

Case No. _____

In the Supreme Court of Nevada

FELICE J. FIORE and SPEEDVEGAS, LLC,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT of the State
of Nevada, in and for the County of Clark; and THE
HONORABLE NANCY L. ALLF, District Judge,

Respondents,

and

ESTATE OF GIL BEN-KELY by ANTONELLA BEN-KELY,
the duly appointed representative of the Estate and
as the widow and heir of Decedent GIL BEN-KELY;
SHON BEN-KELY, son and heir of decedent GIL BEN-
KELY; NATHALIE BEN-KELY-SCOTT, daughter and
heir of the decedent GIL BEN-KELY, GWENDOLYN
WARD, as Personal Representative of the ESTATE OF
CRAIG SHERWOOD, deceased; GWENDOLYN WARD,
Individually, and as surviving spouse of CRAIG
SHERWOOD, deceased; GWENDOLYN WARD, as Mother
and Natural Guardian of ZANE SHERWOOD,
surviving minor child of CRAIG SHERWOOD, decease,

Real Parties in Interest.

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**PETITIONERS' APPENDIX
VOLUME 4
PAGES 751-1000**

DANIEL F. POLSENBERG (SBN 2376)
ABRAHAM G. SMITH (SBN 13,250)
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Pkwy., Suite 600
Las Vegas, Nevada 89169

BRENT D. ANDERSON (SBN 7977)
JAMES D. MURDOCK, II (*pro hac vice*)
TAYLOR ANDERSON, LLP
1670 Broadway, Suite 900
Denver, Colorado 80202

Attorneys for Petitioners

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CERTIFICATE OF SERVICE

I certify that on October 7, 2021, I submitted the foregoing
“Petitioners’ Appendix” for filing *via* the Court’s eFlex electronic filing
system. Electronic notification will be sent to the following:

William R. Brenske
Jennifer R. Andreevski
Ryan D. Krametbauer
BRENSKE ANDREEVSKI & KRAMETBBAUER
3800 Howard Hughes Parkway
Suite 500
Las Vegas, Nevada 89169

*Attorneys for Real Parties in Interest
Estate of Gil Ben-Kely by Antonella Ben-
Kely, the duly appointed representative
of the Estate and as the widow and heir
of Decedent Gil Ben-Kely; Shon Ben-
Kely, son and heir of decedent Gil Ben-
Kely; Nathalie Ben-Kely-Scott, daughter
and heir of the decedent Gil Ben-Kely*

Corey M. Eschweiler
ER INJURY ATTORNEYS
4795 South Durango
Las Vegas, Nevada 89147

Rahul Ravipudi
Paul A. Traina
Ian P. Samson
PANISH SHEA & BOYLE, LLP
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148

*Attorneys for Real Parties in
Interest Gwendolyn Ward, as
Personal Representative of the
Estate of Craig Sherwood,
deceased; Gwendolyn Ward,
individually, and as surviving
spouse of Craig Sherwood,
deceased; Gwendolyn Ward, as
Mother and Natural Guardian of
Zane Sherwood, surviving minor
child of Craig Sherwood, deceased*

I further certify that I served a copy of this document by mailing a
true and correct copy thereof, postage prepaid, at Las Vegas, Nevada,
addressed as follows:

The Honorable Nancy L. Allf
DISTRICT COURT JUDGE – DEPT. 27
200 Lewis Avenue
Las Vegas, Nevada 89155

Respondent

/s/ Jessie M. Helm
An Employee of Lewis Roca Rothgerber Christie LLP

AFFIDAVIT OF FELICE J. FIORE, JR.

STATE OF CONNECTICUT }

COUNTY OF FAIRFIELD }

Felice J. Fiore, Jr., being duly sworn upon his oath, hereby deposes and says:

1. I am over 18 years of age and have personal knowledge of the facts stated in this affidavit. If called as a witness I would testify under oath that each of the facts stated herein are true.

2. This affidavit is presented in support of the motions for summary judgment, or, in the alternative partial summary judgment, brought on my behalf against plaintiffs Estate of Craig Sherwood, Gwendolyn Ward, and Zane Sherwood; and against plaintiffs Estate of Gil Ben-Kely, Antonella Ben-Kely, Shon Ben-Kely, and Nathalie Ben-Kely Scott; and on behalf of SpeedVegas, LLC, against plaintiffs Estate of Craig Sherwood, Gwendolyn Ward, and Zane Sherwood in the consolidated case of *Estate of Ben-Kely et al. vs. SpeedVegas, LLC* (hereinafter "SpeedVegas") et al., Case No. A-17-757614-C.

3. I am a named defendant in this consolidated action, having been sued by the Estate of Craig Sherwood and decedent Craig Sherwood's heirs, and by the Estate of Gil Ben-Kely and his heirs.

4. I am informed and believe that Gil Ben-Kely ("Mr. Ben-Kely") was employed by SpeedVegas as a driving instructor/coach prior to and on the date of February 12, 2017. *See, e.g.*, Ben-Kely Plaintiffs' Fifth Amended Complaint ("5AC") at 2:22-27; 14:12-13; and Sherwood Complaint, 9:10-11.

5. I am informed and believe that on February 12, 2017, Craig Sherwood ("Sherwood"), a customer of SpeedVegas, was driving a Lamborghini Aventador at SpeedVegas, with Ben-Kely seated next to him. *See, e.g.*, 5AC at 2:17-26. During the driving session, the Lamborghini crashed and both Sherwood and Ben-Kely were killed ("Incident"). *See, e.g.*, 5AC at 4:14-16; 5:8-9.

6. I was a member (shareholder) of the SpeedVegas LLC at the time of the Incident.

7. I was also a member of SpeedVegas's Board of Directors at the time of the Incident and I received compensation for my services as a member of SpeedVegas's Board of Directors.

8. I owned the subject Lamborghini Aventador and leased it to SpeedVegas in my capacity as a member of the SpeedVegas LLC. I was authorized by SpeedVegas to do so in this capacity.

9. I have never waived the protection from individual liability provided by NRS Chapter 86 for the debts or liabilities of SpeedVegas in any written instrument.

1 10. I was not, at the time I leased the subject Lamborghini Aventador to SpeedVegas, a merchant
 2 engaged in the business of supplying goods of the kind (automobiles) involved in the case. *See also*
 3 Deposition ("Depo") of Mr. Fiore, 59:20-25; Ex. I.

4 11. My occupation up to the time of the Incident was a financial advisor and investment manager.

5 12. I have never been a merchant engaged in the business of supplying goods of the kind (automobiles)
 6 involved in the case. *See also id.*

7 13. Customers of SpeedVegas paid by the lap to drive a vehicle in SpeedVegas' fleet, including the
 8 subject Lamborghini Aventador, on SpeedVegas' track. They were accompanied by a SpeedVegas
 9 employee serving as a "coach" and could not remove the vehicle from the premises.

10 14. I did not receive notice of a defect in the subject Lamborghini Aventador prior to February 12,
 11 2017, and the deaths of Gil Ben-Kely and Craig Sherwood. I am informed and believe that the recall notice
 12 issued by the National Highway and Traffic Safety Administration (NHTSA) was not issued until after the
 13 date of this accident. Attached as Exhibit 2 is a true and correct copy of the recall notice from
 14 Lamborghini, dated February 28, 2017, and its envelope. I did not first receive notice of the NHTSA recall
 15 until on or after March 9, 2017, as indicated in the postmark of the envelope for the notice. *See Depo of*
 16 *Mr. Fiore, 102:4-15; Ex. 1.*

17 15. I swear or affirm under penalty of perjury pursuant to the laws of the State of Nevada that the
 18 foregoing is correct.

19 Further affiant sayeth not.

20
 21 Executed on May 6th 2021.

Felice J. Fiore, Jr.
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Subscribed and sworn to before me

This 6th day of May, 2021.



Deirdre Nealon
 Notary Public in and for said
 County and State: FAIRFIELD COUNTY, CONNECTICUT

DECLARATION OF REGINA ZERNAY

I, Regina Zernay, declare, as follows:

1. I am an attorney duly licensed to practice law in the State of California and admitted by Motion to practice in the above-referenced matter. I am an attorney at the law firm of Agajanian, McFall, Weiss, Tetreault & Crist, LLP, attorneys of record for defendant, SPEEDVEGAS, LLC (“SpeedVegas” or “defendant”). I have personal knowledge of the facts set forth herein and if called upon, I could and would competently testify thereto.
2. Attached hereto as Exhibit “1” is a true and correct copy of relevant portions from the transcript of the Deposition of Felice Fiore, Jr.
3. Attached hereto as Exhibit “3” is a true and correct copy of the Affidavit of Robert Barnard.
4. Attached hereto as Exhibit “4” is a true and correct copy of relevant portions from the transcript of the Deposition of Aaron Fessler.
5. Attached hereto as Exhibit “5” is a true and correct copy of relevant portions from the transcript of the Deposition of Martyn Thake.
6. Attached hereto as Exhibit “6” is a true and correct copy of relevant portions from the transcript of the Deposition of Robert Butler, Ph.D.
7. Attached hereto as Exhibit “7” is a true and correct copy of relevant portions from the transcript of the Deposition of Robert Banta.
8. Attached hereto as Exhibit “8” is a true and correct copy of relevant portions from the transcript of the Deposition of Cam Cope.
9. Attached hereto as Exhibit “9” is a true and correct copy of relevant portions from the transcript of the Deposition of Mark Arndt.
10. Attached hereto as Exhibit “10” is a true and correct copy of relevant portions from the transcript of the Deposition of Jack Ridenour.
11. Attached hereto as Exhibit “11” is a true and correct copy of relevant portions from the transcript of the Deposition of James Walker.

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1 12. Attached hereto as Exhibit "12" is a true and correct copy of relevant portions from the transcript
2 of the Deposition of Mariusz Ziejewski, Ph.D.

3 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true
4 and correct. EXECUTED this 14th day of May, 2021, at Los Angeles, California.

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6 /s/ Regina Zernay

Regina Zernay, Declarant
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Ward/Sherwood Plaintiffs' Complaint contains six causes of action against SpeedVegas: wrongful death, negligence, negligent hiring, respondeat superior, negligent products liability, and strict products liability. The uncontroverted evidence establishes, as a matter of law, that SpeedVegas cannot be held liable under any of these theories.

A. CLAIMS OF NEGLIGENCE

The SpeedVegas track was designed and constructed by Robert Barnard and Motorsports Services International. Undisputed Material Fact ("UMF") No. 1. SpeedVegas operated the driving experience facility where this fatal accident occurred. UMF No. 2. The subject Lamborghini Aventador involved in this accident was leased to SpeedVegas. UMF No. 3. Decedent Craig Sherwood was driving the subject Lamborghini Aventador at the time of his death (UMF No. 4) and was accompanied in the vehicle by decedent Gil Ben-Kely, an employee of SpeedVegas, who was acting as a coach (UMF No. 5). There is no evidence that the crash of the Lamborghini at the SpeedVegas driving experience track on February 12, 2017, was caused by a mechanical failure (UMF No. 6), modification to the vehicle (UMF No. 7) or improper maintenance (UMF No. 8).

Although notice of a recall of the Lamborghini Aventador to correct a problem with the fuel evaporative canister was announced, such notice was not sent to owners, and Mr. Felice Fiore did not receive it, until after the date of this accident. UMF No. 9.

There is no evidence that the crash of the Lamborghini Aventador at the SpeedVegas driving experience track on February 12, 2017, was caused by a negligently designed or constructed track (UMF No. 10), or negligently designed or constructed wall (UMF No. 11). There is no evidence that the fire following the crash of the Lamborghini Avantador was the result of a negligently designed or constructed track (UMF No. 12) or wall (UMF No. 13).

There is no evidence that the crash of the Lamborghini Aventador at the SpeedVegas driving experience track on February 12, 2017, was caused by negligence on the part of the in-car driving coach, Mr. Gil Ben-Kely. UMF No. 14. There is no evidence that the death of Mr. Sherwood was the result of inadequate or improper fire fighting equipment or the negligent use of such equipment in efforts to

1 suppress the vehicle fire (UMF No. 15) or of negligent track operations (UMF No. 16).

2 Based upon these undisputed material facts, there is no basis for a cause of action sounding in
3 negligence (including causes of action for negligence, negligent hiring, respondeat superior, negligent
4 products liability and wrongful death) against SpeedVegas.

5 **B. STRICT PRODUCTS LIABILITY**

6 Plaintiffs' seventh cause of action is for strict products liability against SpeedVegas, Automobili
7 Lamborghini America, LLC (Lamborghini America") and Mr. Fiore. Lamborghini designed, manufactured
8 and assembled the subject 2015 Aventador Roadster that crashed on February 12, 2017. UMF No. 17.

9 Customers of SpeedVegas paid by the lap to drive a vehicle in SpeedVegas' fleet, including the
10 subject Lamborghini Aventador, on SpeedVegas' track. They were accompanied by a SpeedVegas
11 employee serving as a "coach" and could not remove the vehicle from the premises. UMF No. 18.

12 In order for liability to be imposed upon a party based upon strict products liability, that party must
13 be a manufacturer of the product, a distributor of the product, or a seller who can be regarded as a
14 merchant engaged in the business of supplying goods of the kind involved in the case. Nevada Jury
15 Instruction 7.1. SpeedVegas was not the manufacturer or distributor of the subject vehicle and did not sell,
16 rent, lease or otherwise transfer possessory rights to the vehicle to Mr. Sherwood. Therefore, SpeedVegas
17 cannot be found strictly liable in tort for any alleged defect in the vehicle.

18 **II. STATEMENT OF RELEVANT FACTS**

19 SpeedVegas, LLC ("SpeedVegas"), operated a facility where members of the public could drive
20 exotic and high performance automobiles on a high speed closed road course ("driving experiences").
21 They were accompanied by a "coach" sitting in the front passenger seat who would guide the customer
22 through the experience in an effort to keep them and others on the track safe.

23 Gil Ben-Kely ("Ben-Kely") was employed by SpeedVegas as a driving instructor/coach. *See*
24 Plaintiffs' Complaint at 9:10-11. On February 12, 2017, Craig Sherwood ("Sherwood"), a customer of
25 SpeedVegas, was driving a Lamborghini Aventador at the facility, with Ben-Kely seated next to him. *See*
26 Complaint, *Id.* During the driving session, the Lamborghini crashed and Mr. Sherwood was killed
27 ("Incident"). *See* Complaint at 12:7-8.

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III. STATEMENT OF UNDISPUTED MATERIAL FACTS

1. The SpeedVegas track was designed and constructed by Robert Barnard and Motorsports Services International. Sherwood Complaint, 4:17-18; Ex. 3 – Affidavit of Robert Barnard; Ex. 4 – Depo of Aaron Fessler, 234:4-6; Ex. 5 – Depo of Martyn Thake, 149:4-25.
2. SpeedVegas operated the driving experience facility where this fatal accident occurred. Sherwood Complaint, 4:19-20.
3. The subject Lamborghini Aventador involved in this accident was leased to SpeedVegas. Sherwood Complaint, 6:25-26.
4. Decedent Craig Sherwood was driving the subject Lamborghini Aventador at the time of his death. Sherwood Complaint, 9:21-22; 11:10.
5. Decedent Craig Sherwood was accompanied in the vehicle by decedent Gil Ben-Kely, an employee of SpeedVegas, who was acting as a coach. Sherwood Complaint, 9:10-11
6. There is no evidence that a mechanical failure in the subject Lamborghini Aventador caused or was a contributing factor in the February 12, 2017, crash that caused the deaths of Gil Ben-Kely and Craig Sherwood. Ex. 6 – Depo of Robert Butler, Ph.D., 284:7-11; Ex. 5 – Depo of Martyn Thake, 33:10-13; Ex. 7 – Depo of Robert Banta, 194:3-15; Ex. 8 – Depo of Cam Cope, 272:12-22; Ex. 9 – Depo of Mark Arndt, 284:11-17; 290:11-17.
7. There is no evidence that any modifications made to the subject Lamborghini Aventador caused or were a contributing factor in the February 12, 2017, crash that caused the deaths of Gil Ben-Kely and Craig Sherwood. Ex. 6 – Depo of Robert Butler, Ph.D., 281:13-16; Ex. 5 – Depo of Martyn Thake, 29:19-22; Ex. 8 – Depo of Cam Cope, 274:7-10; Ex. 10 – Depo of Jack Ridenour, 147:13-20.
8. There is no evidence that improper maintenance of the subject Lamborghini Aventador caused or was a contributing factor in the February 12, 2017, crash that caused the deaths of Gil Ben-Kely and Craig Sherwood. Ex. 7 – Depo of Robert Banta, 45:14-16; 195:6-13; Ex. 8 – Depo of Cam Cope, 272:12-22; Ex. 10 – Depo of Jack Ridenour, 149:17-24.
9. Felice Fiore, Jr. did not receive notice of a defect in the subject Lamborghini Aventador prior to February 12, 2017, and the deaths of Gil Ben-Kely and Craig Sherwood. Fiore Affidavit at ¶ 14.

10. There is no evidence that the crash of the Lamborghini Aventador at the SpeedVegas driving experience track on February 12, 2017, was caused by a negligently designed or constructed track. Ex. 9 – Depo of Mark Arndt, 290:18 - 291:7. Ex. 8 – Depo of Cam Cope, 275:18 - 276:18; 277:17-24. Ex. 10 – Depo of Jack Ridenour, 148:7-13.
11. There is no evidence that the crash of the Lamborghini Aventador at the SpeedVegas driving experience track on February 12, 2017, was caused by a negligently designed or constructed wall. Ex. 9 – Depo of Mark Arndt, 277:17-24; 290:18 - 291:7. Ex. 6 – Depo of Robert Butler, Ph.D., 24:19-21. Ex. 7 – Depo of Robert Banta, 45:7-10; 50:24 - 51:2. Ex. 10 – Depo of Jack Ridenour, 148:7-13.
12. There is no evidence that the fire following the crash of the Lamborghini Avantador was the result of a negligently designed or constructed track. Ex. 9 – Depo of Mark Arndt, 290:18-291:7. Ex. 8 – Depo of Cam Cope, 277:17-24; 279:3-17.
13. There is no evidence that the fire following the crash of the Lamborghini Avantador was the result of a negligently designed or constructed wall. Ex. 9 – Depo of Mark Arndt, 289:6-23; 277:17-24; 279:3-17. Ex. 8 – Depo of Cam Cope, 277:17-24. Ex. 5 – Depo of Martyn Thake, 41:2-6.
14. There is no evidence that the crash of the Lamborghini Aventador at the SpeedVegas driving experience track on February 12, 2017, was caused by negligence on the part of the in-car driving coach, Mr. Gil Ben-Kely. Ex. 8 – Depo of Cam Cope, 291:10-15.
15. There is no evidence that the death of Mr. Sherwood was the result of inadequate or improper fire fighting equipment or the negligent use of such equipment in efforts to suppress the vehicle fire. Ex. 10 – Depo of Jack Ridenour, 148:14 - 149:7.
16. There is no evidence that the death of Mr. Sherwood was the result of negligent track operations. Depo of Robert Banta, 194:3-6. Depo of Robert Butler, Ph.D., 24:22-25.
17. Lamborghini designed, manufactured and assembled the subject 2015 Aventador Roadster that crashed on February 12, 2017. Complaint, 16:23-25.
18. Customers of SpeedVegas paid by the lap to drive a vehicle in SpeedVegas' fleet, including the subject Lamborghini Aventador, on SpeedVegas' track. They were always accompanied by a SpeedVegas employee serving as a "coach" and could not remove the vehicle from the premises.

1 Fiore Affidavit at ¶ 13.

2 **IV. ARGUMENT**

3 **A. STANDARD FOR SUMMARY JUDGMENT**

4 Under NRCP 56, a party may move for summary judgment, “identifying each claim or defense – or
5 the part of each claim or defense – on which summary judgment is sought.” NRCP 56. “The court shall
6 grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and
7 the movant is entitled to judgment as a matter of law.” *Id.* Summary judgment is appropriate ““when the
8 pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly
9 before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled
10 to judgment as a matter of law.”” *Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 602, 172
11 P.3d 131, 134 (2007).

12 On summary judgment, the evidence must be viewed in the light most favorable to the nonmoving
13 party. *See Palmieri v. Clark Cty.*, 131 Nev. 1028, 1038, 367 P.3d 442, 449 (Nev. App. 2015). However, to
14 defeat summary judgment, “the nonmoving party must transcend the pleadings and, by affidavit or other
15 admissible evidence, introduce specific facts that show a genuine issue of material fact.” *Id.* at 603. A
16 genuine issue of material fact ““is one where the evidence is such that a reasonable jury could return a
17 verdict for the non-moving party.”” *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87
18 (2002) (internal citations omitted). “When a motion is made and supported by evidence and affidavits, an
19 adverse party may not rest on the mere allegations and denials of his pleadings, but must set forth specific
20 facts showing that there is a genuine issue for trial.” *Ferreira v. P.C.H. Inc.*, 105 Nev. 305, 306, 774 P.2d
21 1041, 1042 (1989). “Neither mere conjecture nor hope of proving the allegations of a pleading is sufficient
22 to create a factual issue.” *Howard Hughes Medical Institute v. Gavin*, 96 Nev. 905, 909, 621 P.2d 489, 491
23 (1980).

24 **B. THERE IS NO EVIDENCE THAT SPEEDVEGAS ACTED NEGLIGENTLY** 25 **WITH REGARD TO ITS USE AND OPERATION OF THE LAMBORGHINI**

26 Plaintiffs’ second cause of action is for negligence against several defendants, including
27 SpeedVegas. They make the following allegations of negligence and SpeedVegas and others:

28 88. Defendants breached their duty of care by, *inter alia*, designing, constructing,

1 and operating an unreasonably dangerous racetrack and vehicle; and failing to
2 utilize, employ, and maintain adequate fire safety and other safety precautions and
3 procedures.

4 Sherwood Complaint, 12:25-27.

5 SpeedVegas did not design or construct the track; that was the work of Robert Barnard and
6 Motorsports Services International. UMF No. 1. It leased the Lamborghini Aventador and used it in its
7 business, providing customers an opportunity to drive it on the SpeedVegas track with a “coach” employed
8 by SpeedVegas who provided instruction, guidance, and a measure of safety.

9 Plaintiffs’ third cause of action against SpeedVegas is for negligent hiring, retention, training and
10 supervision. They make the following allegations:

11 94. SPEEDVEGAS hired, retained, and supervised employees who were unfit for
12 their jobs, unqualified, and/or ignorant of reasonable procedures regarding vehicle
13 fire safety, vehicle maintenance and repair, and racetrack operations and
14 management.

15 Sherwood Complaint, 13:13-16.

16 Plaintiff’s sixth cause of action against SpeedVegas and others is for negligent products liability.
17 They allege:

18 123. Lamborghini, SPEEDVEGAS, and Fiore owed Plaintiffs and Craig a duty to
19 exercise reasonable care in the design, testing, manufacture, assembly, sale,
20 distribution, and servicing of the Roadster, including a duty to assure that the
21 subject vehicle did not cause Craig, other users, bystanders, or the public
22 unnecessary injury or death.

23 124. Upon information and belief, the cause of fire was the ignition of released fuel
24 vapors from the Roadster's dual fuel tanks/system located in the engine
25 compartment just aft of the occupant's seat.

26 Sherwood Complaint. 15:3-8.

27 Plaintiffs’ sixth cause of action is for negligent products liability against Mr. Fiore and others.
28 They allege that:

1 123. Lamborghini, SPEEDVEGAS, and Fiore owed Plaintiffs and Craig a duty to
2 exercise reasonable care in the design, testing, manufacture, assembly, sale,
3 distribution, and servicing of the Roadster, including a duty to assure that the
4 subject vehicle did not cause Craig, other users, bystanders, or the public
5 unnecessary injury or death.

6 Sherwood Complaint, 17:3-6.

7 There is, however, no evidence to support any of these allegations. UMFs 6, 7, 8, 10, 11, 12, 13,
8 14, 15, 16.

9 **1. THE ACCIDENT WAS NOT CAUSED BY A MECHANICAL**
10 **FAILURE, MODIFICATION TO OR FAILURE TO**
11 **PROPERLY MAINTAIN THE LAMBORGHINI**
12 **AVENTADOR**

13 The parties have designated their expert witnesses and their depositions have been taken. The
14 Ward/Sherwood plaintiffs designated experts in this case who have given deposition testimony, including
15 Cam Cope, Mark Arndt and Mariusz Ziejewski, Ph.D.. Mr. Cope was designated by the Sherwood
16 plaintiffs to testify concerning fire cause and origin, fire progression, the standard of care for automotive
17 safety, including fire safety, and accident reconstruction, including speeds and forces involved in the crash.
18 In deposition Mr. Cope testified that when the Lamborghini was delivered to SpeedVegas by Mr. Fiore,
19 Mr. Cope was unfamiliar with any problems with the car. Ex. 8 – Depo of Mr. Cope, 272:12-22. He had
20 no criticism regarding the operation of the car's brakes. *Id.*, 273:1-9. He had no opinions that any
21 modifications to the car caused or contributed to the accident. *Id.*, 274:7-10.

22 Mr. Arndt was designated by the Sherwood plaintiffs to testify concerning failure analysis, design
23 analysis, the nature and composition of components of the subject Lamborghini Aventador, including the
24 fuel tank and the fuel system, the defects in such components, and causation of Mr. Sherwood's death
25 from those defects. In deposition Mr. Arndt testified that he had no opinion about whether SpeedVegas
26 omitted performing any service or maintenance to the Lamborghini that caused or contributed to the crash.
27 Ex. 9 – Depo of Mr. Arndt, 284:11-17. He had no opinions regarding modifications made by SpeedVegas
28 to the subject Lamborghini and if they caused or contributed to the accident. *Id.*, 284:4-10. He further

1 testified that he did not have any opinions that there were any mechanical issues with the Lamborghini that
2 were a factor in the driver (Mr. Sherwood) maintaining control of the vehicle before it impacted the wall.
3 *Id.*, 290:11-17.

4 The Ben-Kely plaintiffs designated Robert Butler, Ph.D., P.E.; Martyn C. Thake; and Robert D.
5 Banta, among others, as liability and causation experts. Dr. Butler was retained to reconstruct the accident
6 and offer opinions regarding vehicle brakes and other topics. He testified that he was not of the opinion
7 that there was a mechanical defect or failure in the Lamborghini that resulted in the subject accident. Ex. 6
8 – Depo of Dr. Butler, 284:7-11. It was also his opinion that the installation of an aftermarket wing on the
9 back of the Lamborghini did not play a part in the accident. *Id.*, 281:13-16.

10 Mr. Thake was retained by the Ben-Kely plaintiffs to offer opinions regarding track design and
11 safety at SpeedVegas. In deposition Mr. Arndt testified that he did not have any opinions regarding post-
12 production modifications that were made to the Lamborghini. Ex. 5 – Depo of Mr. Thake, 29:19-22. He
13 had no opinions regarding the mechanical condition of the Lamborghini at the time of the crash. *Id.*,
14 33:10-13.

15 Mr. Banta was retained by the Ben-Kely plaintiffs to offer opinions regarding the subject
16 Lamborghini, its recall by the manufacturer, and fuel fed fires, among others. In deposition Mr. Banta
17 testified that he had no opinions regarding maintenance of the vehicle. Ex. 7 – Depo of Mr. Banta, 45:14-
18 16; 195:6-10. Mr. Banta had no opinions that SpeedVegas or Mr. Fiore did anything wrong. *Id.*, 194: 14-
19 19; 195:11-13. He was not critical of Mr. Fiore as the owner of the Lamborghini. *Id.*, 196:8-11.

20 Defendant Lamborghini America designated Jack Ridenour, P.E., to offer opinions regarding the
21 design of the Lamborghini Aventador and fuel safety systems. In deposition Mr. Ridenour testified that in
22 his opinion there was no evidence of any mechanical problems with the vehicle that caused it to lose
23 control and impact the wall. Ex. 10 – Depo of Ridenour, 146:25 - 147:11. In his opinion post production
24 modifications to the vehicle did not cause or contribute to the accident. *Id.*, 147:13-20.

25 Lamborghini America also designated James Walker, Jr. P.E. to offer opinions regarding accident
26 reconstruction, vehicle dynamics, stability, braking, steering and handling. In deposition Mr. Walker
27 testified that he did not identify any mechanical or functional issues with the car that would have
28 prevented it from being driven through the subject “S” curve without crashing. Ex. 11 – Depo of Walker,

1 213:2-13.

2 **C. THE ACCIDENT AND RESULTING FATALITIES WERE NOT**
3 **RELATED TO THE MANUFACTURER'S RECALL**

4 No expert witness has formed the opinion that the object of the recall of this model Lamborghini
5 caused the car to crash or catch fire after impact. Mr. Banta, the Ben-Kely plaintiffs' expert, testified that
6 the recall condition did not cause the crash. Ex. 7 – Depo of Mr. Banta, 39:6-25; 40:2-5. He also testified
7 that he does not hold the opinion that the recall condition caused the post-collision fire. *Id.*, 40:7-13.

8 Dr. Butler, an expert retained by the Ward/Sherwood plaintiffs, testified that he did not have an
9 opinion on whether the recall condition on the Lamborghini had any bearing on this case. Ex. 6 – Depo of
10 Mr. Butler, 231:14-20. Mr. Cam Cope, another expert retained by the Ward/Sherwood plaintiffs, testified
11 that in his opinion the recall had nothing to do with this crash and release of gasoline from the fuel tank.
12 Ex. 8 – Depo of Mr. Cope, 53:10-14.

13 Mr. Ridenour, Lamborghini America's expert, testified that in his opinion the reasons for the
14 manufacturer's recall of the Lamborghini did not cause or contribute to the accident or resulting fire. Ex.
15 10 – Depo of Ridenour, 147:20-25.

16 No expert witness in this case has offered an opinion that SpeedVegas did not properly maintain
17 the car, negligently made any modifications to it, or that a mechanical fault caused or contributed to the
18 accident. The uncontroverted evidence is that the vehicle's mechanical condition was non-contributory to
19 this accident and that the condition that precipitated the manufacturer's recall of the subject Lamborghini
20 had nothing to do with this accident.

21 **D. THE ACCIDENT AND RESULTING FATALITIES WERE NOT CAUSED**
22 **BY A NEGLIGENTLY DESIGNED OR CONSTRUCTED TRACK**

23 The track at SpeedVegas where this unfortunate accident occurred, was designed by defendant
24 Robert Barnard, not SpeedVegas, LLC. UMF No. 1.

25 The Sherwood plaintiffs allege that the SpeedVegas track was negligently designed and
26 constructed and that such negligence caused or contributed to the crash and death of Mr. Sherwood. This
27 allegation is not supported by the evidence. The Sherwood plaintiffs did not designate any expert witness
28 to offer opinion testimony regarding track design or construction, nor did they endorse any other party's

1 experts in those fields.

2 Mr. Arndt, the Sherwood plaintiffs' expert regarding failure and design analysis on the subject
3 Lamborghini Aventador as well as the cause of Mr. Sherwood's death, had no opinions regarding the
4 track's physical condition as a cause or contributing factor to the accident. Ex. 9 – Depo of Arndt, 290:18 -
5 291:7.

6 Mr. Cope, the Sherwood plaintiffs' expert regarding accident reconstruction and fire cause and
7 origin, testified in deposition that in his opinion the tire barrier positioned in front of the concrete wall
8 where the accident occurred was improperly constructed. However, he believed Mr. Sherwood survived
9 the impact with the tire barrier and wall (Ex. 8 – Depo of Cope, 275:18 - 276:18) despite its construction.
10 In his opinion, a different construction of the tire barrier would not have prevented the resulting fire. *Id.*,
11 277:17-24. In his opinion, the welds in the Lamborghini's fuel tank would have failed and there would
12 have been a gasoline fire even with a different construction of the tire barrier. *Id.*, 180:6-23. He did not
13 offer the opinion that had the tire barrier been constructed to the standards he described that Mr. Sherwood
14 would have survived the crash and fire. *Id.*, 277:17-24; 279:3-17.

15 Dr. Ziejewski was designated by the Sherwood plaintiffs to offer opinions regarding the
16 biomechanics of the crash and cause of death. In deposition, Dr. Ziejewski had no opinions regarding the
17 design of the SpeedVegas track or its operations. Ex. 12 – Depo of Ziejewski, 277:2-7.

18 Dr. Butler, the Ben-Kelys' expert for accident reconstruction and vehicle braking, testified in
19 deposition that he had no opinions regarding the design of the SpeedVegas track as it may relate to the
20 accident. Ex. 6 – Depo of Butler, 24:19-21.

