every few years, we would take  
15 family photos. And this was taken last year at Red  
16 Rock Country Club.

17 Q. Okay. Is that all four of your immediate  
18 family?

19 A. Yes. Aria and Keon.

20 Q. What's Exhibit 2?

21 A. This is again just another pose. Since it  
22 was our wedding anniversary, the photographer asked us  
23 to do some fun photos. So it's just another depiction  
24 of our relationship and family.

25 Q. Tell me what Exhibit 3 is, if you would.



1           A.    It's just a picture of Kayvan and I, again,  
2 on our anniversary, which we got married in 1998.

3           Q.    So in 2016 your wedding anniversary would  
4 have been your 18th?

5           A.    18th, yeah.

6           Q.    Just so the jury is oriented by the time  
7 they're hearing your testimony, Babak is your older or  
8 younger brother?

9           A.    My older brother.

10          Q.    And you and Kayvan and your boys have sort of  
11 an interesting history that we're going to get into.

12                   Are you American citizens? Canadians?

13          A.    So we both -- both Kayvan and I are Canadian  
14 citizens first. We did all our studies going from, you  
15 know, master's degrees, bachelor's degree, professional  
16 degrees all in Montreal, Canada.

17                   Once we finished our training, then Kayvan  
18 got an academic position here in Las Vegas, and we  
19 moved to the U.S. We moved to first Los Angeles and  
20 then Las Vegas.

21                   And then we went through -- you know, he had  
22 to be accepted as -- to get his green card as a person  
23 with extraordinary abilities, because we didn't have  
24 financial means to invest in this country because we  
25 were just beginning our careers. And then a few years

1 after, we became American citizens as well.

2 Q. You took and passed the citizenship test?

3 A. Yes.

4 Q. How long have you been American citizens?

5 A. Since 2010.

6 Q. And both your boys?

7 A. Both -- one of my sons is a Canadian citizen.

8 He became, because he was a minor, an American citizen,  
9 Aria. He was born in Montreal in 2001. Keon was born  
10 in Las Vegas in 2003, so he was already an American  
11 citizen.

12 Q. All right. And your brothers, Babak and  
13 Siamak, do they have big families as well?

14 A. They have big families. They each have four  
15 children.

16 Q. And the families are extended, but are they  
17 relatively close?

18 A. Oh, we're very close. We're extremely close.  
19 Every summer we made a point of going to Montreal so  
20 that the cousins can grow up together. And we spend  
21 two weeks, my family and their families, together.

22 Q. So how old was Kayvan when he passed in April  
23 of this year?

24 A. He was 51 years old.

25 Q. When would he have turned 52?

1           A.     September 7th of this year.

2           Q.     Help me understand how it was that Kayvan got  
3 to be -- it's not a straight line -- how Kayvan got to  
4 be the head of hand surgery and plastic surgery at the  
5 university. Where was Kayvan from?

6           A.     So Kayvan was born and raised in Iran, in  
7 Tehran, Iran. He left the country during war and  
8 revolution. He escaped through the mountains of  
9 Pakistan and went to Pakistan so that he would be able  
10 to get to North America so he could continue his  
11 studies.

12                   He had done research, as a 15-year-old in the  
13 libraries in Iran, where he could find education would  
14 be more feasible. And he found that Montreal, Canada,  
15 was a place to be compared -- he didn't have means to  
16 go to American colleges.

17                   And so from Pakistan, spending a few months  
18 with whoever helped him out, he became a political  
19 asylum. He declared political asylum. He came to  
20 Montreal, and he was basically in danger because you  
21 have to go to war at that age of 17.

22           Q.     If he would have stayed in Iran?

23           A.     If he would have stayed in Iran. And he did  
24 not want to do that. He wanted to pursue an education  
25 and get out of that country.

1           And so he came to Montreal in 1983 with \$90  
2 in his pocket. And he, from there, became a political  
3 refugee. He had no means, no family, no place to stay.  
4 So he went to the university hostel. He stayed there  
5 for a few months, after which he got jobs washing  
6 dishes, working at McDonald's. Then he got himself on  
7 his feet. He had to prove he had a diploma --

8           Q.    It's okay. Take your time.

9           A.    -- without a family. So then he got on his  
10 feet. He got to college. He got into an accelerated  
11 medical program, which was very competitive.

12          Q.    Now, I want you to slow down. Okay? Because  
13 this is important.

14                So Kayvan is a 17- or 18-year-old boy?

15          A.    Yes.

16          Q.    In Canada. Did he have a big support system  
17 in Canada?

18          A.    He had no support. He had nobody. No  
19 family. Nobody was in Canada. His parents had no  
20 means, really. His parents were, like, a small  
21 business owner, and they could not send money to  
22 support him. And he was determined to leave to make a  
23 better life for himself.

24          Q.    Okay.

25          A.    So he -- he just kind of -- he had

1 determination, and he had always an end goal in mind.  
2 So he just worked through that, whether it was washing  
3 dishes at a Chinese restaurant, McDonald's. He --  
4 honestly, he had told me stories, like he had no money  
5 to buy milk, so he had to go to McDonald's and take the  
6 tiny bottles and drink that milk. So that's where he  
7 started.

8 Q. Okay. And he got into what kind of a program  
9 at the university?

10 A. So he got into an accelerated medical program  
11 in 1988, which was a five-year medical program at  
12 McGill University, which he would bypass doing an  
13 undergraduate program. And so he directly got into  
14 medical school.

15 He finished medical school in 1993. He had  
16 graduation. And that's when he really got to see his  
17 parents after all those years. They ended up making it  
18 to his graduation.

19 And from there, he had a goal in mind. He  
20 wanted to become a plastic reconstructive surgeon. So  
21 he had to go and do, first, general surgery. Then he  
22 got a master's in experimental surgery. And then he  
23 got into a plastic surgery program that he finished  
24 in -- in 1999.

25 And then he applied -- because Dr. Zamboni

1 here at UNR -- he was a plastic surgeon here. He was  
2 really world renowned for his research that Kayvan was  
3 interested in, and microsurgery program. He applied  
4 for a fellowship.

5 And he worked with Dr. Zamboni in Las Vegas,  
6 Nevada for -- from the year 2000 to 2001.

7 Q. Okay. You covered a lot of years in there.  
8 It sounds like Kayvan started that accelerated medical  
9 school in 1998; is that correct?

10 A. Yes, correct.

11 Q. And when in this time frame do you meet  
12 Kayvan?

13 A. So I met Kayvan exactly in 1998, because I  
14 entered an undergraduate degree. And, through common  
15 friends, they introduced me. There weren't that many  
16 Persians at the time in the university. So they said,  
17 "Oh, well, we have this Iranian guy in our class. You  
18 have to meet." So we met as friends in big lecture  
19 rooms. So we became, you know, acquainted.

20 And then, following that year, 1989, we both  
21 ended up coincidentally doing a research program at  
22 McGill. I was with one professor, he was with another  
23 one, in the department of anatomy and cell biology.

24 Q. Okay.

25 A. And so we became more acquainted and got to

1 know each other more, just conversing, talking and --  
2 Q. And we'll talk about that. Before we do, I  
3 want you to explain to the jury how it is that you --  
4 because you have kind of a circuitous path to getting  
5 to Montreal as well.

6 How was it that Katy Barin ends up in  
7 Montreal in 1998?

8 A. So I was born and raised in -- in Iran as  
9 well. And during the tumultuous years of revolution  
10 and war, it was a very unstable country with a very  
11 uncertain future for all of us. So we had plans to  
12 possibly eventually leave the country, but we weren't  
13 ready yet. Yeah.

14 Q. Okay.

15 A. And so one year in 1982, March of 1982, my  
16 brother Siamak, my mom, and I went to Paris. We had an  
17 aunt and cousins who lived there. And my brother  
18 joined us from Geneva so we could spend the Easter  
19 vacation together. We spent the Easter vacation  
20 together. And, at the end of that, we got a phone call  
21 from the rest of our family in Iran saying that "your  
22 house is confiscated and the government has completely  
23 locked down. There are two guards in front of your  
24 house."

25 And then it was uncertain. My dad was an

1 anesthesiologist who was not related to any  
2 political -- you know, he didn't have any affiliations,  
3 but they went to his hospital and said "We want a name  
4 of all the doctors who are out of the country," and my  
5 dad's name happened to be on that list. And they  
6 decided to just take our house over, which then made us  
7 all kind of numb to, okay, how do we go back? We can't  
8 go back because we don't even have a home to go back.  
9 It was very uncertain times.

10 Q. What did your family do with -- how old were  
11 you at this time? Help me understand.

12 A. I was 12.

13 Q. And Siamak, your younger brother, was 10?

14 A. 10 1/2.

15 Q. What happened to you two? Just tell us --

16 A. So then, after much contemplation, my dad  
17 decided he had -- my mom went because my dad was not  
18 sure what's going to happen. So my mom went to Iran to  
19 refigure the house and see if we can get the house  
20 back. And then, shortly after that, once she settled  
21 the situation, my dad went back.

22 So then Siamak and I were on our own for --  
23 for a little bit. We had my aunt who lived next door  
24 to us, but we had an apartment together. And I really,  
25 truly kind of -- I would manage, you know, cooking



1 shopping, whatever we had to do. And then -- and then  
2 we just decided to stay.

3           So my mom came back a few months later. We  
4 didn't speak any French, so we then took advantage of  
5 the time, learned French. And then, in 1983, we  
6 started school in Paris in an international school so  
7 that -- we both spoke English fluently; therefore, we  
8 attended the school which had an adaptation program  
9 that we could not skip a year and continue our  
10 education and go on. So that's how we ended up staying  
11 in Paris.

12           We stayed in Paris until 1986. And then my  
13 brother Babak, at that point in 1984, he went to  
14 Northwestern University. And then --

15           Q. In Chicago?

16           A. In Chicago.

17           Q. So Babak is in Chicago. You and Siamak, your  
18 younger brother, are finishing --

19           A. High school in Paris.

20           Q. High school in Paris.

21           A. Yes. And, after which, my dad came one day  
22 to us and he said, "Look, I don't have any means to" --  
23 we all had the education we had in Iran. We always  
24 went to American schools. And our ultimate goal was to  
25 end up somewhere, a college, in the U.S.

1           And my dad said, "I'm sorry, but I don't have  
2 means to provide you with that life. So your only  
3 choice" -- because university is free in France. And  
4 he said, "Your choice is to stay here." And we said,  
5 "That's fine."

6           So I was completing an international  
7 baccalaureate program, hoping we finish and then go to  
8 university there. In the meanwhile, we got some, you  
9 know, information from some of our family who lived in  
10 Montreal that McGill is very affordable. It was a  
11 couple of thousand dollars a year to go to university.

12           And imagine, in 1986, as an Iranian citizen  
13 with an Iranian passport, no country would give you a  
14 visa to go visit or stay. It was very difficult times.  
15 So it was almost practically impossible to get a visa  
16 to go to Canada. But we had a letter from our family  
17 saying that they're just going to come and visit.

18           And so Babak, my charming older brother, he  
19 happened to speak to a diplomat who was across the  
20 table. We ended up as a family to get a visa to  
21 Montreal for one week in October of 1986.

22           Q. Did you go?

23           A. We went. So Siamak and I, my younger  
24 brother, and I packed our bags and we left alone and we  
25 went to Montreal. My mom and dad were packing the rest

1 of our belongings and packing our home in Paris. We  
2 landed with a suitcase.

3 My brother Babak came from Northwestern. He  
4 took care of us. He rented an apartment for us, opened  
5 a bank account, bought a stereo system and a bed, and  
6 he went back home.

7 And then -- then my mom arrived, you know, a  
8 few weeks later. And that's how we started our life.  
9 We became illegal residents. And then we hired  
10 attorneys, and then we became landed immigrants, and  
11 then we became Canadian citizens. And then I continued  
12 my education.

13 And then that led me to 1988. I met Kayvan  
14 after two years of college.

15 Q. So you two both meet at the university --

16 A. At the university.

17 Q. -- in Montreal called McGill University?

18 A. Yes.

19 Q. And you told us how you had similar classes  
20 and interacted with each other on a platonic or a  
21 friendship --

22 A. Yes.

23 Q. -- type of a basis for a few years. At what  
24 point in time did you become romantically involved?

25 A. So, I mean, after, you know, being -- meeting

1 in the lab -- and it truly was a love story because, at  
2 that point, you know, Kayvan had different interests.  
3 He was very much into music. He was a talented  
4 musician. He had long hair, ponytail. He did not look  
5 your normal medical student.

6 But we connected in a heart to heart and --  
7 and truly, after, like, conversations. I mean, we just  
8 had, like, always conversations continued on. And I  
9 graduated my undergraduate degree in anatomy and cell  
10 biology, honors program, in 1991. And then Kayvan and  
11 I became romantically involved on October 23rd of 1991.

12 Q. Approximately October 23rd, or is that --

13 A. Exactly October 23rd.

14 Q. All right. After October 23rd, 1991, you  
15 finished your undergraduate degree. What is it that  
16 you go on to do education-wise?

17 A. So education-wise I was doing my master's  
18 program. And, you know, I had a difficult year that  
19 year. I really wanted to get into medical school, but  
20 it was rough. My MCAT scores weren't good. So Kayvan  
21 was a huge influence and a huge positive influence in  
22 my life. He said, "You should try dental school."

23 And then I tried dental school, and I didn't  
24 have to really make much effort. And so then I got  
25 accepted to dental school in 1993 after completing my

1 master's degree.

2 Q. So you got your undergraduate degree from  
3 McGill, then your master's degree from McGill; is that  
4 right?

5 A. Yes.

6 Q. And then where did you go to dental school?

7 A. McGill University.

8 Q. Okay.

9 A. Kayvan graduates from medicine in 1993, and I  
10 start dental school in 1993.

11 Q. And you guys are a couple at this point but  
12 not married?

13 A. We're couple, but we're not married.

14 Q. When was it that you-all got engaged?

15 A. So he proposed to me after I graduated dental  
16 school in 1997. He arranged a very surprised romantic  
17 trip to Paris, and he proposed to me in Paris in 1997.

18 Q. And when were you married?

19 A. October 23rd of 1998.

20 Q. On the -- what was that? -- the seven-year  
21 anniversary of when you first got together?

22 A. Yes.

23 Q. So you guys keep that tradition?

24 A. So we decided to have the wedding on  
25 October 23rd because that was meaningful to us.

1           Q.    You gave us a bit of a description of Kayvan  
2 back then relative to his music.  How -- describe for  
3 us, if you will, Kayvan relative to passion for  
4 medicine.

5           A.    So, honestly, to this day, not really just  
6 because he was my husband and I was in love with him,  
7 not really -- honestly, I've never in my life met an  
8 individual like that.  And that goes for everybody who  
9 knew him.

10                   He was -- when I met him and he was a medical  
11 student, we would take the bus to go to different  
12 places.  And he knew that he wanted to be a surgeon.  
13 So all he did on the rails, you know, in front of us,  
14 he would just do the surgical knot until he -- before  
15 he got into even a surgery program, he just mastered  
16 and he just had a complete passion for -- I mean, his  
17 passion was really plastic surgery and microsurgery,  
18 and not necessarily the aesthetic part but more like  
19 the reconstructive part.

20                   And so whatever he -- he would put his mind  
21 at, he always had plans and he worked ahead.  He had  
22 goals.  And I know he had goals that once he finishes  
23 medical school and his plastic surgery program, he  
24 had -- he had programmed it all so that he would  
25 directly, with no issues, get into an American school.

1           Because, you understand, it's two different  
2 countries. But, I mean, still specialty degrees from  
3 McGill are accepted in the U.S. But he had sort of  
4 structured all his training so that he would be  
5 directly accepted into an American program.

6           And so -- and he had visions to always, you  
7 know, come to California or somewhere west coast of the  
8 United States. And he had planned that ten years  
9 before because he didn't want to stay in Montreal.  
10 That was minus 40 degrees Celsius over the winters.  
11 And we had rough times going -- I mean, he did. I did  
12 as well, but, you know, he would have to get the bus at  
13 5:00 in the morning, minus 40 degrees. You know,  
14 travel -- walk up the hills. And it wasn't -- it  
15 wasn't your -- you know, it's not easy to go to school  
16 and train there. So he had many difficult years of  
17 training.

18           But the good thing is, the last two years, we  
19 were together, and we were, like, a huge support for  
20 one another. And so his goal was to become a plastic  
21 surgeon. And so when he came here, he did microsurgery  
22 with Dr. Zamboni, and then he also wanted to become a  
23 hand surgeon.

24           And usually in the U.S. either plastic  
25 surgeons, mostly orthopods, are the ones who do hand

1 surgery, but he was one of the few people who, as a  
2 plastic surgeon, got into a hand surgery program with  
3 the world-renowned Dr. Neil Ford Jones. He's written  
4 books, and he trained one year with him at UCLA.

5 Q. And is that -- what year was that, that he --

6 A. So we have to backtrack to the point where  
7 he -- when he took his car, a red Jetta, and he drove  
8 from Montreal to Las Vegas, I was pregnant with my  
9 first son, Aria, who was three months old. And he came  
10 here to Dr. Zamboni and started his training. I was  
11 pregnant with Aria, a very difficult year in our life.

12 We had no choice because I didn't have a  
13 license, and we really wouldn't make ends meet. And so  
14 he was a fellow here making only a small stipend, and I  
15 stayed there. My goal was --

16 Q. Stayed where, Katy?

17 A. Stayed in Montreal.

18 Q. Okay.

19 A. And I worked until the afternoon that I  
20 delivered Aria.

21 Q. What were you working at?

22 A. I was a dentist in a private practice. And  
23 my doctor decided that Kayvan's presence is as  
24 important as a medical reason to have an induction. So  
25 we -- we had a planned induction so that Aria -- Kayvan



1 can take time off from his training program, come to  
2 Montreal for one week, we have the baby, he stays with  
3 the baby for a week, and then he went back.

4 So we planned the induction on February 1st  
5 of 2001, and he arrived, he came to my practice. I  
6 practiced until noon, February 1st, 2001.

7 We had lunch together and we went to the  
8 hospital. We checked in. They started the induction  
9 process, and Aria was born on February 2nd, 2001.

10 And Kayvan -- you know, cold day. Anyway, he  
11 stayed there for a week. Extremely difficult for him  
12 to go back. Of course it was tough and, you know, I  
13 was devastated. It just became increasingly difficult  
14 to be apart. So, periodically, whenever he would have  
15 time, he would just pop in and visit and then go back.

16 During that year, of course we decided that  
17 I'm going to join him in Los Angeles when he does the  
18 fellowship in Los Angeles. So I started --

19 Q. This is 2001?

20 A. 2001.

21 Q. Okay.

22 A. So we had my mom and then my in-laws,  
23 Kayvan's parents, helping us with the baby because I  
24 was working full-time. I went to work after three  
25 weeks because we could not afford to -- it was one of

1 the biggest mistakes in my life I regret, because it  
2 was hard on my body and hard on my psyche. But I had  
3 to go to work after three weeks. And so I left the  
4 baby with my mom, and then I would work. And then I  
5 started studying for the board exams for California.

6 And then I -- 9/11 happened. And then three  
7 days after 9/11, I took the plane and I traveled -- I  
8 think my brother Babak was freaking out. He's like,  
9 "You can't travel after 9/11." But, you know, I had  
10 goals and I had to go to San Francisco to UOP and --

11 Q. What did you do there?

12 A. Planned to take my exams.

13 Q. So you could be a dentist in California?

14 A. To be a dentist in California.

15 Q. And did you pass that exam?

16 A. I passed that exam.

17 Q. And after you passed the exam, what did that  
18 allow you and your infant, Aria, to do?

19 A. So we moved then October again. October  
20 seems to be the month. October of -- yeah, 2001, we  
21 moved to Los Angeles. And I started desperately  
22 looking for a job. And it was one of the difficult  
23 things because it was right after 9/11. And even being  
24 a Canadian citizen and, you know, the working  
25 relationships with the U.S., it was very difficult to

1 get a working visa -- for me to just get a working visa  
2 so I can just get a job. Nobody wanted to write a  
3 letter that I could then take to the embassy and say,  
4 "This is my job offer."

5           People were scared. And so, finally, one  
6 lady had faith in me. And she said, "You know, I will  
7 write this letter for you because I feel" -- Aria  
8 was -- I would go to interviews. I would open -- I  
9 opened the Yellow Pages and I started looking for work.  
10 I start just calling people from A to Z. And then one  
11 of the ladies said, "Well, just come in. We want to  
12 see you."

13           And I didn't have an extra car, but I  
14 borrowed Kayvan's car that day before he went to UCLA,  
15 and went to the interview with Aria. And then she  
16 had -- she said, "I feel for you, because I'm a Mexican  
17 person myself and I know the visa issues are  
18 difficult."

19           So she gave me a job offer, after which I  
20 went and I got the H-1 visa, which I could work legally  
21 in California. So we put Aria in day care, and Kayvan  
22 was going to UCLA, and I started working as a dentist.

23           And then -- and then, after that year was  
24 over, Kayvan got an academic offer from Dr. Zamboni at  
25 University Medical Center here.

1 Q. Here in Las Vegas?

2 A. Here in Las Vegas.

3 Q. And, at that point, did you all move back --  
4 move here to Las Vegas as a family?

5 A. As a family in 2002, October 2002.

6 Q. And then what happened the next year?

7 A. So the next year, Keon was born. So we moved  
8 here, and I was pregnant with Keon. And then Keon was  
9 born in May 2003.

10 Q. All right. Since 2002 when you came to  
11 Las Vegas, has your family resided here, you know,  
12 consistently?

13 A. Consistently, yes.

14 Q. Your boys were raised here?

15 A. My boys were raised here, yes.

16 Q. Help us understand what Kayvan did at the  
17 university, not titles, but what -- what did he do?

18 A. So he then was hired as an associate  
19 professor in plastic surgery. And, I mean, there are  
20 cases of him that you can see on the internet. One big  
21 case was Hannah's hands. That was a shotgun trauma,  
22 and this poor five-year-old girl just lost her hands.