21 Mr. Banta, the Ben-Kelys' expert on the Lamborghini recall and fuel fed fires, had no opinions
22 regarding the design of the SpeedVegas track. Ex. 7 – Depo of Banta, 45:7-10. In fact he had no opinions
23 regarding the cause of the crash. *Id.*, 50:24 - 51:2.

24 Mr. Thake, the Ben-Kelys' expert re track design and safety, had no opinion on the fire cause and
25 origin. Ex. 5 – Depo of Thake, 41:7-10. He testified that he was not going to offer any opinions that if the
26 wall had been designed differently, it would have changed the outcome of the accident. *Id.*, 41:2-6.

27 Mr. Ridenour, Lamborghini America's accident reconstruction expert, offered no criticisms of the
28 SpeedVegas tire barrier and wall where the accident occurred. Ex. 10 – Depo of Ridenour, 151:17-24;

1 152:16-25. He testified that he had no opinions that were critical of SpeedVegas. *Id.* 148:7-12.

2 **E. THERE IS NO EVIDENCE THAT THE ACCIDENT WAS THE RESULT**
3 **OF NEGLIGENT TRACK OPERATIONS OR EMPLOYEES**

4 The Sherwood plaintiffs allege in their complaint that SpeedVegas negligently hired, trained and
5 supervised employees responsible for vehicle fire safety, vehicle maintenance and repair, racetrack
6 operations and management. Complaint, 13:13-16. However, there is no evidence to support these claims
7 of negligence or that there was causation of injury.

8 Mr. Cope, the Sherwood plaintiffs' expert regarding accident reconstruction, had no criticisms of
9 Mr. Ben-Kely who was riding with Mr. Sherwood as a coach, regarding any efforts he may have made to
10 try and avoid the accident. Ex. 8 – Depo of Cope, 291:10-15.

11 Mr. Banta, the Ben-Kelys' expert on the Lamborghini recall and fuel fed fires, testified that he had
12 no opinion that SpeedVegas did anything wrong. Ex. 7 – Depo of Banta, 194:3-6.

13 Mr. Thake, the Ben-Kely's expert regarding track design and operations, had no opinion as to why
14 Mr. Sherwood, as the driver of the Lamborghini, lost control of the car (Ex. 5 – Depo of Thake, 35:6-10)
15 or crashed it into the wall (*Id.*, 39:24 - 40:3).

16 Mr. Butler, the Ben-Kelys' expert for accident reconstruction and vehicle braking, testified in
17 deposition that he had no opinions regarding SpeedVegas' track operations. Ex. 6 – Depo of Butler, 24:22-
18 25.

19 Dr. Ziejewski, the Sherwood plaintiffs' biomechanical expert, expressed no opinions regarding
20 track design, layout and safety. Ex. 12 – Depo of Ziejewski, 277:2-7. He also admitted that he did not
21 know why the accident occurred. *Id.*, 281:2-11.

22 Mr. Ridenour, Lamborghini America's accident reconstruction expert, testified in deposition that
23 had the SpeedVegas fire and safety crew and truck had the recommended 65 gallon water tank on board, it
24 would have made no difference in this case since the Las Vegas Fire Department had to apply nearly 1500
25 gallons of water to extinguish the fire. Ex. 10 – Depo of Ridenour, 148:14 - 149:7.

26 There is no evidence that this accident was the result of any mechanical failures or shortcomings
27 with the subject vehicle. Although the tire barrier and wall were criticized, no expert has offered the
28 opinion that Mr. Sherwood would have survived this accident if the tire barrier and wall were of different

1 construction. There is no evidence that track operations contributed to the accident or caused the death of
2 Mr. Sherwood. There is no evidence that an alleged failure to properly provision and train SpeedVegas’
3 fire and safety team would have prevented the death of Mr. Sherwood.

4 It is therefore proper to grant summary judgment as to causes of action for negligence (second),
5 negligent hiring, retention, training and supervision (third), respondeat superior (fourth), and negligent
6 products liability (sixth).

7 **F. PRODUCT LIABILITY CLAIMS FAIL AS A MATTER OF LAW**
8 **BECAUSE SPEEDVEGAS IS NOT A “SELLER” OF THE**
9 **LAMBORGHINI**

10 Plaintiffs’ seventh cause of action is for strict products liability against SpeedVegas, Automobili
11 Lamborghini America, LLC (“Lamborghini America”) and Mr. Fiore. It alleges the following facts against
12 those defendants:

13 138. Lamborghini, SPEEDVEGAS, and Fiore manufactured, designed, promoted
14 and/or sold the Roadster and its component parts to the public, knowing the
15 Roadster would be purchased and/or used without inspection for defects by the
16 general public.

17 Sherwood Complaint, 19:40-8.

18 Nevada has adopted the Restatement of Torts, holding that the end user of a product has a cause of
19 action against the manufacturer or distributor when an injury is caused by a product defect. *Shoshone*
20 *Coca-Cola Bottling Co. v. Dolinski*, 82 Nev. 439 (1966). In other words, product liability claims can only
21 be had against a “seller.” *Allison v. Merck*, 110 Nev. 762 (1994) (affirming summary judgment in favor of
22 a hospital because it is not a “seller” of defective vaccine administered to a patient). But SpeedVegas is
23 not a seller, manufacturer, or distributor of the Lamborghini, and thus not subject to a strict products
24 liability claim.

25 It is undisputed that SpeedVegas did not design, build or market the Lamborghini. UMF No.
26 17. Instead, it merely used the car to provide a track experience with a coach to people like Mr.
27 Sherwood. This is not enough to turn SpeedVegas into a “seller” of the Lamborghini such that is liable
28 under a strict products liability theory for any defects in the car.

1 An example of a case on point is *Barnard v. Buggy's*, 2013 Nev. Dist. LEXIS 1966, in which this
2 Court (Judge Early) held on a motion for summary judgment that a hotel was not liable under a strict
3 product liability theory for injuries to a guest when a defective chair collapsed under the guest, injuring
4 him. Like the hotel in *Barnard*, SpeedVegas had nothing to do with the design, manufacture, marketing, or
5 sale of subject Lamborghini. Like the hotel in *Barnard*, one could not reasonably expect SpeedVegas to
6 correct defects in the Lamborghini's fuel tank design or manufacture that it was not aware of and cannot
7 be discerned by reasonable inspection. In fact, Plaintiffs' cause of action in this case against Lamborghini
8 is based on very technical criticisms of the layout of the fuel tank within the structure of the vehicle as
9 well as its design. Even assuming Plaintiffs' criticisms of the vehicle design are fully valid, there is no way
10 SpeedVegas could have identified them.

11 Another case on point is *Catha v. Ahern Rentals*, 2013 Nev. Dist. LEXIS 389, wherein this Court
12 (Judge Susan Scann) held on a motion for summary judgment that a lessor of a motorized work cart was
13 not subject to a products liability claim because a lessor is not a "seller."

14 Simply put, SpeedVegas, did not "sell" Mr. Sherwood the allegedly defective Lamborghini. It sold
15 the experience (a service) of driving an exotic car on a track with a coach. SpeedVegas is not a seller or
16 manufacturer or distributor of Lamborghini, and thus cannot be liable under a strict products liability
17 theory for defects within the car it did not create or know about as a matter of law.

18 It is therefore proper to grant summary judgment as to the seventh cause of action for strict
19 products liability. Having granted summary judgment on all of the negligence based causes of action as
20 well as the cause of action for strict products liability, it is proper for this court to grant summary judgment
21 as to the first cause of action for wrongful death.

22 **V. CONCLUSION**

23 Based on the foregoing, defendant SpeedVegas, LLC, asks this court to grant summary judgment in
24 its favor and against the Ward/Sherwood plaintiffs, and dismiss the First, Second, Third, Fourth, Sixth and
25 Seventh causes of action in the Ward/Sherwood plaintiffs' complaint.

26 ///

27 ///

28 ///

1 DATED: May 14, 2021

PERRY & WESTBROOK

2 /s/ Alan W. Westbrook
3 Alan W. Westbrook, Esq.
4 Attorneys for Defendants, SPEEDVEGAS, LLC;
FELICE J. FIORE, JR.; and TOM MIZZONE

5 DATED: May 14, 2021

AGAJANIAN, McFALL, WEISS,
TETREAULT & CRIST LLP

6 /s/ Paul L. Tetreault
7 Paul L. Tetreault, Esq.
8 Regina S. Zernay, Esq.
9 Attorneys for Defendants, SPEEDVEGAS, LLC;
FELICE J. FIORE, JR.; and TOM MIZZONE

10 DATED: May 14, 2021

TAYLOR ANDERSON, LLP

11 /s/ James D. Murdock
12 Brent D. Anderson, Esq.
13 James D. Murdock, Esq.
Attorneys for Defendants, SPEEDVEGAS, LLC;
FELICE J. FIORE, JR.; and TOM MIZZONE

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of May, 2021, I caused to be served a true and correct copy of **MOTION FOR SUMMARY JUDGMENT, OR, IN THE ALTERNATIVE PARTIAL SUMMARY JUDGMENT, AS TO DEFENDANT SPEEDVEGAS, LLC; AGAINST PLAINTIFFS ESTATE OF CRAIG SHERWOOD, GWENDOLYN WARD, and ZANE SHERWOOD; DECLARATION OF REGINA ZERNAY** in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically served through the Court's Electronic Filing/Service system to all parties on the Court's Master Service List, listed below.

William R. Brenske, Esq. BRENSKE ANDREEVSKI & KRAMETBAUER 3800 Howard Hughes Pkwy., Ste. 500 Las Vegas, NV 89169 Ph: (702) 385-3300 FAX: (702) 385-3823 Attorneys for Plaintiffs, ESTATE OF GIL BEN-KELY, et al.	Ryan S. Petersen, Esq. WILEY PETERSEN 1050 Indigo Drive, Suite 200B Las Vegas, NV 89145 Ph: (702) 910-3329 FAX: (702) 553-3467 Attorneys for Defendant, AUTOMOBILI LAMBORGHINI AMERICA, LLC
Gary Guelker, Esq. RESNICK & LOUIS, P.C. 8925 W Russell Road Suite 220 Las Vegas, NV 89148 Ph: (702) 997-3800 Attorney for Plaintiff, ESTATE OF GIL BEN-KELY	Susan V. Vargas, Esq. Alexander Gerard Calf, Esq. KING & SPALDING LLP 633 W. 5 th Street, Suite 1600 Los Angeles, CA 90071 Ph: (213) 443-4346 Attorneys for Defendant, AUTOMOBILI LAMBORGHINI AMERICA, LLC
Corey M. Eschweiler, Esq. Craig A. Henderson, Esq. ER INJURY ATTORNEYS 4795 S. Durango Drive Las Vegas, NV 89147 Ph.: (702) 968-7500 FAX: (702) 307-5762 Attorneys for Plaintiffs, GWENDOLYN WARD, et al.	Philip E. Holladay, Jr., Esq. KING & SPALDING 1180 Peachtree Street, NE, Suite 1600 Atlanta, GA 30309 Ph: (404) 572-4600 Attorneys for Defendant, AUTOMOBILI LAMBORGHINI AMERICA, LLC
Ian P. Samson, Esq. PANISH SHEA & BOYLE LLP 8816 Spanish Ridge Avenue Las Vegas, NV 89148 Ph: (310) 477-1700 FAX: (310) 477-1699 Attorneys for Plaintiffs, GWENDOLYN WARD, et al.	Harry Franklin Hosteller, III, Esq. MUSIC PEELER & GARRET LLP 650 Town Center Drive, Suite 1200 Costa Mesa, CA 92626 Ph.: (714) 668-2454 FAX: (714) 668-2490

<p>Robert E. Schumacher, Esq. Bradley G. Taylor, Esq. Dylan E. Houston, Esq. GORDON REES SCULLY MANSUKHANI, LLP 300 S. Fourth Street, Suite 1550 Las Vegas, NV 89101 Ph: (702) 577-9319 FAX: (702) 255-2858 Attorneys for Defendants, AARON FESSLER and SPEEDVEGAS, LLC</p>	<p>Michael Merritt, Esq. McCORMICK, BARSTOW, SHEPPARD, WAYTE & CARRUTH LLP 8337 West Sunset Road, Suite 350 Las Vegas, NV 89113 Ph: (702) 949-1100 FAX: (702) 949-1101 Attorneys for Defendant, SLOAN VENTURES 90, LLC</p>
<p>Brent D. Anderson, Esq. James D. Murdock, Esq. TAYLOR ANDERSON 1670 Broadway, Suite 900 Denver, CO 80202 Attorneys for Defendants, SPEEDVEGAS, LLC, FELICE J. FIORE, JR., and TOM MIZZONE</p>	<p>Jorge A. Ramirez, Esq. Christopher D. Phipps, Esq. WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP 6689 Las Vegas Blvd. South, Suite 200 Las Vegas, NV 89119 P.: (702) 727-1400 F.: (702) 727-1401 Attorneys for Plaintiff/Defendant/Crossclaim Plaintiff/Crossclaim Defendant ESTATE OF CRAIG SHERWOOD</p>

By:

/s/ Mary Davis
An Employee of Taylor Anderson, LLP

EXHIBIT “1”

In the Matter Of:
A-17-757614-C
ESTATE OF BEN-KELY
VS
SPEED VEGAS, LLC, et al.

Videotaped Deposition Of:

PHIL FIORE

March 10, 2021



702-805-4800
scheduling@envision.legal

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF GIL BEN-KELY by)
 ANTONELLA BEN-KELY as the)
 duly appointed representative)
 of the Estate and as the)
 widow and heir of Decedent)
 GIL BEN-KELY; SHON BEN-KELY,)
 son and heir of Decedent GIL) Case No.:
 BEN-KELY; NATHALIE BEN-KELY) A-17-757614-C
 SCOTT, daughter and heir of)
 the Decedent GIL BEN-KELY,)
 GWENDOLYN WARD, as Personal)
 Representative of the ESTATE) Dept. No.:
 OF CRAIG SHERWOOD, deceased;)
 GWENDOLYN WARD, individually) XXVII
 and as surviving spouse of)
 CRAIG SHERWOOD; GWENDOLYN)
 WARD, as mother and natural)
 guardian of ZANE SHERWOOD,)
 surviving minor child of)
 CRAIG SHERWOOD,)
)
)
 Plaintiffs,)
)
)

VIDEOTAPED VIDEOCONFERENCE DEPOSITION

OF PHIL FIORE

WEDNESDAY, MARCH 10, 2021

Reported by: Monice K. Campbell, NV CCR No. 312

Job No.: 5221

1 vs.)
2)
3 SPEEDVEGAS, LLC, a foreign-)
4 limited liability company;)
5 VULCAN MOTOR CLUB, LLC dba)
6 WORLD CLASS DRIVING, a New)
7 Jersey limited liability)
8 company; SLOAN VENTURES 90,)
9 LLC, a Nevada limited)
10 liability company; MOTORSPORT)
11 SERVICES INTERNATIONAL, LLC,)
12 a North Carolina limited)
13 liability company; AARON)
14 FESSLER, an individual; the)
15 ESTATE OF CRAIG SHERWOOD and)
16 AUTOMOBILI LAMBORGHINI)
17 AMERICA, LLC, a foreign)
18 limited liability company;)
19 TOM MIZZONE, an individual)
20 SCOTT GRAGSON, an)
21 individual; PHIL FIORE aka)
22 FELICE FIORE, an individual;)
23 DOES I-X; and ROE ENTITIES)
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1 VIDEOTAPED VIDEOCONFERENCE DEPOSITION OF PHIL
2 FIORE, held on Wednesday, March 10, 2021, at 8:01
3 a.m., before Monice K. Campbell, Certified Court
4 Reporter, in and for the State of Nevada.

5
6 APPEARANCES:

7 For the Plaintiff, The Estate of Gil Ben-Kely:

8 BRENSKE ANDREEVSKI & KRAMETBAUER
9 BY: JENNIFER ANDREEVSKI, ESQ.
3800 Howard Hughes Parkway, Suite 500
10 Las Vegas, Nevada 89169
702.385.3300
11 jandreevski@baklawlv.com

12 For the Plaintiff, The Estate of Craig Sherwood:

13 ER INJURY ATTORNEYS
14 BY: COREY M. ESCHWEILER, ESQ.
4795 South Durango Drive
15 Las Vegas, Nevada 89147
702.877.1500
16 corey@erinjuryattorneys.com

17 For the Plaintiff, The Estate of Craig Sherwood:

18 PANISH SHEA & BOYLE
19 BY: PAUL TRAINA, ESQ.
11111 Santa Monica Blvd., Suite 700
20 Los Angeles, California 90025
(310) 928-6200
21 traina@psblaw.com
22
23
24
25

1 APPEARANCES:

2 For the Defendant Sloan Ventures 90, LLC:

3 MCCORMICK, BARSTOW, SHEPPARD,
4 WAYTE & CARRUTH LLP

5 BY: MICHAEL MERRITT, ESQ.
6 8337 W. Sunset Road, Suite 350
7 Las Vegas, Nevada 89113
8 702.949.1100

9 michael.merritt@mccormickbarstow.com

10 For the Defendant Automobili Lamborghini
11 America, LLC:

12 KING & SPALDING LLP

13 BY: SUSAN VARGAS, ESQ.

14 633 West Fifth Street, Suite 1600
15 Los Angeles, CA 90071

16 213.443.4346
17 svargas@kslaw.com

18 For the Defendant Automobili Lamborghini
19 America, LLC:

20 WILEY PETERSEN

21 BY: RYAN PETERSEN, ESQ.

22 1050 Indigo Drive, Suite 200B
23 Las Vegas, Nevada 89145

24 702.910.3329
25 rpetersen@wileypetersenlaw.com

For the Estate of Gil Ben-Kely:

RESNICK & LOUIS

BY: GARY R. GUELKER, ESQ.

8925 W. Russell Road, Suite 220
Las Vegas, Nevada 89148

702.997.3800
gguelker@rlattorneys.com

1 APPEARANCES:

2 For SpeedVegas, LLC, Tom Mizzone and Felice Fiore,
3 Jr.:

4 TAYLOR ANDERSON

5 BY: BRENT D. ANDERSON, ESQ.

6 1670 Broadway, Suite 900

7 Denver, Colorado 80202

8 303.551.6661

9 banderson@talawfirm.com

10 Also Present:

11 NATHALIE BEN-KELY

12 KORTNEY DRAGOO, EXHIBIT TECH

1 exact name, but it was a dealership out of Chicago.

2 Q. Was that the first exotic car that you
3 had owned?

4 A. No.

5 Q. When was the first time that you
6 purchased an exotic car?

7 A. It depends how you define "exotic." I've
8 had Corvettes and Datsun 280Zs and those type of
9 cars, right, but if you're talking about the level
10 of Ferraris and those types of cars, a couple years
11 prior to me owning a Lamborghini, I had purchased a
12 Ferrari.

13 Q. And what happened with regard to that
14 Ferrari?

15 A. What I did at the time, I actually
16 owned -- I don't consider this an exotic car,
17 although an expensive car -- I had owned the
18 Ferrari and a Rolls Royce. And what I had done was
19 trade those cars for the Lamborghini, essentially.

20 Q. Of the cars that you owned, not
21 including the Lamborghini, did you ever lease
22 those cars to any other person or entity?

23 A. No. But for the Lamborghini, I've
24 never -- I never did a transaction like this, ever.
25 I was just a typical retail buyer of cars.

1 did it ever have a salvage title, to your
2 knowledge?

3 A. Not to my knowledge.

4 Q. And then, are you aware that a recall
5 was issued by the National Highway Traffic
6 Safety Administration regarding the EVAP system
7 on the Lamborghini?

8 A. Am I aware of that now?

9 Q. Yes.

10 A. Yes, I am aware of that now.

11 Q. When did you first become aware of
12 that recall?

13 A. I was sent that recall at the beginning
14 of March. I think the exact stamp on that was
15 March 9th of 2017.

16 Q. Okay.

17 MS. ANDREEVSKI: Those are all the
18 questions that I have. Thank you.

19 THE VIDEOGRAPHER: Anybody have any
20 further questions?

21 MR. TRAINA: I don't think so. Not from
22 me.

23 MS. VARGAS: I don't have any other
24 questions for Mr. Fiore.

25 MR. ANDERSON: Brent Anderson. No

1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)

3) SS:

4 COUNTY OF CLARK)

5
6 I, Monice K. Campbell, a duly
7 commissioned and licensed court reporter, Clark
8 County, State of Nevada, do hereby certify: That I
9 reported the taking of the deposition of the
10 witness, PHIL FIORE, commencing on Wednesday, March
11 10, 2021, at 8:01 a.m.;

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

19
20 I further certify that I am not a relative or
21 employee of an attorney or counsel or any of the
22 parties, nor a relative or employee of an attorney or
23 counsel involved in said action, nor a person
24 financially interested in the action; that a request
25 ([X] has not) been made to review the transcript.

1
2 IN WITNESS THEREOF, I have hereunto set my hand
3 in my office in the County of Clark, State of Nevada,
4 this 22nd day of March, 2021.

5
6 

7
8 Monice K. Campbell, CCR No. 312

EXHIBIT “2”



Herrndon, February 28, 2017

FELICE G FIORE

IMPORTANT SAFETY RECALL – Recall No. 17V-073 EVAP system

Your Lamborghini Aventador with the VIN ZHWUR1ZD3FLA03687

Automobili
Lamborghini America LLC

Dear FELICE G FIORE

This notice is sent to you in accordance with the National Traffic and Motor Vehicle Safety Act. Automobili Lamborghini S.p.A. has decided that a defect, which relates to motor vehicle safety, exists in certain Model Year 2012-2017 Aventador Coupé and Roadster vehicles. Our records indicate that you are the owner of a vehicle in this recall.

Why are we contacting you?

We are pleased to inform you that we have the necessary parts to complete this recall. Please contact your authorized Lamborghini Dealer immediately to schedule an appointment to have this important free repair performed as soon as possible. You can locate your nearest Lamborghini Dealer at <https://www.lamborghini.com/en-en/ownership/dealer-locator>.

What is the issue?

Under certain circumstances, fuel vapors can interact with hot gases and increase the risk of a fire. This condition is dependent on various factors, including overfilling the fuel tank combined with certain handling conditions that allow mistreated fuel vapors to combine with hot gasses, increasing the risk of a fire.

In case of fuel tank heavily overfilled and in particular handling conditions liquid fuel could reach the carbon canister and the purge valves, causing fuel vapors not treated properly. With not properly treated fuel vapor, particular maneuvers, as example engine over revving at idle, could imply contact between fuel vapor and hot gasses; especially if combined with a not approved aftermarket exhaust system, this could lead to risk of fire.

For safety reasons it is therefore necessary to upgrade these vehicles. If you are not the only driver of this vehicle, please advise all other drivers and passengers of this important information.

Your vehicle is affected

2200 Ferdinand Porsche Drive
Herrndon, VA 20171
USA
Telephone: 1-800-651-6276
Fax: +1-248-754-6599

000783

000783

What will Lamborghini do?

We will upgrade the EVAP system "Free of Charge". The repair could take up to 8 hours depending on your car configuration. Please contact your dealer and make arrangements to leave the car for up to 3 business days. We apologize for any inconvenience this recall may cause.

Please bring this letter and your Service Booklet with you when you visit the dealer, so that we can make all necessary entries.

We recommend that, until your car is fixed, that you avoid severe handling maneuvers or over-revving the engine at idle, and ensure that you do not over-fill your fuel tank. If, however, you notice a strong fuel smell, please contact your Lamborghini dealer to have your vehicle towed.

What if you are not the current owner of this vehicle?

You can update your vehicle ownership or contact information by filling out the enclosed document (Appendix A) and sending it to Lamborghini by following the detailed instructions present on it.

If you are a vehicle lessor, Federal Regulations require you to forward this notice to your lessee within ten days.

What if you have questions or experience problems?

Should you need additional assistance, you may contact Lamborghini Customer Care via Email at CustomerCareAmerica@lamborghini.com or by calling 1-866-681-6276 from 9 AM to 5 PM Eastern Time, Monday through Friday.

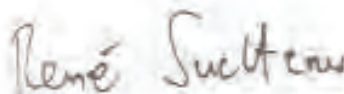
If your Lamborghini Dealer is unable to remedy the defect within a reasonable period of time, you may notify the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Ave., S.E., Washington, DC 20590, call the toll-free Vehicle Safety Hotline at 1-888-327-4236 (TTY: 1-800-424-9153), or go to <http://www.safercar.gov>.

We sincerely apologize for any inconvenience this recall may cause; however, be assured that Lamborghini is concerned about your safety.

Yours faithfully,



Alessandro Farneschi
Chief Operating Officer
Automobili Lamborghini America LLC



René Sultzner
Head of After Sales
Automobili Lamborghini America LLC

000784

000784

Automobili Lamborghini America, LLC
2200 Ferdinand Porsche Drive
Herrdon, VA 20171

METROPLEX MI 4830
09 MAR 2017 PM 5 L



IMPORTANT SAFETY RECALL NOTICE

IMPORTANT SAFETY RECALL INFORMATION



Issued in Accordance
With Federal Law



08752-124799

08752-124799

EXHIBIT “3”

AFFIDAVIT OF ROBERT D. BARNARD

State of The Kingdom of Spain
Province of Barcelona
City of Barcelona
Consulate General of the
County of United States of America } S.S.

I, Robert D. Barnard, being first duly sworn hereby depose and state as follows:

1. I am a Motor Sport Consultant and owner of Motorsport Services International;
2. I was responsible for the design and construction management of the SpeedVegas road course and the safety features associated with it. I also provided guidance on operation and emergency response for this type of facility;
3. Attached to this affidavit is my Curriculum Vitae. I have been responsible for the design and construction and operation of tracks for Formula One, MotoGP, World Sports Car, and karts to the highest international standard. The Adelaide Formula One track, built in 1985, and the Philip Island MotoGP circuit built in 1989 remain to this day iconic tracks judged to be the benchmark for that type of circuit. I have provided expert witness testimony in motorsport litigation since the year 2000. I have inspected tracks for the Sports Car Club of America, instructed their members on track safety, and conducted a course on track reviews. I have designed several courses for the type of use at SpeedVegas, including a private course for the Toyota Motor Company in Dallas, Texas;
4. In developing the design for the SpeedVegas course I relied upon the guidelines for safety for a FIA Level 2 standard facility as the only reliable standards available, even though this was not to function as a race track. The course was created from an open undeveloped property with the understanding that it was to be used by novice drivers in market available high performance vehicles. The design of SpeedVegas exceeds to general industry standards;
5. I developed operational procedures in conjunction with SpeedVegas based upon my experience of track management. I have awards for The Best Operated Formula One race in the world in 1985, and the Best Sporting Event in Australia for the MotoGP at Philip Island in 1989. I prepared a draft Emergency Action Plan based upon NFPA 610, "Guidelines for Emergency and Safety Operations at Motorsport Venues." I advise on the equipping of the Response Vehicle based upon a specification provided by Gordon Gratiot, a past Emergency Chief for IMSA Sports Car Series. The location of the Response vehicle while cars were on course was approved by me, and was within a few hundred feet of this unfortunate incident. The response vehicle was on scene within an acceptable time of less than half a minute;
6. I visited the SpeedVegas course shortly after its completion and drove both an Audi R8 and Porsche GT3 at speeds in excess of 140 mph. I have not raced since 1992, but had no difficulty in navigating the course;
7. The access to the course was purposely extended to enable cars to join the course at a slow corner, not on the high speed straight, and to allow a driver to become accustomed to the vehicle, including braking. It is odd that Mr. Thake took exception to this safety feature;

- 1 8. The arrangement of the Turn 1-2 complex was purposely designed to make cars slow
2 considerably after the high-speed point, and once in the corner accelerate through the Turn
3 2 portion. A very fast corner would be unsafe for the type of drivers using the course. This
4 design is common in many tracks around the world, including at Spa, an F1 track at the Les
5 Combs and "Bus Stop" corners, the Monza F1 track at the end of the main straight, at
6 Suzuka F1 track before the last corner. The approaches to these corners are all extremely
7 fast, over 180 mph, to a slow combination of right-left corners with barriers close on the
8 exit of Turn 2;
- 9 9. SpeedVegas is not a race track and Mr. Thake should not review it as such. It has no
10 Start/Finish line, no timing and scoring, no winners rostrum, trophies, or prize money.
11 There is no pit lane, paddock, or other features of a race track. Cars are released out onto
12 the course so that they are separated and overtaking limited if not eliminated. This removes
13 a number of potential risks inherent in racing, namely contact with other cars, the incentive
14 to overdrive the car, or place strain on components. The course is purposely left as open as
15 possible to avoid the claustrophobic atmosphere of driving between lines of barriers that
16 would be on both sides of a normal track all around the course. This is a driving experience.
17 Mr. Thake mentions "continuous safety" which I take to mean a complete barrier, which in
18 the case of SpeedVegas is possibly unsafe if there is space available to make a mistake and
19 recover without hitting a barrier;
- 20 10. Barriers are only installed at SV where essential to protect either the driver and coach, or
21 the general public. A barrier protects the whole west side to cover the building area, access
22 lane onto the course and South Las Vegas Boulevard. The proximity to the Boulevard is not
23 an issue as the barrier prevents a car from reaching it. Barriers are installed at other
24 locations such as over the tunnel or over drainage structures where falling into the hole that
25 is created would be a risk of greater injury;
- 26 11. To soften impact tire barriers are installed and banded together in an accepted manner.
27 Conveyor belt was not originally installed on the face towards the course as this is not a
28 required measure. Mr. Thake mentions the lack of banding between stacks in the location of
the impact. In a recent case at the Summit Point Raceway in West Virginia where a similar
incident occurred Mr. Thake provided an opposing opinion that stated that unconnected tire
stacks were an acceptable method of construction, but here provides a different opinion
here;
12. Mr. Thake describes the briefing given to drivers as deficient. I personally sat in on a
briefing and was impressed by the instructor's manner and content for the type of drivers
being briefed. Again, this is not a race meeting;

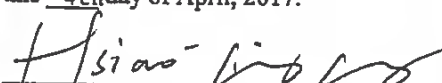
1 13. Mr. Thievin is not a track designer, he is a driver. From my personal experience drivers
2 have little to no knowledge about how a track should be designed, if they did then there
3 would be considerably more recognized designers in the US apart from myself and very
4 few others. Mr. Thake has primarily designed street courses for IndyCar which is a not a
5 good basis of comparison for this type of facility.

6 Further Affiant Sayeth Naught.

7 Dated this 4 day of April, 2017.


ROBERT D. BARNARD

8 Subscribed and Sworn to before me
9 this 4th day of April, 2017.


Notary Public

HSIAO-CHING CHANG
VICE CONSUL OF THE UNITED
STATES OF AMERICA

EXHIBIT “4”

In the Matter Of:
A-17-757614-C
ESTATE OF BEN-KELY, et al.
VS
SPEED VEGAS, LLC, et al.

Transcript Of The Videotaped 30(b)(6) For:

SPEEDVEGAS

and

AARON FESSLER, INDIVIDUALLY

Volume I

December 10, 2019



702-805-4800
scheduling@envision.legal

DISTRICT COURT
CLARK COUNTY, NEVADA

ESTATE OF GIL BEN-KELY by)
ANTONELLA BEN-KELY, the duly)
appointed representative of)
the ESTATE and as the widow)
and heir of Decedent GIL)
BEN-KELY; SHON BEN-KELY, son)
and heir of decedent GIL)
BEN-KELY; NATHALIE BEN-KELY)
SCOTT, daughter and heir of)
the decedent GIL BEN-KELY,)
GWENDOLYN WARD, as Personal)
Representative of the ESTATE)
OF CRAIG SHERWOOD, Deceased;)
GWENDOLYN WARD,)
Individually, and as)
surviving spouse of CRAIG)
SHERWOOD, Deceased;)
GWENDOLYN WARD, as mother)
and natural guardian of)
ZANE SHERWOOD, surviving)
minor child of CRAIG)
SHERWOOD, Deceased,)

Plaintiffs,

vs.

SPEED VEGAS, LLC, a Delaware)
limited liability company;)
SCOTT GRAGSON, WORLD CLASS)
DRIVING, an unknown entity)
SLOAN VENTURES 90, LLC,)
a Nevada limited liability)
company, ROBERT BARNARD;)
MOTORSPORTS SERVICES)
INTERNATIONAL, LLC, a North)
Carolina limited liability)
company; AARON FESSLER; the)
ESTATE OF CRAIG SHERWOOD;)
AUTOMOBILI LAMBORGHINI)
AMERICA, LLC, a foreign)
limited liability company;)
FELICE J. FIORE, JR.; DOES)
I-X, inclusive; and ROE)
CORPORATIONS I-X, inclusive,)

Defendants.