23 And Kayvan, with his expertise, managed to  
24 save Hannah's hand. And Hannah was there at Kayvan's  
25 service after 15 years because she saved her hands. So

1 Kayvan was very much involved in all the trauma that  
2 came and --

3 Q. So a bit different than a plastic surgeon  
4 doing cosmetics?

5 A. Absolutely. He did not do any cosmetic  
6 surgery at all. He only did -- he did -- a big part of  
7 his practice was reconstructive surgery for cancer  
8 patients, the breast reconstruction.

9 He's actually the one who came up with a lot  
10 of procedures that were brand new that people didn't do  
11 before. And he actually -- you know, all these big  
12 companies had him lecture and talk about the techniques  
13 because he was extremely talented.

14 And he really spent all those years just  
15 completely -- I would see him, you know, watching  
16 videotapes, educational, going to classes, reading  
17 lectures. I mean, he knew the names of diseases and  
18 who discovered it. He completely, as much as I think  
19 anyone can, mastered the field of plastic surgery in  
20 his areas of interest. And then he continued -- to the  
21 practice. He did that for a long time.

22 He did a lot of congenital hand, you know,  
23 deformities, you know, hand traumas, putting hands  
24 together, putting arms together. God knows, like open  
25 wounds that they had cardiac surgery, and they

1 sometimes cannot close the wound, so they need a  
2 plastic surgeon to put a flap and close that.

3 A lot of orthopedic surgery where they can't  
4 close the knee and they need someone. And the only  
5 person in town who could do any of this -- if you still  
6 go to UMC, people tell me that they say if Dr. Khiabani  
7 was here, he would have been able to do that for you,  
8 but we don't have anyone who can do that again.

9 And then later on in his career, he became  
10 extremely fascinated -- because his field is  
11 microsurgery. So he operated everywhere in the body.  
12 And he became involved in managing -- there were  
13 advances.

14 He worked with a neurologist, one of his  
15 friends, people who had severe migraines and nothing  
16 helped them. It was debilitating and stopping them  
17 from regular life. It's kind of like carpal tunnel  
18 surgery. He would then, you know, release the nerve.  
19 And he has a bunch of videos on that of people that he  
20 helped.

21 And people would move, like, come from  
22 Arizona or wherever, neighboring places, who had heard  
23 about him or done their research.

24 Q. That's called micro -- migraine microsurgery?

25 A. Yes.

1 Q. Was that another one of Kayvan's passions?

2 A. Yes.

3 Q. And when I say "passions," help the ladies  
4 and gentlemen on the jury understand how your husband  
5 went at things. Was he a person to do sort of only  
6 something halfway --

7 A. Oh, no, no, no.

8 Q. -- or did he have a very different  
9 personality?

10 A. No. I mean, he was one of the most  
11 tedious -- one of the most demanding in his field. He  
12 was a perfectionist. I mean, he -- whenever he studied  
13 it, he just went to the nth degree to learn about it  
14 and master it.

15 I mean -- and, like, his friends tell me -- I  
16 was never in the OR with him. They said he was one of  
17 the most talented surgeons that you see. He's just --  
18 not just a regular guy.

19 And so that was his approach to anything that  
20 he became passionate about. So he had passions in  
21 technology. I mean, he would spend hours at CES. He  
22 knew whatever was out there for technology. That's  
23 what -- that was one of his other passions. He knew  
24 things that people in technology didn't know because he  
25 would spend hours. All he would do is spend his free

1 time just reading and learning.

2 Q. Was opera another area?

3 A. Opera. I mean, he probably watched every  
4 single opera, and he studied it as a book, the scores,  
5 because he was a very also talented musician. And he  
6 would then go and watch -- or, actually, through  
7 videos. So there was no one that he could talk to  
8 because, the level of expertise that he knew, he  
9 couldn't talk to really anybody.

10 And then watchmaking was another one of his  
11 passions that he would just watch hours and hours of  
12 detail and intricate -- not just a regular -- like,  
13 hours and hours of techniques that goes, because he  
14 also was a microsurgeon. So he was so interested in  
15 the details of how that operates.

16 And I say he would spend hours and hours,  
17 honestly, thinking about our -- reading about our boys'  
18 futures and what's a good field for them to go to, what  
19 they should study and how he should guide them. So  
20 there were hours that were spent in his life --

21 Q. When you say he was -- I don't know if the  
22 right word is "obsessive" -- about topics, did he --

23 A. Learning, yes.

24 Q. About learning?

25 A. Uh-huh.



1 Q. Why did he become so interested recently in  
2 education for your boys? Why was that a new area for  
3 Kayvan?

4 A. So, you know, Pete, like -- what I'm saying  
5 is that the whole reading about, like, how he could  
6 guide them in the future started a while ago. He kept,  
7 like, reading and reading. Like, just because Aria's a  
8 junior this year and we did not go to American  
9 colleges, and he then would read articles that were --  
10 or books, rather, a hundred pages, just to make himself  
11 familiar and, like, know exactly everything that Aria  
12 has to take, whether it's ACT, SAT, which schools to  
13 apply to, how to apply to them. So that was his latest  
14 obsession.

15 Actually, the day before he passed, he just  
16 finished a hundred-page article that was sent to him by  
17 one of our friends.

18 Q. So if I understand what you're telling me is,  
19 Kayvan was trying to be as smart as a dad could be  
20 about what was best for his sons going forward with  
21 their education?

22 A. Yes.

23 Q. Okay. How about physically? Was Kayvan a  
24 active guy or an inactive guy?

25 A. No, he was very a active guy. I mean, we did

1 a ton of stuff together. We ran together. We did boot  
2 camp together. He would do yoga. He was fascinated by  
3 the Japanese culture. So he would do Taiko, or the  
4 Japanese drumming, for a little while. So he was very  
5 physically fit.

6 He always biked. I never biked because I  
7 just don't like to bike. But he always -- that was  
8 part of what he did in addition to everything else that  
9 we did together. We tried to do as a family, like with  
10 Aria and Keon, like, 5Ks, and, you know, have a healthy  
11 life basically, because he always thought -- he goes "I  
12 don't want to choke at 50."

13 Q. He was very meticulous. Is that fair?

14 A. Very, very meticulous. Very detail-oriented  
15 yeah. He had to in his profession to be -- to get the  
16 results he wanted to get.

17 But, honestly -- and this is the truth -- he  
18 was picky about every item, even the table we would  
19 purchase and how exact would it fit in a room.

20 So one day I told him, "I honestly feel very  
21 honored that you've picked me as your wife because  
22 you're such a picky person." So I actually -- I did  
23 say that to him. I said I really feel honored because  
24 there's a lot of things you have to cross before you  
25 cross his checkpoint for perfection.

1 Q. Sounds like it.

2 All right. I'm going to show you a  
3 presentation of a bunch of pictures, just in a brief  
4 video format, that I'll later produce. I'm going to  
5 ask you to look at some of the pictures and tell me --  
6 give me some examples of what it shows your family  
7 doing.

8 A. Okay.

9 Q. It's just pictures of you and your family.  
10 Okay?

11 All right. This is it. Let me ask you:  
12 This presentation, you know, what was it made for,  
13 Katy?

14 A. This was made by Aria, my son, my oldest son,  
15 for Kayvan's service.

16 Q. And this is, simply so all counsel knows and  
17 the record is clear, a presentation of some photos that  
18 I'll produce later today.

19 (Whereupon video deposition was played.)

20 Q. Who's that in that picture?

21 A. That's Kayvan and I. That's my friend's 50th  
22 birthday party.

23 Q. When is it?

24 A. It's about ten years ago. Yeah, when my  
25 friend turned 50.

1 Q. Dr. Barin, we went off the record to have a  
2 technical snafu, but up on the video monitor, there's a  
3 photo -- actually two photos.

4 A. Two photos.

5 Q. One is a black-and-white. And that's -- it  
6 looks like in a white frame. Tell us what that is.

7 A. Actually, now that I look at the picture,  
8 this is the white frame picture of our wedding, and  
9 that was kind of an anniversary party we had.

10 Q. The one above it?

11 A. The one above it, yeah. It was -- every year  
12 around, like, October 23rd, I would just have a party  
13 and invite friends. It was almost like a tradition in  
14 our family almost every single year. And so this  
15 happens to be just one of those years.

16 And this was maybe about five, six years ago.  
17 I made a mistake. I just for a second thought this was  
18 a wedding. A birthday of a friend. But there is our  
19 house. That's Kayvan. My friends put that picture of  
20 our wedding on the bottom.

21 Q. Got it. And this is a video or presentation  
22 your son Aria put together for Kayvan's funeral?

23 A. Yes.

24 Q. Katy, those are all a bunch of pictures of  
25 who?

1           A.    All Kayvan.  So this is first part of the  
2 presentation was all his pictures, of him alone.

3           Q.    And what do those pictures show?  A bunch of  
4 them were outdoors?

5           A.    Yeah.  Just to show, really, what kind of  
6 person he was.  I mean, he loved cigars.  He loved  
7 reading.  He was always outdoors.  Here, I think this  
8 is in California.  And then running pictures and the  
9 outdoors pictures.

10          Q.    Okay.  There are a bunch of pictures further  
11 on in here of Kayvan and your family.

12          A.    Yes.

13          Q.    Did your family, as a group, travel?

14          A.    Always.  Uh-huh.

15          Q.    Where is that, Katy?

16          A.    This is at our home.

17          Q.    What's -- what's Kayvan doing?

18          A.    He was making a barbecue.  He was cooking a  
19 lot of Persian kebabs.

20          Q.    Koobideh?

21          A.    Koobideh and chicken, yes.  It's probably a  
22 party we had, and he was cooking them.

23          Q.    Is that something he regularly did when  
24 you --

25          A.    That's something he regularly did, uh-huh.

1 Q. What's Kayvan doing in that get-up?

2 A. This is a Halloween party, I think. We had a  
3 family and all friends. So he's dressed up for the  
4 Halloween party.

5 Q. All right. And the prior pictures were  
6 pictures of him running and skiing. Were those all  
7 activities you all did together as family?

8 A. Always did together as family.

9 Q. And the photos, if I were to play this thing  
10 through its conclusion, there'd be a whole bunch of  
11 pictures of you and your family on vacations, outdoors,  
12 doing things by the water?

13 A. Uh-huh. He loved the water. I mean, he  
14 loved life. I mean, we would travel to Yosemite or  
15 Zion or -- and you'll see him doing yoga in Zion or  
16 wherever. Aria and Keon and Kayvan, when we went to  
17 Yosemite or we went to Montana, Yellowstone, whatever  
18 pool of water they would get, they would take off their  
19 clothes -- we would bike. They would take their  
20 clothes off and run in the water, get their clothes  
21 back on, got on the bikes, and then go. So that's why  
22 you see them in water all the time.

23 Q. Great. Katy, let's shift gears a little bit  
24 and talk about what kind of dad Kayvan was.

25 A. Yeah, yeah. Kayvan was -- he was a very

1 present dad. So, I mean, he just regarded them as his,  
2 you know, genetic duplication, especially Aria. And he  
3 adored them. He loved spending time with them. You  
4 know, wrestling, you know, when they were little.