Case No.: A-17-757614-C
Dept. No.: XXVII

VOLUME I

VIDEOTAPED DEPOSITION
OF THE

30(B)(6) OF SPEEDVEGAS

AND

AARON FESSLER,

INDIVIDUALLY

TAKEN ON:

DECEMBER 10, 2019

JOB #3944

GWENDOLYN WARD, as Personal)
Representative of the ESTATE)
OF CRAIG SHERWOOD, Deceased;)
GWENDOLYN WARD,)
Individually, and as)
surviving spouse of CRAIG)
SHERWOOD; Deceased;)
GWENDOLYN WARD, as Mother)
and Natural Guardian of)
ZANE SHERWOOD, surviving)
minor child of CRAIG)
SHERWOOD, Deceased,)

Crossclaim Plaintiffs,)

vs.)

ESTATE OF GIL BEN-KELY by)
ANTONELLA BEN-KELY, the duly)
appointed representative)
of the ESTATE; DOES I-X,)
inclusive; and ROE)
CORPORATIONS I-X, inclusive,)

Crossclaim Defendants.)

ESTATE OF BEN-KELY by)
ANTONELLA BEN-KELY, duly)
appointed representative)
of the ESTATE and widow and)
heir of decedent GIL)
BEN-KELY; SHON BEN-KELY,)
son and heir of decedent)
GIL BEN-KELY; NATHALIE)
BEN-KELY SCOTT, daughter)
and heir of decedent)
GIL BEN-KELY,)

Crossclaim Plaintiffs,)

vs.)

ESTATE OF CRAIG SHERWOOD;)
DOES I-X, inclusive; and)
ROE CORPORATIONS I-X,)
inclusive,)

Crossclaim Defendants.)

1 VIDEOTAPED DEPOSITION OF THE 30(b)(6) of
2 SPEEDVEGAS, LLC, AND AARON FESSLER, individually,
3 held at Lerner & Rowe, located at 4795 South Durango
4 Drive, Las Vegas, Nevada, on Tuesday, December 10,
5 2019, at 9:07 a.m., before Monice K. Campbell,
6 Certified Court Reporter, in and for the State of
7 Nevada.

8
9 APPEARANCES:

10 For the Plaintiff, The Estate of Gil Ben-Kely:

11 BRENSKE ANDREEVSKI & KRAMETBAUER
12 BY: WILLIAM R. BRENSKE, ESQ.
13 3800 Howard Hughes Parkway, Suite 500
14 Las Vegas, Nevada 89169
702.385.3300
wrb@baklawlv.com

15 For the Plaintiff, The Estate of Craig Sherwood:

16 LERNER & ROWE INJURY ATTORNEYS
17 BY: COREY M. ESCHWEILER, ESQ.
18 4795 South Durango Drive
19 Las Vegas, Nevada 89147
702.877.1500
ceschweiler@lernerandrowe.com

20 For the Plaintiff, The Estate of Craig Sherwood:

21 PANISH SHEA & BOYLE
22 BY: PAUL TRAINA, ESQ.
23 11111 Santa Monica Blvd., Suite 700
24 Los Angeles, California 90025
25 (310) 928-6200
traina@psb.law

1 APPEARANCES:

2 For Defendant/Cross-Defendant The Estate of Craig
3 Sherwood:4 WILSON ELSEER MOSKOWITZ EDELMAN & DICKER LLP
5 BY: CHRISTOPHER D. PHIPPS, ESQ.
6 300 S. Fourth Street, 11th Floor
7 Las Vegas, Nevada 89101
8 702.727.1400
9 christopher.phipps@wilsonelser.com

10 For the Defendant Sloan Ventures 90, LLC:

11 MCCORMICK, BARSTOW, SHEPPARD,
12 WAYTE & CARRUTH LLP
13 BY: MEREDITH HOLMES, ESQ.
14 8337 W. Sunset Road, Suite 350
15 Las Vegas, Nevada 89113
16 702.949.1100
17 meredith.holmes@mccormickbarstow.com18 For the Defendant Automobili Lamborghini
19 America, LLC:20 KING & SPALDING LLP
21 BY: PHILIP E. HOLLADAY, ESQ.
22 1180 Peachtree Street, N.E.
23 Atlanta, Georgia 30309
24 404.572.3340
25 pholladay@kslaw.com26 For the Defendant Automobili Lamborghini
27 America, LLC:28 KOLESAR & LEATHAM
29 BY: JENNIFER L. MICHELI, ESQ.
30 400 S. Rampart Boulevard, Suite 400
31 Las Vegas, Nevada 89145
32 702.362.7800
33 jmicheli@klnevada.com

1 APPEARANCES:

2 For The Defendant/Cross-Claimant SpeedVegas, LLC,
3 and the Witness, Aaron Fessler:

4 GORDON REES SCULLY MANSUKHANI, LLP
5 BY: ROBERT SCHUMACHER, ESQ.
6 300 S. Fourth Street, #1550
7 Las Vegas, Nevada 89101
8 702.577.9305
9 rschumacher@gordonrees.com

10 For SpeedVegas, LLC and Felice Fiore, Jr.:

11 LAW OFFICES OF AGAJANIAN, McFALL, WEISS,
12 TETREAULT & CRIST LLP
13 BY: PAUL L. TETREAULT, ESQ.
14 346 N. Larchmont Boulevard
15 Los Angeles, California 90004
16 323.993.0198
17 paul@agajanianlaw.com

18 Also Present:

19 SKYLAR CATANENO

20 ANTONELLA BEN-KELY

21 SHON BEN-KELY

22 NATHALIE BEN-KELY
23
24
25

1 within 24 or 48 hours.

2 Q. What is it specifically that you asked
3 him to do?

4 A. I had hired Bob Barnard as the track
5 architect. Bob Barnard designed the processes,
6 procedures, and track design.

7 I felt a sense of moral obligation to
8 make sure that nothing had been designed
9 inappropriately or no detail had been missed, and
10 so while I continued to have full confidence in Bob
11 Barnard, I wanted to get an independent person to
12 double-check everything.

13 Q. I may have asked you. Is there anything
14 exchanged by you and Mr. Weiss in writing?

15 A. I believe there's a signed contract.

16 Q. "A signed contract" meaning that you had
17 to pay him?

18 A. Yes.

19 Q. And how much did you pay him?

20 A. I don't recall. I'm sure the contract
21 was produced at some point. But if not, it should
22 be produced, in my opinion.

23 Q. I mean, this is a contract between
24 SpeedVegas and Mr. Weiss, or is it a contract
25 between you and Mr. Weiss?

1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)

3) SS:

4 COUNTY OF CLARK)

5
6 I, Monice K. Campbell, a duly
7 commissioned and licensed court reporter, Clark
8 County, State of Nevada, do hereby certify: That I
9 reported the taking of the deposition of the
10 witness, Aaron Fessler, as the 30(b)(6) of Speed
11 Vegas, LLC, commencing on Tuesday, December 10,
12 2019, at 9:07 a.m.;

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

20
21 I further certify that I am not a relative or
22 employee of an attorney or counsel or any of the
23 parties, nor a relative or employee of an attorney or
24 counsel involved in said action, nor a person
25 financially interested in the action; that a request

1 has been made to review the transcript.

2
3 IN WITNESS THEREOF, I have hereunto set my hand
4 in my office in the County of Clark, State of Nevada,
5 this 17th day of December, 2019.

6 

7
8 Monice K. Campbell, CCR No. 312

EXHIBIT “5”

In the Matter Of:
A-17-757614-C
ESTATE OF BEN-KELY
VS
SPEED VEGAS, LLC, et al.

Deposition Of:
MARTYN THAKE
April 07, 2021



702-805-4800
scheduling@envision.legal

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

ESTATE OF GIL BEN-KELY by)	
ANTONELLA BEN-KELY as the)	
duly appointed representative)	
of the Estate and as the)	
widow and heir of Decedent)	Case No.
GIL BEN-KELY; SHON BEN-KELY,)	A-17-757614-C
son and heir of Decedent GIL)	
BEN-KELY; NATHALIE BEN-KELY)	Dept. No. XXVII
SCOTT, daughter and heir of)	
the Decedent GIL BEN-KELY;)	
GWENDOLYN WARD, as Personal)	
Representative of the ESTATE)	
OF CRAIG SHERWOOD, deceased;)	
GWENDOLYN WARD, individually)	
and as surviving spouse of)	
CRAIG SHERWOOD; GWENDOLYN)	
WARD, as mother and natural)	
guardian of ZANE SHERWOOD,)	
surviving minor child of)	
CRAIG SHERWOOD,)	
)	
Plaintiffs,)	
)	

REMOTE VIDEOTAPED ZOOM DEPOSITION OF: MARTYN THAKE
APRIL 7, 2021
9:09 A.M.

Reporter: Vickie Larsen, CCR/RMR
Utah License No. 109887-7801
Nevada License No. 966
Notary Public in and for the State of Utah

April 07, 2021

Martyn Thake

Page 2

1
2 vs.)
3)
4 SPEEDVEGAS, LLC, a foreign-)
5 limited liability company;)
6 VULCAN MOTOR CLUB, LLC, dba)
7 WORLD CLASS DRIVING, a New)
8 Jersey limited liability)
9 company; SLOAN VENTURES 90,)
10 LLC, a Nevada limited)
11 liability company; MOTORSPORT)
12 SERVICES INTERNATIONAL, LLC,)
13 a North Carolina limited)
14 liability company; AARON)
15 FESSLER, an individual; the)
16 ESTATE OF CRAIG SHERWOOD and)
17 AUTOMOBILI LAMBORGHINI)
18 AMERICA, LLC, a foreign)
19 limited liability company;)
20 TOM MIZZONE, an individual;)
21 SCOTT CRAGSON, an individual;)
22 PHIL FIORE aka FELICE FIORE,)
23 an individual; DOES I-X; and)
24 ROE ENTITIES I-X, inclusive,)
25)

Defendants.)

AND ALL RELATED CLAIMS)
)

April 07, 2021

Martyn Thake

Page 3

1 APPEARANCES (All parties present remotely)

2 For the Plaintiff, Estate of Gil Ben-Kely, Personal
3 Representative of Antonella Ben-Kely, Shon Ben-Kely,
4 Nathalie Ben-Kely-Scott & Antonella Ben-Kely:

5 William Brenske
6 BRENSKE ANDREEVSKI & KRAMETBAUER
7 3800 Howard Hughes Parkway, Suite 500
8 Las Vegas, Nevada 89169
9 702.385.3300
10 Bak@baklawlv.com

11 For the Defendant, SpeedVegas, Tom Mizzone, and Phil
12 Fiore:

13 James D. Murdock
14 TAYLOR ANDERSON, LLP
15 1670 Broadway, Suite 900
16 Denver, Colorado 80202
17 720.473.5941
18 Jmurdock@talawfirm.com

19 For the Plaintiff, The Estate of Craig Sherwood:

20 Paul Traina
21 Ian Samson
22 PANISH SHEA & BOYLE
23 11111 Santa Monica Blvd., Suite 700
24 Los Angeles, California 90025
25 310.928.6200
Traina@psblaw.com
Samson@psblaw.com

For the Defendant, Automobili Lamborghini America,
LLC:

Ryan Petersen
WILEY PETERSEN
1050 Indigo Drive, Suite 200B
Las Vegas, Nevada 89145
702.910.3329
Rpetersen@wileypetersen.com

April 07, 2021

Martyn Thake

Page 4

1 APPEARANCES CONTINUED

2 For Crossclaim Defendant, Sloan Ventures 90 LLC, and
3 Defendant Scott Gragson:

4 Krystina Butchart
5 Michael Merritt
6 McCORMICK BARSTOW LLP
7 8337 West Sunset Road, Suite 350
8 Las Vegas, Nevada 89113
9 702.949.1100
10 Michael.merritt@mccormickbarstow.com
11 Krystina.butchart@mccormickbarstow.com

12 For the Estate of Gil Ben-Kely:

13 Kristine Maxwell
14 RESNICK & LOUIS, PC
15 5940 South Rainbow Boulevard
16 Las Vegas, Nevada 89118
17 702.997.3800
18 Kmaxwell@rlattorneys.com

19 Also Present:

20 Shon Ben-Kely
21 Nathalie Ben-Kely-Scott
22 Kortney Dragoo, exhibit tech

23 -oOo-

April 07, 2021

Martyn Thake

Page 29

1 for the vehicle?

2 A. I have seen YouTube videos of -- of the
3 cars catching fire, and it is my understanding from
4 these YouTube videos that it's got something to do
5 with the exhaust system and the fuel system and how
6 the exhaust system was routed.

7 But I am not an engineer and I would not
8 even consider making that a statement in fact, it's
9 just what I've heard and what I've read and what I've
10 seen.

11 Q. In this case are you going to be offering
12 any opinions as an expert regarding the design of the
13 2015 Aventador involved in this accident?

14 A. No.

15 Q. In this case are you going to be offering
16 any opinions regarding the manufacturer of the 2015
17 Aventador involved in this accident?

18 A. No.

19 Q. Are you going to be offering any opinions
20 regarding modifications made to the Aventador in this
21 case that were post-production modification?

22 A. No.

23 Q. Are you aware of any modifications to
24 this car?

25 A. I understand the brake system was

April 07, 2021

Martyn Thake

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1 qualified to offer any accident reconstruction
2 opinions in this case; is that right?

3 A. That's correct.

4 Q. As you sit here, you don't know the
5 braking capacity of the Aventador; is that right?

6 A. Correct.

7 Q. You don't know the cornering capability
8 of the Aventador; is that correct?

9 A. Correct.

10 Q. You have no opinions regarding the
11 mechanical condition of the car at the time of the
12 crash, meaning no negative opinions about that; is
13 that correct?

14 A. That is correct.

15 Q. Do you know what ChassisSim is?

16 A. Say again.

17 Q. Are you familiar with a program --
18 program called ChassisSim?

19 A. I am not.

20 Q. What is an escape line?

21 A. An escape line?

22 Q. Are you familiar with that term?

23 A. I'm not.

24 Q. Again, some of these questions probably
25 seem silly, but I just -- I'm helping narrow the case.

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Martyn Thake

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1 track; correct?")

2 (There was a discussion held off the record.)

3 MR. MURDOCK: That was terrible. I'll
4 re-ask that question. And the objections are noted in
5 advance.

6 Q. Mr. Thake, is it -- do you have any
7 opinion that a condition with the track caused
8 Mr. Sherwood to lose control of the car and crash it
9 into the wall?

10 A. No.

11 Q. Did you perform any type of evaluation
12 regarding the crash sequence?

13 A. Define what you mean by "sequence,"
14 please.

15 Q. Well, from the time that -- I'll give it
16 a window here.

17 All right. Do you know what lap this
18 accident occurred on?

19 A. Top of my head, no.

20 Q. Do you know if Mr. Sherwood had driven
21 any vehicles other than the Aventador on the
22 SpeedVegas track the day of the accident before the
23 accident occurred?

24 A. If -- I'm sure I read that information,
25 but I do not recall it until -- I'd have to go back

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1 A. That's how I would categorize it, yes.

2 Q. So for my question, what I'm going to ask
3 you is did you perform any analysis regarding the
4 crash sequence? And when I say "the crash sequence,"
5 I'm going to define that as from the time that
6 Mr. Sherwood entered the straightaway until the car
7 reached a final rest after impacting the wall, did you
8 perform any analysis of that crash sequence?

9 A. No.

10 Q. Are you aware that the vehicle caught on
11 fire at some point?

12 A. Yes.

13 Q. Did you perform any analysis regarding
14 how the vehicle caught on fire?

15 A. I did not, no.

16 Q. All right. And I take it you did not
17 perform any analysis of why the vehicle caught on
18 fire; correct?

19 A. Correct.

20 Q. You're not going to be offering any
21 opinions about the fire, how or why that began; is
22 that right?

23 A. Correct.

24 Q. I take it from your testimony a moment
25 ago, you're also not going to be offering any opinions

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1 about why Mr. Sherwood ran into the barrier wall;
2 correct?

3 A. Correct.

4 Q. And because you didn't perform an
5 accident reconstruct analysis, you're also not going
6 to be offering any opinions about whether that wall
7 had any bearing on the outcome of this accident;
8 right?

9 MR. BRENSKE: Objection.

10 Mischaracterizes the document that's been provided to
11 the court -- or to counsel.

12 Go ahead and answer the question.

13 THE WITNESS: Ask it again, please.

14 MR. MURDOCK: Sure.

15 Q. Well, what I'm going to ask you is do you
16 have any opinions regarding what role, if any, the
17 barrier wall that Mr. Sherwood ran into played in this
18 accident?

19 A. Yes.

20 Q. And I'll get into that.

21 As an overview, what is that opinion?

22 A. Location of the wall.

23 Q. Anything else?

24 A. Tire barrier as well, I would say.

25 Again, it comes back to my overall opinion of the

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1 design.

2 Q. But you agree with me that you're not
3 going to be offering any opinions that if the wall had
4 been designed differently, that would have impacted
5 the outcome of this accident; is that correct?

6 A. That is correct.

7 Q. I asked you about this already, but just
8 to close the loop, you are not going to be offering
9 any fire cause and origin opinions; correct?

10 A. Correct.

11 Q. You're not going to be offering any
12 metallurgical opinions; correct?

13 A. Correct.

14 Q. And you're not going to be offering any
15 opinions about the forces involved in the impact,
16 either with respect to the car or the occupants in the
17 car; correct?

18 A. Correct.

19 Q. So let me go back into some of your
20 background, sir, and then we'll take a break here in a
21 little bit.

22 A. Okay.

23 Q. We haven't been going quite an hour, but
24 I think I'll go through the next little section here
25 and then we'll -- we'll stop for a few minutes.

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1 Q. Let me -- I've moved into the chat
2 Exhibit 6.

3 (Exhibit 6 was marked for identification.)

4 Q. BY MR. MURDOCK: And if you pull this up,
5 this is the affidavit of Mr. Barnard dated --

6 A. Okay, yeah.

7 Q. -- April 4, 2017.

8 You received this affidavit; correct?

9 A. Yes.

10 Q. You've seen this before?

11 A. I have.

12 Q. You've addressed it, in fact, on some of
13 your notes, haven't you?

14 A. Yes.

15 Q. Okay. And in this affidavit,
16 Paragraph 2, Mr. Barnard states under oath he was
17 responsible for the design and construction management
18 of the SpeedVegas course, and the safety features
19 associated with it.

20 Did I read that correctly?

21 A. I believe, yes, you did read that
22 correctly, yes.

23 Q. Do you have any reason to dispute what he
24 stated here under oath?

25 A. I do not.

April 07, 2021

Martyn Thake

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Reporter's Certificate

State of Nevada)
County of Clark)

I, Vickie Larsen, Certified Shorthand
Reporter and Registered Merit Reporter, in the State of
Nevada, do hereby certify:

THAT the foregoing proceedings were taken
before me at the time and place set forth herein; that
the witness was duly sworn to tell the truth, the whole
truth, and nothing but the truth; and that the
proceedings were taken down by me in shorthand and
thereafter transcribed into typewriting under my
direction and supervision;

THAT the foregoing pages contain a true
and correct transcription of my said shorthand notes so
taken.

IN WITNESS WHEREOF, I have subscribed my
name this 19th day of April, 2021.



Vickie Larsen, CCR/RMR
Utah License No. 109887-7801
Nevada License No. 966

EXHIBIT “6”

In the Matter Of:
A-17-757614-C
ESTATE OF BEN-KELY, et al.
VS
SPEED VEGAS, LLC, et al.

Deposition Of:
ROBERT J. BUTLER, PH.D., P.E.
March 05, 2021



702-805-4800
scheduling@envision.legal

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF GIL BEN-KELY by)
 ANTONELLA BEN-KELY as the)
 duly appointed representative)
 of the Estate and as the)
 widow and heir of Decedent)
 GIL BEN-KELY; SHON BEN-KELY,)
 son and heir of Decedent GIL) Case No.:
 BEN-KELY; NATHALIE BEN-KELY) A-17-757614-C
 SCOTT, daughter and heir of)
 the Decedent GIL BEN-KELY,)
 GWENDOLYN WARD, as Personal)
 Representative of the ESTATE) Dept. No.:
 OF CRAIG SHERWOOD, deceased;)
 GWENDOLYN WARD, individually) XXVII
 and as surviving spouse of)
 CRAIG SHERWOOD; GWENDOLYN)
 WARD, as mother and natural)
 guardian of ZANE SHERWOOD,)
 surviving minor child of)
 CRAIG SHERWOOD,)
)
)
 Plaintiffs,)
)
)

VIDEOCONFERENCE DEPOSITION OF

ROBERT J. BUTLER, Ph.D., P.E.

FRIDAY, MARCH 5, 2021

Reported by: Monice K. Campbell, NV CCR No. 312

Job No.: 5228

1 vs.)
2)
3 SPEEDVEGAS, LLC, a foreign-)
4 limited liability company;)
5 VULCAN MOTOR CLUB, LLC dba)
6 WORLD CLASS DRIVING, a New)
7 Jersey limited liability)
8 company; SLOAN VENTURES 90,)
9 LLC, a Nevada limited)
10 liability company; MOTORSPORT)
11 SERVICES INTERNATIONAL, LLC,)
12 a North Carolina limited)
13 liability company; AARON)
14 FESSLER, an individual; the)
15 ESTATE OF CRAIG SHERWOOD and)
16 AUTOMOBILI LAMBORGHINI)
17 AMERICA, LLC, a foreign)
18 limited liability company;)
19 TOM MIZZONE, an individual)
20 SCOTT GRAGSON, an)
21 individual; PHIL FIORE aka)
22 FELICE FIORE, an individual;)
23 DOES I-X; and ROE ENTITIES)
24 I-X, inclusive,)
25)

Defendants.)
_____)
AND ALL RELATED CLAIMS)
_____)

1 VIDEOCONFERENCE DEPOSITION OF ROBERT J. BUTLER,
2 Ph.D., P.E., held on Friday, March 5, 2021, at
3 9:00 a.m., before Monice K. Campbell, Certified Court
4 Reporter, in and for the State of Nevada.

5
6 APPEARANCES:

7 For the Plaintiff, The Estate of Gil Ben-Kely:

8 BRENSKE ANDREEVSKI & KRAMETBAUER
9 BY: RYAN KRAMETBAUER, ESQ.
3800 Howard Hughes Parkway, Suite 500
10 Las Vegas, Nevada 89169
702.385.3300
rkrametbauer@baklawlv.com
11

12 For the Plaintiff, The Estate of Craig Sherwood:

13 ER INJURY ATTORNEYS
14 BY: COREY M. ESCHWEILER, ESQ.
4795 South Durango Drive
15 Las Vegas, Nevada 89147
702.877.1500
corey@erinjuryattorneys.com
16

17 For the Plaintiff, The Estate of Craig Sherwood:

18 PANISH SHEA & BOYLE
19 BY: PAUL TRAINA, ESQ.
BY: IAN SAMSON, ESQ.
11111 Santa Monica Blvd., Suite 700
20 Los Angeles, California 90025
310.928.6200
21 traina@psblaw.com
samson@psblaw.com
22
23
24
25

1 APPEARANCES:

2 For the Defendant Sloan Ventures 90, LLC:

3 MCCORMICK, BARSTOW, SHEPPARD,
4 WAYTE & CARRUTH LLP5 BY: MICHAEL MERRITT, ESQ.
6 8337 W. Sunset Road, Suite 350
7 Las Vegas, Nevada 89113
8 702.949.1100

9 michael.merritt@mccormickbarstow.com

10 For the Defendant Automobili Lamborghini
11 America, LLC:12 MUSICK, PEELER & GARRETT LLP
13 BY: H. FRANK HOSTETLER, III, ESQ.
14 650 Town Center Drive, Suite 1200
15 Costa Mesa, California 92626
16 714.668.2454
17 f.hostetler@musickpeeler.com18 For the Defendant Automobili Lamborghini
19 America, LLC:20 WILEY PETERSEN
21 BY: JASON WILEY, ESQ.
22 1050 Indigo Drive, Suite 200B
23 Las Vegas, Nevada 89145
24 702.910.3329
25 jwiley@wileypetersenlaw.com

1 APPEARANCES:

2 For the Estate of Gil Ben-Kely:

3 RESNICK & LOUIS
4 BY: GARY R. GUELKER, ESQ.
8925 W. Russell Road, Suite 220
Las Vegas, Nevada 89148
5 702.997.3800
gguelker@rlattorneys.com
6

7 For SpeedVegas, LLC and Felice Fiore, Jr.:

8 LAW OFFICES OF AGAJANIAN, McFALL, WEISS,
TETREAULT & CRIST LLP
9 BY: PAUL TETREAULT, ESQ.
346 N. Larchmont Boulevard
10 Los Angeles, California 90004
323.993.0198
11 ptetreault@agajanianlaw.com
12

13
14 Also Present:

15 NATHALIE BEN-KELY

16 KORTNEY DRAGOO, EXHIBIT TECH
17
18
19
20
21
22
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1 engineering certainty?

2 A. I don't have an opinion that that
3 absolutely occurred. I have an opinion that it's
4 something you can't rule out.

5 Q. Do you have any opinion as to any
6 vehicle dynamics control systems on this
7 Lamborghini Aventador?

8 A. I don't.

9 Q. Skid control, any other devices to
10 regulate the vehicle dynamics or the brakes?

11 A. Any criticism? Is that what you're
12 asking?

13 Q. Correct, or opinions.

14 A. No.

15 Q. Do you have any opinions on seatbelt
16 or restraint system design as they relate to
17 this crash?

18 A. No.

19 Q. Do you have any opinions as to
20 racetrack design as they relate to this crash?

21 A. No.

22 Q. Do you have any opinions as to
23 racetrack operation or safety procedures as they
24 relate to this crash?

25 A. No.

1 Q. Did you review the Nevada OSHA report
2 for this matter?

3 A. Yes.

4 Q. Did you note anything inaccurate about
5 that report?

6 A. I don't remember.

7 Q. Did you rely on anything in that
8 report?

9 A. I don't know about relying. I summarized
10 their findings and noted the recall documents that
11 were -- because that's primarily where the recall
12 documents came from. That's what I remember about
13 the OSHA file.

14 Q. This is the Lamborghini fuel system
15 recall?

16 A. Yes.

17 Q. Do you have any opinion as to whether
18 or not that recall had any bearing whatsoever on
19 this case?

20 A. No. I don't have an opinion.

21 Q. Do you have an opinion as to how much
22 fuel was in the Aventador's tank at the time of
23 the crash?

24 A. I just have an observation of what --
25 some witnesses said it was half full.

1 Q. Have you been to any other experienced
2 track that had a similar instructor or coach
3 brake system and tested that vehicle?

4 A. No. I've not seen any -- I think this is
5 the only vehicle I've worked on that had the
6 alternate brake.

7 Q. Okay. This vehicle had a -- I don't
8 know if you know this, but I'll represent to
9 you, in case you don't, that this vehicle, this
10 Aventador, had a non-factory rear wing.

11 Were you aware of that?

12 A. Yes. I wrote that in the first report.

13 Q. Do you have any opinions as to whether
14 or not the application or the installation of
15 that rear wing played a part in this accident?

16 A. I don't believe it did.

17 Q. I'm just about done.

18 In your first report, Doctor, you make
19 reference on page 4 -- let me see. Let me go to
20 the exhibits here.

21 Is that Exhibit 3? I forget which one it
22 is now.

23 EXHIBIT TECH: Yes, Counsel, it is
24 Exhibit 3.

25 MR. TETREAULT: Okay. Thank you.

1 stating the hypotheses I can't rule out.

2 Q. Are you going to ascribe some fault to
3 Lamborghini?

4 A. I don't -- I don't give fault at all. I
5 don't use the word "fault" -- certainly not in
6 trial, nor in a report.

7 Q. You don't have any opinion that --
8 that there was a mechanical defect or a failure,
9 mechanical failure of some type that resulted in
10 this accident?

11 A. I don't have that opinion, no.

12 Q. Same thing with regards to SpeedVegas.
13 Do you expect to be providing an opinion at
14 trial that this accident was caused or
15 contributed to based upon something that
16 SpeedVegas did or did not do?

17 A. No. When you were saying "the accident,"
18 I'm thinking the accident sequence and it
19 occurring.

20 You know, clearly, in my work regarding,
21 you know, what failed and pushed into the fuel
22 tank, that's -- I don't think any of the experts
23 are disagreeing that that fuel tank breached. I
24 think some of the experts are arguing over welds
25 and so forth, but I won't be in that battle.

1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)

3) SS:

4 COUNTY OF CLARK)

5
6 I, Monice K. Campbell, a duly
7 commissioned and licensed court reporter, Clark
8 County, State of Nevada, do hereby certify: That I
9 reported the taking of the deposition of the
10 witness, ROBERT J. BUTLER, Ph.D., P.E., commencing
11 on Friday, March 5, 2021, at 9:00 a.m.;

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

19
20 I further certify that I am not a relative or
21 employee of an attorney or counsel or any of the
22 parties, nor a relative or employee of an attorney or
23 counsel involved in said action, nor a person
24 financially interested in the action; that a request
25 ([X] has) been made to review the transcript.

1
2 IN WITNESS THEREOF, I have hereunto set my hand
3 in my office in the County of Clark, State of Nevada,
4 this 11th day of March, 2021.

5
6 

7
8 _____
9 Monice K. Campbell, CCR No. 312
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EXHIBIT “7”

In the Matter Of:
A-17-757614-C
ESTATE OF BEN-KELY
VS
SPEED VEGAS, LLC, et al.

Deposition Of:
ROBERT D. BANTA
March 25, 2021



702-805-4800
scheduling@envision.legal

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF GIL BEN-KELY by)
 ANTONELLA BEN-KELY as the)
 duly appointed) Case No.: A-17-757614-C
 representative widow and) Dept. No.: XXVII
 heir of Decedent GIL)
 BEN-KELY; NATHALIE)
 BEN-KELY SCOTT, daughter)
 and heir of the Decedent)
 GIL BEN-KELY, GWENDOLYN)
 WARD, as Personal)
 Representative of the)
 ESTATE OF CRAIG SHERWOOD,)
 deceased; and as surviving)
 spouse of CRAIG SHERWOOD;)
 GWENDOLYN WARD, as mother)
 and natural guardian of)
 ZANE SHERWOOD, surviving)
 minor child of CRAIG)
 SHERWOOD,)
 Plaintiffs,)

VIDEOCONFERENCE DEPOSITION OF ROBERT D. BANTA

March 25, 2021

REPORTED BY: KELLY REXROAT, CCR NO. 977

JOB NO. 5239

March 25, 2021

Robert D. Banta

Page 2

1 vs.)

2)
3 SPEEDVEGAS, LLC, a foreign-limited)
4 liability company; VULCAN MOTOR)
5 CLUB, LLC d/b/a WORLD CLASS)
6 DRIVING, a New Jersey limited)
7 liability company; SLOAN VENTURES)
8 90, LLC, a Nevada limited liability)
9 company; MOTORSPORT SERVICES)
10 INTERNATIONAL, LLC, a North)
11 Carolina limited liability company;)
12 AARON FESSLER, an individual; the)
13 ESTATE OF CRAIG SHERWOOD and)
14 AUTOMOBILI LAMBORGHINI AMERICA,)
15 LLC, a foreign limited liability)
16 company; TOM MIZZONE, an)
17 individual; SCOTT GRAGSON, an)
18 individual; PHIL FIORE a/k/a FELICE)
19 FIORE, an individual; DOES I-X; and)
20 ROE ENTITIES I-X, inclusive,)

21 Defendants.)

22 AND ALL RELATED CLAIMS)
23)
24)
25)

March 25, 2021

Robert D. Banta

Page 3

1 VIDEOCONFERENCE DEPOSITION OF ROBERT D. BANTA
2 on March 25, 2021, at 8:14 a.m., before Kelly
3 Rexroat, Certified Court Reporter, in and for the
4 State of Nevada.

5
6 REMOTE APPEARANCES

7
8 For the Plaintiff, The Estate of Gil Ben-Kely:

9 BRENSKE ANDREEVSKI & KRAMETBAUER
10 BY: RYAN KRAMETBAUER, ESQ.
11 3800 Howard Hughes Parkway
12 Suite 500
Las Vegas, NV 89169
rkrametbauer@baklawlv.com
702.385.3300

13 For the Plaintiff, The Estate of Craig Sherwood:

14 ER INJURY ATTORNEYS
15 BY: COREY M. ESCHWEILER, ESQ.
16 4795 South Durango Drive
Las Vegas, NV 89147
corey@erinjuryattorneys.com
702.877.1500

17 For the Plaintiff, The Estate of Craig Sherwood:

18 PANISH SHEA & BOYLE
19 BY: PAUL TRAINA, ESQ.
20 11111 Santa Monica Boulevard
Suite 700
Los Angeles, CA 90025
traina@psblaw.com
21 310.928.6200
22
23
24
25

March 25, 2021

Robert D. Banta

Page 4

1 REMOTE APPEARANCES (Continued)

2 For the Defendant Sloan Ventures 90, LLC:

3 MCCORMICK, BARSTOW, SHEPPARD
4 WAYTE & CARRUTH, LLP
5 BY: ALLISON ROTHGEB, ESQ.
6 8337 W. Sunset Road
7 Suite 350
8 Las Vegas, NV 89113
9 702.949.1100
10 allison.rothgeb@mccormickbarstow.com

11 For the Defendant Automobili Lamborghini America,
12 LLC:

13 MUSICK, PEELER & GARRETT LLP
14 BY: H. FRANK HOSTETLER, III, ESQ.
15 650 Town Center Drive
16 Suite 1200
17 Costa Mesa, CA 92626
18 f.hostetler@musickpeeler.com
19 714.668.2454

20 For the Defendant Automobili Lamborghini America,
21 LLC:

22 WILEY PETERSEN
23 BY: RYAN PETERSEN, ESQ.
24 1050 Indigo Drive
25 Suite 200B
Las Vegas, NV 89145
rpetersen@wileypetersen.com
702.910.3329

26 For the Defendant/Cross-Claimant SpeedVegas, LLC,
27 Tom Mizzone and Felice Fiore, Jr.:

28 TAYLOR ANDERSON
29 BY: JAMES D. MURDOCK, ESQ.
30 1670 Broadway, Suite 900
31 Denver, CO 80202
32 303.551.6661
33 jmurdock@talawfirm.com

March 25, 2021

Robert D. Banta

Page 5

1 REMOTE APPEARANCES (Continued)

2 For the Defendant/Cross-Claimant Estate of Gil
3 Ben-Kely:

4 RESNICK & LOUIS
5 BY: GARY R. GUELKER, ESQ.
6 8925 W. Russell Road
7 Suite 220
8 Las Vegas, NV 89148
9 702.997.3800
10 gguelker@rlattorneys.com

11 Also present: Nathalie Ben-Kely
12 Shon Ben-Kely

13 Exhibit Technician: Jared Marez
14
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March 25, 2021

Robert D. Banta

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1 Q. Is it your belief that they recalled
2 100 percent of the vehicles that were included in
3 the population?

4 A. Well, yeah. They defined the population
5 and then they said that 100 percent had the defect.

6 Q. Mr. Banta, based on your analysis in this
7 case and all the things that you reviewed, the
8 expert reports, the police reports, the NHTSA recall
9 materials, the communications back and forth between
10 the manufacturer and the safety agency, is it your
11 opinion that the condition described in recall
12 17V-073 caused the February 12, 2017, collision with
13 the tire barrier and concrete wall at SpeedVegas?

14 A. No, I have not made a study of whether or
15 not this recall condition caused that fire, and of
16 course, the recall condition did not cause the
17 crash. So I'm focusing only on the post-collision
18 fuel-fed fire and it's curious to me that 17V-073
19 involved this vehicle, and I have not gone any
20 further with it.

21 Q. It's not your opinion that this recall
22 condition caused the crash itself?

23 MR. KRAMETBAUER: Object to the form.
24 Asked and answered.

25 A. That is not my opinion, yes.

March 25, 2021

Robert D. Banta

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1 BY MR. HOSTETLER:

2 Q. Is it your opinion that the recall
3 condition did not cause the crash?

4 MR. KRAMETBAUER: Same objection.

5 A. Yes, the fuel leak did not cause the crash.

6 BY MR. HOSTETLER:

7 Q. Is it your opinion, Mr. Banta, that the
8 condition described in recall 17V-073 caused the
9 post-collision fire?

10 A. I cannot determine that. I don't know.

11 Q. You have no opinion on that?

12 A. No, I have no opinion. I don't have
13 sufficient information to draw that conclusion.
14 What I'm saying is that the condition existed -- the
15 fuel leak condition existed in this car prior to the
16 crash and Lamborghini knew it and Lamborghini was
17 effecting a recall for it, and it was an active fuel
18 leak. It wasn't like it was a fuel leak that's just
19 slowly dripping. This thing was transferring fuel
20 from the tank to the ORVR system and out the vent
21 into that space where the EVAP system is located.

22 Q. Let me go through a couple things and then
23 we'll dive into your report, Mr. Banta. Did you
24 find any evidence in your review of this file of
25 driver incapacitation?

March 25, 2021

Robert D. Banta

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1 A. I know Mark Arndt. I have not talked to
2 him.

3 Q. Or Cam Cope?

4 A. No.

5 Q. You know Mr. Cope, don't you?

6 A. Oh, yes.

7 Q. Do you have any opinions about racetrack
8 design with respect to SpeedVegas in any way, shape,
9 or form?

10 A. I do not, no.

11 Q. And do you have any opinions about
12 racetrack operation or safety?

13 A. No.

14 Q. Do you have any opinions about whether this
15 2015 Lamborghini Aventador was properly maintained?

16 A. No, I have not undertaken a study on that.

17 Q. Are you aware of any modifications to this
18 2015 Lamborghini Aventador?

19 A. I'm aware of what other experts said in
20 their reports, but I haven't undertaken a study of
21 that subject.

22 Q. What is your awareness from any source
23 about the modifications to this vehicle?

24 A. I think I learned through the reports that
25 there was a claim that this vehicle may have had

March 25, 2021

Robert D. Banta

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1 vehicle capacity, anything like that?

2 A. No.

3 Q. Or individual capacity?

4 A. Same answer.

5 Q. When you saw all the reports in the media,
6 did you ever learn that the driver had a seizure
7 history?

8 MR. KRAMETBAUER: Object to the form of the
9 question.

10 Go ahead.

11 A. No, I did not see that in the media.

12 BY MR. HOSTETLER:

13 Q. When you saw it in the media, what was the
14 discussion about the cause of the crash?

15 A. My memory of the media report was that the
16 cause of the crash was under investigation, and, of
17 course, the media wants the flames and the smoke and
18 the drama of two people dying in this fiery crash.
19 I don't think the media went into any technical
20 explanation for either the crash or the fire.

21 Q. Not the first time you have seen that;
22 right?

23 A. Yes.

24 Q. Last question, did you form any opinions
25 about the cause of the crash in terms of vehicle

March 25, 2021

Robert D. Banta

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1 factors, environmental factors, or driver factors?

2 A. No.

3 Q. I want to go through your entire file,
4 Mr. Banta, and I want to make sure I understand that
5 you've produced everything in your file; correct?

6 A. Yes. Except I did not produce even this
7 morning a page where I jotted down some notes about
8 the second part 573 report that I found.

9 Q. That was the one you found last night?

10 A. Yes. I took a notepad and kind of drew a
11 line down the center, and I did a comparison of the
12 February 2017 -- 17V-073 report to the March 2017
13 report.

14 Q. And that's on one page?

15 A. One page, yes. Well, yes.

16 Q. Did you make any other notes in this case?

17 A. Pardon me?

18 Q. Did you make any other notes in this case?

19 A. I had some notes that I wrote down with
20 my -- as a result of my conversations with
21 Mr. Brenske on the first day that I went down to his
22 office to talk to him about this case, and I also
23 have a page of notes that I didn't produce to you
24 that has a chronology of Lamborghini ownership
25 history where I was uncertain about when Chrysler

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1 A. Yes, that's correct.

2 BY MR. MURDOCK:

3 Q. In fact, you have no opinions that
4 SpeedVegas did anything wrong in this case; is that
5 correct?

6 A. That's correct. I mentioned earlier the
7 mere fact that a vehicle has aftermarket brakes or
8 aftermarket exhaust system does not necessarily mean
9 they're defective. They may not be endorsed by the
10 auto manufacturer or authorized by the auto
11 manufacturer, but that does not mean they're
12 defective. What it means is that we don't know, but
13 perhaps the supplier of them does know. But it's
14 not fair to make a blanket statement to say these
15 are unauthorized parts.

16 Q. Okay. So --

17 A. Things like brakes and exhaust are common
18 replacement items.

19 Q. Do you know in this case who replaced or
20 who may have modified the exhaust system on this
21 car?

22 A. I do not.

23 Q. Do you know who the owner of this vehicle
24 was?

25 A. No.

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1 Q. A gentleman by the name of Felice Fiore,
2 and I'll represent to you he owned the vehicle -- he
3 bought it about a year before the crash and he was
4 leasing it to the SpeedVegas track, okay?

5 A. Yeah.

6 Q. And what I want to find out from you is,
7 first, I take it you have no criticisms of
8 Mr. Fiore's maintenance of the subject vehicle; is
9 that correct?

10 A. Or lack of maintenance, yes. I don't know.

11 Q. Essentially you're not going to say he did
12 anything wrong; is that correct?

13 A. That's correct.

14 Q. In fact, isn't it true, he did not receive
15 a recall notice before the subject accident; is that
16 true?

17 MR. KRAMETBAUER: Object to the form of the
18 question.

19 A. I believe that to be correct.

20 BY MR. MURDOCK:

21 Q. So let me ask you --

22 MR. KRAMETBAUER: Sorry, guys.

23 BY MR. MURDOCK:

24 Q. Let me ask you in a different way. Do you
25 have any information that Mr. Fiore was aware of a

March 25, 2021

Robert D. Banta

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1 recall or a potential recall of this vehicle anytime
2 before February 12, 2017?

3 A. No, I do not.

4 MR. KRAMETBAUER: Object to form. Sorry.
5 I didn't mean to cut you off. Object to the form of
6 the question. Keep going, J.D.

7 BY MR. MURDOCK:

8 Q. Do you have any criticisms of Mr. Fiore's
9 conduct while he was an owner of the vehicle up
10 until the date of the crash?

11 A. I do not, no.

12 Q. Do you have any criticisms of the fact that
13 Mr. Fiore leased the vehicle to SpeedVegas?

14 A. No.

15 Q. You were asked a number of questions about
16 the part 573 safety recall report, and I want to ask
17 you, step back a little bit and walk me through how
18 this process works. If a company submits a 573
19 safety recall report, what is the impetus for that?
20 Why would a company do that?

21 A. Because the Code of Federal Regulations, 49
22 CFR 573 contains all of the instructions to auto
23 manufacturers and NHTSA and some aftermarket
24 equipment manufacturers about how to handle the
25 recall process, and the investigation process

March 25, 2021

Robert D. Banta

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CERTIFICATE OF REPORTER


STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Kelly Rexroat, a Certified Court Reporter
licensed by the State of Nevada, do hereby certify:
That I reported the deposition of ROBERT D. BANTA on
March 25, 2021, at 8:14 a.m.

That prior to being deposed, the witness was
duly sworn by me to testify to the truth. That I
thereafter transcribed my said stenographic notes via
computer-aided transcription into written form, and
that the typewritten transcript is a complete, true,
and accurate transcription of said shorthand notes;
that review of the transcript was requested.

I further certify that I am not a relative,
employee, or independent contractor of counsel or of
any of the parties involved in the proceeding; nor a
person financially interested in the proceeding; nor
do I have any other relationship that may reasonably
cause my impartiality to be questioned.

IN WITNESS HEREOF, I have set my hand in my
office in the County of Clark, State of Nevada, this
8th day of April 2021.



KELLY REXROAT, CCR NO. 977

EXHIBIT “8”

In the Matter Of:
A-17-757614-C
ESTATE OF BEN-KELY
VS
SPEED VEGAS, LLC, et al.

Deposition Of:
CAM COPE, B.S., CFII, CFEI, CVFR, CLI
March 17, 2021



702-805-4800
scheduling@envision.legal

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF GIL BEN-KELY by)
 ANTONELLA BEN-KELY as the)
 duly appointed representative)
 of the Estate and as the)
 widow and heir of Decedent)
 GIL BEN-KELY; SHON BEN-KELY,)
 son and heir of Decedent GIL) Case No.:
 BEN-KELY; NATHALIE BEN-KELY) A-17-757614-C
 SCOTT, daughter and heir of)
 the Decedent GIL BEN-KELY,)
 GWENDOLYN WARD, as Personal)
 Representative of the ESTATE) Dept. No.:
 OF CRAIG SHERWOOD, deceased;)
 GWENDOLYN WARD, individually) XXVII
 and as surviving spouse of)
 CRAIG SHERWOOD; GWENDOLYN)
 WARD, as mother and natural)
 guardian of ZANE SHERWOOD,)
 surviving minor child of)
 CRAIG SHERWOOD,)
)
)
 Plaintiffs,)
)
)

VIDEOCONFERENCE DEPOSITION OF

CAM COPE, B.S., CFII, CFEI, CVFR, CLI

WEDNESDAY, MARCH 17, 2021

Reported by: Monice K. Campbell, NV CCR No. 312

Job No.: 5237

March 17, 2021

Cam Cope, B.S., CFII, CFEI, CVFR, CLI

Page 2

1 vs.)
2)
3 SPEEDVEGAS, LLC, a foreign-)
4 limited liability company;)
5 VULCAN MOTOR CLUB, LLC dba)
6 WORLD CLASS DRIVING, a New)
7 Jersey limited liability)
8 company; SLOAN VENTURES 90,)
9 LLC, a Nevada limited)
10 liability company; MOTORSPORT)
11 SERVICES INTERNATIONAL, LLC,)
12 a North Carolina limited)
13 liability company; AARON)
14 FESSLER, an individual; the)
15 ESTATE OF CRAIG SHERWOOD and)
16 AUTOMOBILI LAMBORGHINI)
17 AMERICA, LLC, a foreign)
18 limited liability company;)
19 TOM MIZZONE, an individual)
20 SCOTT GRAGSON, an)
21 individual; PHIL FIORE aka)
22 FELICE FIORE, an individual;)
23 DOES I-X; and ROE ENTITIES)
24 I-X, inclusive,)
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27 Defendants.)
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March 17, 2021

Cam Cope, B.S., CFII, CFEI, CVFR, CLI

Page 3

1 VIDEOCONFERENCE DEPOSITION OF CAM COPE, BS,
2 CFII, CFEI, CVFR, CLI, held on Wednesday, March 17,
3 2021, at 8:00 a.m., before Monice K. Campbell,
4 Certified Court Reporter, in and for the State of
5 Nevada.

6
7 APPEARANCES:

8 For the Plaintiff, The Estate of Gil Ben-Kely:

9 BRENSKE ANDREEVSKI & KRAMETBAUER
10 BY: JENNIFER ANDREEVSKI, ESQ.
11 3800 Howard Hughes Parkway, Suite 500
12 Las Vegas, Nevada 89169
702.385.3300
jandreevski@baklawlv.com

13 For the Plaintiff, The Estate of Craig Sherwood:

14 ER INJURY ATTORNEYS
15 BY: COREY M. ESCHWEILER, ESQ.
16 4795 South Durango Drive
17 Las Vegas, Nevada 89147
702.877.1500
corey@erinjuryattorneys.com

18 For the Plaintiff, The Estate of Craig Sherwood:

19 PANISH SHEA & BOYLE
20 BY: PAUL TRAINA, ESQ.
21 BY: IAN SAMSON, ESQ.
22 11111 Santa Monica Blvd., Suite 700
23 Los Angeles, California 90025
24 (310) 928-6200
25 traina@psblaw.com
samson@psblaw.com

March 17, 2021

Cam Cope, B.S., CFII, CFEI, CVFR, CLI

Page 4

1 APPEARANCES:

2 For the Defendant Sloan Ventures 90, LLC:

3 MCCORMICK, BARSTOW, SHEPPARD,
4 WAYTE & CARRUTH LLP5 BY: MICHAEL MERRITT, ESQ.
6 8337 W. Sunset Road, Suite 350
7 Las Vegas, Nevada 89113
8 702.949.1100
9 michael.merritt@mccormickbarstow.com10 For the Defendant Automobili Lamborghini
11 America, LLC:12 MUSICK, PEELER & GARRETT LLP
13 BY: H. FRANK HOSTETLER, III, ESQ.
14 650 Town Center Drive, Suite 1200
15 Costa Mesa, California 92626
16 714.668.2454
17 f.hostetler@musicckpeeler.com18 For the Defendant Automobili Lamborghini
19 America, LLC:20 WILEY PETERSEN
21 BY: RYAN PETERSEN, ESQ.
22 1050 Indigo Drive, Suite 200B
23 Las Vegas, Nevada 89145
24 702.910.3329
25 rpetersen@wileypetersenlaw.com

For the Estate of Gil Ben-Kely:

RESNICK & LOUIS
BY: GARY GUELKER, ESQ.
8925 W. Russell Road, Suite 220
Las Vegas, Nevada 89148
702.997.3800
gguelker@rlattorneys.com

March 17, 2021

Cam Cope, B.S., CFII, CFEI, CVFR, CLI

Page 5

1 APPEARANCES:

2 For SpeedVegas, LLC, Tom Mizzone and Felice Fiore,
3 Jr.:

4 TAYLOR ANDERSON
5 BY: J.D. MURDOCK, ESQ.
6 1670 Broadway, Suite 900
7 Denver, Colorado 80202
8 303.551.6661
9 jmurdock@talawfirm.com

10 Also Present:

11 SHON BEN-KELY

12 KORTNEY DRAGOO, EXHIBIT TECH
13
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March 17, 2021

Cam Cope, B.S., CFII, CFEI, CVFR, CLI

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1 A. It's a fire safety issue on the recall,
2 yes.

3 Q. And do you have any information
4 whether the conditions that needed to be present
5 for the recall condition were present in the
6 subject vehicle?

7 A. At the time of the crash?

8 Q. Yes, sir.

9 A. I don't think so.

10 Q. Is it your opinion that this recall
11 had nothing to do with the crash?

12 A. I don't think the recall had anything to
13 do with this crash and the release of gasoline from
14 the fuel tank.

15 Q. Do you have any criticism of the
16 manufacturer issuing a safety recall as they did
17 in this case -- not in this case, but with this
18 vehicle?

19 A. No, sir.

20 Q. As part of your analysis, Mr. Cope,
21 did you form an opinion as to how much fuel was
22 in the vehicle at the time of the crash?

23 A. We did an analysis of what the vehicle
24 was designed to hold, and we received information
25 from the racetrack that indicated that the fuel

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Cam Cope, B.S., CFII, CFEI, CVFR, CLI

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1 saw a bad wreck and we didn't see any fire, we
2 would know that most likely it had a fire panel on
3 it.

4 Q. And you've actually seen NASCAR wrecks
5 with the fire panel activated?

6 A. Sir, I don't know. We'll just have to
7 pull that up. Leave a blank there and we'll pull
8 up information on NASCAR for you --

9 Q. Sure.

10 A. -- and I'll supplement that.

11 (_____
12 _____
13 _____)

14 BY MR. HOSTETLER:

15 Q. Now, in paragraph 47, you talk about
16 the Crown Victoria test with the fire panels?

17 A. Yes.

18 Q. And it was a 70-mile-an-hour impact,
19 or was that the delta-v?

20 A. It was a 70-mile-an-hour impact.

21 Q. And what was the result of the
22 70-mile-an-hour impact?

23 A. No fire.

24 Q. And who ran those tests, if you know?

25 A. They were done with Fire Tech. They were

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1 (Recess had.)

2 THE COURT REPORTER: We're back on the
3 record at 3:54 p.m.

4
5 EXAMINATION

6 BY MR. MURDOCK:

7 Q. Mr. Cope, I do have some follow-up
8 questions for you. I'll do my best not to cover
9 any ground that has already been covered by
10 Frank, but I do want to follow up on some
11 questions.

12 So, first, is it my understanding that
13 when the car was first transferred to SpeedVegas
14 that there were no mechanical conditions with the
15 vehicle that you believe had a -- caused or
16 contributed to this accident; is that fair to say?

17 MR. SAMSON: Objection to form.
18 Misstates testimony.

19 MS. ANDREEVSKI: Object to the form.
20 Join.

21 THE WITNESS: I'm not familiar with any
22 problems when it was delivered to SpeedVegas.

23 BY MR. MURDOCK:

24 Q. And you had mentioned -- I think it's
25 actually in Exhibit 3 -- actually, I guess it's

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Cam Cope, B.S., CFII, CFEI, CVFR, CLI

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1 Exhibit 4, your report. You talk about that
2 there is nothing with the brakes you felt caused
3 or contributed to cause this accident; is that
4 correct?

5 A. I don't think there's anything with the
6 brakes that caused the accident.

7 Q. No criticism of them, in other words,
8 right?

9 A. Correct.

10 Q. Including the pedal for the -- for
11 Mr. Ben-Kely to operate? I know you had a
12 criticism about the use of the wire, but at the
13 end of the day, is that a causative factor in
14 the accident, in your opinion?

15 A. No. I think Mr. Sherwood was braking the
16 full time and that the brakes were performing and
17 they're leaving marks on the roadway for 565 feet.

18 Q. Do you have any opinions about any --
19 strike that.

20 Do you know who owned the vehicle and who
21 leased it to SpeedVegas?

22 A. I think it's listed in the one of the
23 reports where the data indicates that it was
24 purchased by somebody -- I think one of the other
25 experts has got that information. But it was

March 17, 2021

Cam Cope, B.S., CFII, CFEI, CVFR, CLI

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1 purchased by somebody. I don't know who it was. I
2 don't remember. But it's been -- that information
3 is available.

4 Q. If I represent to you that it was
5 Phil Fiore, does that sound familiar?

6 A. Yes, sir.

7 Q. And do you have any opinions as to
8 whether any modifications he made to the car
9 caused or contributed to cause this accident?

10 A. No, not to my knowledge.

11 Q. One of the aspects he changed out is
12 he made the steering wheel a carbon fiber
13 steering wheel. He also changed some shifters
14 in the vehicle.

15 You have no criticism of those
16 modifications; is that correct?

17 A. No, sir.

18 Q. Meaning correct, no criticisms, right?

19 A. No, sir, no criticisms.

20 Q. You were asked a series of questions
21 about the PC-Crash data results, the PC -- that
22 you ran, the computer program?

23 A. Yes.

24 Q. A couple of overarching questions
25 about that.

March 17, 2021

Cam Cope, B.S., CFII, CFEI, CVFR, CLI

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1 Did you perform any independent
2 calculations to verify the data in the PC-Crash
3 report or the results that PC-Crash returned to
4 you?

5 MR. SAMSON: Objection to form. Asked
6 and answered.

7 THE WITNESS: No. That's been documented
8 by various people over the past 20 years with
9 regards to what PC-Crash is capable of doing. And
10 we used it -- I think it's been proven over and
11 over, the information that you get from PC-Crash is
12 very authenticated, very accurate. That's our
13 number 1, in my opinion, methodology for
14 determining what vehicles are doing in an accident.

15 BY MR. MURDOCK:

16 Q. Now, I want to return to that, but I
17 wanted to ask you something else first.

18 Here it seems that your testimony is that
19 the tires along the wall prevented the Lamborghini
20 from coming into contact with the wall; is that
21 correct?

22 A. Correct.

23 Q. Is it fair to say, then, that the
24 tires served their purpose in providing an
25 additional barrier for the vehicle at the time

March 17, 2021

Cam Cope, B.S., CFII, CFEI, CVFR, CLI

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1 of impact?

2 MR. SAMSON: Objection to the form.

3 THE WITNESS: They provided --

4 MS. ANDREEVSKI: Join.

5 THE WITNESS: -- additional protection
6 for the occupants inside the vehicle and kept the
7 vehicle from impacting the concrete wall, yes.

8 BY MR. MURDOCK:

9 Q. And you also agree that the wall and
10 the tire configuration served its purpose
11 insofar as both occupants initially survived the
12 crash, correct?

13 MR. SAMSON: Objection to form.

14 THE WITNESS: I believe that the
15 occupants --

16 MS. ANDREEVSKI: Join.

17 THE WITNESS: -- survived the crash with
18 the tires.

19 BY MR. MURDOCK:

20 Q. Do you have any opinions as to whether
21 the change -- whether a change in the
22 configuration of the tires, meaning bolted
23 together vertically and horizontally, would have
24 changed the outcome of this accident?

25 A. It's possible if they don't move, as they

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Cam Cope, B.S., CFII, CFEI, CVFR, CLI

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1 did in this particular case. So I think that the
2 structure and the way they've redone them out there
3 now is better than it was before, and I think it's
4 safer under the new system that they have out there
5 than it was on the day of this particular event.

6 Q. Did you perform any independent
7 analysis or calculation to determine if a change
8 in the tire configuration on the day of the
9 accident, assuming the wall to be in the same
10 place it was at the time of the accident, would
11 have had any bearing on outcome in this case?

12 MR. SAMSON: Objection to the form.

13 THE WITNESS: We didn't do any testing on
14 that.

15 MS. ANDREEVSKI: Join.

16 BY MR. MURDOCK:

17 Q. So as you sit here today, can you
18 offer any opinions that a change -- any
19 calculations you could do, saying, "Hey, if the
20 wall -- if the tires had been bolted vertically
21 and horizontally together, this fire wouldn't
22 have occurred"? Is that going to be an opinion
23 that you offer at the time of trial?

24 A. No.

25 MS. ANDREEVSKI: Object to the form.

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Cam Cope, B.S., CFII, CFEI, CVFR, CLI

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1 beneficial in this particular wreck.

2 BY MR. MURDOCK:

3 Q. Let me ask you more directly. Had the
4 tires been repositioned differently, would
5 Mr. Ben-Kely or Mr. Sherwood have survived this
6 accident?

7 MR. SAMSON: Objection. Form.

8 THE WITNESS: It's possible, yes.

9 MS. ANDREEVSKI: Join.

10 BY MR. MURDOCK:

11 Q. And what calculations did you perform
12 to reach that conclusion?

13 A. We didn't do any calculations to perform
14 it. Just looking at the technology that went into
15 the additional tires that were there and how they
16 were structured tells me it's a much better system
17 than it was with just two rows.

18 Q. How would the change in that
19 configuration have impacted the crash pulse in
20 this case?

21 A. I think it could have forced the vehicle
22 out if the tires didn't break up. I think it could
23 have forced the vehicle back out into the track,
24 and that might have made a big difference with
25 regards to the damage to the vehicle.

March 17, 2021

Cam Cope, B.S., CFII, CFEI, CVFR, CLI

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1 internet, you'll see fire-retardant suits. I think
2 firemen use them, and I think that that's something
3 that's available for your regular fire department.
4 They order them in and carry fire and flammability
5 suits, and all your firehouses have got them. So
6 it's not too difficult to find one.

7 Which one is the most widely used or
8 best, I don't know, but your local fire department
9 would know.

10 Q. Do you know how long a typical fire
11 suit worn by racecar drivers protects one
12 against a fire, a vehicle fire?

13 A. I think it protects them long enough
14 for -- in most cases, for fire crews to get out,
15 extinguish the fire, and pull them out. We rarely
16 have individuals now on our racetracks that burn up
17 as a result of fire. Most them are pretty much
18 sprayed down, and the suits pretty much have
19 protected them, and they generally live.

20 Q. But do you know how long the typical
21 fire suit protects one from a fire, an
22 inner-cabin fire in a vehicle?

23 A. I'm sorry. I didn't hear all your
24 question.

25 Q. Oh, apologies. So what I was asking

March 17, 2021

Cam Cope, B.S., CFII, CFEI, CVFR, CLI

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1 you've called him an experienced driver; is
2 that --

3 MR. GUELKER: Object as to form. This is
4 Gary Guelker.

5 MS. ANDREEVSKI: Join.

6 THE WITNESS: No. I don't know what his
7 criteria is as far as his training or his ability
8 to drive cars. I don't know.

9 BY MR. MURDOCK:

10 Q. Do you have any -- any criticisms of
11 any efforts that he may have made to try and
12 avoid this accident?

13 MR. GUELKER: Form.

14 MS. ANDREEVSKI: Join.

15 THE WITNESS: No.

16 BY MR. MURDOCK:

17 Q. Do you think that he should have
18 provided Mr. Sherwood any different instructions
19 through the straightaway leading into turn 1?

20 MR. GUELKER: Form.

21 MS. ANDREEVSKI: Join.

22 THE WITNESS: Yes. I think that he
23 should have instructed Mr. Sherwood to a greater
24 extent than what he did.

25 / / /

March 17, 2021

Cam Cope, B.S., CFII, CFEI, CVFR, CLI

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1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)

3) SS:

4 COUNTY OF CLARK)

5
6 I, Monice K. Campbell, a duly
7 commissioned and licensed court reporter, Clark
8 County, State of Nevada, do hereby certify: That I
9 reported the taking of the deposition of the
10 witness, CAM COPE, BS, CFII, CFEI, CVFR, CLI,
11 commencing on Wednesday, March 17, 2021, at 8:00
12 A.M.;

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

20
21 I further certify that I am not a relative or
22 employee of an attorney or counsel or any of the
23 parties, nor a relative or employee of an attorney or
24 counsel involved in said action, nor a person
25 financially interested in the action; that a request

March 17, 2021

Cam Cope, B.S., CFII, CFEI, CVFR, CLI

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1 ([X] has) been made to review the transcript.

2
3 IN WITNESS THEREOF, I have hereunto set my hand
4 in my office in the County of Clark, State of Nevada,
5 this 23rd day of March, 2021.

6
7 

8
9 _____
Monice K. Campbell, CCR No. 312

EXHIBIT “9”

In the Matter Of:
A-17-757614-C
ESTATE OF BEN-KELY
VS
SPEED VEGAS, LLC, et al.

Deposition Of:
MARK W. ARNDT
March 22, 2021



702-805-4800
scheduling@envision.legal

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF GIL BEN-KELY by)
 ANTONELLA BEN-KELY as the)
 duly appointed representative)
 of the Estate and as the)
 widow and heir of Decedent)
 GIL BEN-KELY; SHON BEN-KELY,)
 son and heir of Decedent GIL) Case No.:
 BEN-KELY; NATHALIE BEN-KELY) A-17-757614-C
 SCOTT, daughter and heir of)
 the Decedent GIL BEN-KELY,)
 GWENDOLYN WARD, as Personal)
 Representative of the ESTATE) Dept. No.:
 OF CRAIG SHERWOOD, deceased;)
 GWENDOLYN WARD, individually) XXVII
 and as surviving spouse of)
 CRAIG SHERWOOD; GWENDOLYN)
 WARD, as mother and natural)
 guardian of ZANE SHERWOOD,)
 surviving minor child of)
 CRAIG SHERWOOD,)
)
)
 Plaintiffs,)
)
)

VIDEOCONFERENCE DEPOSITION OF

MARK W. ARNDT

MONDAY, MARCH 22, 2021

Reported by: Monice K. Campbell, NV CCR No. 312

Job No.: 5231

March 22, 2021

Mark W. Arndt

Page 2

1 vs.)
2)
3 SPEEDVEGAS, LLC, a foreign-)
4 limited liability company;)
5 VULCAN MOTOR CLUB, LLC dba)
6 WORLD CLASS DRIVING, a New)
7 Jersey limited liability)
8 company; SLOAN VENTURES 90,)
9 LLC, a Nevada limited)
10 liability company; MOTORSPORT)
11 SERVICES INTERNATIONAL, LLC,)
12 a North Carolina limited)
13 liability company; AARON)
14 FESSLER, an individual; the)
15 ESTATE OF CRAIG SHERWOOD and)
16 AUTOMOBILI LAMBORGHINI)
17 AMERICA, LLC, a foreign)
18 limited liability company;)
19 TOM MIZZONE, an individual)
20 SCOTT GRAGSON, an)
21 individual; PHIL FIORE aka)
22 FELICE FIORE, an individual;)
23 DOES I-X; and ROE ENTITIES)
24 I-X, inclusive,)
25)
Defendants.)
AND ALL RELATED CLAIMS)

VIDEOCONFERENCE DEPOSITION OF MARK W. ARNDT,
held on Monday, March 22, 2021, at 9:10 a.m., before
Monice K. Campbell, Certified Court Reporter, in and
for the State of Nevada.