5 And he really captured -- like, thank God he  
6 did what he did -- all the moments in their growing up  
7 and, you know, playing with them, whatever it was --  
8 biking, hiking, skiing -- you know, just to inject the  
9 joy of life into them, which I'm so happy he did. It  
10 changed our lives.

11 Q. Start with, for the jury, if you would, with  
12 your oldest boy, Aria. Whose personality did Aria  
13 inherit?

14 A. So Aria physically looks like me but  
15 personality-wise is an absolutely duplication of my  
16 husband in every sense of the way. He's assertive.  
17 He's confident. He's joyous. He fills a room. He's  
18 cheerful. Extremely driven. Extremely intelligent.  
19 And extremely like, you know, structured. And, yeah,  
20 he got a lot of that from his dad.

21 He says in his speech he -- Aria would be  
22 fascinated. He loved talking to Kayvan because every  
23 topic he would touch, he was, like, he had things that  
24 he could learn from him. He was fascinated by that.

25 So he had a lot of respect for him because he

1 just -- no matter what he talked about, Kayvan had --  
2 you know, I mean, he's not talking as an opinion but  
3 factual information that he would provide to him.

4 Q. Aria was how old when his dad passed away?

5 A. 16.

6 Q. And do you have an opinion relative to those  
7 years immediately before 16 being important in Kayvan  
8 developing Aria's --

9 A. Absolutely.

10 Q. Tell -- tell the jury what that is.

11 A. The boys were -- when they were, like, much  
12 younger, of course, you know, we would take them around  
13 together, we would go to things. But, honestly, after  
14 Aria went through puberty, which he went kind of little  
15 earlier than Keon, was 12 or 13, he really almost  
16 became a magnet, and Kayvan took him under his arms.  
17 And they had this special connection, hours and hours  
18 of conversation, conversing, talking. They had a lot  
19 of things in common: music, technology, education,  
20 anything.

21 So Kayvan had a huge influence on his  
22 formative years. Like, I'm glad he had the opportunity  
23 because they had many good years together.

24 And then every time he drove him to school or  
25 drove him back, the entire time -- you know how



1 teenagers are, their relationship was they spoke the  
2 entire time and they connected. There was, like, not  
3 one minute that they would not talk about a topic.

4 Q. And when Kayvan passed April 18th of this  
5 year, how old was Keon, your youngest boy?

6 A. So Keon was 13.

7 Q. And so is Keon going to have that same  
8 ability to have that influence of his father?

9 A. Oh, absolutely not. He -- you know, because  
10 I felt, you know, Aria immediately became, like, his  
11 little, you know, junior, you know guy under his arms.  
12 And, of course, Keon doesn't have that anymore. You  
13 know, there are a lot of insecurities he had after  
14 Kayvan passed. But, of course, he misses that  
15 opportunity.

16 And as a child growing up, Keon was a lot  
17 more timid and shy and a bit more hesitant. And, you  
18 know, a lot of the activities that you saw we did, and  
19 Kayvan sort of instilled that confidence, Hey, you can  
20 jump in that water or you can get on that zip-line.  
21 It's going to be fun skiing, fun night skiing.

22 And these are things that he instilled in  
23 them. But in terms of them going through from  
24 childhood to, you know, adulthood, becoming -- Keon  
25 changed significantly. He went through puberty

1 actually after Kayvan passed away. So, of course, he  
2 did not have the opportunity at all.

3 Q. All right. Let's go to April the 18th of  
4 2017. What were you doing that day?

5 A. I was working in my practice that day.

6 Q. As a dentist?

7 A. As a dentist. Yes. It was a Tuesday, and --

8 Q. What was Kayvan doing that day? Was he at  
9 work at the university?

10 A. No. He was on vacation. And --

11 Q. Did you know of Kayvan's plans to go cycling  
12 that day?

13 A. I did not. So it was the first time in my  
14 life that we left in a rush, and I didn't kiss him --  
15 in all the years that I know, I didn't get to kiss him  
16 goodbye. So then I called as soon as I got to my  
17 practice. And I said, "Kayvan, I'm so sorry. I don't  
18 know what happened. We got busy. We were late."

19 And he's like, "You know, I always told you I  
20 love you more than you love me. So you left me without  
21 kissing me."

22 Anyway, we said -- and I'm like, well, joke,  
23 laugh. "I love you." "I love you. Goodbye." And  
24 that was it.

25 And then -- and then throughout the day, I

1 mean, I was kind of having bone -- experiencing bone  
2 pain because of the injections they gave me for my --  
3 to increase my white blood cell count. So he would  
4 always call a few times a day to check on me.

5 And after my -- I hung up on the phone at  
6 8:30, I called him a few times. I called him at 10:00.  
7 I called exactly at 10:30. I called him at 11:00. And  
8 he just wouldn't answer the phone. So I thought maybe  
9 he's tied up, you know, and doing something. And I  
10 called him at 12:30. I called him at 1:30. Did not  
11 hear anything.

12 And then I received a phone call at exactly  
13 2:00 from UMC that "Your husband has been in an  
14 accident and it's very serious, and you should come  
15 here as soon as possible."

16 Q. We're going to talk about that day, but I  
17 want you to help a jury have some perspective.

18 You mentioned that in April of this year, you  
19 were having some pain from injections. What happened  
20 to Katy Barin in January of 2017?

21 A. So January 27 of 2017, I was diagnosed with  
22 stage 4 colon cancer, with multiple metastasis to my  
23 liver. The only way we discovered this, I had some  
24 pressure on the right side, feeling a little tired at  
25 night.

1           So my husband Kayvan said, "You should go get  
2 an ultrasound just to make sure, you know, it's not  
3 your gallbladder or anything hurting you."

4           So we did the ultrasound, and I got a call  
5 from my doctor saying, "You have 15 tumors in your  
6 liver. One of them is 8 1/2 centimeters," which then  
7 grew later to be 10. But -- and he says, "I want you  
8 to see the oncologist right away tomorrow."

9           So that Friday I went. And because I have  
10 friends in oncology -- I have multiple friends -- and  
11 without preauthorizations or anything, they got me  
12 under the scan, and they confirmed that, yes, it is, in  
13 fact, cancer, and it's spread extensively.

14          Q.    Okay. That's in late January?

15          A.    Yep, January 27.

16          Q.    Help the ladies and gentlemen of the jury  
17 understand what you did relative to work. Did you quit  
18 working?

19          A.    No. I have a private practice that survives  
20 only because of me. So -- and I was feeling -- you  
21 know, I was feeling okay, even though devastated that  
22 I, of course, have cancer, but I physically felt okay.  
23 I can't really honestly -- if I don't practice for a  
24 couple of days, that whole place will shut down. So --

25          Q.    What was your schedule?

1           A.    -- I continued going back to work.

2                   I -- so then we did different kinds of tests,  
3 and they put me on a regimen of chemo every two weeks.  
4 And I am -- and I was very committed to my practice,  
5 and so I would work Monday, Tuesday, Wednesday,  
6 Thursday, until noon. Kayvan would come pick me up, or  
7 a friend, depending if he was at work or -- but the  
8 first couple times, he came with me for support.

9                   At noon I would go for my chemo. I would sit  
10 in the chemo chair until 5:00 o'clock in the afternoon,  
11 go home for 48 hours with the chemo pump. They'd take  
12 it off Saturday morning at 8:00 o'clock. I would  
13 recover on Sunday, and go back to work on Monday.

14                  So we did that until Kayvan passed.

15           Q.    How was your -- the treatment of your cancer  
16 progressing between January 27th, when you figure out  
17 you've got colon cancer, and April the 18th, when your  
18 husband passed?

19           A.    So when they gave me the treatments, they  
20 were waiting for some genetic testing to target -- to  
21 have a direct target of my cancer. But they said this  
22 is so severe that we have to start you on a chemo  
23 regimen, which is the standard of care.

24                  So they started me on a standard of care.

25 And after three cycles I got a scan, which was

1 extremely positive, because my tumor levels went down  
2 from 8,000 to 2,000, and I had 50 percent shrinkage of  
3 the tumors.

4 Q. And you're still -- still working?

5 A. Working, yep.

6 Q. And then your husband is struck by the bus  
7 April the 18th and passes away that day.

8 A. Well, yeah. I mean, I was devastated. I  
9 just deteriorated. I could not work. I mean, I was  
10 not in a mental state to work. Devastating too.

11 Q. Katy, I came to see your office yesterday in  
12 getting ready for your deposition. You took me in the  
13 kitchenette, and I noticed and took a picture of  
14 something.

15 Tell everybody what that picture of is  
16 Exhibit 6.

17 A. This is a picture of a cot, a bed that my  
18 assistant brings in with me with a mattress, so that I  
19 could -- I kind of lay down between patients.  
20 Otherwise, I can't carry through -- carry on throughout  
21 the day. And, honestly, I can't even work. I just  
22 went in to just check patients, but in between I still  
23 get extremely exhausted.

24 So this cot is there in my small lunchroom,  
25 so I lay down and rest in between.

1 Q. Since Kayvan passed, have you had to hire  
2 another dentist to come in and basically take over the  
3 practice?

4 A. Yes.

5 Q. Before Kayvan passed who was running that  
6 practice?

7 A. I was.

8 Q. For the three months you had cancer?

9 A. Yeah.

10 Q. All right. Let's go back to April the 18th,  
11 and you get a phone call from UMC.

12 Who was it that called you, Katy?

13 A. They called me from UMC. They said, "Katy  
14 Barin?"

15 "Yes."

16 "Your husband, Dr. Khiabani, was in a serious  
17 accident."

18 I freaked out. I initially thought it was a  
19 car accident. I said, "How's he doing?"

20 They said, "Well, it's very serious. You  
21 should come here as soon as possible."

22 So I was in a state of -- and my assistant  
23 Heather said, "You can't go alone. I will drive you."

24 And so I immediately got in the car. The  
25 first thing I had to do was call my friends to figure

1 out the pickup situation for the boys to see who picks  
2 up who.

3 And then I called my in-laws, who were at  
4 home. And then I said, "When did Kayvan leave the  
5 house this morning?"

6 And they said, "He left the house at 9:30 and  
7 went for a bike ride and never returned and never  
8 called us," and, like, pacing back and forth. And so  
9 then we went to the trauma room.

10 Q. So we -- so that everybody understands, when  
11 you called your in-laws, are those Kayvan's parents?

12 A. Kayvan's parents.

13 Q. They happened to be in town?

14 A. To be visiting, yes.

15 Q. If I were to play all of Kayvan's funeral,  
16 your son Aria gives a speech at that funeral?

17 A. Yes.

18 Q. And Aria was how old at the time?

19 A. 16.

20 Q. And in his -- standing next to Aria while he  
21 gives his speech is who?

22 A. Keon.

23 Q. And how old was Keon?

24 A. Keon is 13 at the time, yeah.

25 Q. And in Aria's speech, he reads a letter that



1 Keon wrote.

2 A. Uh-huh.

3 Q. And I -- help us understand when it was that  
4 your 14-year-old wrote this letter.

5 A. So Keon was 13.

6 Q. Sorry.

7 A. He came home from my -- I sent someone -- I  
8 don't know -- one of my staff. I said, "Go get Keon,  
9 drop him home." You know, the school is very close to  
10 our home.

11 He came home. He saw, like, the grandparents  
12 in a state of disaster. They were bawling, pacing up  
13 and down. They were like, "We don't know where your  
14 dad is."

15 And then he starts panicking. He starts  
16 writing a letter to his dad, expressing, you know, how  
17 worried he is about him, wants to know where he is, how  
18 he's doing.

19 And as a 13-year-old is extremely concerned  
20 about his grandparents, who are in despair. And, you  
21 know, he brings them a blanket and he writes in the  
22 letter, "Dad, I'm taking care of your parents because  
23 they're very upset. I'm giving them a blanket." You  
24 know, and then the rest of the speech is what an  
25 incredible dad you've been to us. And goes "I hope to

1 see you soon," because he had no idea where he is,  
2 neither did the grandparents. Nobody knew at that  
3 point what was going on.

4 Q. That's as you're traveling to the hospital?

5 A. That's -- yeah. Actually, that's -- that's a  
6 little after. He gets home at, like, 3:30. So I was  
7 traveling to the hospital at 2:00. I got there at  
8 2:30.

9 Q. Who ultimately tells -- gives you  
10 notification that your husband has passed at the  
11 hospital?

12 A. So they take me right into a small room, and  
13 I believe it was one of the -- the PR people from UMC,  
14 and then they bring me back to the room. It's just a  
15 little visitation room. And then -- then the whole  
16 team comes in -- the nurse, the doctor, the person from  
17 the funeral home -- and then they tell me what happened  
18 to Kayvan.

19 Q. And what is it that you're told, Katy?

20 A. They told me that Kayvan was biking his --  
21 was biking and he was struck by the bus. And they  
22 don't know what happened, but he came into the ER  
23 unrecognizable. They tried to do three rounds of the  
24 CPR. That did not work. And he passed at 11:00.  
25 11:09, to be exact.

1 Q. And what time is it when you're learning of  
2 this?

3 A. Somewhere between 2:30, 2:35.

4 Q. And to the extent you can explain it to us,  
5 tell us what you're going through at that time.

6 A. So, I mean, of course, I'm devastated. I  
7 don't even know what to do with the news. I called my  
8 brother Babak, and he's like, "I don't understand  
9 really what you're saying. I can't" -- he was just in  
10 disbelief. He was at a family vacation with his family  
11 in Toronto. He says, "Could you pass me to someone  
12 that I could speak to?" because I was devastated.

13 So I gave the phone to the doctor. The  
14 doctor explained it.

15 And then next thing, I called his sister.

16 Q. Kayvan's sister?

17 A. Kayvan's sister, who lives in London. And,  
18 of course, she's devastated. She's yelling and  
19 screaming. We don't know what to do about the parents.  
20 They're both, you know, in their 80s.

21 She says, "If you tell them, they may just  
22 drop." And, I mean, this is their only son and, of  
23 course, you know, proud of him.

24 And then I called my friend, Dr. Foad Moazez.  
25 I said, "Come help me. I don't know what to do or to

1 go from here."

2 Then I called another one of our relatives,  
3 my dad's cousin, Morey. And then, like -- then our  
4 immediate friends found out, and they all came.

5 And then at 3:00 -- like around 3:00, coroner  
6 came with all of his belongings and handed it to me in  
7 a yellow envelope.

8 Q. And what of his belongings do you keep on  
9 you?

10 A. So I keep his ring, our wedding -- his  
11 wedding ring.

12 Q. Okay. Now walk me through what you had to do  
13 the rest of that day. You had to tell his boys?

14 A. So she told me the news at 3:00. We tried to  
15 figure it out. Called, you know, my close friend,  
16 Ladan. You know, she took a plane right away. They  
17 all came. My brother flew the next night, the sister  
18 flew the next day.

19 And at that point, my boys did not know. So  
20 I went to my cousin's house, Vicki and Morey. We  
21 decided we all go to the house, which we live in the  
22 same neighborhood.

23 And my kids kept calling me. They're like,  
24 "Why are you keeping us in the dark? What's going on  
25 with Dad?"

1           In the meanwhile, the news had spread  
2 throughout the entire city. Luckily, I had my  
3 assistant, Heather, at the house guarding the house,  
4 because people were -- my best friends, their husbands  
5 are surgeons. They all kept showing up at the house to  
6 find out if this is really true, if this is really what  
7 happened. And my boys at that point didn't know.

8           So the e-mail was sent to the rest of the  
9 faculty of surgery and the entire world at 3:03 before  
10 I get home and before I could reconvene with my family  
11 and explain it to my boys.

12           So the boys did not know until maybe 5:30,  
13 6:00, because we had to just put our brains together.  
14 You know, if we tell the boys, what do we do about the  
15 grandparents? What happens to them if they, you know,  
16 faint and have a heart attack?

17           So we decided to go to get the boys. Some  
18 family members went and got them. I had to break the  
19 news to them.

20           Q.   How did you do that?

21           A.   I took them to a room and I said, "He was hit  
22 by a bus and he didn't make it." So they were freaking  
23 out.

24           And, believe it or not, this is 5:00. I get  
25 calls from strangers, strangers that are like even oral

1 surgeons that worked with me. "Katy, we heard what  
2 happened to Kayvan." They all knew him. I was like,  
3 "Wow. How did you guys hear the news? I just told my  
4 children."

5 So that was a very difficult -- that was a  
6 very difficult night. We didn't tell the parents, and  
7 they were devastated. His mom said, "You know, I  
8 really need to, like, see my boy. Can I go to the  
9 hospital? Can I visit?"

10 We said, "He's not in a good state. We can't  
11 really do that."

12 And she was really connected to her son. So  
13 the next morning, she woke up and she said, "I had a  
14 dream that he passed. So I guess you guys don't need  
15 to keep this from me. I know he's gone. I had a  
16 dream." And that was it.

17 Q. How did your boys take it? One at a time.  
18 How did Aria?

19 A. They were devastated, just crying, bawling.  
20 Keon was, like, freaking out. You know, I mean -- and  
21 then lucky that we had so many friends around. They  
22 took them one by one for a walk and trying to calm them  
23 down.

24 Because it was already quite a year with, you  
25 know, me having cancer and then their dad. So it was

1 tough, yeah.

2           Aria is a little more reserved. He's -- you  
3 know, he has to stay tough, but he felt that he has to  
4 immediately be the head of the family. And -- and then  
5 Keon, of course, is a child and just had to distract  
6 himself just playing and doing video games so he could  
7 just completely zone out over that a lot.

8           Q.    Okay. Now -- now explain to the ladies and  
9 gentlemen of the jury how it was you were able to cope  
10 with it.

11          A.    I mean, it was so shocking, so devastating,  
12 something that I did not expect at all. And, I mean,  
13 my entire body kept going into this spasm almost.  
14 Every time I thought about it, I didn't know how to --  
15 like, where to begin, what to do. And just -- I mean,  
16 it's hard to explain to you.

17                I mean, it's been -- he's been my best friend  
18 since, honestly, 1991. We've been through -- there's  
19 never been a thing that I've never told him. I've  
20 shared everything with me [sic]. He's, like, guided me  
21 through everything in life. You know, there was my  
22 practice. It's, like, he was the rock of my life and a  
23 huge support.

24                I mean, he was devastated that I had cancer  
25 because we really had a very -- sort of an intense

1 relationship in the sense that we both really depended  
2 on each other, more in an emotional way and mental way  
3 than, you know, everyday life. We were very  
4 independent people, each of us.

5 But, I mean, he would come to every, you  
6 know, medical visit with me as much as, you know -- he  
7 was numb to the whole situation because he just  
8 couldn't believe that this happened to me. But he  
9 really was a solid rock in my life, but ...

10 Q. When was the service here in Las Vegas, Katy?

11 A. It was April -- I forget the date. Was it  
12 April 23rd? I think April 23rd.

13 Q. And is that the service that's reflected in  
14 the video we played a little bit of earlier?

15 A. Yes. Yes. So we had a viewing, even though  
16 we don't do that in our culture at all. It's  
17 against -- but we had to do that because we had to  
18 transfer the body to Montreal. So we had to embalm the  
19 body and then -- so we had a private viewing and a  
20 closure. Because it was very important for us to have,  
21 like, some form of closure and to see him, for his  
22 parents, for myself. The boys did not want to be  
23 involved in that process. And then we had the service.

24 Q. And that service, if I tell you the video is  
25 about an hour and a half long, does that seem about --



1           A.    Yep.

2           Q.    -- the right length to you?

3           A.    Yep.  There were maybe 6 or 700 people at --  
4 there were people standing outside throughout.

5           Q.    And then -- I know you had a separate service  
6 in Montreal.  Help everybody understand that process.

7           A.    So after the services here, then we had to  
8 transfer Kayvan to Montreal because we had it in our  
9 will -- I mean, it was really my wish to be buried in  
10 Montreal where my family is.  And he said, "I want to  
11 be wherever you want to be."  So then we had to, like,  
12 really last minute put tickets together for everybody.

13                   And then we had to just make sure that Kayvan  
14 will make it on time for all of us to have the service  
15 the following weekend, which was, like, April 30th, in  
16 Montreal.

17                   So we had the burial ceremony, plus we had  
18 another service in the chapel for him that day.

19           Q.    Okay.  Did you and your boys come back to  
20 Las Vegas after burying Kayvan in Montreal?

21           A.    Yes.

22           Q.    From your perspective, talking to your  
23 doctors, has your cancer gotten worse or better since  
24 Kayvan passed?

25           A.    Definitely worse, yeah.  I mean, it's on the

1 verge of the liver failure and ...

2 Q. Do you have an understanding from speaking to  
3 your doctors whether or not your cancer is curable?

4 A. Well, my doctor told me straight that this is  
5 not a curable disease; it's a terminal disease.

6 Q. And have you and your family had to make sort  
7 of extraordinary arrangements relative to your boys  
8 just based on the knowledge that at some point you're  
9 not going to be around?

10 A. We're making arrangements every day, yeah.  
11 My brothers are going to be the guardians. So they  
12 have to -- to arrange it so that it could happen fairly  
13 quickly if something had to happen to me.

14 Q. Okay. In addition to the emotional  
15 devastation Kayvan's death caused, help us understand  
16 financially how it's impacted your family's life, Katy.

17 A. Financially, we have -- you know, of course  
18 he was a huge financial contributor to the household.  
19 And, you know, I would have of course worked. So we  
20 have -- we don't have his income, and we don't have my  
21 income.

22 So it's had a huge -- I mean, my older son --  
23 and I think even Keon, they're very conscious of that.  
24 They're always worried. And they're constantly  
25 worrying about future and, oh, we're broke. I mean,

1 honestly, one of the first things Keon -- he was like,  
2 "Can we afford to live in this house, and can I get a  
3 shave?"