APPEARANCES:

For the Plaintiff, The Estate of Gil Ben-Kely:

BRENSKE ANDREEVSKI & KRAMETBAUER
BY: RYAN KRAMETBAUER, ESQ.
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
702.385.3300
rkramebtauer@baklawlv.com

For the Plaintiff, The Estate of Craig Sherwood:

ER INJURY ATTORNEYS
BY: COREY M. ESCHWEILER, ESQ.
4795 South Durango Drive
Las Vegas, Nevada 89147
702.877.1500
corey@erinjuryattorneys.com

For the Plaintiff, The Estate of Craig Sherwood:

PANISH SHEA & BOYLE
BY: IAN SAMSON, ESQ.
11111 Santa Monica Blvd., Suite 700
Los Angeles, California 90025
310.928.6200
samson@psblaw.com

March 22, 2021

Mark W. Arndt

Page 4

1 APPEARANCES:

2 For the Defendant Sloan Ventures 90, LLC:

3 MCCORMICK, BARSTOW, SHEPPARD,
4 WAYTE & CARRUTH LLP5 BY: ALLISON ROTHGEB, ESQ.
6 8337 W. Sunset Road, Suite 350
7 Las Vegas, Nevada 89113
8 702.949.1100
9 allison.rothgeb@mccormickbarstow.com10 For the Defendant Automobili Lamborghini
11 America, LLC:12 MUSICK, PEELER & GARRETT LLP
13 BY: H. FRANK HOSTETLER, III, ESQ.
14 650 Town Center Drive, Suite 1200
15 Costa Mesa, California 92626
16 714.668.2454
17 f.hostetler@musicckpeeler.com18 For the Defendant Automobili Lamborghini
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21 BY: RYAN PETERSEN, ESQ.
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24 702.910.3329
25 rpetersen@wileypetersenlaw.com

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RESNICK & LOUIS
BY: GARY GUELKER, ESQ.
8925 W. Russell Road, Suite 220
Las Vegas, Nevada 89148
702.997.3800
gguelker@rlattorneys.com

March 22, 2021

Mark W. Arndt

Page 5

1 APPEARANCES:

2 For SpeedVegas, LLC, Tom Mizzone, and Felice Fiore,
3 Jr.:

4 TAYLOR ANDERSON
5 BY: J.D. MURDOCK, ESQ.
6 1670 Broadway, Suite 900
7 Denver, Colorado 80202
8 303.551.6661
9 jmurdock@talawfirm.com

10 Also Present:

11 SHON BEN-KELY

12 JARED MAREZ, EXHIBIT TECH
13
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March 22, 2021

Mark W. Arndt

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1 memorializing set of documents of some notes that I
2 took where there's a side-by-side of a photograph
3 that's annotated to a photograph that's not -- they
4 are identical photographs; just one has been drawn
5 on and the other one hasn't.

6 MR. HOSTETLER: I want to mark as
7 Exhibit 17, a series of technical articles on tire
8 marks.

9 (Exhibit Number 17 was marked.)

10 EXHIBIT TECH: Exhibit 17 has been posted
11 to the chat.

12 BY MR. HOSTETLER:

13 Q. Mr. Arndt, there are a series of
14 technical articles, maybe three, that all have
15 to do with tire marks and yaw speed analysis.

16 A. Okay.

17 Q. Are these references that you are
18 using to discredit Mr. Walker's opinion that the
19 tire marks are not brake marks?

20 MR. SAMSON: Objection to the form.

21 And, Mark, make sure you look at -- it's
22 a collection of them together.

23 THE WITNESS: I wouldn't characterize
24 this collection -- I think that these are a
25 collection that I obtained or that I had in my

March 22, 2021

Mark W. Arndt

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1 MR. SAMSON: I don't see an 18 marked.

2 There it is.

3 EXHIBIT TECH: Exhibit 18 has been posted
4 to the chat.

5 THE WITNESS: This is a document that I
6 originally -- the original version of this was
7 something that we used when I worked at Arndt &
8 Associates, which was my father's firm. I think
9 originally maybe Nieva Johnson put it together --
10 Nieva Johnson. Maybe she used something and then
11 added to it.

12 And then since then I have gone through
13 it and added and edited it from that time period.
14 So that's kind of the progression and its update
15 over time.

16 BY MR. HOSTETLER:

17 Q. You've inherited this document, then?

18 A. I inherited a version of it. I've been
19 using essentially this document since the early
20 '90s.

21 Q. When was it last changed?

22 A. It might be labeled. Let's see.

23 MR. SAMSON: Frank, as he's looking, we
24 are at seven hours. It sounds like you're pretty
25 close to getting done.

March 22, 2021

Mark W. Arndt

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1 would be -- how it would come to be -- brought to
2 bear, measured.

3 BY MR. MURDOCK:

4 Q. Do you have any opinions that
5 SpeedVegas made any modifications to the subject
6 Lamborghini that caused the initial impact?

7 MR. SAMSON: Objection to the form.
8 Asked and answered.

9 THE WITNESS: I do not have an opinion.

10 BY MR. MURDOCK:

11 Q. Do you have any opinions that
12 SpeedVegas omitted performing any service or
13 maintenance to the Lamborghini that caused or
14 contributed to cause the initial impact?

15 MR. SAMSON: Same objection.

16 THE WITNESS: I don't think I have an
17 opinion.

18 BY MR. MURDOCK:

19 Q. You did not evaluate the crash pulse
20 or the energy of the crash apart from the
21 opinions you've already discussed; is that fair?
22 We've covered your crash pulse opinions?

23 A. I don't really remember expressing any
24 crash pulse opinions, so I guess I don't understand
25 your question.

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Mark W. Arndt

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1 paraphrase here -- but along the lines of, even
2 if the tires had been bolted vertically and
3 horizontally, he still believes that the gas
4 tank in the Lamborghini would have failed and
5 the fire would have occurred.

6 Do you have any reason to dispute that
7 opinion by Mr. Cope?

8 MR. SAMSON: Objection to the form.

9 THE WITNESS: In the configuration with
10 the two tires, my general conclusion would be that
11 I concur.

12 BY MR. MURDOCK:

13 Q. I believe you were asked early on in
14 the deposition if there were any -- if you
15 examined the vehicle to determine if there were
16 any mechanical problems with the car that caused
17 or contributed to -- the car to lose control.

18 Do you remember being asked a couple of
19 questions along those lines?

20 MR. SAMSON: Objection to the form.
21 Objection to the phrase "lose control."

22 BY MR. MURDOCK:

23 Q. And I can rephrase that if you -- I'm
24 just trying to set the predicate for my
25 question.

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1 A. Well, then ask it.

2 I don't recall it, but I understand where
3 your -- what you're asking about.

4 Q. Okay. Did you observe anything or
5 take any -- reach any conclusions about whether
6 there were any mechanical defects with the car
7 that caused it to lose -- that was a factor in
8 it being -- lost control at the time of the
9 impact -- strike that. Let me ask it
10 differently.

11 Based on your evaluation in this case, do
12 you have any opinions that there were mechanical
13 issues with the Lamborghini that was a factor in
14 Mr. Sherwood not being able to maintain control of
15 the vehicle as it came down the straightaway before
16 it impacted the wall?

17 A. I don't have an opinion.

18 Q. Do you have any opinions that there
19 were any conditions with the track -- the
20 topography of the track, the surface material,
21 the visual markers -- that was a cause or a
22 contributing factor to Mr. Sherwood's operation
23 of the car and leading up to the impact?

24 MR. SAMSON: Objection to the form.
25 Asked and answered.

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1 THE WITNESS: I don't have an opinion.

2 BY MR. MURDOCK:

3 Q. So you have no opinion on either of
4 those? You didn't reach an affirmative or a
5 negative opinion, just no opinion; is that
6 correct?

7 A. Correct.

8 Q. In your report marked as Exhibit 3, I
9 believe it is, on page 8, you were asked a
10 question about this statement, and I'll read it
11 to you.

12 And it's Bates number 233. It says:
13 "A principle of motor vehicle fuel
14 system crashworthiness was that
15 occupants should not be burned in
16 crashes that are otherwise
17 survivable."

18 Do you recall that terminology in your
19 report?

20 A. Yes.

21 Q. Is it also fair to say that vehicle
22 operators and owners should not have to
23 anticipate a fire like this from a crash like
24 this?

25 MR. SAMSON: Objection to form.

March 22, 2021

Mark W. Arndt

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1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)

3) SS:

4 COUNTY OF CLARK)

5
6 I, Monice K. Campbell, a duly
7 commissioned and licensed court reporter,
8 Clark County, State of Nevada, do hereby certify:
9 That I reported the taking of the deposition of the
10 witness, Mark W. Arndt, commencing on Monday,
11 March 22, 2021, at 9:10 a.m.;

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

19
20 I further certify that I am not a relative or
21 employee of an attorney or counsel or any of the
22 parties, nor a relative or employee of an attorney or
23 counsel involved in said action, nor a person
24 financially interested in the action; that a request
25 ([X] has not) been made to review the transcript.

March 22, 2021

Mark W. Arndt

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1
2 IN WITNESS THEREOF, I have hereunto set my hand
3 in my office in the County of Clark, State of Nevada,
4 this 1st day of April, 2021.



Monice K. Campbell, CCR No. 312

EXHIBIT “10”

In the Matter Of:
A-17-757614-C
ESTATE OF BEN-KELY
VS
SPEED VEGAS, LLC, et al.

Videotaped Deposition Of:

JACK RIDENOUR, P.E.

April 02, 2021



702-805-4800
scheduling@envision.legal

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF GIL BEN-KELY by)
 ANTONELLA BEN-KELY, as the)
 duly appointed representative)
 of the Estate and as the)
 widow and heir of Decedent)
 GIL BEN-KELY; SHON BEN-KELY,)
 son and heir of Decedent GIL) Case No.:
 BEN-KELY; NATHALIE BEN-KELY) A-17-757614-C
 SCOTT, daughter and heir of)
 the Decedent GIL BEN-KELY,)
 GWENDOLYN WARD, as Personal)
 Representative of the ESTATE) Dept. No.:
 OF CRAIG SHERWOOD, deceased;)
 GWENDOLYN WARD, individually) XXVII
 and as surviving spouse of)
 CRAIG SHERWOOD; GWENDOLYN)
 WARD, as mother and natural)
 guardian of ZANE SHERWOOD,)
 surviving minor child of)
 CRAIG SHERWOOD,)
)
)
 Plaintiffs,)
)
)

VIDEOTAPED VIDEOCONFERENCE DEPOSITION OF

JACK RIDENOUR, P.E.

FRIDAY, APRIL 2, 2021

Reported by: Monice K. Campbell, NV CCR No. 312

Job No.: 5222

April 02, 2021

Jack Ridenour, P.E.

Page 2

1 vs.)
1)
2 SPEEDVEGAS, LLC, a foreign-)
2 limited liability company;)
3 VULCAN MOTOR CLUB, LLC dba)
3 WORLD CLASS DRIVING, a New)
4 Jersey limited liability)
4 company; SLOAN VENTURES 90,)
5 LLC, a Nevada limited)
5 liability company; MOTORSPORT)
6 SERVICES INTERNATIONAL, LLC,)
6 a North Carolina limited)
7 liability company; AARON)
7 FESSLER, an individual; the)
8 ESTATE OF CRAIG SHERWOOD and)
8 AUTOMOBILI LAMBORGHINI)
9 AMERICA, LLC, a foreign)
9 limited liability company;)
10 TOM MIZZONE, an individual)
10 SCOTT GRAGSON, an)
11 individual; PHIL FIORE aka)
11 FELICE FIORE, an individual;)
12 DOES I-X; and ROE ENTITIES)
12 I-X, inclusive,)
13)
13)

14 Defendants.)
14)
15)
15 AND ALL RELATED CLAIMS)
16)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

April 02, 2021

Jack Ridenour, P.E.

Page 3

1 VIDEOTAPED VIDEOCONFERENCE DEPOSITION OF JACK
2 RIDENOUR, P.E., held via videoconference, on Friday,
3 April 2, 2021, at 8:35 a.m., before Monice K.
4 Campbell, Certified Court Reporter, in and for the
5 State of Nevada.

6
7 APPEARANCES:

8 For the Plaintiff, The Estate of Gil Ben-Kely:

9 BRENSKE ANDREEVSKI & KRAMETBAUER
9 BY: JENNIFER ANDREEVSKI, ESQ.
10 3800 Howard Hughes Parkway, Suite 500
10 Las Vegas, Nevada 89169
11 702.385.3300
11 jandreevski@baklawlv.com
12

13 For the Plaintiff, The Estate of Craig Sherwood:

14 ER INJURY ATTORNEYS
14 BY: COREY M. ESCHWEILER, ESQ.
15 4795 South Durango Drive
15 Las Vegas, Nevada 89147
16 702.877.1500
16 ceschweiler@erinjuryattorneys.com
17

18 For the Plaintiff, The Estate of Craig Sherwood:

19 PANISH SHEA & BOYLE
19 BY: IAN SAMSON, ESQ.
20 11111 Santa Monica Blvd., Suite 700
20 Los Angeles, California 90025
21 310.928.6200
21 samson@psblaw.com
22

April 02, 2021

Jack Ridenour, P.E.

Page 4

1 For the Defendant Sloan Ventures 90, LLC:

2 MCCORMICK, BARSTOW, SHEPPARD,
2 WAYTE & CARRUTH LLP
3 BY: ALLISON ROTHGEB, ESQ.
3 8337 W. Sunset Road, Suite 350
4 Las Vegas, Nevada 89113
4 702.949.1100
5 allison.rothgeb@mccormickbarstow.com

6
7 For the Defendant Automobili Lamborghini America,
7 LLC:

8 MUSICK, PEELER & GARRETT LLP
9 BY: H. FRANK HOSTETLER, III, ESQ.
9 650 Town Center Drive, Suite 1200
10 Costa Mesa, California 92626
10 714.668.2454
11 f.hostetler@musickpeeler.com
11
12

13 For SpeedVegas, LLC and Felice Fiore, Jr.:

14 TAYLOR ANDERSON
14 BY: J.D. MURDOCK, ESQ.
15 1670 Broadway, Suite 900
15 Denver, Colorado 80202
16 303.551.6661
16 jmurdock@talawfirm.com
17

18 For the Estate of Gil Ben-Kely:

19 RESNICK & LOUIS
19 BY: GARY R. GUELKER, ESQ.
20 8925 W. Russell Road, Suite 220
20 Las Vegas, Nevada 89148
21 702.997.3800
21 gguelker@rlattorneys.com
22

23 Also Present:

24 JARED MAREZ, EXHIBIT TECH/VIDEOGRAPHER
25

April 02, 2021

Jack Ridenour, P.E.

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1 stronger, and we still fractured it in multiple
2 locations.

3 And here again, this is an example of why
4 it is unfeasible to not have a fire if someone
5 survives a crash. You know, people survive
6 incredibly severe crashes, crashes that would be
7 considered unsurvivable, just as sometimes people
8 survive falls from heights that would be expected
9 to be fatal, and that happened in this case.

10 Q. So let me go through this, sir, if I
11 may, just briefly here.

12 The first opinion you discussed is the
13 severity of the impact. Was it -- well, strike
14 that.

15 Did you determine whether the damage to
16 the vehicle was consistent with an impact of 105 to
17 124 miles per hour with the barrier wall?

18 A. I did. That was my conclusion, that it
19 was, and it was totally inconsistent with a 45-,
20 50-, 60-, or even 75-, 79-mile-an-hour --
21 78-mile-an-hour, I think, was Mr. Butler's
22 number -- crash into the wall. The damage to this
23 vehicle -- it was almost torn in two, against a
24 flat barrier, which is incredibly difficult to do.

25 Q. Let me go back before the impact. Is

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Jack Ridenour, P.E.

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1 there any evidence, or are you aware of any
2 evidence, of any mechanical problems with the
3 Lamborghini that caused or contributed to cause
4 the vehicle to lose control and impact the wall?

5 MR. SAMSON: Objection to the form.

6 THE WITNESS: No. I found no evidence of
7 a vehicle malfunction -- a vehicle performance
8 issue. It appears to be totally driver error
9 causing the vehicle not to slow down to an
10 appropriate speed at the end of the Speedway, end
11 of the straightaway.

12 BY MR. MURDOCK:

13 Q. So you'd also agree, then, that none
14 of the modifications, either post-manufacturing
15 or aftermarket modifications, to the vehicle
16 were a factor in causing the car to lose control
17 or causing the car to have the initial impact.

18 Is that also correct?

19 MR. SAMSON: Objection.

20 THE WITNESS: That is correct. And also
21 that the recall had no effect in this crash,
22 either. I agree with Mr. Arndt on that. There is
23 no indication that this recall was relevant or
24 contributed or was a factor in this collision cause
25 and/or the subsequent fire.

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Jack Ridenour, P.E.

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1 BY MR. MURDOCK:

2 Q. And I know you testified previously
3 you did not do a formal accident reconstruction
4 analysis with computing delta-v or anything in
5 this case; is that correct?

6 A. That is correct.

7 Q. I take it, then, you have no opinions
8 regarding the design or the layout of the
9 SpeedVegas track? You're not going to offer any
10 opinions that that was a poor design or a poor
11 layout of the track; is that right?

12 A. That's correct. I don't believe I have
13 any opinions critical of the track.

14 Q. Do you have any opinions that --
15 regarding the operations of SpeedVegas? Are you
16 familiar with any of the operations that were
17 conducted at SpeedVegas?

18 A. Which operations are you referring to?

19 Q. Okay. Well, here, let me --

20 A. I can certainly answer that in general.

21 You know, the fire response -- you know,
22 if there had been a 65-gallon water tank on the
23 rescue truck at the time, that would not have been
24 any more effective in fighting this fire than what
25 the fire extinguishers were, essentially.

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Jack Ridenour, P.E.

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1 The fire department applied almost
2 1,500 gallons of water in this incident to put out
3 the fire. One fire engine was not sufficient with
4 its water supply. There's no reason to believe
5 that a SpeedVegas fire response on-site, shy of two
6 engines -- complete, you know, big fire department
7 fire engines -- would have had any effect.

8 Q. How about with respect to the
9 maintenance of the vehicle, do you have any
10 opinions as to whether -- well, strike that.

11 You testified before that there's no
12 mechanical issues you identified in the vehicle
13 that you believe were a factor in the accident.

14 Is that -- did I understand your
15 testimony correctly?

16 A. Yes, that is correct.

17 Q. So I take it, then, you also agree
18 that -- you have no criticism -- strike that.

19 Do you believe that SpeedVegas'
20 maintenance of the vehicle was appropriate prior to
21 and on the day of the accident?

22 A. I don't think there's anything that
23 SpeedVegas did in maintenance that influenced this
24 accident. It wasn't a factor.

25 Q. You were asked some questions about

April 02, 2021

Jack Ridenour, P.E.

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1 moved -- or during that process, the rear axle
2 moved forward also. And there are imprints in the
3 constant velocity joint at the transmission --
4 excuse me, the differential, which shows the axle
5 moving forward, and bending the axle, actually, and
6 that's when the right rear wheel and tire
7 interacted with the frame rails, causing the outer
8 frame rails to be damaged and separated.

9 Q. So the -- I just want to make sure I
10 understand.

11 Sorry, I'm getting a bad connection. Is
12 this better?

13 A. Yes.

14 Q. Okay. Starting again.

15 So let me reask the question that I was
16 going to ask.

17 Is it fair to say, then, that you don't
18 have any criticisms of the type of tires or the
19 configuration of the tires along the barrier wall
20 that the vehicle impacted in the crash? Is that
21 fair to say?

22 A. You know, you can always put more tires
23 up, so -- but it wouldn't -- I don't think it would
24 have made much difference here. And obviously, if
25 the wall wasn't there, then the vehicle could have

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Jack Ridenour, P.E.

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1 gone further, and if -- you know, we can sit here
2 and go if, if, if. If the driver had gone straight
3 instead of trying to make the turn or the
4 instructor had done that, that might have been a
5 better outcome. There's lots of things that can
6 affect the severity of the impact.

7 I'm not criticizing Mr. Ben-Kely for
8 trying to -- I think he was the one controlling the
9 car at the time, or trying to control the car. I'm
10 not criticizing him for trying to make the turn or
11 take the path that he did. But, you know, all
12 those things are what lead to an accident. And if
13 you can break the chain, you can change the results
14 sometimes, but I don't think it's reasonable to
15 have expected him to do anything different.

16 Q. How about the tires and barrier wall?
17 Do you have any criticisms about the tires along
18 the barrier wall or the position of the barrier
19 wall itself?

20 A. I'm really not addressing that.
21 Obviously, if there was more space, there might
22 have been more time to slow down, but he wasn't
23 slowing down much anyway because he chose to use
24 the traction that he had for steering, and he chose
25 that path.

April 02, 2021

Jack Ridenour, P.E.

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1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)

3) SS:

4 COUNTY OF CLARK)

5
6 I, Monice K. Campbell, a duly
7 commissioned and licensed court reporter, Clark
8 County, State of Nevada, do hereby certify: That I
9 reported the taking of the deposition of the
10 witness, JACK RIDENOUR, P.E., commencing on Friday,
11 April 2, 2021, at 8:35 a.m.;

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

19
20 I further certify that I am not a relative or
21 employee of an attorney or counsel or any of the
22 parties, nor a relative or employee of an attorney or
23 counsel involved in said action, nor a person
24 financially interested in the action; that a request
25 ([X] has) been made to review the transcript.

EXHIBIT “11”

In the Matter Of:
A-17-757614-C
ESTATE OF BEN-KELY
VS
SPEED VEGAS, LLC, et al.

Videotaped Deposition Of:
JAMES WALKER, JR., P.E.

March 23, 2021



702-805-4800
scheduling@envision.legal

DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF GIL BEN-KELY by)
 ANTONELLA BEN-KELY as the duly)
 appointed representative widow)
 and heir of Decedent GIL) Case No.:
 BEN-KELY; NATHALIE BEN-KELY) A-17-757614-C
 SCOTT, daughter and heir of the) Dept. No.: XXVII
 Decedent GIL BEN-KELY,)
 GWENDOLYN WARD, as Personal)
 Representative of the ESTATE OF)
 CRAIG SHERWOOD, deceased; and)
 as surviving spouse of CRAIG)
 SHERWOOD; GWENDOLYN WARD, as)
 mother and natural guardian of)
 ZANE SHERWOOD, surviving minor)
 child of CRAIG SHERWOOD,)
 Plaintiffs,

VIDEOCONFERENCE DEPOSITION OF

JAMES WALKER, JR., P.E.

Tuesday, March 23, 2021

REPORTED BY: KELLY REXROAT, CCR NO. 977

JOB NO. 5223

1 vs.)
2)
3 SPEEDVEGAS, LLC, a foreign-limited)
liability company; VULCAN MOTOR)
4 CLUB, LLC d/b/a WORLD CLASS)
DRIVING, a New Jersey limited)
5 liability company; SLOAN VENTURES)
90, LLC, a Nevada limited liability)
6 company; MOTORSPORT SERVICES)
INTERNATIONAL, LLC, a North)
7 Carolina limited liability company;)
AARON FESSLER, an individual; the)
8 ESTATE OF CRAIG SHERWOOD and)
AUTOMOBILI LAMBORGHINI AMERICA,)
9 LLC, a foreign limited liability)
company; TOM MIZZONE, an)
10 individual; SCOTT GRAGSON, an)
individual; PHIL FIORE a/k/a FELICE)
11 FIORE, an individual; DOES I-X; and)
ROE ENTITIES I-X, inclusive,)

12 Defendants.)

13 AND ALL RELATED CLAIMS)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

1 VIDEOCONFERENCE DEPOSITION OF JAMES WALKER,
2 JR., P.E., on March 23, 2021, at 10:02 a.m., before
3 Kelly Rexroat, Certified Court Reporter, in and for
4 the State of Nevada.

5
6 REMOTE APPEARANCES

7
8 For the Plaintiff, The Estate of Craig Sherwood:

9 PANISH SHEA & BOYLE
10 BY: IAN SAMSON, ESQ.
11 PAUL TRAINA, ESQ.
12 11111 Santa Monica Boulevard
Suite 700
Los Angeles, CA 90025
samsoni@psblaw.com
310.928.6200

13 For the Plaintiffs Estate of Gil Ben-Kely, et al.:

14 BRENSKE ANDREEVSKI & KRAMETBAUER
15 BY: RYAN KRAMETBAUER, ESQ.
16 3800 Howard Hughes Parkway
Suite 500
17 Las Vegas, NV 89169
rkrametbauer@baklawlv.com
702.385.3300

18 For the Plaintiff, The Estate of Craig Sherwood:

19 ER INJURY ATTORNEYS
20 BY: COREY M. ESCHWEILER, ESQ.
21 4795 South Durango Drive
Las Vegas, NV 89147
22 corey@erinjuryattorneys.com
23 702.877.1500
24
25

1 APPEARANCES (Continued)

2 For the Sloan Ventures 90, LLC:

3 MCCORMICK BARSTOW SHEPPARD

4 WAYTE & CARRUTH, LLP

5 BY: MICHAEL MERRITT, ESQ.

6 8337 W. Sunset Road

Suite 350

7 Las Vegas, NV 89113

702.949.1100

8 michael.merritt@mccormickbarstow.com

9 For the Defendant Automobili Lamborghini America,
10 LLC:

11 KING & SPALDING LLP

12 BY: SUSAN VARGAS, ESQ.

633 W. 5th Street

Suite 1600

Los Angeles, CA 90071

svargas@kslaw.com

214.443.4355

13 For the Defendant Automobili Lamborghini America,
14 LLC:

15 WILEY PETERSEN

16 BY: RYAN PETERSEN, ESQ.

1050 Indigo Drive

Suite 200B

Las Vegas, NV 89145

17 rpetersen@wileypetersen.com

702.910.3329

18
19 For the Defendant/Cross-Claimant SpeedVegas, LLC,
20 Tom Mizzone and Felice Fiore, Jr.:

21 TAYLOR ANDERSON

22 BY: JAMES D. MURDOCK, ESQ.

1670 Broadway, Suite 900

Denver, CO 80202

303.551.6661

23 jmurdock@talawfirm.com

1 your opinion is consistent with that?

2 Did you identify any mechanical or
3 functional issues with the car that would prevent it
4 from being navigated through the S curve on that 7th
5 lap by Mr. Sherwood?

6 MR. KRAMETBAUER: Object to the form of the
7 question.

8 MR. SAMSON: Join.

9 A. I did not find any reason why the car could
10 not have successfully navigated that turn. The
11 brakes and the steering all appeared to be intact
12 and functional and available for use at the time of
13 the crash.

14 BY MR. MURDOCK:

15 Q. And you were also asked some questions
16 about looking at the track. Let me ask you a little
17 bit about that.

18 One of the sources of information you
19 relied on is your scene inspection; right?

20 A. Both of them, yes.

21 Q. Your scene inspections, I should say,
22 correct.

23 The other one is the FARO data obtained
24 from Mr. Redfairn's scan; is that right?

25 A. That's right.

CERTIFICATE OF REPORTER

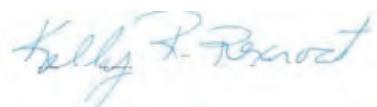
STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Kelly Rexroat, a Certified Court Reporter
licensed by the State of Nevada, do hereby certify:
That I reported the deposition of JAMES WALKER, JR.,
P.E. on March 23, 2021, at 10:02 a.m.

That prior to being deposed, the witness was
duly sworn by me to testify to the truth. That I
thereafter transcribed my said stenographic notes via
computer-aided transcription into written form, and
that the typewritten transcript is a complete, true,
and accurate transcription of said shorthand notes;
that review of the transcript was requested.

I further certify that I am not a relative,
employee, or independent contractor of counsel or of
any of the parties involved in the proceeding; nor a
person financially interested in the proceeding; nor
do I have any other relationship that may reasonably
cause my impartiality to be questioned.

IN WITNESS HEREOF, I have set my hand in my
office in the County of Clark, State of Nevada, this
26th day of March, 2021.



KELLY REXROAT, CCR NO. 977

006000

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EXHIBIT “12”

In the Matter Of:
A-17-757614-C
ESTATE OF BEN-KELY
VS
SPEED VEGAS, LLC, et al.

Deposition Of:
MARIUSZ ZIEJEWSKI, PH.D.
March 24, 2021



702-805-4800
scheduling@envision.legal

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF GIL BEN-KELY by)
ANTONELLA BEN-KELY as the)
duly appointed representative))
of the Estate and as the)
widow and heir of Decedent)
GIL BEN-KELY; SHON BEN-KELY,)
son and heir of Decedent GIL) Case No.:
BEN-KELY; NATHALIE BEN-KELY) A-17-757614-C
SCOTT, daughter and heir of)
the Decedent GIL BEN-KELY,)
GWENDOLYN WARD, as Personal)
Representative of the ESTATE) Dept. No.:
OF CRAIG SHERWOOD, deceased;) XXVII
GWENDOLYN WARD, individually)
and as surviving spouse of)
CRAIG SHERWOOD; GWENDOLYN)
WARD, as mother and natural)
guardian of ZANE SHERWOOD,)
surviving minor child of)
CRAIG SHERWOOD,)
Plaintiffs,)

VIDEOCONFERENCE DEPOSITION OF

MARIUSZ ZIEJEWSKI, Ph.D.

WEDNESDAY, MARCH 24, 2021

Reported by: Monice K. Campbell, NV CCR No. 312

Job No.: 5234

March 24, 2021

Mariusz Ziejewski, Ph.D.

Page 2

1 vs.)
2)
3 SPEEDVEGAS, LLC, a foreign-)
4 limited liability company;)
5 VULCAN MOTOR CLUB, LLC dba)
6 WORLD CLASS DRIVING, a New)
7 Jersey limited liability)
8 company; SLOAN VENTURES 90,)
9 LLC, a Nevada limited)
10 liability company; MOTORSPORT)
11 SERVICES INTERNATIONAL, LLC,)
12 a North Carolina limited)
13 liability company; AARON)
14 FESSLER, an individual; the)
15 ESTATE OF CRAIG SHERWOOD and)
16 AUTOMOBILI LAMBORGHINI)
17 AMERICA, LLC, a foreign)
18 limited liability company;)
19 TOM MIZZONE, an individual)
20 SCOTT GRAGSON, an)
21 individual; PHIL FIORE aka)
22 FELICE FIORE, an individual;)
23 DOES I-X; and ROE ENTITIES)
24 I-X, inclusive,)
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27 Defendants.)
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March 24, 2021

Mariusz Ziejewski, Ph.D.

Page 3

1 VIDEOCONFERENCE DEPOSITION OF MARIUSZ ZIEJEWSKI,
2 Ph.D., held on Wednesday, March 24, 2021, at
3 9:13 a.m., before Monice K. Campbell, Certified
4 Court Reporter, in and for the State of Nevada.
5

6 APPEARANCES:

7 For the Plaintiff, The Estate of Gil Ben-Kely:

8 BRENSKE ANDREEVSKI & KRAMETBAUER
9 BY: RYAN KRAMETBAUER, ESQ.
3800 Howard Hughes Parkway, Suite 500
10 Las Vegas, Nevada 89169
702.385.3300
11 rkramebtauwer@baklawlv.com

12 For the Plaintiff, The Estate of Craig Sherwood:

13 ER INJURY ATTORNEYS
14 BY: COREY M. ESCHWEILER, ESQ.
4795 South Durango Drive
15 Las Vegas, Nevada 89147
702.877.1500
16 corey@erinjuryattorneys.com

17 For the Plaintiff, The Estate of Craig Sherwood:

18 PANISH SHEA & BOYLE
19 BY: PAUL TRAINA, ESQ.
BY: IAN SAMSON, ESQ.
11111 Santa Monica Blvd., Suite 700
20 Los Angeles, California 90025
(310) 928-6200
21 traina@psblaw.com
samson@psblaw.com
22
23
24
25

March 24, 2021

Mariusz Ziejewski, Ph.D.

Page 4

1 APPEARANCES:

2 For the Defendant Sloan Ventures 90, LLC:

3 MCCORMICK, BARSTOW, SHEPPARD,
4 WAYTE & CARRUTH LLP5 BY: MICHAEL MERRITT, ESQ.
6 8337 W. Sunset Road, Suite 350
7 Las Vegas, Nevada 89113
8 702.949.1100

9 michael.merritt@mccormickbarstow.com

10 For the Defendant Automobili Lamborghini
11 America, LLC:12 MUSICK, PEELER & GARRETT LLP
13 BY: H. FRANK HOSTETLER, III, ESQ.
14 650 Town Center Drive, Suite 1200
15 Costa Mesa, California 92626
16 714.668.2454
17 f.hostetler@musickpeeler.com18 For the Defendant Automobili Lamborghini
19 America, LLC:20 WILEY PETERSEN
21 BY: RYAN PETERSEN, ESQ.
22 1050 Indigo Drive, Suite 200B
23 Las Vegas, Nevada 89145
24 702.910.3329
25 rpetersen@wileypetersenlaw.com

For the Estate of Gil Ben-Kely:

RESNICK & LOUIS
BY: GARY GUELKER, ESQ.
8925 W. Russell Road, Suite 220
Las Vegas, Nevada 89148
702.997.3800
gguelker@rlattorneys.com

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1 make sure I understand.

2 You have no opinions regarding the design
3 of the SpeedVegas track; is that correct?

4 A. That's correct.

5 Q. And you have no opinions regarding the
6 operation of the SpeedVegas track, correct?

7 A. That's correct.

8 Q. Going to Exhibit 7, which is your
9 rebuttal report, you -- Issue Number 3, you were
10 asked a number of questions about the
11 calculations you performed, and I want to make
12 sure I understand.