4 Because Kayvan, when Aria went through  
5 puberty, had a whole ceremonial shave for him. You  
6 know, he took him to Art of Shaving. He did a whole,  
7 you know, event for him. And he was like, "I never got  
8 to do that with dad, but can we afford to do that for  
9 me the same way we did for my brother?"

10 And I said, "Your uncles will take care of  
11 that. It will be okay." So, I mean, they're always --  
12 I mean, Aria is constantly preoccupied. And, you know,  
13 honestly, if I have to give a birthday gift to someone,  
14 he's like, "Mom, I think we're -- you know, you don't  
15 need to give, you know, that much. We're broke. We  
16 don't have any money."

17 I mean, it's constantly -- he's thinking of  
18 applying for scholarships. I mean, he's a constant  
19 preoccupation.

20 Q. Okay. Have you had to talk to your boys  
21 about the cancer and the likelihood that you're not  
22 going to be around?

23 A. Yes, absolutely. I mean, Keon, what he  
24 really wanted to know, which we told him -- I think  
25 it's best to know the absolute worst-case scenario. He

1 was devastated, of course, for Kayvan, but he was  
2 devastated that he's going to lose me. And he has a  
3 strong attachment to me, of course. And so does Aria.

4 But he's younger. And he says, "I already  
5 know -- how I could live without you, but what's going  
6 to happen to me?" And I said, "Well, your uncles will  
7 take care of you." So, I mean, I think I had to give  
8 him the worst-case scenario of what could happen, so --  
9 for him to know that.

10 Q. And how would you best describe the effects  
11 of your husband's death on your family as a whole?

12 A. Oh, it's broken our whole family. He was the  
13 life, the brain. I mean, he's the core of our family,  
14 the joy, the laughters. And not only that, but he  
15 planned for everything. He planned for all of us.  
16 He -- you know, we each had a problem. Kayvan was the  
17 one who would come up with a solution, who would guide  
18 us. And so his absence is pretty devastating because,  
19 really, nobody replaces him.

20 I mean, we have a lot of support, and we're  
21 very fortunate. But, of course, the bond we had and  
22 the connection we had and the resources we had through  
23 him is not there. So it's an empty nest. It's an  
24 empty house. It's not the same as ...

25 CROSS-EXAMINATION

1 BY MR. ROBERTS:

2 Q. You mentioned that you were on a number of  
3 medications for pain associated with your cancer?

4 A. Uh-huh.

5 Q. Are you on any of those medications here  
6 today?

7 A. No.

8 Q. Okay. Is there any medication that you're  
9 taking that might affect your memory or ability to  
10 recall today?

11 A. Oh, no, absolutely not. Yeah, that was a  
12 time when I was not getting treatment and my -- it was  
13 getting worse, and so they put me on pain medication  
14 and after the surgery. But, at this point,  
15 everything -- I don't have pain. So when I don't have  
16 pain, I don't take anything for pain.

17 Q. Okay. I'm glad.

18 A. Thank you.

19 Q. Are you back at your practice now?

20 A. I am not back at my practice. I only go the  
21 days that I feel well enough, and only to do exams.  
22 There's one day that I don't have coverage at my  
23 practice, and I don't want to close that day, so I only  
24 go to do checkups when I can. And that could be once  
25 every two weeks.

1 Q. Okay. And the picture -- I believe this was  
2 marked as Exhibit 6.

3 Pete, is that correct?

4 MR. CHRISTIANSEN: That is accurate,  
5 Mr. Roberts.

6 BY MR. ROBERTS:

7 Q. Showing a bed at your -- this is at your  
8 practice?

9 A. Yes.

10 Q. And do you recall when this was taken?

11 A. This was yesterday.

12 Q. Okay.

13 A. Yeah.

14 Q. So when did you first have the bed installed  
15 in your practice?

16 A. Well, it's -- we had it -- well, it's just  
17 periodically after Kayvan passed. I mean, I don't go,  
18 honestly, every day -- or I don't have a routine. It's  
19 only when I can and when there's patients and the other  
20 doctor is not there.

21 And so this is always installed because not  
22 every day I could make it through the day without kind  
23 of resting and then particularly going after to see my  
24 patients.

25 Q. I understand.

1           A.    And I don't do any procedures. I really  
2 can't. I only just check patients after their hygiene  
3 visits.

4           Q.    Okay. So when did you stop doing procedures,  
5 Doctor?

6           A.    I stopped doing procedures, honestly, really  
7 after Kayvan passed, yeah. And if there were, like,  
8 little things that I had to close up, if I would feel  
9 good, I would go for an hour, finish those cases that I  
10 have a commitment. When you start a case as a dentist,  
11 you have to finish it yourself. You can't, you know,  
12 just pass it along to someone else. So ...

13          Q.    You mentioned going for, I believe, three  
14 courses of chemo, and then you took a break, and then  
15 you went back for another three?

16          A.    Uh-huh. Another --

17          Q.    I don't -- do you recall when that second  
18 course started and stopped?

19          A.    Can I look -- I can look in my calendar,  
20 because it goes on -- so I started -- I don't have  
21 the -- I always have it for my doctor's visits, but  
22 I -- so my fourth chemo was scheduled -- Kayvan passed  
23 away on Tuesday, April 18. The fourth chemo was  
24 scheduled on the 20th. And I went to that. So --

25          Q.    You mentioned some of the activities

1 that Dr. Khiabani enjoyed, outdoors activities. And  
2 one of the ones you mentioned was biking.

3 A. Uh-huh.

4 Q. How long had Dr. Khiabani been a cyclist?

5 A. I mean, he's been biking, really, since we  
6 were in Montreal, for as long as I've known him. It's  
7 something he liked to do, and he would just do it alone  
8 by himself or with some friends or the groups that he  
9 was involved with.

10 Q. In the years prior to this accident, how --  
11 how often would you say he cycled?

12 A. He would cycle, you know, at least, at the  
13 minimum, twice a week, two to three times. But, like,  
14 if he would go -- he was working full-time, so it was  
15 just mainly on the weekends.

16 And then if -- you know, if it was on  
17 vacation and he had time during the week, then he would  
18 go on another bike ride. But I would say at a minimum,  
19 twice a week, yeah.

20 Q. And just to make sure I've got this right,  
21 you've never accompanied your husband on -- on his bike  
22 rides?

23 A. No, except if we were on vacation and we'd  
24 just go for a casual bike ride, you know, Yosemite Park  
25 or other places or we'd go to Vancouver, go to the



1 park. You know, other than the four of us being  
2 engaged on the vacation biking together, not any of his  
3 bike rides that he did as an exercise for purpose of  
4 exercising.

5 Q. Was it typical for your husband to bike in --  
6 in the more congested areas of town, or did he like to  
7 get out on the highways or the bike paths?

8 A. You know, honestly, like, very rarely -- the  
9 only bike paths -- you know, he would not discuss where  
10 he went, but we had -- we had an understanding that if  
11 he ever goes and he's gone for more than two hours,  
12 then I should be alarmed, because, you know, his phone  
13 was in his back. He did not wear headphones. So, you  
14 know, I never wanted to reach him because I couldn't  
15 reach him because he didn't have headphones and the  
16 phone was in the back.

17 And so he always said, "If I'm gone for more  
18 than two hours, then start getting worried." But I  
19 know that a few times he would go up to Blue Diamond  
20 and back. And that was kind of the cycling path that  
21 everybody takes. And he would just kind of -- kind of  
22 with the whole crowd. I don't know if you're from  
23 here, but everybody goes that path.

24 Q. I am. I'm familiar with that path.

25 A. Okay. Yeah.

1 Q. About what was his typical length of time he  
2 would be gone when he cycled and you were aware of when  
3 he left and came back?

4 A. About an hour and a half.

5 Q. You mentioned that he would typically keep  
6 his phone in his back?

7 A. Uh-huh.

8 Q. Do you know how long he had had the bicycle  
9 that --

10 A. I think this bicycle, this particular one, he  
11 had about six months.

12 Q. Do you know how often he had ridden it from  
13 the time he bought it up until the date of the  
14 accident?

15 A. You know, about two or three times a week.

16 Q. During the entire six months?

17 A. Yes. About two or three times a week, yeah.

18 Q. You -- you mentioned that your husband was on  
19 vacation that day?

20 A. Yes.

21 Q. To your knowledge, did he have any  
22 appointments or anything that he had planned for later  
23 in the day after he would have returned from his bike  
24 ride?

25 A. Just to pick up my son from school.

1 Q. Okay.

2 A. Yep.

3 Q. And what time did he usually pick up your  
4 son?

5 A. He usually picked -- about 3:00 o'clock. My  
6 son who was at high school. And then later on -- like,  
7 he picked up, you know, Aria, and then he would drive  
8 back, pick up Keon, and then drop them home. And that  
9 was the usual routine. And that was what he was doing  
10 that day.

11 And, you know, actually, when people called  
12 Aria, they're like, "We're going to pick you up." He's  
13 like, "No, my dad is picking me up. I have already  
14 discussed it. We know where we're meeting." So that  
15 was just where he had to be that day.

16 MR. CHRISTIANSEN: That concludes the  
17 examination, Your Honor.

18 That concludes the witnesses for today as  
19 well, Judge.

20 THE COURT: Very good. I would like to see  
21 counsel at the bench.

22 MR. CHRISTIANSEN: Yes, Your Honor.

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

25 THE COURT: All right. Ladies and gentlemen,

1 I'm going to admonish you, and we start again Monday at  
2 9:30.

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

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

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

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

22           You're not to form or express any opinion on  
23 any subject connected with this trial until the case is  
24 finally submitted to you.

25           Have a great weekend. Thank you for your

1 service. And see you back here at 9:30 a.m. on Monday  
2 morning.

3 THE MARSHAL: All rise.

4 (The following proceedings were held  
5 outside the presence of the jury.)

6 MR. CHRISTIANSEN: He's closing it, Your  
7 Honor.

8 THE COURT: I do want to chat with the  
9 attorneys for a moment. It's very simple. I'm  
10 probably going to be the least popular judge in this  
11 building, but I know that we're going to have to  
12 submit -- you're going to be submitting the jury  
13 instructions that are, you know, the regular jury  
14 instructions that you all agreed to. But I want, by  
15 Tuesday or Wednesday, jury instructions from both  
16 sides. And, you know, if we have to add, delete,  
17 change, that's fine. I would like to start studying  
18 them before -- I think it will save a lot of time.  
19 Okay? So --

20 MR. KEMP: Can we say Tuesday at 5:00?

21 THE COURT: Tuesday at 5:00 is great,  
22 because, that way, I can -- I can start reviewing them.  
23 And, again, if -- if you need to augment them or --

24 MR. KEMP: Sure.

25 THE COURT: -- take them out, or modify them,

1 that's fine. But at least I'll have a chance to look  
2 through everything first. Okay?

3 MR. KEMP: Judge, the verdict form too?

4 THE COURT: I'm sorry?

5 MR. KEMP: The verdict forms too?

6 THE COURT: Yes. Okay? From both parties.

7 MR. KEMP: Very good.

8 MR. ROBERTS: Joel and Dan, I believe, are  
9 going to be handling those for our side.

10 MR. HENRIOD: Yep, we got them.

11 THE COURT: Have a great weekend, everyone.

12 MR. ROBERTS: Thank you, Your Honor.

13 MR. KEMP: Thank you.

14 THE COURT: Thank you very much for your  
15 help, everyone.

16 THE MARSHAL: I did speak with Mr. Lennon.  
17 He did say he didn't have any bills that he had to pay  
18 today, but if we could assure that he can have  
19 something by Monday, he could hold off till Monday. If  
20 that's the direction we want to go today.