13 The impact of the helmet to
14 Mr. Ben-Kely's shoulder, there were rotational and
15 linear forces involved, right?

16 A. Sure. The impact is some kind of angle
17 hitting the shoulder, but how the head got to that
18 point, sure, there would be some -- would be
19 mainly -- with the big delta-v, would be mainly
20 linear. There would be some rotation, sure.

21 Q. Right. And also, you've got an
22 impact -- you talked about before the angular
23 impact of the vehicle into the wall, correct?

24 A. Right.

25 Q. So you've got that, plus you've got

March 24, 2021

Mariusz Ziejewski, Ph.D.

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1 A. No opinion.

2 Q. Do you have any idea why this crash
3 happened?

4 MR. TRAINA: Objection. It's overly
5 broad. Objection as to form.

6 THE WITNESS: No, I don't have an opinion
7 on that.

8 BY MR. MURDOCK:

9 Q. Do you have any explanation as to why
10 this accident happened?

11 A. No.

12 MR. MURDOCK: I don't believe I have any
13 further questions. Thank you.

14 Kept it within 15 minutes, Paul.

15 THE WITNESS: That's right.

16 THE COURT REPORTER: Do you guys have the
17 time for everyone?

18 THE VIDEOGRAPHER: We do. I apologize.

19 We have seven hours and two minutes for
20 Frank. And then five minutes for you, J.D.

21 MR. MURDOCK: I was very efficient.

22 Monice, I think you said at one point in
23 time you had a question about what the doctor said
24 during one of his answers around 5:30 -- or I guess
25 it was at 4:30 your time. 4:32?

March 24, 2021

Mariusz Ziejewski, Ph.D.

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1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)

3) SS:

4 COUNTY OF CLARK)

5
6 I, Monice K. Campbell, a duly
7 commissioned and licensed court reporter, Clark
8 County, State of Nevada, do hereby certify: That I
9 reported the taking of the deposition of the
10 witness, MARIUSZ ZIEJEWSKI, Ph.D., commencing on
11 Wednesday, March 24, 2021, at 9:13 a.m.;

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

19
20 I further certify that I am not a relative or
21 employee of an attorney or counsel or any of the
22 parties, nor a relative or employee of an attorney or
23 counsel involved in said action, nor a person
24 financially interested in the action; that a request
25 ([X] has) been made to review the transcript.

March 24, 2021

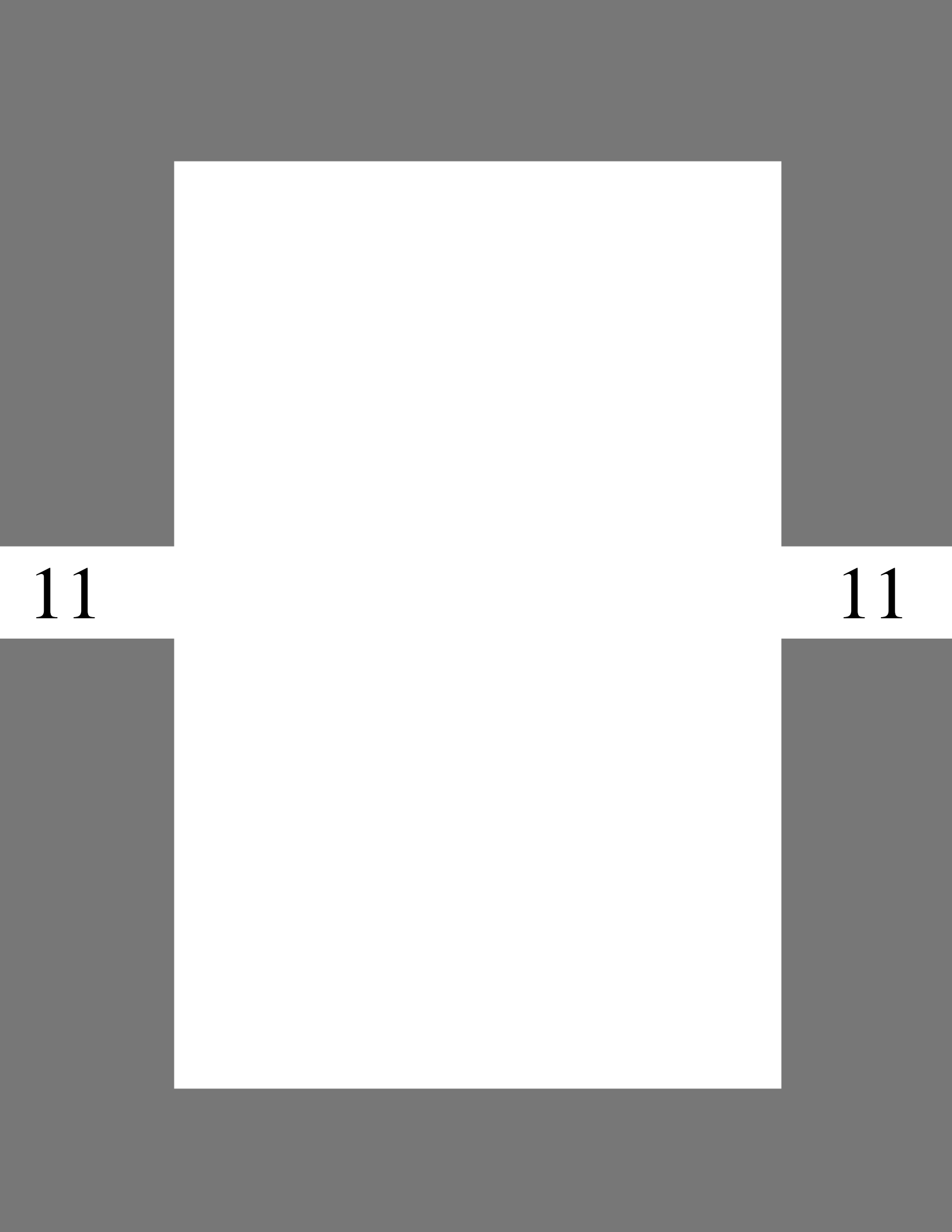
Mariusz Ziejewski, Ph.D.

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1
2 IN WITNESS THEREOF, I have hereunto set my hand
3 in my office in the County of Clark, State of Nevada,
4 this 3rd day of April, 2021.

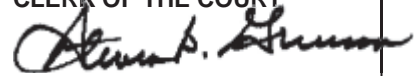
5
6 

7
8 _____
9 Monice K. Campbell, CCR No. 312



11

11



OPP

COREY M. ESCHWEILER

Nevada Bar No. 6635

ER INJURY ATTORNEYS

4795 South Durango

Las Vegas, Nevada 89147

-and-

RAHUL RAVIPUDI

Nevada Bar No. 14750

ravipudi@psblaw.com

PAUL A. TRAINA

Admitted Pro Hac Vice

traina@psblaw.com

IAN P. SAMSON, ESQ.

Nevada Bar No. 15089

samson@psblaw.com

PANISH SHEA & BOYLE, LLP

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Telephone: 310.477.1700

Facsimile: 310.477.1699

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF GIL BEN-KELY by
ANTONELLA BEN-KELY, the duly
appointed representative of the ESTATE and as
the widow and heir of Decedent GIL BEN-
KELY; SHON BEN-KELY, son and heir of
decedent GIL BEN-KELY; NATHALIE BEN-
KELY-SCOTT, daughter and heir of the
decedent GIL BEN-KELY, GWENDOLYN
WARD, as Personal Representative of the
ESTATE OF CRAIG SHERWOOD, deceased;
GWENDOLYN WARD, Individually, and as
surviving spouse of CRAIG SHERWOOD,
deceased; GWENDOLYN WARD, as Mother
and Natural Guardian of ZANE SHERWOOD,
surviving minor child of CRAIG
SHERWOOD, deceased,

Plaintiffs,

v.

SPEED VEGAS, LLC, a Delaware Limited
liability company; SCOTT GRAGSON
WORLD CLASS DRIVING, an unknown

Case No. A-17-757614-C

Dept. No.: XXVII

**PLAINTIFFS' OPPOSITION TO
DEFENDANT FELICE FIORE'S
MOTION FOR SUMMARY JUDGMENT**

HEARING REQUESTED

entity; SLOAN VENTURES 90, LLC, a Nevada limited liability company; ROBERT BARNARD; MOTORSPORT SERVICES INTERNATIONAL, LLC, a North Carolina limited liability company; AARON FESSLER; the ESTATE OF CRAIG SHERWOOD; AUTOMOBILI LAMBORGHINI AMERICAN, LLC, a foreign limited liability company; FELICE J. FIORE, JR.; DOES I-X, inclusive; and ROE CORPORATIONS I-X, inclusive

Defendants.

GWENDOLYN WARD, as Personal Representative of the ESTATE OF CRAIG SHERWOOD, deceased; GWENDOLYN WARD, Individually, and as surviving spouse of CRAIG SHERWOOD, deceased; GWENDOLYN WARD, as Mother and Natural Guardian of ZANE SHERWOOD, surviving minor child of CRAIG SHERWOOD, deceased,

Crossclaim Plaintiffs,

v.

ESTATE OF GIL BEN-KELY by ANTONELLA BEN-KELY, the duly appointed representative of the ESTATE; DOES I-X, inclusive; and ROE CORPORATIONS I-X, inclusive,

Crossclaim Defendants.

ESTATE OF BEN-KELY by ANTONELLA BEN-KELY, duly appointed representative of the Estate and widow and heir of decedent GIL BEN-KELY; SHON BEN-KELY, son and heir of decedent GIL BEN-KELY; NATHALIE BEN-KELY SCOTT, daughter and heir of decedent GIL BEN-KELY,

Crossclaim Plaintiffs,

ESTATE OF CRAIG SHERWOOD; DOES I-X, inclusive; and ROE CORPORATIONS I-X, inclusive,

Crossclaim Defendants.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On February 12, 2017, Craig Sherwood burned to death in the driver's seat of a 2015 Lamborghini Aventador following impact with a tire and concrete barrier on the racetrack at SpeedVegas. Mr. Sherwood's death arose from defects in the Aventador's fuel system. It should not have failed, but it did, causing a rapidly spreading fire that took Mr. Sherwood's life and caused unthinkable pain and suffering before he died.

Defendant Phil Fiore moves for summary judgment on Plaintiffs' negligence and product liability claims. As explained below, pursuant to EDCR 2.67(b), Plaintiffs intend to drop the negligence claims against Mr. Fiore at the time of the pretrial memorandum, thereby mooted that portion of his motion.

The product liability claims, on the other hand, should proceed against Mr. Fiore. He moves for summary judgment on a single issue: he should not be liable for product liability because he is not a "merchant," but a "one-time" seller. Mr. Fiore is wrong. Although he admits he owns the Aventador, and that he leased it to SpeedVegas, his arrangement with the track was hardly a "one-time" event. Mr. Fiore fails to attach the lease itself, and with good reason: that "commercial lease" shows that, far from a one-time transaction, Mr. Fiore negotiated an ongoing, direct interest in sales generated by the Aventador:

3. RENT & OPTION TO PURCHASE. As Rent for the use of the vehicle the LESSEE agrees to pay to the LESSOR an amount determined as follows:

- A. Fifty percent (50%) of the total sales earned by Lessee from the rental of the Vehicle at the Speed Vegas facility (the "Track") each month, after deducting the cost of tires, repairs, and maintenance expense incurred by the Lessee in operation of the Vehicle at the Track;
- B. Plus an additional Three thousand dollars and no cents (\$3,000.00) per month. Notwithstanding the foregoing the minimum payment due to the Lessor shall be six thousand dollars and no cents (\$6,000.00) per month for each and every month the Vehicle is leased by the LESSEE.

(**Exhibit 1**, Lease Agreement (SpeedVegas 00498 to 500).) Mr. Fiore was not simply a "private owner" looking to offload an expensive car "he could no longer afford." (Mot. at 20:2-3.) He was a part-owner in a racetrack and negotiated a lease deal where he would receive 50% of the net

1 revenue each time his Aventador was driven by a customer. He therefore was directly in the business
2 of making the car available for short-term leases (a few laps at a time) as part of a “driving
3 experience” business of which he was a board member. None of the cases SpeedVegas cites suggest
4 Mr. Fiore should escape product liability exposure on this ground.

5 Consequently, Mr. Fiore’s motion should be denied in its entirety.

6 **II. PLAINTIFFS ABANDON THE NEGLIGENCE CLAIM AGAINST MR. FIORE**

7 Plaintiffs intend to abandon their negligence claim against Mr. Fiore in the pretrial
8 memorandum. *See* EDCR 2.67(b) (indicating the final pretrial memorandum should indicate the
9 claims to be abandoned). Mr. Fiore’s motion for summary judgment is not necessary, as entering
10 partial summary judgment on an abandoned claim is an unnecessary step. His motion is moot.

11 **III. THE PRODUCT LIABILITY CLAIM AGAINST MR. FIORE IS NOT SUBJECT TO**
12 **SUMMARY JUDGMENT**

13 To obtain summary judgment, Mr. Fiore bears the burden to show “the evidence is such that
14 a rational trier of fact could return a verdict for the nonmoving party.” *Wood v. Safeway, Inc.*, 121
15 Nev. 724, 731, 121 P.3d 1026, 1029 (2005). When considering his arguments, the Court must
16 construe “the pleadings and other proof ... in a light most favorable to the nonmoving party.” *Id.*

17 Mr. Fiore’s sole argument is that he may not be sued for product liability because he does
18 have the characteristics of a proper products liability defendant. He does not make any other product
19 liability argument, such as contending the product was not actually defective. On the one ground
20 he raises—that he may not be held liable—Mr. Fiore is wrong.

21 As an initial matter, Mr. Fiore admits whether he is “a seller who can be regarded as a
22 merchant engaged in the business of supplying goods of the kind involved in the case” is a question
23 of fact for the jury. (Mot. at 17-18 (citing Nevada Jury Instruction 7.1).) In fact, one of the principal
24 cases on which Mr. Fiore relies makes this point exactly. *See Lucas v. Dorsey Corp.*, 609 N.E.2d
25 1191, 1202 (Ind. 1993) (“The evidence, here, does present a jury question as to whether [the
26 defendant] was a ‘seller’ within the purview of the Products Liability Statute.”).

27 Mr. Fiore also admits “the nature of the transaction (lease vs. sale) ... makes no difference”
28 to the strict products liability analysis. (Mot. at 20:4-6.) In either transaction the defendant

1 commercially exploits the product. *See Price v. Shell Oil Co.* (1970) 2 Cal.3d 245, 252 (“Similarly
2 we can perceive no substantial difference between Sellers of personal property and Non-sellers, such
3 as bailors and lessors. In each instance, the seller or non-seller places (an article) on the market,
4 knowing that it is to be used without inspection for defects.”); *see also Maduik v. Agency Rent-A-*
5 *Car*, 114 Nev. 1, 27-28 (1998) (applying strict liability principles to lessor).

6 Despite these admissions, Mr. Fiore insists there are no questions of fact for the jury to
7 resolve. He is incorrect. Mr. Fiore’s reliance on *Elley v. Stephens*, 104 Nev. 413, 760 P.2d 768
8 (1988), illustrates the flaw in his argument. In *Elley*, the “product” at issue was a pre-fabricated
9 home originally commissioned by the Stephens family. Shortly after it was completed, the
10 Stephens sold the house to the Halls, and the Halls sold it the Elleys. Twelve years after the
11 Stephens had initially sold the house to the Halls, Bradley Elley was injured when a railing broke.
12 He sued the Stephens in product liability. The trial court entered summary judgment, which the
13 Supreme Court affirmed on grounds that the Stephens’ single home sale to someone else (the
14 Halls) made them only occasional sellers outside the scope of a products claim. *Id.* at 418.

15 Mr. Fiore is not like the Stephens. As he acknowledges, he was a board member of
16 SpeedVegas, which made money charging customers to operate various cars on its track and that he
17 leased the Aventador to SpeedVegas “in [that] capacity.” The Stephens, by contrast, had no
18 development role, but simply ordered a prefabricated vacation home. Mr. Fiore leased the
19 Aventador to SpeedVegas under a “commercial lease agreement” and negotiated revenue sharing
20 each time the car was used. The Stephens, by contrast, had no continuing relationship with the
21 property after they sold it, and certainly not with later buyers injured over a decade later. Because
22 of the lease structure, Mr. Fiore’s total compensation depended upon how many times the Aventador
23 was rented per month. The Stephens, by contrast, made a one-time sale in which they transferred
24 all rights to the property to the Halls. This case is not like *Elley*.

25 Nor is it like the out-of-state cases on which Mr. Fiore relies. Mr. Fiore relies heavily on
26 *Brescia v. Great Road Realty Trust*, 117 N.H. 154 (1977), a New Hampshire Supreme Court case
27 from 1977. *Brescia* bears no relation to Mr. Fiore’s actions. There, a construction company’s
28 employees was injured by a crane “leased” from a trust. It turned out the “trust” was an all-but-non-

1 existent legal entity wholly controlled by the construction company's owner, and that the "lease"
2 was a "verbal" arrangement (presumably the owner speaking to himself). The Court, noting that
3 the trust had no meaningful existence, found that the "lease" was insufficient grounds for a product
4 case against it.

5 Contrast that with Mr. Fiore. Unlike the construction company and the trust, which had a
6 "verbal" "business arrangement" without any arms-length negotiation, Mr. Fiore negotiated a
7 commercial lease with a revenue sharing deal. The basis of that revenue was short-term leases of
8 the car (a few laps) by consumers, putting Mr. Fiore directly in the business of generating revenue
9 from third party use of the car. The trust, by contrast, did not appear to derive any benefit from its
10 "lease," and it leased to no one other than the construction company. *Brescia* is not like this case,
11 and it does not support Mr. Fiore's argument.

12 The other out-of-state cases do not, either. *Siemen v. Alden* involved a saw one mill operator
13 purchased from another, a one-off, secondary market sale without any continuing relationship or
14 interest in the product sold, such as a percentage of the revenue the saw generated. 34 Ill. App. 3d
15 961 (1975). *Lucas*, as noted, emphasized whether a defendant is a seller is a question of fact for the
16 jury to determine. 609 N.E.2d at 1202. *Griffin Industries, Inc. v. Jones* concerned an "animal waste
17 rendering" machine one animal waste rendering plant sold to another slightly above cost and without
18 any continued relationship or interest. 975 S.W.2d 100 (Ky. 1998). Finally, *Fernandes v. Union*
19 *Bookbinding Co., Inc.*, does not appear to be a products case, but a negligence and warranty action
20 in which one defendant's status as a seller was relevant to the negligence claim. 400 Mass. 27
21 (1987) ("As a seller of the press manufactured by another, [the defendant] would not be liable in an
22 action for negligence unless it knew or had reason to know of the dangerous condition that caused
23 the accident."). Nothing about *Fernandes* appears applicable here.

24 In sum, Mr. Fiore is not like "a homemaker who sells a jar of jam or a person who sells his
25 used car to his neighbor." *Lucas*, 609 N.E.2d at 1202. He was a board member of a business that
26 made money providing short-term car leases to customers. He negotiated a commercial lease of a
27 vehicle to that business to be made available to customers over and over again. He maintained a
28 continuous interest in both the product itself and the money generated from customers using it. As

1 Mr. Fiore himself acknowledges, whether he is a seller is a question of fact for the jury. The Court
2 should deny this motion and let the jury answer it.

3 **V. CONCLUSION**

4 For the foregoing reasons, Plaintiffs respectfully request the Court deny Mr. Fiore's motion
5 for summary judgment.

6
7 **DATED** this 28th day of May 2021.

8 **ER INJURY ATTORNEYS**

9 **PANISH SHEA & BOYLE, LLP**

10
11 

12 _____
13 COREY ESCHWEILER

14 Nevada Bar No. 6635

15 RAHUL RAVIPUDI

16 Nevada Bar No. 14750

17 PAUL A. TRAINA

18 *Admitted Pro Hac Vice*

19 IAN SAMSON

20 Nevada Bar No. 15089

21 *Attorneys for Plaintiffs*
22
23
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[X] pursuant to N.E.F.C.R. 9 by serving it via this Court’s Electronic Filing System (“EFS”) to all parties listed in the Service Contact List of EFS;

An Employee of PANISH SHEA & BOYLE LLP

EXHIBIT 1

COMMERCIAL VEHICLE LEASE AGREEMENT

This Vehicle Lease (the "Agreement" or "Lease Agreement") is entered into on January __, 2017, by and between Phil Fiore (the "LESSOR" or "Owner") and Speed Vegas, LLC (hereinafter referred to as the "LESSEE") (collectively, the "Parties").

In consideration of the mutual covenants, promises and representations herein, the Parties agree as follows:

1. LESSOR hereby agrees to Lease to the LESSEE the following described motor vehicle (the "Vehicle") with all accessories incorporated therein or affixed thereto:

Lamborghini Aventador
 (Id#) Vehicle description VIN: vehicle id number

2. TERM. The term of this Agreement shall be for a period of fifteen (15) months commencing on January 15 2017 and ending April 14, 2018. After the initial fifteen-month term, the Agreement shall continue indefinitely, unless and until such time as either Party gives sixty (60) days' written notice to the other.

3. RENT & OPTION TO PURCHASE. As Rent for the use of the vehicle the LESSEE agrees to pay to the LESSOR an amount determined as follows:

- A. Fifty percent (50%) of the total sales earned by Lessee from the rental of the Vehicle at the Speed Vegas facility (the "Track") each month, after deducting the cost of tires, repairs, and maintenance expense incurred by the Lessee in operation of the Vehicle at the Track;
- B. Plus an additional Three thousand dollars and no cents (\$3,000.00) per month. Notwithstanding the foregoing the minimum payment due to the Lessor shall be six thousand dollars and no cents (\$6,000.00) per month for each and every month the Vehicle is leased by the LESSEE.
- C. The LESSEE shall be granted an option to purchase the Vehicle for the greater of fair market value or the outstanding balance due to Putnam Leasing at anytime between April 14, 2018 and lease termination.

Rent is due on the 7th of each month by wire transfer to LESSOR. LESSEE shall provide a monthly statement reflecting revenue activity and expenses.

4. MAINTENANCE AND REPAIRS. The LESSEE shall pay for and furnish all maintenance and repairs to keep the Vehicle in good working order and condition for use at the Track. LESSEE agrees to wrap the vehicle, and to protect the original seats from wear and tear.

PS

At the expiration or termination of this Lease, the Vehicle and all equipment in the Vehicle will be returned to the LESSOR in good condition (including but not limited to tires, clutch and transmission), reasonable wear and tear excepted.

5. REGISTRATION, LICENSE, TAXES, INSPECTION, FEES, EXPENSES. The Vehicle shall not be registered for on-road use by LESSEE or LESSEE agents.

6. USE AND OPERATION. The LESSEE acknowledges receipt of the Vehicle, and that the same is in condition satisfactory to LESSEE'S intended purposes. Vehicle shall not be altered, marked or additional equipment installed without the prior written consent of the LESSOR unless otherwise required by law and in which case the LESSEE will bear the expense thereof as well as the restoration expenses.

7. INDEMNIFICATION AND INSURANCE. The LESSEE agrees and will protect, indemnify and hold harmless the Lessor and its assignees and agents from and against any and all losses, damages, injuries, claims, demands and expenses occasioned by, or arising out of the use, the operation, the condition, maintenance of the Vehicle including any accident or other occurrence causing or inflicting injury and/or damage to any person or property, happening or done, in, upon, or about the Vehicle, or due directly or indirectly to this Lease, the use and operation by of the Vehicle by any patron of Speed Vegas and or the Lessee or the condition, maintenance, use or operation of the vehicle by the LESSEE or any person claiming through or under the LESSEE.

In the event the Vehicle is involved in an accident, damaged, stolen or destroyed by fire, the LESSEE shall promptly notify the LESSOR in writing within twenty-four (24) hours. The LESSEE agrees to cooperate with the LESSOR, and the insurance companies in defending and indemnifying the LESSOR against any claims or actions resulting from the LESSEE'S operation or use of the Vehicle.

8. DAMAGE TO VEHICLE. Should the Vehicle or any part thereof be so damaged as to preclude usage for the purpose intended, the LESSEE will repair or replace the Vehicle or the damaged part thereof.

9. TITLE. The Parties acknowledge that this is a Lease Agreement for the Vehicle which shall be used exclusively as a Track vehicle at the SPEEDVEGAS recreational racing facility in Las Vegas Nevada only, and that the LESSEE does not in any way acquire title to the Vehicle unless the Vehicle is purchased as provided above at the expiration of the term of the Lease Agreement. LESSEE agrees not to do any act to encumber, convert, pledge, sell, assign, rehire, lease, lend, conceal, abandon, give up possession of, or otherwise encumber title to the Vehicle.

10. WARRANTIES AND WAIVER. The LESSEE agrees to make use of the Vehicle herein described in "as is" condition and that the Vehicle is in good working order fit to be used as a commercial vehicle at the SPEEDVEGAS recreational racing facility without the need for further modification or repair by the LESSEE aside from ongoing maintenance and repairs otherwise contemplated under the Lease Agreement.

11. CONSTRUCTION. This Lease Agreement shall be construed and determined in accordance with the laws of the State of Nevada in the Clark County District Courts. Any provision herein prohibited by

law shall be ineffective to the extent of such prohibition without invalidating the remaining provisions of the Agreement. This Agreement shall not be construed more strictly against one party than the other merely by virtue of the fact that it has been prepared initially by counsel for one of the Parties, it being recognized that both Parties have had a full and fair opportunity to negotiate and review the terms and provisions of this Agreement and to contribute to its substance and form.

12. ENTIRE AGREEMENT. This Agreement contains the whole agreement of the parties. None of the covenants, provisions, terms or conditions of this Agreement shall be in any manner modified, waived, abandoned or amended except by a written instrument duly signed by the Parties.

13. BINDING. Each and every covenant and agreement herein contained shall extend to and be binding upon the respective officers, directors, agents, successors, heirs, administrators, executors and assigns of the parties hereto except as may be modified in writing by the Parties to the Agreement.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement on the day and year first written above.

LESSOR
PHIL FIORE

By: 

Date: 1/11/12

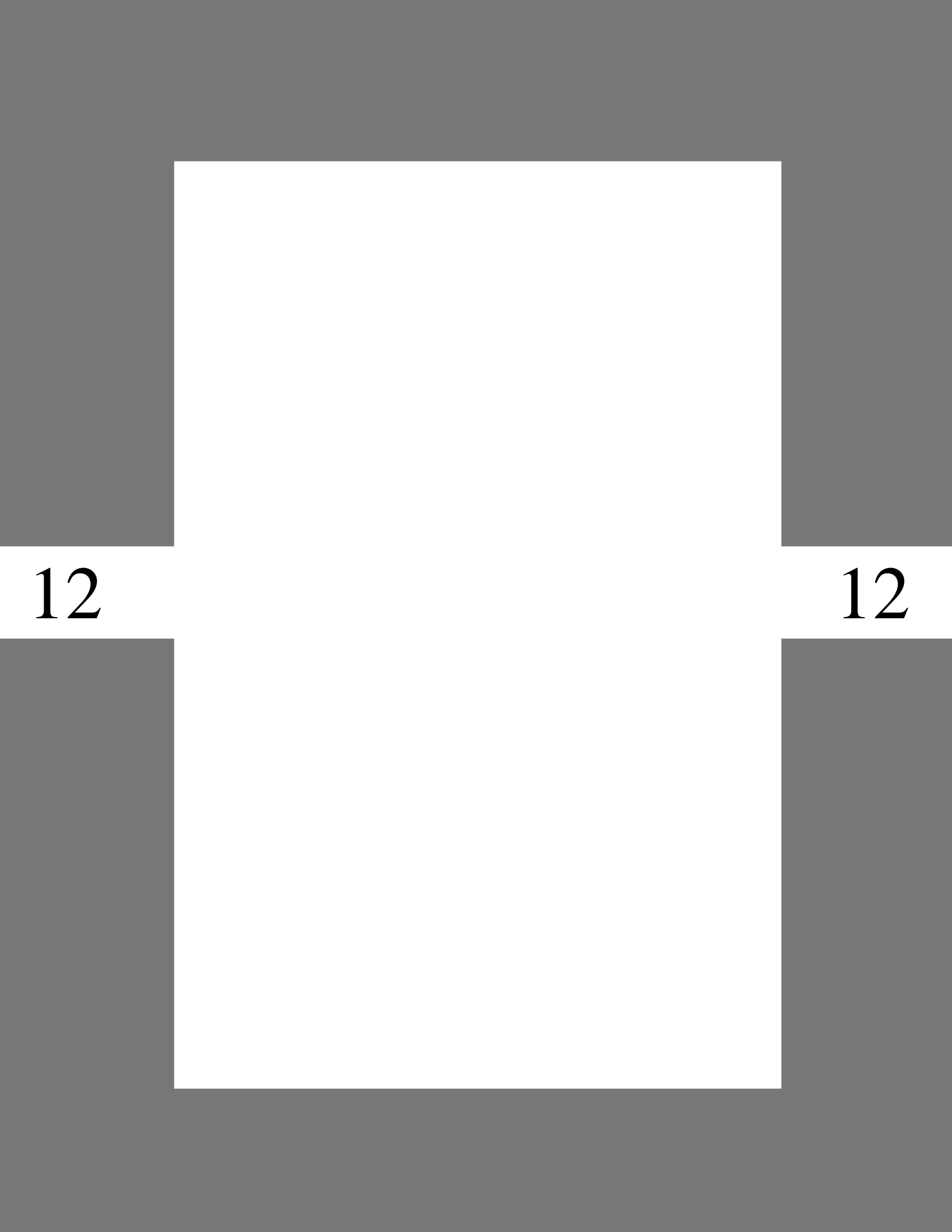
LESSEE
SPEEDVEGAS, LLC

By: 

Its Aaron Fesler

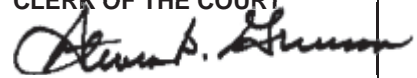
(Print Name and Title)

Date: 1/12/12



12

12



OPP
COREY M. ESCHWEILER
Nevada Bar No. 6635
ER INJURY ATTORNEYS
4795 South Durango
Las Vegas, Nevada 89147

-and-

RAHUL RAVIPUDI
Nevada Bar No. 14750
ravipudi@psblaw.com

PAUL A. TRAINA
Admitted Pro Hac Vice
traina@psblaw.com

IAN P. SAMSON, ESQ.
Nevada Bar No. 15089
samson@psblaw.com

PANISH SHEA & BOYLE, LLP
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Telephone: 310.477.1700
Facsimile: 310.477.1699

Attorneys for Plaintiffs

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CLARK COUNTY, NEVADA

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WARD, as Personal Representative of the
ESTATE OF CRAIG SHERWOOD, deceased;
GWENDOLYN WARD, Individually, and as
surviving spouse of CRAIG SHERWOOD,
deceased; GWENDOLYN WARD, as Mother
and Natural Guardian of ZANE SHERWOOD,
surviving minor child of CRAIG
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Plaintiffs,

v.

SPEED VEGAS, LLC, a Delaware Limited
liability company; SCOTT GRAGSON
WORLD CLASS DRIVING, an unknown

Case No. A-17-757614-C
Dept. No.: XXVII

**PLAINTIFFS' OPPOSITION TO
DEFENDANT SPEEDVEGAS'S MOTION
FOR SUMMARY JUDGMENT**

HEARING REQUESTED

entity; SLOAN VENTURES 90, LLC, a Nevada limited liability company; ROBERT BARNARD; MOTORSPORT SERVICES INTERNATIONAL, LLC, a North Carolina limited liability company; AARON FESSLER; the ESTATE OF CRAIG SHERWOOD; AUTOMOBILI LAMBORGHINI AMERICAN, LLC, a foreign limited liability company; FELICE J. FIORE, JR.; DOES I-X, inclusive; and ROE CORPORATIONS I-X, inclusive

Defendants.

GWENDOLYN WARD, as Personal Representative of the ESTATE OF CRAIG SHERWOOD, deceased; GWENDOLYN WARD, Individually, and as surviving spouse of CRAIG SHERWOOD, deceased; GWENDOLYN WARD, as Mother and Natural Guardian of ZANE SHERWOOD, surviving minor child of CRAIG SHERWOOD, deceased,

Crossclaim Plaintiffs,

v.

ESTATE OF GIL BEN-KELY by ANTONELLA BEN-KELY, the duly appointed representative of the ESTATE; DOES I-X, inclusive; and ROE CORPORATIONS I-X, inclusive,

Crossclaim Defendants.

ESTATE OF BEN-KELY by ANTONELLA BEN-KELY, duly appointed representative of the Estate and widow and heir of decedent GIL BEN-KELY; SHON BEN-KELY, son and heir of decedent GIL BEN-KELY; NATHALIE BEN-KELY SCOTT, daughter and heir of decedent GIL BEN-KELY,

Crossclaim Plaintiffs,

ESTATE OF CRAIG SHERWOOD; DOES I-X, inclusive; and ROE CORPORATIONS I-X, inclusive,

Crossclaim Defendants.

DECLARATION OF IAN SAMSON

I, IAN SAMSON, state and declare as follows:

1. I am an attorney at law, duly admitted to practice before the courts of the State of Nevada. I am an attorney with PANISH SHEA & BOYLE, LLP, attorneys of record for Plaintiffs.

2. I know the following facts to be true of my own knowledge, and if called to testify, I am competent to do so.

3. Attached hereto as **Exhibit 1** is a true and correct copy of excerpts from the Deposition of Andrew Ipekian.

4. Attached hereto as **Exhibit 2** is a true and correct copy of excerpts from the Deposition of Robert Butler.

5. Attached hereto as **Exhibit 3** is a true and correct copy of excerpts from the Deposition of Billy Cox.

6. Attached hereto as **Exhibit 4** is a true and correct copy of the expert report of Robert Redfairn.

7. Attached hereto as **Exhibit 5** is a true and correct copy of one of Ben Willshire's expert reports.

8. Attached hereto as **Exhibit 6** is a true and correct copy of excerpts from the Deposition of Ben Willshire.

9. Attached hereto as **Exhibit 7** is a true and correct copy of excerpts from the Deposition of Paul Crifasi.

10. Attached hereto as **Exhibit 8** is a true and correct copy of one of Ben Willshire's expert reports.

11. Attached hereto as **Exhibit 9** is a true and correct copy of a letter from Robert Barnard.

12. Attached hereto as **Exhibit 10** is a true and correct copy of the initial expert report of Plaintiffs' expert Cam Cope.

13. Attached hereto as **Exhibit 11** is a true and correct copy of excerpts of the Deposition of Cam Cope.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On February 12, 2017, Craig Sherwood burned to death in the driver's seat of a 2015
4 Lamborghini Aventador following impact with a tire and concrete barrier on the racetrack at
5 SpeedVegas. Plaintiffs, his widow and young son, bring this action against SpeedVegas and others.
6 Plaintiffs assert negligence claims and a claim for strict products liability against SpeedVegas. It
7 now moves for summary judgment on those claims.

8 Its motion should be denied. As shown below, there are myriad questions of fact for the jury
9 to determine as to Plaintiffs' negligence-based claims. The evidence supports negligence in many
10 ways, including: the instructor's failure to prevent the Aventador from travelling too fast for the turn
11 (even though he had a passenger-side pedal SpeedVegas contends was fully operational); the track's
12 absence of any meaningful fire-fighting equipment or training, making a vehicle fire a death
13 sentence; and the track's design and "culture" problems even SpeedVegas's expert recognized as
14 creating a "high potential for incidents." Cases in Nevada are tried on the merits, and this one should
15 be, too. Summary judgment should be denied on the negligence claims.

16 Summary judgment is likewise inapplicable on the strict products liability claim.
17 SpeedVegas concedes whether it is a "seller" as that term is used in the products liability context is
18 a question of fact to be determined by the jury. There is plenty for them to consider, and more than
19 adequate information to conclude SpeedVegas is a "seller." SpeedVegas functionally sells short-
20 term leases. The cars are not mere tools, but marketed as unique. They have different prices for
21 each corresponding to the perceived value of riding in the car. Although the term of the lease is
22 short (a number of laps), the effect is the same: SpeedVegas repeatedly injects the cars into the
23 marketplace, deriving a commercial benefit from being paid for their use. SpeedVegas cites no
24 authority stating it is not a "seller" as a matter of law. That means the jury must resolve the question
25 of fact the evidence creates. Summary judgment is inappropriate on this ground, too.

26 In short, SpeedVegas's motion ignores the voluminous evidence of its negligent operation
27 of the "driving experience" it offered amateur customers like Mr. Sherwood. A jury should decide
28 whether that conduct subjects SpeedVegas to liability.

1 **II. LEGAL STANDARD**

2 To obtain summary judgment, SpeedVegas bears the burden to show “the evidence is such
3 that a rational trier of fact could return a verdict for the nonmoving party.” *Wood v. Safeway, Inc.*,
4 121 Nev. 724, 731, 121 P.3d 1026, 1029 (2005). When considering his arguments, the Court must
5 construe “the pleadings and other proof ... in a light most favorable to the nonmoving party.” *Id.*

6 **III. PLAINTIFFS’ NEGLIGENCE CLAIMS RAISE GENUINE ISSUES OF FACT**

7 SpeedVegas groups several claims together, arguing there is no genuine issue of material
8 fact as to any of them. It is wrong. Plaintiffs do not contend the crash occurred because of a
9 mechanical failure in the vehicle. Instead, it occurred because SpeedVegas’s instructor failed to
10 properly control the Aventador. That instruction made the track dangerous, as did the lack of fire
11 suits, proper fire-fighting equipment,

12 **A. The Evidence Shows Mr. Ben-Kely’s Negligence Caused the Crash**

13 SpeedVegas does not dispute that, as a driving instructor, Mr. Ben-Kely’s job was to instruct
14 amateur drivers like Mr. Sherwood how to navigate the SpeedVegas track. That is what he did, as
15 Mr. Ipekian made clear:

16 **Q.** And while you were driving the Aventador, did the instructor give you
17 pointers on where to accelerate?

18 **A.** Yes.

19 **Q.** Where to brake?

20 **A.** Yes.

21 **Q.** Where to turn?

22 **A.** Yes.

23 (**Exhibit 1**, Deposition of Andrew Ipekian (“Ipekian Dep.”) at 73:1-11.) Since Mr. Ben-Kely was
24 in the course and scope of his employment, SpeedVegas is vicariously liable for his breach of duty.

25 The evidence of that breach is apparent: Mr. Ben-Kely failed to stop the Aventador from
26 travelling too fast for the turn. SpeedVegas’s experts, Billy Cox and William Redfairn, pinpoint the
27 cause of the crash as an improper approach by the Aventador to Turn 1. Mr. Cox said it was “too
28 fast ... almost double the speed of the designed speed for the curve” and was not on the right “driving

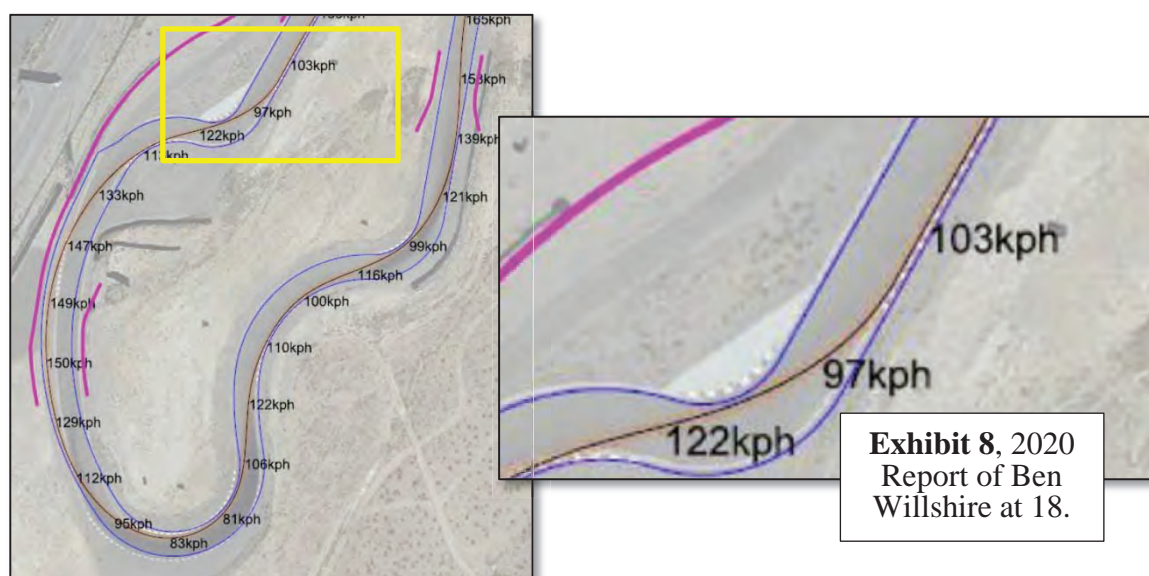
line” to navigate it. (**Exhibit 3**, Deposition of Billy Cox (“Cox Dep.”) at 79:1-12.) The same goes for Mr. Redfairn, who opines the Aventador’s brakes were applied “well beyond the safe area” to do so as it was “being operated outside of the normal driving line leading into turn one.” (**Exhibit 4**, Redfairn Report at 73.) Even the Ben-Kely Estate’s expert agrees. (**Exhibit 2**, Deposition of Robert Butler (“Butler Dep.”) at 29:9-25.) Their opinions are clear: the crash occurred because the Aventador was travelling too fast and on the wrong line as it approached Turn 1.

Ben Willshire, a “driving experience” track expert hired by SpeedVegas, emphasized the importance proper instruction plays for inexperienced drivers. His report recommended a wholesale “cultural shift” in SpeedVegas’s operations, encouraging a push away from “speed” as emphasized to Mr. Sherwood and toward an “exciting experience” not focused on “people [] driv[ing] faster.” (**Exhibit 5**, Willshire 2018 Report at 6-7.) Mr. Willshire left no mistake about the importance of proper instruction, opining failure to properly instruct customers would make SpeedVegas’s track “unsafe” regardless of its design:

Q. Would you agree with me that the instruction or lack of instruction can make a track that is designed appropriately unsafe?

A. Yes.

(**Exhibit 6**, Deposition of Ben Willshire (“Willshire Dep.”) at 84:5-9.) Also, Mr. Willshire produced what he called the “optimum” driving line and speed for the track (information that was not available to Mr. Sherwood). In his opinion, the Aventador should have been between 97 kilometers per hour (about 60 mph) and 103 kilometers per hour (about 64 mph) in the final approach to Turn 1:



1 Mr. Butler opined that, in this same area, the vehicle was travelling between 138 miles per
2 hour and 100 miles per hour, well in excess of the speeds it should have been:

3 Q. When the vehicle left the paved surface on the inside of the right curve, how
4 fast was it going?

5 A. I didn't calculate that.

6 Q. Do you have an opinion?

7 A. Less than 138 miles an hour and more than -- well, it's less than 138.

8 ...

9 Q. Do you have an estimate as to how fast it was going when it reentered the track,
10 other than less than 138 miles an hour?

11 A. Probably around 100, ballparkish.

12 (**Exhibit 2**, Butler Dep. at 57:12-18, 61:22-25.)

13 Mr. Ben-Kely should not have permitted the vehicle to travel at the speed. He had the ability
14 to control it himself by using the passenger-side brake pedal in the car. There is no evidence the
15 passenger brake pedal malfunctioned or was otherwise inoperable. Paul Crifasi, the SpeedVegas
16 mechanic who installed the pedal, testified Mr. Ben-Kely's pedal was "doing the exact same thing
17 as" the driver's brake pedal, that there were no "problems or issues" with its installation or its use
18 by instructors, who routinely tested that it worked. (**Exhibit 7**, Deposition of Paul Crifasi at 39:19-
19 22, 72:25-74:4, 93:1-8, 93:19-22.) Clearly the passenger brake pedal was part of the instruction Mr.
20 Ben-Kely agreed to provide to customers, and, since it functioned just like the driver's pedal, was
21 available for Mr. Ben-Kely to slow the car. He failed to do so.

22 Mr. Ben-Kely also provided instruction to customers, as record evidence in this case shows.
23 SpeedVegas admits it is proper to look to Mr. Ipekian's experience with Mr. Ben-Kely to consider
24 this issue. Mr. Ipekian testified that, when he was with Mr. Ben-Kely in the Aventador before Mr.
25 Sherwood drove, Mr. Ben-Kely's instructions were "far more aggressive" than his previous
26 instructor and focused on hitting "top speed":

27 Q. Did you brake in response to instructions from the Aventador's coach [Mr. Ben-
28 Kely]?

1 A. Yes.

2 Q. ...Were you told by the instructor in the Aventador something like, "Brake
3 now"?

4 A. Yes. He was *far more aggressive* than the elderly gentleman.

5 Q. When you say he was far more aggressive, what do you mean?

6 A. *Try and get your top speed, turn into the turn. It was more like a racing*
7 *experience.*

8 Q. And so you don't recall whether or not you started braking as a result of seeing
9 signaling on the track, like cones or signs; is that correct?

10 A. I remember *taking more of his instruction*, if you're asking me a question.

11 (Exhibit 1, Ipekian Dep. at 79:25-80:19 (emphasis added).) Mr. Ipekian's testimony
12 demonstrates Mr. Ben-Kely's habit of providing instruction to amateur drivers to "aggressively"
13 pursue their "top speed." That habit is further confirmed by SpeedVegas's expert, Ben Willshire,
14 who noted the dangerous "culture" of treating amateur drivers as though they were racing that
15 created a "high potential to create incidents." (Exhibit 5, Willshire Report at 5-6.) Given the
16 Aventador's high speed in the area SpeedVegas urged customers to hit their "top speed," the
17 evidence allows the jury to draw the inference Mr. Ben-Kely's instruction was improper and unsafe.

18 SpeedVegas's claim that no one "criticized" Mr. Ben-Kely is misleading. For instance, Mr.
19 Cope extensively discussed his opinion that the circumstances of the crash indicated Mr. Ben-Kely's
20 failure to properly control the Aventador as an instructor. SpeedVegas cites a single exchange of
21 his deposition in which Mr. Cope answered "no" when asked whether he "had any criticisms of any
22 efforts [Mr. Ben-Kely] may have made to try and avoid the accident." Any uncertainty created by
23 that ambiguous question is dispelled by the very next question:

24 Q. Do you think that he should have provided Mr. Sherwood any different
25 instructions through the straightaway leading into turn 1?

26 A. Yes. *I think that he should have instructed Mr. Sherwood to a greater extent*
27 *than what he did.*

28

1 (Exhibit 11, Cope Dep. at 291:17-24.) SpeedVegas may not create the appearance of an absence
2 of issues of fact simply by concealing evidence.

3 **B. SpeedVegas's Fire-Related Breaches Raise Genuine Issues of Material Fact**

4 In addition to causing the crash, SpeedVegas was negligent (and grossly so) when it came
5 to fire-related issues. Specifically, SpeedVegas did not mandate the use of fire suits (despite
6 representing the track as complying with FIA standards) and had woefully inadequate firefighting
7 equipment incapable of fighting a vehicle fire. SpeedVegas instead relied on the county's fire
8 department, making any vehicle fire a death sentence for the occupants. These questions of fact
9 preclude summary judgment.

10 Applying FIA standards to SpeedVegas is appropriate because that is what SpeedVegas's
11 expert implies and what SpeedVegas represented itself to do. In his report analyzing the
12 SpeedVegas track, Mr. Willshire referred to three professional race tracks as comparators with
13 "similar design principles to those seen at the SpeedVegas venue." (Exhibit 8 2020 Willshire Report
14 at 10.) Those racetracks were Circuit Gilles Villeneuve (used for the Formula 1 Canadian Grand
15 Prix), Circuit de Spa-Francorchamps (FIA Grade 1 licensed track), and Snetterton Circuit (used for
16 British Championships and hosts public track days and corporate experiences). (*Id.* at 10-11.) In
17 addition, SpeedVegas's track designer, Robert Barnard, represented that the facility was "designed
18 to meet FIA Level 2 International standards for safety and operation for race facilities." (Exhibit 9,
19 Letter from Robert Barnard dated February 17, 2017.) FIA standards require "certified safety
20 equipment for the driver," such as "fire suits/clothing." (Exhibit 10, Cam Cope Report at 8.)

21 There is a question of fact whether those fire suits would have saved Mr. Sherwood's life
22 had he *and* fire crew been equipped with them. Mr. Cope testified lack of suits impeded the
23 firefighting efforts because this "handicaps them from being able to get into the vehicle or closer to
24 the vehicle to extract people from it." (Exhibit 11, Cope Dep. at 283:1-9.) He testified that such
25 fire suits protect drivers in the event of a fire:

26 I think it protects them long enough for -- in most cases, for fire crews to get out,
27 extinguish the fire, and pull them out. We rarely have individuals now on our
28

1 racetracks that burn up as a result of fire. Most them are pretty much sprayed down,
2 and the suits pretty much have protected them, and they generally live.

3 (*Id.* at 289:13-19.) He likewise testified about the efficacy of fire suits for Mr. Sherwood:
4 I think that you still have enough time if you're there in a couple of minutes, one or
5 two minutes. I think that if you're there and you're able to extinguish it, that it would
6 have made a difference. Because I don't think they, number 1, died on impact, and
7 I do think that it takes a little bit with people burning up. So I think they were
8 making an effort to get out of the vehicle, and I think that it was survivable for a
9 short period of time until the truck got there. It's not that far away, like you said,
10 550 feet.

11 (*Id.* at 284:21-285:7.)

12 SpeedVegas's stated compliance with FIA standards also mandated "safety equipment for
13 the race track, such as emergency service trucks with foam extinguishment systems." (**Exhibit 10**
14 **Cope Report at 8.**) SpeedVegas failed to meet this standard. Mr. Cope opines that SpeedVegas
15 "should have been aware that chemical foam extinguishers are required to extinguish gasoline fuel-
16 fed/vehicle fires" and that the "portable A, B & C rated handheld extinguishers" were "ineffective
17 and not adequate to extinguish fuel led fires." (*Id.* at 25.) Similarly, Mr. Cope opines that "Fire
18 Safety service trucks stationed on the racetrack should be equipped with foam systems capable of
19 extinguishing gasoline fuel fed fires." (*Id.*) He concluded that "Speed Vegas had no foam
20 extinguishment methodology or systems in place at the time of this crash," something SpeedVegas
21 does not dispute. (*Id.*) Mr. Cope also noted that an OSHA investigation found that "SpeedVegas
22 did not provide training and education for all fire brigade members" and "such training is necessary
23 before they perform fire brigade emergency activities." (*Id.* at 26.) Similarly, SpeedVegas
24 "provided portable fire extinguishers for employee use in the workplace and but did not provide an
25 educational program on their use." (*Id.*) SpeedVegas likewise did not equip the Aventador with a
26 fire suppression system. (*Id.* at 24.) Instead, although they did not disclose this information to
27 customers, SpeedVegas had no ability to fight a vehicle fire and knew it could not do so. (**Exhibit**
28 **12**, Fessler Dep. at 258:20-259:14, 263:20-23.)

1 Some SpeedVegas employees found that unacceptable and begged the track to equip the
2 “fire truck” with better equipment and provide better training. Jodi Zollin, the supervisor of the
3 track’s Fire and Safety Team, testified that in June 2016, she asked SpeedVegas supervisor Darren
4 Strahl for a water tank so that the track's truck would be similar to the firetruck that she had while
5 working at Las Vegas International Speedway. (*Id.* at 34:17-35:17.) This would have resulted in
6 an 80-gallon tank with an 80-foot-long hose. (*Id.*) She had three to four conversations regarding
7 the tank, including providing a quote of \$1,700.00, but the tank was never obtained. (*Id.* at 36:23-
8 37:13.) In addition, Ms. Zollin confirmed SpeedVegas never provided her or her team with training
9 in fire safety and extrication, and she never instructed her team on how to use the extrication
10 equipment. (*Id.* at 37:20-38:22.)

11 During his deposition, Mr. Cope opined the proper equipment could have affected the
12 outcome of the fire:

13 **Q.** Would those -- had those modifications been made, would that have altered the
14 outcome, in your opinion, in this case?

15 ...

16 **A.** I think that it has the possibility of doing that. If you have the hose and you pull
17 up there right beside it with the truck and now you're spraying water onto Mr.
18 Sherwood as he's attempting to get out, and you have the fire suit on where you can
19 go in and help him get out of that particular vehicle while somebody's spraying it
20 down with water, I think that's a big benefit.

21 (**Exhibit 11**, Cope Dep. at 312:16-313:3.)

22 ///

23 ///

24 ///

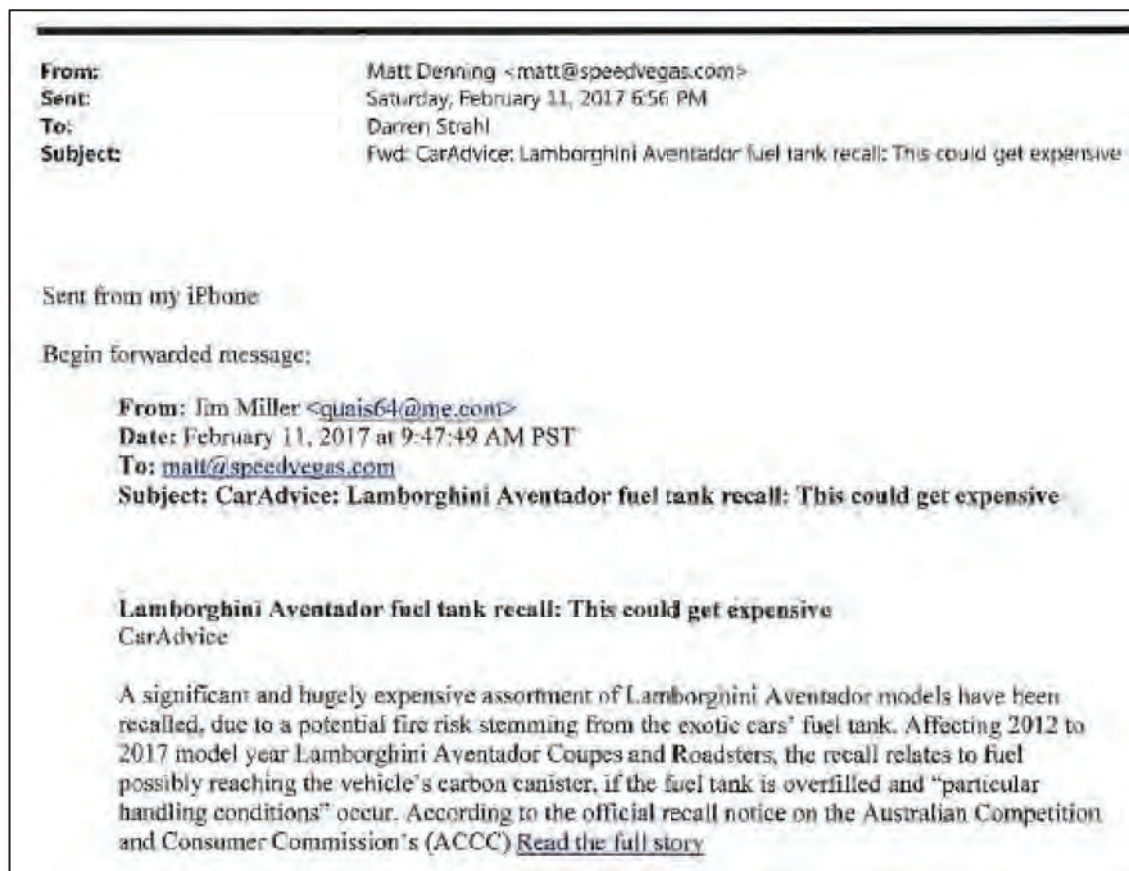
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SpeedVegas also knew the Aventador had been recalled for a fire-safety issue at the time it permitted Mr. Sherwood to use the car. SpeedVegas admits it was aware of a recall notice on the Aventador the day before the crash:



(**Exhibit 13**). SpeedVegas employees Matt Denning (general manager) and Darren Strahl (director of operations) were included in this email. (*Id.*) Mr. Strahl confirmed that the email was dated February 11, 2017 and was received from SpeedVegas general manager Matt Denning the day before Craig died. (**Exhibit 14**, Deposition of Darren Strahl at 113:4-114:25). Mr. Strahl confirmed SpeedVegas knew about the recall before Mr. Sherwood drove the Aventador and that it should have been pulled from service due to the fire risk. (*Id.* at 115:9-21, 118:4-16). Similarly, Mr. Denning confirmed receiving this email from Mr. Miller and discussing it with him. (**Exhibit 15**, Deposition of Charles Matthew Denning at 132:25-133:4). He also confirmed forwarding it to Mr. Strahl at 6:56pm the night before Mr. Sherwood's death. (*Id.* at 135:2-19).

Consequently, there are genuine issues of fact as to the fire-related negligence of SpeedVegas. SpeedVegas's arguments to the contrary lack merit.

1 **C. SpeedVegas's Track Deficiencies Raise Genuine Issues of Material Fact**

2 There are also genuine issues of material fact as to the design and layout of the SpeedVegas
3 track. As an initial matter, SpeedVegas's argument that it cannot be blamed for the shortcomings
4 of its track designer Bob Barnard lack merit. SpeedVegas may not pass the buck to an independent
5 contractor for the condition on its property. Nevada law recognizes the concept of a nondelegable
6 duty, which "imposes upon the principal not merely an obligation to exercise care in his own
7 activities, but to answer for the well-being of those persons to whom the duty runs." *Alcantara ex*
8 *rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 259 (2014) (quoting *Gen. Bldg. Contractors*
9 *Ass'n, Inc. v. Pennsylvania*, 458 U.S. 375, 395 (1982)). "Even the use of utmost care in hiring and
10 delegating the duty to an independent contractor ... will not discharge the duty." *Id.* This doctrine
11 runs counter to the common law's refusal to extend liability for an independent contractor's torts to
12 the hiring entity. *San Juan v. PSC Industrial Outsourcing*, 126 Nev. 355, 359 (2010). Courts instead
13 found nondelegable duties and imposed vicarious liability for contractors in certain circumstances,
14 including "landowners contracting for work creating a risk of harm to neighbors or passersby." *Id.*
15 (citing *Dixon v. Simpson*, 74 Nev. 358 (1958) (landowner liable for injuries to a pedestrian who fell
16 into a trench the landowner hired an independent contractor to dig)).

17 Even so, Aaron Fessler made clear SpeedVegas would take Mr. Barnard's input into account,
18 but it ultimately made all track decisions. SpeedVegas decided to move the concrete barrier after
19 the crash "to make our coaches feel more comfortable about the environment." (**Exhibit 12**, Fessler
20 Dep. at 145:8-23). Coaches' concerns were shared with Mr. Barnard, who stated that "there was no
21 point in moving it, but if it made [SpeedVegas] feel better and made the coaches feel better" then it
22 could be done." (*Id.* at 150:6-9). Mr. Fessler gave similar testimony tire barriers at the track:

23 Specifically, Bob had indicated that the inside of turn number 2 should be lined
24 with tires between point A and point B. And I recall prior to the accident having a
25 conversation with Bob, saying, "Bob, you know, I don't know appropriately how to
26 design this, but I wonder if we would benefit from having additional tires." And
27 Bob said to me, "Look, Aaron. You can add as many additional tires on top of my
28 specification as you like. If it makes you feel better and sleep at night, you're

1 welcome to do so." And the tires, coincidentally, that this accident occurred at
2 happened in an area that was outside of what Bob had specified for protection from
3 tires.

4 (*Id.* at 288:3-19.) This evidence belies SpeedVegas's suggestion it blindly implemented Mr.
5 Barnard's specifications.

6 The actual layout of the track created dangers and raises questions of fact to be determined
7 by the jury. SpeedVegas's own expert, Mr. Willshire, agreed the barrier wall was too close to the
8 track. His report indicated as follows:

9 Following a visit by the Author in 2017, it was observed that the latter segment of the safety barrier could be
10 moved further away from the track, with the objective of reducing risk of impact – this was based on a similar risk
11 assessment exercise to that shown above and assumes the vehicle has successfully navigated turn 1 and 2. It is
not believed that the location of the barrier could have been designed to reasonably mitigate against a driver
completely disregarding the Turn 1 & 2 complex.

12 (**Exhibit 5**, Willshire Report at 19.) Martyn Thake, another track design expert, criticized the
13 placement of the barrier wall at SpeedVegas:

14 I can tell you that there's an advertising billboard that's right behind that wall,
15 between the wall and the property line, and I would have ensured -- or I would have
16 expected and told and instructed the client to remove the billboard and put the
17 barrier wall further away. The basic tenet is the wall needs to be -- not the wall --
18 the barrier needs to be as far away from a track surface as you can possibly get it,
19 and it was not in this case.

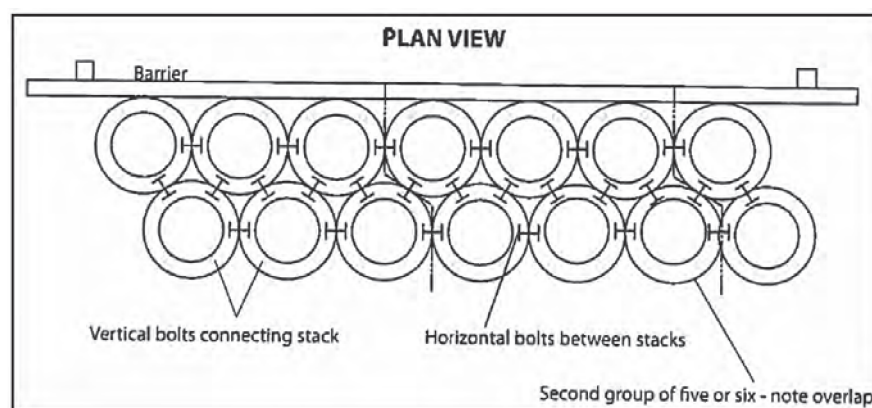
20 (**Exhibit 16**, Deposition of Martyn Thake ("Thake Dep.") at 157:9-18, 161:15-18). Mr. Thake
21 explained that the barrier "needs to be as far away from the track as physically possible" and if there
22 were restrictions due to other factors (*i.e.* property line, drainage ditch, etc.) "then you need to
23 modify the design of the corner to accept the restrictions that you're limited by." (*Id.* at 163:1-6).

24 Also problematic was SpeedVegas's failure to properly place tires in front of the barrier
25 wall. As the track had represented it met FIA standards, (*see* **Exhibit 12**), those tires were necessary
26 to meet those requirements. (**Exhibit 10**, Cope Report at 9.) Mr. Cope explained:

27 The tire barriers used at the track were likewise not up to FIA standards. Tire
28 barriers are used to absorb force, cushion impact, and deflect vehicles away from

1 fixed points. To do so, FIA standards require tires to be bolted horizontally and
 2 vertically. SpeedVegas's tire barrier specifications said the same thing. The tires at
 3 Turn 1 and Turn 2 were not bolted, but instead were banded together vertically. The
 4 tires still provided energy absorption and deflection from the concrete barrier as
 5 discussed below. They did not meet FIA standards for the tires.

6 (*Id.*). The diagram for the SpeedVegas track did include the proper use of bolts, but that was not
 7 what was actually present on the track:



15 Mr. Thake likewise opined that the barrier wall was "inefficient and ineffective." (**Exhibit**
 16 **16**, Thake Dep. at 164:15-21). One reason for this is that it "did not appear to be connected in the
 17 correct manner to prevent penetration." (*Id.*) That is because "they were not bolted, they were
 18 banded." (*Id.* at 169:22). He also opined that the various sizes of tires in the same stack did not meet
 19 the "industry standard" for "tire barriers at tracks." (*Id.* at 169:7-11, 170:1.) They also did not meet
 20 the FIA standard. (*Id.* at 170:13-23.) Mr. Thake was questioned about the fact that there was no
 21 particular book that discussed the merits of bolted versus strapped, but he clarified that this opinion
 22 was based on known industry standards:

23 **Q.** You also take issue with the fact that they're strapped together as opposed to
 24 bolted; correct?

25 **A.** I do.

26 **Q.** You agree with me that there's no studies you're aware of that have evaluated
 27 the performance of tires that are bolted versus strapped together; is that correct?

28 ///

1 **A.** Official funded studies, none that I'm aware of. But anyone that's been around
2 this business for any period of time will tell you what will happen when a -- when
3 tire barriers made like this are hit. So it's not -- it's not like we refer to the book.
4 (*Id.* at 177:4-16.) In concluding, Mr. Thake opined that the configuration of the tires "most
5 definitely ... would have changed the result" of the crash. (*Id.* at 179:4-17.) He stated that if the
6 tires had been properly constructed then the vehicle "may not have reached the wall" or "may have
7 reached it slower." (*Id.*)

8 SpeedVegas also understood the track's design posed a strong chance of a crash at the
9 location where Mr. Sherwood lost his life. Mr. Strahl, speaking to employees prior to Mr.
10 Sherwood's death, indicated that Turn 1 and Turn 2 was the "most likely" place for a crash to occur.
11 (**Exhibit 14**, Strahl Dep. at 53:7-54:6.) Non-managerial employees knew that, too. (**Exhibit 17**,
12 Deposition of Natalie Darrow at 100:8-101:18.) Yet the track was designed to encourage top speed
13 immediately before this dangerous area, a practice SpeedVegas encouraged. (*Id.* at 99:4-25, 103:23-
14 25.) These questions, including concerning the barrier wall's location, the tire barrier placement
15 and banding, and SpeedVegas's encouragement of top speed driving into an area it knew to be
16 dangerous all raise questions of fact as to SpeedVegas's negligence.