21 THE COURT: Well -- and, that way, perhaps it  
22 could come from The Venetian.

23 MR. KEMP: Yeah, that would be better, Your  
24 Honor.

25 THE COURT: So where are the checks? Jerry,

1 they're right here.

2 They're right here?

3 THE MARSHAL: Uh-huh.

4 THE COURT: Okay. Who should I give these  
5 to?

6 MR. CHRISTIANSEN: I am going to trust

7 Mr. Kemp.

8 THE COURT: I'm going to give them back to  
9 Mr. Christiansen.

10 THE MARSHAL: But he did say definitely by  
11 Monday.

12 THE COURT: By Monday? Okay.

13 All right. So I would prefer that the checks  
14 be written in the normal course by The Venetian.

15 MR. BARGER: It would be easier.

16 THE COURT: See if you can arrange that,  
17 Mr. Pepperman.

18 MR. PEPPERMAN: I will, Your Honor.

19 THE COURT: All right. We're done now, then.  
20 Let's go off the record. Thank you.

21 (Thereupon, the proceedings  
22 concluded at 5:12 p.m.)  
23  
24  
25

-oOo-

ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF  
PROCEEDINGS.

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KRISTY L. CLARK, CCR #708



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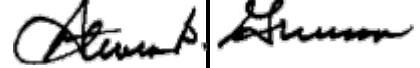
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Steven D. Grierson

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, )  
25 et al., )

Defendants. )

21 REPORTER'S TRANSCRIPTION OF PROCEEDINGS

22 BEFORE THE HONORABLE ADRIANA ESCOBAR  
23 DEPARTMENT XIV

24 DATED MONDAY, MARCH 12, 2018

25 RECORDED BY: SANDY ANDERSON, COURT RECORDER

TRANSCRIBED BY: KIMBERLY A. FARKAS, NV CCR No. 741

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007730



## I N D E X

Witness:	Direct:	Cross:	Redirect:	Recross:
ARIA KHIABANI	11			
ROBERT RUCOBA	161			

## E X H I B I T S

Number	Admitted
Ex. 86-90	5
Ex. 95-97	5
Ex. 101-104	5
Ex. 62	6
Ex. 81	6
Ex. 109	6
Ex. 188	6
Ex. 124	6
Ex. 261	5
Ex. 501	8
Ex. 515-566	161

1 LAS VEGAS, NEVADA, MONDAY, MARCH 12, 2018;

2 9:48 A.M.

3 P R O C E E D I N G S

4 \* \* \* \* \*

5 (The following proceedings were held  
6 outside the presence of the jury.)

7 THE MARSHAL: All rise.

8 THE COURT: Good morning.

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

11 MR. CHRISTIANSEN: Judge, just by way of  
12 housekeeping, plaintiff has one final witness,  
13 subject to us checking with the clerk and making  
14 sure we've got everything, and that's Aria  
15 Khiabani. Mr. Barger and I this morning,  
16 yesterday, and today went through plaintiffs', the  
17 following exhibits:

18 Plaintiffs' Exhibits 101 through 104,  
19 which are the Palm Mortuary bills from  
20 Dr. Khiabani's funeral;

21 Exhibit 86, which is the catering bill  
22 from Dr. Khiabani's funeral here in Las Vegas;

23 The UMC records, which is Exhibit 109  
24 for his medical bills;

25 And from Montreal, Exhibits 89 -- 95,

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1 96, 97, 188, and 87, 88, and 90.

2 THE COURT: I'm sorry. 87, 88.

3 MR. CHRISTIANSEN: And 90, which are the  
4 airfare related to the transport of Dr. Khiabani  
5 for his burial in Montreal. Those, I think by way  
6 of -- I also, Your Honor, neglected Exhibit 89,  
7 which is the obituary in the Montreal Gazette. I  
8 think, by stipulation, those will all be agreed  
9 to.

10 In addition, I prepared and gave to your  
11 clerk a summary of all of those, which, next in  
12 line, would be Exhibit 261 and, by agreement,  
13 those all come into evidence.

14 MR. BARGER: Yes, Your Honor.

15 THE COURT: Okay. Thank you,  
16 Mr. Barger. Those come in by agreement.

17 (Exhibits 86, 87, 88, 89, 90, 95, 96, 97  
18 101, 102, 103, 104, 109, 261 were  
19 admitted.)

20 MR. BARGER: You want to do the others?

21 MR. CHRISTIANSEN: Yeah.

22 THE COURT: I'm making sure. There's  
23 some other exhibits.

24 MR. CHRISTIANSEN: I have a couple  
25 other, two, Your Honor, just so you can do it at

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1 one time.

2 The S-1 Gard, which is Exhibit 62. We  
3 think the S-1 Gard brochure, which is Exhibit 81  
4 is in. If not, we both want it in, minus page 3,  
5 which are the testimonials that we took out, I  
6 believe.

7 THE COURT: Correct.

8 MR. CHRISTIANSEN: And the final one is  
9 the S-1 Gard instruction manual, which is  
10 Exhibit 124.

11 MR. BARGER: That's correct, Your Honor.

12 THE COURT: Correct? Stipulated to?

13 All right. So those are admitted.

14 (Exhibits 62, 81 and 124 were  
15 admitted.)

16 THE COURT: Anything else,  
17 Mr. Christiansen?

18 MR. CHRISTIANSEN: One final one, Your  
19 Honor. Part of -- Exhibit 117 is the funeral  
20 video of Dr. Khiabani as a whole. We've parsed  
21 out the collage that his son Aria put together for  
22 him, and we'll offer that this afternoon as 117A,  
23 and I'll bring Ms. Court Clerk the actual copy of  
24 just the collage -- the introduction and the  
25 collage, nothing else with the funeral. But I

1 have to physically get a separate copy so we don't  
2 offer 117. It will just be 117A.

3 THE COURT: Understood.

4 MR. BARGER: That's correct.

5 THE COURT: Thank you. So those are  
6 stipulated to and, once we take a look at them,  
7 will be admitted.

8 Mr. Christiansen, did you make a  
9 synopsis in writing?

10 MR. CHRISTIANSEN: Oh, of what I just  
11 told you? It's almost illegible. Can I approach  
12 your clerk, Judge, and I can --

13 THE COURT: Of course.

14 MR. CHRISTIANSEN: I don't want to try  
15 to make her read my chicken scratch.

16 MR. BARGER: As a matter of  
17 housekeeping, if we can, our Exhibit 501 is the  
18 second S-1 Gard that has the attachment materials  
19 with it and the bolts. We'd like to go ahead and  
20 offer that, get it out of the way.

21 MR. CHRISTIANSEN: No objection.

22 THE COURT: So Exhibit 501, the second  
23 S-1 Gard with the bolts?

24 MR. BARGER: And the attachment plate.

25 THE COURT: Attachment. Okay. So that

007735

1 is stipulated to, and it's admitted.

2 (Exhibit 501 was admitted.)

3 THE COURT CLERK: It hasn't been marked.

4 MR. BARGER: We need to put a label on  
5 it.

6 THE COURT CLERK: I'll do it.

7 (Discussion off the record.)

8 THE COURT: Do you have anything else,  
9 Mr. Christiansen?

10 MR. CHRISTIANSEN: I don't believe at  
11 this time, Your Honor.

12 Ms. Court Recorder, can I have the ELMO  
13 controller, please? Thank you.

14 THE COURT: Everyone ready for the jury?

15 MR. CHRISTIANSEN: Yes, Your Honor.

16 THE COURT: Okay. Good.

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

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

21 Please be seated. Come to order.

22 THE COURT: Good morning, ladies and  
23 gentlemen of the jury. I hope you had a restful  
24 weekend. Thank you for coming back and following  
25 through with your civic duties. I appreciate you

007736

1 being here.

2 Call roll.

3 THE CLERK: Yes, Your Honor.

4 Byron Lennon.

5 JUROR NO. 1: Here.

6 THE CLERK: John Toston.

7 JUROR NO. 2: Here.

8 THE CLERK: Michelle Peligro.

9 JUROR NO. 3: Here.

10 THE CLERK: Raphael Javier.

11 JUROR NO. 4: Here.

12 THE CLERK: Dylan Domingo.

13 JUROR NO. 5: Here.

14 THE CLERK: Aberash Getaneh.

15 JUROR NO. 6: Here.

16 THE CLERK: Jaymi Johnson.

17 JUROR NO. 7: Here.

18 THE CLERK: Constance Brown.

19 JUROR NO. 8: Here.

20 THE CLERK: Enrique Tuquero.

21 JUROR NO. 9: Here.

22 THE CLERK: Raquel Romero.

23 JUROR NO. 10: Here.

24 THE CLERK: Pamela Phillips-Chong.

25 JUROR NO. 11: Here.

007737

1 THE CLERK: Gregg Stephens.

2 JUROR NO. 12: Here.

3 THE CLERK: Glenn Krieger.

4 JUROR NO. 13: Here.

5 THE CLERK: Emilie Mosqueda.

6 JUROR NO. 14: Here.

7 THE COURT: Do the parties stipulate to  
8 the presence of the jury?

9 MR. CHRISTIANSEN: Yes, Your Honor.

10 MR. BARGER: Yes, Your Honor.

11 THE COURT: Mr. Christiansen, are you  
12 ready?

13 MR. CHRISTIANSEN: I am, Your Honor.

14 THE COURT: All right. Please proceed.

15 MR. CHRISTIANSEN: Plaintiffs call Aria  
16 Khiabani.

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

21 Thank you. Please be seated and please  
22 state and spell your name.

23 THE WITNESS: Aria Khiabani, A-r-i-a,  
24 K-h-i-a-b-a-n-i

25 MR. CHRISTIANSEN: May I proceed, Your

007738



1 Honor?

2 THE COURT: Please.

3 DIRECT EXAMINATION OF ARIA KHIABANI

4 BY MR. CHRISTIANSEN:

5 Q. Good morning, Aria.

6 A. Good morning.

7 Q. Tell the ladies and gentlemen of the  
8 jury -- Mr. Marshal is going to fix the microphone  
9 for you.

10 A. Oh, thank you.

11 Q. Where is it that you currently reside,  
12 Aria?

13 A. I live in Montreal, Canada.

14 Q. And with whom do you reside?

15 A. With my uncle and my aunt, Babak Barin  
16 and Marie-Claude Rigaud.

17 Q. The English version; right?

18 And who all lives in the house with you,  
19 Babak, and Marie-Claude?

20 A. So Babak and Marie-Claude, and they have  
21 four kids. So Nakesa, Noah, Zacharia, and Isaiah,  
22 and my brother and I.

23 Q. Where is it in the house in Montreal  
24 that you live?

25 A. I live in the garage, and my brother

007739

1 lives in the basement.

2 Q. They've been made in -- converted?

3 A. Yeah.

4 Q. Okay. Go back in time with me to  
5 January of 2017. Where did you live then?

6 A. Here in Las Vegas.

7 Q. And who was in your immediate family?

8 A. My mom, Katy Barin; my dad, Kayvan  
9 Khiabani; then me and my brother.

10 Q. I've got some pictures. I'll show them  
11 to you.

12 MR. CHRISTIANSEN: This has been  
13 admitted as 259A, Your Honor. If I can do this  
14 upside down.

15 Mr. Marshal, is the TV on?

16 THE MARSHAL: It is.

17 BY MR. CHRISTIANSEN:

18 Q. Is this your family, Aria?

19 A. Yeah. Yeah.

20 Q. Who's the youngest, I guess, on the  
21 right side of the photograph? Who's the youngest?

22 A. The youngest one in the family?

23 Q. Yes.

24 A. My brother, Keon Khiabani.

25 Q. And how long ago was this photograph

007740

1 taken?

2 A. Oh, I'd say a little more than a year  
3 ago, maybe two years ago.

4 Q. Okay. In January of 2017, how old would  
5 your dad, Kayvan, have been?

6 A. 52.

7 Q. 51, 52?

8 A. 51, 52, yes.

9 Q. Okay. How about mom?

10 A. 47.

11 Q. If I could sort of direct your attention  
12 to the end of January, do you recall learning that  
13 your mom had been -- was ill?

14 A. Yeah. Yeah, my mom called me up to her  
15 room, and she said -- she told me first and then  
16 my brother that she was diagnosed with -- so first  
17 she just said she was diagnosed with cancer. And  
18 then I asked what kind, and she told me.

19 Q. We're going to use that as sort of our  
20 first watermark in time when we talk today. And I  
21 want to talk to you about before that period of  
22 time. Okay?

23 A. Okay.

24 Q. What did your dad do here in Las Vegas?

25 A. He was a hand surgeon, a plastic

007741

1 surgeon, a researcher and professor of medicine at  
2 UNR Medical School.

3 Q. Where were you born?

4 A. I was born in Montreal, Canada.

5 Q. When was it that you came here to Las  
6 Vegas?

7 A. When I was roughly two years old.

8 Q. Before your memory kicks in?

9 A. Yeah, yeah, for sure. Definitely.

10 Q. Did you attend school here in Clark  
11 County?

12 A. Yes.

13 Q. Where were you -- I guess last year in  
14 January, tell the ladies and gentlemen of the jury  
15 what year of school you would have been in.

16 A. Last year in January, I was a sophomore  
17 in high school.

18 Q. When is your birthday, Aria?

19 A. February 2nd, 2001.

20 Q. So a sophomore at what high school? I'm  
21 sorry.

22 A. I was at W. Clark High School, here  
23 in -- it's a magnet school in the district. I was  
24 in the math and science program. So high math and  
25 high science and applied technology.

007742

1 Q. Help those of us that don't understand  
2 what a magnet school is because we're too old.  
3 Tell me what a magnet school is and how it worked  
4 at Clark where you were attending school.

5 A. So magnet schools were created -- I'm  
6 not sure when, but they were like a place where  
7 smarter and more, like, invested kids could go and  
8 learn about things that they wanted to learn.  
9 There were some for music; there were some for  
10 engineering or bio med and so on.

11 So I went to arguably one of the hardest  
12 ones to get into, which was Clark. They had the  
13 best math and science program, and they were  
14 sending kids to the best universities -- so like  
15 the Ivy League schools like Harvard and Yale --  
16 from Vegas, which was really, really awesome.

17 So I went there. And you had to apply  
18 and you had to have a certain GPA. And, like  
19 thousands of kids applied, and they accepted only,  
20 like, 150, 125 kids.

21 Q. What was the reason -- who wanted you to  
22 go to Clark? Ask that question first.

23 A. My mom and my dad -- my mom and dad  
24 wanted me to go there, and they told me why. And  
25 then I wanted to go there really badly. That's

007743

1 ultimately why I went there.

2 Q. What were the reasons that you and your  
3 family wanted you to go to Clark?

4 A. Like, the culture at Clark was, like, a  
5 lot of really, really motivated kids who had,  
6 like, really big dreams and, like, maybe not the  
7 means to get there or the money, but they had --  
8 they had really big goals and they studied  
9 extremely hard.

10 And my parents thought that would be a  
11 good place for me to learn, so I could learn a lot  
12 of good lessons and learn what it was like to  
13 really fight for what you want to get, because  
14 that's ultimately what my parents did.

15 So they sent me to Clark because it had  
16 the best version of that. It's a huge school,  
17 over 3,000 kids. But it was really good to meet  
18 everybody, meet people from different backgrounds  
19 and kind of be able to learn in that environment,  
20 that the kids were really pushing to, like, change  
21 the world and go on to great things.

22 Q. Great. Back in -- we're still early  
23 January timeframe. Okay? Where did you intend to  
24 finish high school or graduate?

25 A. Clark High School.

007744

1 Q. And where, from your perspective, were  
2 you hoping to move on to from Clark High School?

3 A. I was -- I was at that time sort of  
4 honing in on going to U Penn, which was an Ivy  
5 League school for -- I wanted to go for business  
6 and finance and for math. Yeah, that's where I  
7 was shooting to go.

8 Q. All right. Same timeframe. Tell the  
9 ladies and gentlemen about Keon. They've seen a  
10 very brief video deposition last week that I took  
11 of your brother a few months back.

12 Back in January, where was Keon  
13 attending school?

14 A. Keon had just started. He was a  
15 freshman at Clark High School also. He was in the  
16 academy of finance. Yeah.

17 Q. And Keon is your younger brother. Does  
18 Keon have any unique qualities about himself that  
19 are different from you?

20 A. Yeah. We're two completely different  
21 people. So my brother has a strong form of ADHD,  
22 so he struggles in learning environments and in  
23 the classroom and just in general. Like, it's  
24 hyperactive -- attention-deficit/hyperactive  
25 disorder.

007745

1           So he's -- like, ever since he was a  
2 kid, he was always a little different. He thought  
3 differently and he thinks outside the box, but it  
4 just didn't really work in the classroom. It was  
5 hard for him to learn. So from there, we're both  
6 really different, but we get along pretty well.

7           Q.    Okay. January, early January 2017, what  
8 was your mom's occupation? What did she do for a  
9 living?

10          A.    She was a dentist.

11          Q.    Where was her practice at?

12          A.    It was in Village Center Circle in  
13 Summerlin.

14          Q.    You told us your dad worked at the  
15 university and was a hand and plastic surgeon?

16          A.    Yes.

17          Q.    How long had your folks been married  
18 last January? 18, 19 years?

19          A.    Yeah, that sounds about right. Yeah.

20          Q.    Okay. Do you know when your folks'  
21 anniversary is?

22          A.    Sometime in September, I think.

23          Q.    October 23rd?

24          A.    October 23rd. Yeah. Same day as their  
25 first date actually, yeah.

007746



1 Q. All right. And if you know, what was  
2 the notion behind Keon getting in and going to the  
3 magnet school even with his -- some of his special  
4 needs?

5 A. So when I went there, my parents wanted  
6 him to follow me so he could be in the same place  
7 for a while so they could start with his roots  
8 because they didn't know, like, with his ADHD how  
9 it would be for him to learn and so on. And so  
10 they trusted me with that.

11 So they said you can go where Aria is  
12 going, and they still firmly believed that  
13 Clark -- although it was, like, 25 minutes from  
14 our house, it started at, like, 7:00 in the  
15 morning and we would leave at 6:15 or so on, but  
16 they really believed that he should go there so he  
17 could be with me, and together I could set up,  
18 like, a base for him so he could have good  
19 friends, good teachers, and help him with like --  
20 with school and homework since I had already been  
21 there for, like, two years.

22 Q. What was the intent -- where was the  
23 intent for Keon to graduate from high school back  
24 in January of 2017?

25 A. Clark, Clark High School.

007747

1 Q. I'm going to show you, Aria, a picture  
2 that's been entered. I think it is 259B, like  
3 boy. It's just sort of a -- well, tell me what it  
4 is.

5 A. So it was the same day as the last  
6 picture. We all went for family photos, and  
7 that's just in our neighborhood. And so we did a  
8 photo where my brother and I are kind of looking  
9 at my mom and dad while they're, like, flirting.  
10 Right? They're, like, holding hands. Not really  
11 kissing, just looking into each other eyes. So  
12 look at my face, I'm like tsk, tsk, and my brother  
13 is just smiling. It was a good setup shot that we  
14 did.

15 Q. Tell us about your parents' relationship  
16 before your mom was ill?

17 A. Oh. They were, like -- they were the  
18 best team I've ever seen in my whole life. Like,  
19 whether it was professionally or romantically or  
20 in terms of raising kids or as partners, like,  
21 they worked really well together. Right? And  
22 they knew each other's strengths and weaknesses.  
23 Yeah, just super efficient, really -- they  
24 raised -- they raised me and my brother the way we  
25 are today. So I'm forever grateful. But they

007748

1 were really -- really, really tight team. They  
2 worked really well together.

3 Q. Great. Do you know how it was your  
4 parents met?

5 A. Yeah. It's a crazy story.

6 Q. Let's hear it.

7 A. Okay. So my parents met at McGill  
8 University in Montreal. And there was always a  
9 running -- my mom's Iranian. Right? And the  
10 culture that dates back, it's like, oh, you need  
11 to marry, like, a guy who's going to become a  
12 doctor and so on and so forth. And so -- and my  
13 mom always took it as a joke.

14 But then one day her friend came up to  
15 her and said, "I found the guy. He's a  
16 good-looking Iranian dude, and he's trying to  
17 become a doctor."

18 So she was, like, "Oh, okay. Whatever."

19 And at the time my dad had a girlfriend  
20 when they met. And he met my mom, dumped her, and  
21 then they started -- they started talking.

22 And so my dad lived on the east side of  
23 town and my mom lived on the west side of town.  
24 And so, like, they were really far away from each  
25 other, and neither of them had a car. But they

007749

1 would still -- they would meet at the lab, right,  
2 because they were both at university. And they  
3 would, like, spend hours and hours, like,  
4 sleepless nights, just, like, talking and  
5 researching and so on and so forth, flirting back  
6 and forth. Yeah, that's how they met.

7 Q. Okay. You talked about the east and the  
8 west side of town.

9 Where your father lived, was it -- what  
10 kind of neighborhood did your father live in when  
11 your parents met?

12 A. It was not the best -- yeah, not a good  
13 part of town. At least back then it was the  
14 rough -- rougher side of town, poorer side of  
15 town.

16 Q. Aria, if you know, can you explain to  
17 the ladies and gentlemen of the jury how your  
18 father came to be in Montreal and why it was he  
19 lived in the part of town in which he did reside  
20 when he met your mother?

21 A. Yeah, absolutely.

22 My dad was born in Tehran, Iran. And  
23 when he was roughly 17, there was the  
24 revolution -- the Iranian revolution. And so he  
25 knew that -- he wanted to -- he wanted to do good

007750