17 **D. Each Negligence Claim Should Be Tried**

18 SpeedVegas groups the four negligence-related claims together and does not specifically
19 discuss the evidence with respect to any. Regardless, the multitude of fact questions relating to the
20 track's negligence liability should result in all claims being tried. SpeedVegas's negligence is clear,
21 as set forth above. So is its vicarious liability for its employees' actions and omissions, including
22 those of Mr. Ben-Kely. The negligent hiring, training, and retention claim is likewise supported by
23 the evidence SpeedVegas cultivated a "culture" of dangerous and reckless behavior and driving (and
24 that's the opinion of *its own expert*). Finally, the negligent product liability claims are proper, in
25 part because of its inaction in the face of the recall notice. Its motion must be denied.

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28 ///

1 **IV. THERE IS A GENUINE ISSUE OF MATERIAL FACT THAT SPEEDVEGAS IS A**
2 **SELLER AND THEREFORE SUBJECT TO PRODUCT LIABILITY**

3 SpeedVegas's sole argument is that it may not be sued for product liability because it was
4 not "the manufacturer or distributor of the subject vehicle and did not sell, rent, lease or otherwise
5 transfer possessory rights to the vehicle to Mr. Sherwood." (Mot. at 9:15-16.) It does not make any
6 other product liability argument, such as contending the product was not actually defective. On the
7 one ground it raises—that it may not be held liable—SpeedVegas is wrong.

8 As an initial matter, SpeedVegas admits whether it is "a seller who can be regarded as a
9 merchant engaged in the business of supplying goods of the kind involved in the case" is a question
10 of fact for the jury. (Mot. at 9:15-16 (citing Nevada Jury Instruction 7.1).) In fact, one of the
11 principal cases on which SpeedVegas's co-defendant, Phil Fiore, relies makes this point exactly.
12 *See Lucas v. Dorsey Corp.*, 609 N.E.2d 1191, 1202 (Ind. 1993) ("The evidence, here, does present
13 a jury question as to whether [the defendant] was a 'seller' within the purview of the Products
14 Liability Statute.").

15 Despite that acknowledgement, SpeedVegas nevertheless contends it is not a "seller" as a
16 matter of law. That ignores the evidence. SpeedVegas does not dispute it made cars commercially
17 available for customers' use in exchange for payment. It euphemistically refers to this practice as
18 "merely us[ing] the car to provide a track experience with a coach to people like Mr. Sherwood,"
19 (*see* Mot. at 19:26-27), but the practical reality is that it engaged in short-term leases of vehicles to
20 consumers. *See Price v. Shell Oil Co.* (1970) 2 Cal.3d 245, 252 ("Similarly we can perceive no
21 substantial difference between Sellers of personal property and Non-sellers, such as bailors and
22 lessors. In each instance, the seller or non-seller places (an article) on the market, knowing that it
23 is to be used without inspection for defects."); *see also Maduike v. Agency Rent-A-Car*, 114 Nev. 1,
24 27-28 (1998) (applying strict liability principles to lessor). A jury should determine whether the
25 evidence shows SpeedVegas qualifies as a seller due to its persistent and targeted commercial
26 exploitation of these products, including the Aventador.

27 SpeedVegas's counterarguments do not eliminate this genuine issue of material fact. That
28 SpeedVegas did not "design" or "build" the Aventador is irrelevant—it injected the car into market

1 knowing consumers would use it “without inspection for defects.” *Price*, 2 Cal. 3d at 252.
2 SpeedVegas is wrong that it did not “market” the Aventador. It actively promoted the rshort-term
3 use of that and other cars as the core of its business. And it did not just sell a “service.” The evidence
4 is that the cars cost different amounts to rent, with the Aventador at the top of the list.

5 SpeedVegas’s citation to non-citable trial court decisions does not change the analysis. In
6 *Barnard*, there was no evidence the hotel charged the guest specifically for the use of the chair.
7 Contrast that with SpeedVegas, whose business model involves charging consumers for the use of
8 products. *Catha* has too little information to be of any value. Mere mention of an eight year old
9 trial court decision without any analysis has no persuasive value.

10 In short, the evidence is that SpeedVegas leased or otherwise permitted possession of
11 vehicles, including the Aventador, for short time periods. A jury should determine the question of
12 fact whether that repeated commercial exploitation of the car in a manner in which it is obvious
13 customers will not inspect for defects makes SpeedVegas a “seller.” Thus, SpeedVegas’s motion
14 should be denied on this ground, too.

15 **V. THERE IS A GENUINE ISSUE OF MATERIAL FACT AS TO THE WRONGFUL**
16 **DEATH CLAIM**

17 SpeedVegas does not make any independent arguments why summary judgment should be
18 granted on the wrongful death claim, but instead contends it should have the same fate as the
19 negligence and strict liability claims. (Mot. at 20:19-21.) Since summary judgment is inappropriate
20 on any of Plaintiffs’ claims for the reasons stated above, it is likewise improper on the wrongful
21 death claim. Instead, SpeedVegas’s motion should be denied in its entirety.

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1 **VI. CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully request the Court deny SpeedVegas's
3 motion for summary judgment.

4
5 **DATED** this 28th day of May 2021.

6 **ER INJURY ATTORNEYS**

7 **PANISH SHEA & BOYLE, LLP**

8
9 

10 _____
COREY ESCHWEILER

11 Nevada Bar No. 6635

12 RAHUL RAVIPUDI

13 Nevada Bar No. 14750

14 PAUL A. TRAINA

15 *Admitted Pro Hac Vice*

16 IAN SAMSON

17 Nevada Bar No. 15089

18 *Attorneys for Plaintiffs*

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☒ pursuant to N.E.F.C.R. 9 by serving it via this Court's Electronic Filing System ("EFS") to all parties listed in the Service Contact List of EFS;

An Employee of PANISH SHEA & BOYLE LLP

EXHIBIT 1

EXHIBIT 1

In the Matter Of:
A-17-757614-C
ESTATE OF BEN-KELY
VS
SPEED VEGAS, LLC, et al.

Videotaped Deposition Of:

ANDREW IPEKIAN

April 05, 2021



702-805-4800
scheduling@envision.legal

April 05, 2021

Andrew Ipekian

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1 Q. And while you were driving the
2 Aventador, did the instructor give you pointers
3 on where to accelerate?

4 A. Yes.

5 Q. Where to brake?

6 A. Yes.

7 Q. Where to turn?

8 A. Yes.

9 Q. And did the instructor of the
10 Aventador seem to know the track well?

11 A. Yes.

12 Q. Do you think the instructor gave you
13 good directions while you were driving the
14 Aventador?

15 MR. ESCHWEILER: Object to the form.

16 THE WITNESS: Yes. He was really good.

17 BY MS. VARGAS:

18 Q. Did you have any mechanical problems
19 while you were driving the Lamborghini
20 Aventador?

21 A. There was an engine light on, on the
22 Lamborghini that was flashing, or on.

23 Q. Was it on or was it flashing?

24 A. I don't recall. It might have been on,
25 but I don't know -- don't hold me to it. The

April 05, 2021

Andrew Ipekian

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1 how to drive, there's another brake. I'm aware.

2 Q. In both the Aventador and in the
3 Mercedes?

4 A. In the -- I remember in the Mercedes, he
5 did that to me once. He applied his brake.

6 Q. And how did you know he applied his
7 brake?

8 A. Because I felt it.

9 Q. And you didn't have that same
10 experience in the Aventador when you drove it
11 with the instructor?

12 A. I don't think so.

13 Q. But you're not sure?

14 A. I'm not sure. I don't recall.

15 Q. Before you started on your laps, did
16 the instructor in the Aventador do any kind of
17 warm-up as a test of the brakes?

18 A. No, not that I recall.

19 Q. When you were driving the Aventador
20 along the straightaway toward turn 1, do you
21 remember where you started braking?

22 A. No.

23 Q. Did you brake?

24 A. I don't even know where turn 1 is.

25 Q. Did you brake in response to

April 05, 2021

Andrew Ipekian

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1 instructions from the Aventador's coach?

2 A. Yes.

3 Q. So you were told by the -- strike
4 that.

5 Were you told by the instructor in the
6 Aventador something like, "Brake now"?

7 A. Yes. He was far more aggressive than the
8 elderly gentleman.

9 Q. When you say he was far more
10 aggressive, what do you mean?

11 A. Try and get your top speed, turn into the
12 turn. It was more like a racing experience.

13 Q. And so you don't recall whether or not
14 you started braking as a result of seeing
15 signaling on the track, like cones or signs; is
16 that correct?

17 MR. ESCHWEILER: Object to the form.

18 THE WITNESS: I remember taking more of
19 his instruction, if you're asking me a question.

20 BY MS. VARGAS:

21 Q. As you drove more laps in the
22 Aventador, did the point where you were braking
23 after the straightaway change at all, or was it
24 always the same place where you were braking at
25 the end of the straightaway in the Aventador?

EXHIBIT 2

EXHIBIT 2

In the Matter Of:

A-17-757614-C

ESTATE OF BEN-KELY, et al.

VS

SPEED VEGAS, LLC, et al.

Deposition Of:

ROBERT J. BUTLER, PH.D., P.E.

March 05, 2021



702-805-4800

scheduling@envision.legal

1 was influenced by the lack of a brake marker prior
2 to the 500-foot location. I guess you could
3 consider that environmental.

4 And Mr. Sherwood had a medical problem
5 that made him unable to properly operate the
6 vehicle.

7 Those were the ones related to the
8 driver.

9 Q. Did you reach a conclusion,
10 Dr. Butler, as to what caused the loss of
11 control that led up to the impact?

12 A. I don't believe there was loss of
13 control.

14 Q. Do you believe that the vehicle was
15 under control right up to the point of impact?

16 A. I think it was being steered, yes.
17 Now, it was going too fast, but I don't
18 call that loss of control.

19 At least in my vocabulary, somebody says
20 "loss of control," I think of a vehicle spinning
21 out or something of that nature.

22 Q. So it's your opinion the vehicle was
23 in control right up to the point of impact?

24 A. Based on the tire evidence, it appears to
25 be. It's just going too fast.

1 starting to brake around the same point as before,
2 but clearly the vehicle didn't slow down as
3 quickly.

4 Q. Did you do any calculations,
5 Dr. Butler, as to the speed or vehicle factors
6 from the point of the first tire mark to the
7 point the vehicle left the road surface on the
8 inside of the right curve?

9 A. No. Just based on knowing its top speed
10 and seeing the tire marks, I know it's slowing
11 down.

12 Q. When the vehicle left the paved
13 surface on the inside of the right curve, how
14 fast was it going?

15 A. I didn't calculate that.

16 Q. Do you have an opinion?

17 A. Less than 138 miles an hour and more
18 than -- well, it's less than 138.

19 Q. From the point it first started
20 leaving tire marks to the point it left the road
21 surface on the inside of the right curve, how
22 many feet did it travel?

23 A. I would have to look at my scale drawing
24 and tell you. It's in the report. It's just I
25 can't tell you that as I sit here.

1 you did not calculate that?

2 A. No. It wasn't necessary for the opinions
3 I gave.

4 Q. Did you formulate an opinion as to how
5 far the vehicle traveled while it was off the
6 paved surface on the inside of the right curve?

7 A. I didn't formulate an opinion. We
8 provided a scale drawing that you can -- that you
9 could take measurements from.

10 Q. And how did you prepare your scene
11 diagram, Figure 16?

12 A. From FARO data of the track.

13 Q. On that you overlaid the physical
14 evidence of the brake marks?

15 A. Yes.

16 Q. When the vehicle reentered the track
17 at the end of its off-road excursion on the
18 inside of the right curve, did you calculate the
19 speed as it reentered the track?

20 A. No. It wasn't necessary for the opinions
21 I gave.

22 Q. Do you have an estimate as to how fast
23 it was going when it reentered the track, other
24 than less than 138 miles an hour?

25 A. Probably around 100, ballparkish.

EXHIBIT 3

EXHIBIT 3

In the Matter Of:
A-17-757614-C
ESTATE OF BEN-KELY
VS
SPEED VEGAS, LLC, et al.

Videotaped Deposition Of:

BILLY S. COX

April 07, 2021



702-805-4800
scheduling@envision.legal

April 07, 2021

Billy S. Cox

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1 Q. Okay. So the only opinion that you have is
2 that the -- leading up to the crash, the car was
3 traveling too fast and on the wrong driving line for
4 turn 1 and turn 2; correct?

5 A. It was going too fast, you know, it was
6 almost double the speed of the designed speed for
7 the curve. It did take the wrong driving line. You
8 can see the path of travel based on the skid marks,
9 that it wasn't on the driving line in the curve, and
10 I feel like the crash occurred because of the speed
11 of the car. It was a direct result of the speed of
12 the car, which the driver has control of.

13 Q. Right. Except you are saying the driver
14 has control of, but you acknowledge the presence of
15 a passenger side brake pedal; correct?

16 A. I don't have an opinion on when that brake
17 pedal is supposed to be activated and whether it
18 counters, you know, throttle input of the driver. I
19 don't know how effective that brake pedal is.

20 Q. Okay. So you can't say with complete
21 certainty that the driver and only the driver has
22 control over the speed of the vehicle; correct?

23 MS. VARGAS: Objection. Form.

24 MS. ZERNAY: Speculation.

25 A. You know, I can say with certainty that the

EXHIBIT 4

EXHIBIT 4



Dynamic Safety L.L.C.

Illinois • Nevada • Wisconsin • Massachusetts

Estate of Gil Ben-Kely, et. al. vs SpeedVegas, L.L.C. et. al.

Preliminary Report

Prepared for:

Paul L. Tetreault, Esq.

Law Offices of Agajanian, McFall, Weiss, Tetreault & Crist LLP
346 North Larchmont Boulevard
Los Angeles, CA. 90004
(323) 993-0198

Prepared by:

William Redfair, Consultant

Las Vegas Office
(702) 281-9744

wredfair@dynamicsafetyllc.com

Dynamic Safety L.L.C. File #:

R17-128

Date prepared:

Thursday, November 5, 2020

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Introduction

On February 12, 2017 at approximately 10:00 pm, I received a phone call from Mr. Sean Lethbridge who was calling on behalf of SpeedVegas. Mr. Lethbridge told me there had been an incident with a Lamborghini Aventador at SpeedVegas that had resulted in two (2) fatalities. He said SpeedVegas was looking for someone to document the scene and vehicle before the vehicle was removed and the area cleaned up. I had previously worked with Mr. Lethbridge at the Las Vegas Metropolitan Police Department's Fatal Detail and he knew I was doing consulting work in crash investigation and reconstruction. Therefore, Mr. Lethbridge was inquiring if I was interested in doing the work. I told him Dynamic Safety LLC could do the work, but it would be best to wait till morning when the lighting would be better, and we could be there first thing in the morning. Mr. Lethbridge agreed, and we planned to meet at SpeedVegas at 9:30 am on February 13, 2017.

On February 13, 2017, Jim Byrne and myself meet Mr. Lethbridge at SpeedVegas where he introduced us to Mr. Aaron Fessler and Mr. Johnny McCann. They took us to where the incident occurred and told us SpeedVegas personnel would stay out of our way unless we needed something from them. I suggested to Mr. Fessler and Mr. McCann the Lamborghini needed to be preserved in a secure location for potential future investigation. After starting our work, Mr. Fessler and Mr. McCann told me they wanted Dynamic Safety LLC to supervise the removal and transport of the Lamborghini to Fast Towing. I then made plans with Fast Towing to recover and store the Lamborghini after Dynamic Safety had completed the scene work. Over the next several hours, Mr. Byrne and I proceeded to photograph, and 3D scan the incident location. Once our work was completed, we supervised the Lamborghini's removal, transport and secured storage at Fast Towing.

Officer Cannon from the Las Vegas Metropolitan Police Department (LVMPD) investigated this incident. Officer Cannon determined the following: *"V1 [2015 Lamborghini] was traveling counter clockwise around an enclosed racetrack. V1 was traveling southbound on the straightaway approaching an 'S' curve. D1 [Craig Sherwood] failed to slow enough to negotiate the 'S' curve. V1 traveled straight off the track onto loose gravel unable to maneuver the first curve, then continued straight crossing back over the track passing the second curve. V1 left the track southbound hitting the two rows of stacked tires and ran into the concrete impact barrier. Upon impact, V1 exploded. Both occupants in V1 suffered fatal injuries upon impact. V1 left approximately 548 feet of yaw and skid marks prior to impact."*

The incident was also investigated by the State of Nevada Occupational Safety and Health Administration, Clark County Coroner/Medical Examiner's Office, and the Clark County Fire Department.

Background

I was provided the following information to assist in my analysis:

1. State of Nevada Traffic Crash Report completed by LVMPD Officer Cannon under Crash Number 170212002001
2. SpeedVegas Emergency Action Plan updated on April 5, 2016 Bates stamped SpeedVegas 00017 to SpeedVegas 00024
3. Coach Daily Operations Bates stamped SpeedVegas 00135
4. Safehold Incident Report Bates stamped SpeedVegas 00136
5. Safehold Incident Report Bates stamped SpeedVegas 00137
6. ProSight First Report of Injury Bates stamped SpeedVegas 00138
7. OSHA Injuries and Illness Incident Report Bates stamped SpeedVegas 00139
8. Gil Ben-Kely Resume' Bates stamped SpeedVegas 00189 to SpeedVegas 00190
9. Gil Ben-Kely Employment Application Bates stamped SpeedVegas 00191 to SpeedVegas 00192
10. Statement of Kyle Weech dated February 13, 2017 @5:15 pm and Bates stamped SpeedVegas 00200 to SpeedVegas 00200
11. Handwritten statement of Shuttle Driver Daniel Alves dated February 14, 2017 and Bates stamped SpeedVegas 00205 to SpeedVegas 00209
12. Statement of Francisco Durban Alvarez-Ossorio Bates stamped SpeedVegas 00208 to SpeedVegas 00212
13. Statement of Jody Zollin dated February 12, 2017 and Bates stamped SpeedVegas 00213 to SpeedVegas 00214
14. Transcribed statement of Les Williams dated February 15, 2017 and Bates stamped SpeedVegas 0000223 to SpeedVegas 00224
15. Statement of Less Williams dated February 13, 2017 and Bates stamped SpeedVegas 00225A to SpeedVegas 00225B
16. Statement of Robert Benard dated February 17, 2017 and Bates stamped SpeedVegas 00235
17. Statements of Paul Crifasi Bates stamped SpeedVegas 00236A, SpeedVegas 00236B, and SpeedVegas 00236C
18. Clark County Temporary Business License dated December 29, 2016 and Bates stamped SpeedVegas 00242
19. Statement of Ashley Carrillo Bates stamped SpeedVegas 00308
20. Statement of Brandon Dudley dated February 24, 2017 and Bates stamped SpeedVegas 00309

21. Statement of Eduardo Lima dated February 23, 2017 and Bates stamped SpeedVegas 00310A & B
22. Statement of Eduardo Lima dated February 23, 2017 and Bates stamped SpeedVegas 00310C
23. Insurance Identification Card Bates stamped SpeedVegas 00454
24. Gil Ben-Kely personnel file Bates stamped SpeedVegas 00456 to SpeedVegas 00470
25. Incident Report Bates stamped SpeedVegas 00471
26. Prehospital Patient Care Report dated January 16, 2017 and Bates stamped SpeedVegas 00472 to SpeedVegas 00474
27. Prehospital Patient Care Report dated January 23, 2017 and Bates stamped SpeedVegas 00475 to SpeedVegas 00476
28. Prehospital Patient Care Report dated January 23, 2017 and Bates stamped SpeedVegas 00477 to SpeedVegas 00478
29. Prehospital Patient Care Report dated June 1, 2016 and Bates stamped SpeedVegas 00479 to SpeedVegas 00480
30. Prehospital Patient Care Report dated June 18, 2016 and Bates stamped SpeedVegas 00481 to SpeedVegas 00482
31. Prehospital Patient Care Report dated July 1, 2016 and Bates stamped SpeedVegas 00483 to SpeedVegas 00484
32. Prehospital Patient Care Report dated July 1, 2016 and Bates stamped SpeedVegas 00485 to SpeedVegas 00486
33. Prehospital Patient Care Report dated August 9, 2016 and Bates stamped SpeedVegas 00487 to SpeedVegas 00488
34. Prehospital Patient Care Report dated October 3, 2016 and Bates stamped SpeedVegas 00489 to SpeedVegas 00490
35. Alternate Speed Vegas Motorsports Part Proposed Track Layout Bates stamped SpeedVegas 00491
36. Document entitled "Pre-Opening Training: March – April 2016 Roland Linder, Supercar Promotion" and Bates stamped SpeedVegas 00492 to SpeedVegas 00495
37. Commercial Vehicle Lease Agreement Bates stamped SpeedVegas 00498 to SpeedVegas 00500
38. "Track Warm Up Procedure" dated March 21, 2017 and Bates stamped SpeedVegas 00501
39. "Briefing Procedure" dated March 21, 2017 and Bates stamped 00502 to SpeedVegas 00503
40. "Moving Cars from Pit to Garage" dated March 21, 2017 and Bates stamped SpeedVegas 00504
41. "Assessing a Potential Coach/Driving Instructor" dated March 21, 2017 and Bates stamped SpeedVegas 00505

42. "Training a New Coach/Driving Instructor" dated March 21, 2017 and Bates stamped SpeedVegas 00506 to SpeedVegas 00508
43. Deposition of Paul Crifasi dated December 16, 2019
44. Deposition of Aaron Fessler dated December 10, 2019 (Volume 1)
45. Deposition of Aaron Fessler dated December 11, 2019 (Volume 2)
46. Deposition of Greg Schroeder dated November 21, 2019
47. Deposition of Dr. Mark Shuman dated November 22, 2019
48. Deposition of Kyle Weech dated December 17, 2019
49. Deposition of Leslie Williams dated December 16, 2019
50. Deposition of Jodi Zollin dated December 11, 2019
51. File folder labeled "HiRox" containing twenty-six (26) color photographs in *.jpg file format
52. File folder labeled "Micro" containing eleven file folders labeled as followed:
 - a. "Sample 1-1" containing five (5) color photographs in *.jpg format
 - b. "Sample 1-2" containing fourteen (14) color photographs in *.jpg format
 - c. "Sample 2" containing fifty-two (52) color photographs in *.jpg format
 - d. "Sample 3A" containing five (5) color photographs in *.jpg format
 - e. Sample 3B" containing five (5) color photographs in *.jpg format
 - f. "Sample 4A" containing eleven (11) color photographs in *.jpg format
 - g. "Sample 4B" containing twenty-eight (28) color photographs in *.jpg format
 - h. "Sample 5A" containing fourteen (14) color photographs in *.jpg format
 - i. "Sample 5B" containing ten (10) color photographs in *.jpg format
 - j. "Sample 6A" containing eleven (11) color photographs in *.jpg format
 - k. "Sample 6B" containing twenty (20) color photographs in *.jpg format
53. File folder labeled "Overall" containing two hundred seventy-seven color photographs in *.jpg format
54. File folder labeled "Sem EDX" containing eighty-four black and white and color photographs in *.jpg format
55. Report entitled "Micro Indentation Hardness Test Results" from EAG Laboratories dated February 4, 2020
56. Report entitled "Rockwell Hardness Test" from EAG Laboratories dated February 4, 2020
57. File folder entitled "LV Metro PD Photos from Ben-Kely Ps" containing two hundred thirty-seven (237) color photographs in *.jpg format

58. Clark County Coroner/Medical Examiner reports for Gill Ben-Kely bates stamped BEN000186 to BEN000197
59. Clark County Coroner/Medical Examiner reports for Craig Sherwood bates stamped BEN000551 to BEN000546
60. Clark County Coroner/Medical Examiner reports for Craig Sherwood bates stamped BEN000551 to BEN000585
61. Clark County Fire Department Fire Incident Report for Incident # 7044564 dated February 12, 2017
62. State of Nevada Occupational Safety and Health Administration Amended Citation and Notification of Penalty report under Inspection Number 1211366 and dated August 9, 2017
63. State of Nevada Occupational Safety and Health Administration Citation and Notification of Penalty report under Inspection Number 1211366 and dated July 26, 2017
64. State of Nevada Occupational Safety and Health Administration letter to Ben-Kely Family dated February 17, 2017
65. State of Nevada Occupational Safety and Health Administration Inspection Narrative for Inspection Number 1211366 dated July 25, 2017
66. State of Nevada Occupational Safety and Health Administration letter to SpeedVegas (Attn: Howard Mavity) dated August 30, 2017
67. File entitled "Track Pictures BEEN000417-433"
68. File entitled "Track Plans BEN000434-457"
69. File entitled "ALA – Images" containing the following files:
 - a. ALA_Ben-Kely_002253_Confidential - Produced Pursuant to Protective Order thru ALA_Ben-Kely_002275_Confidential - Produced Pursuant to Protective Order
 - b. ALA_Ben-Kely_002277_Confidential - Produced Pursuant to Protective Order thru ALA_Ben-Kely_002297_Confidential - Produced Pursuant to Protective Order
 - c. ALA_Ben-Kely_002303_Confidential - Produced Pursuant to Protective Order
 - d. ALA_Ben-Kely_002306_Confidential - Produced Pursuant to Protective Order
 - e. ALA_Ben-Kely_002309_Confidential - Produced Pursuant to Protective Order thru ALA_Ben-Kely_002635_Confidential - Produced Pursuant to Protective Order
 - f. ALA_Ben-Kely_002640_Confidential - Produced Pursuant to Protective Order
 - g. ALA_Ben-Kely_002736_Confidential - Produced Pursuant to Protective Order
 - h. ALA_Ben-Kely_002757_Confidential - Produced Pursuant to Protective Order thru ALA_Ben-Kely_002758_Confidential - Produced Pursuant to Protective Order
 - i. ALA_Ben-Kely_002760_Confidential - Produced Pursuant to Protective Order

- j. ALA_Ben-Kely_002762_Confidential - Produced Pursuant to Protective Order thru
ALA_Ben-Kely_003152_Confidential - Produced Pursuant to Protective Order
- k. ALA_Ben-Kely_003173_Confidential - Produced Pursuant to Protective Order thru
ALA_Ben-Kely_003468_Confidential - Produced Pursuant to Protective Order
- l. ALA_Ben-Kely_003544_Confidential - Produced Pursuant to Protective Order
- m. ALA_Ben-Kely_003565_Confidential - Produced Pursuant to Protective Order thru
ALA_Ben-Kely_003822_Confidential - Produced Pursuant to Protective Order
- n. ALA_Ben-Kely_003924_Confidential - Produced Pursuant to Protective Order
- o. ALA_Ben-Kely_003943_Confidential - Produced Pursuant to Protective Order thru
ALA_Ben-Kely_004005_Confidential - Produced Pursuant to Protective Order
- p. ALA_Ben-Kely_004044_Confidential - Produced Pursuant to Protective Order
- q. ALA_Ben-Kely_004052_Confidential - Produced Pursuant to Protective Order thru
ALA_Ben-Kely_004151_Confidential - Produced Pursuant to Protective Order
- r. ALA_Ben-Kely_004218_Confidential - Produced Pursuant to Protective Order
- s. ALA_Ben-Kely_004228_Confidential - Produced Pursuant to Protective Order thru
ALA_Ben-Kely_004303_Confidential - Produced Pursuant to Protective Order
- t. ALA_Ben-Kely_004333_Confidential - Produced Pursuant to Protective Order
- u. ALA_Ben-Kely_004342_Confidential - Produced Pursuant to Protective Order thru
ALA_Ben-Kely_004612_Confidential - Produced Pursuant to Protective Order
- v. ALA_Ben-Kely_004682_Confidential - Produced Pursuant to Protective Order thru
ALA_Ben-Kely_004683_Confidential - Produced Pursuant to Protective Order
- w. ALA_Ben-Kely_004700_Confidential - Produced Pursuant to Protective Order thru
ALA_Ben-Kely_004706_Confidential - Produced Pursuant to Protective Order
- x. ALA_Ben-Kely_004767_Confidential - Produced Pursuant to Protective Order thru
ALA_Ben-Kely_004769_Confidential - Produced Pursuant to Protective Order
- y. ALA_Ben-Kely_004779_Confidential - Produced Pursuant to Protective Order thru
ALA_Ben-Kely_005203_Confidential - Produced Pursuant to Protective Order
- z. ALA_Ben-Kely_005225_Confidential - Produced Pursuant to Protective Order
- aa. ALA_Ben-Kely_005247_Confidential - Produced Pursuant to Protective Order
- bb. ALA_Ben-Kely_005350_Confidential - Produced Pursuant to Protective Order
- cc. ALA_Ben-Kely_005371_Confidential - Produced Pursuant to Protective Order thru
ALA_Ben-Kely_005571_Confidential - Produced Pursuant to Protective Order

- dd. ALA_Ben-Kely_005573_Confidential - Produced Pursuant to Protective Order thru
ALA_Ben-Kely_005574_Confidential - Produced Pursuant to Protective Order
 - ee. ALA_Ben-Kely_005577_Confidential - Produced Pursuant to Protective Order
 - ff. ALA_Ben-Kely_005651_Confidential - Produced Pursuant to Protective Order
 - gg. ALA_Ben-Kely_005671_Confidential - Produced Pursuant to Protective Order thru
ALA_Ben-Kely_006116_Confidential - Produced Pursuant to Protective Order
 - hh. ALA_Ben-Kely_006277_Confidential - Produced Pursuant to Protective Order
 - ii. ALA_Ben-Kely_006298_Confidential - Produced Pursuant to Protective Order thru
ALA_Ben-Kely_006574_Confidential - Produced Pursuant to Protective Order
 - jj. ALA_Ben-Kely_006664_Confidential - Produced Pursuant to Protective Order
 - kk. ALA_Ben-Kely_006685_Confidential - Produced Pursuant to Protective Order thru
ALA_Ben-Kely_006686_Confidential - Produced Pursuant to Protective Order
 - ll. ALA_Ben-Kely_006724_Confidential - Produced Pursuant to Protective Order
 - mm. ALA_Ben-Kely_006745_Confidential - Produced Pursuant to Protective Order
thru ALA_Ben-Kely_007287_Confidential - Produced Pursuant to Protective Order
 - nn. ALA_Ben-Kely_007378_Confidential - Produced Pursuant to Protective Order
 - oo. ALA_Ben-Kely_007399_Confidential - Produced Pursuant to Protective Order
70. File entitled “ALA – Natives” containing the following files:
- a. ALA_Ben-Kely_002253_Confidential - Produced Pursuant to Protective Order thru
ALA_Ben-Kely_002255_Confidential - Produced Pursuant to Protective Order
 - b. ALA_Ben-Kely_002323_Confidential - Produced Pursuant to Protective Order thru
ALA_Ben-Kely_002329_Confidential - Produced Pursuant to Protective Order
 - c. ALA_Ben-Kely_002763_Confidential - Produced Pursuant to Protective Order thru
ALA_Ben-Kely_002768_Confidential - Produced Pursuant to Protective Order
 - d. ALA_Ben-Kely_003247_Confidential - Produced Pursuant to Protective Order thru
ALA_Ben-Kely_003253_Confidential - Produced Pursuant to Protective Order
 - e. ALA_Ben-Kely_003566_Confidential - Produced Pursuant to Protective Order thru
ALA_Ben-Kely_003572_Confidential - Produced Pursuant to Protective Order
 - f. ALA_Ben-Kely_003944_Confidential - Produced Pursuant to Protective Order thru
ALA_Ben-Kely_003946_Confidential - Produced Pursuant to Protective Order
 - g. ALA_Ben-Kely_004052_Confidential - Produced Pursuant to Protective Order thru
ALA_Ben-Kely_004056_Confidential - Produced Pursuant to Protective Order

- h. ALA_Ben-Kely_004229_Confidential - Produced Pursuant to Protective Order thru ALA_Ben-Kely_004232_Confidential - Produced Pursuant to Protective Order
 - i. ALA_Ben-Kely_004343_Confidential - Produced Pursuant to Protective Order thru ALA_Ben-Kely_004348_Confidential - Produced Pursuant to Protective Order
 - j. ALA_Ben-Kely_004701_Confidential - Produced Pursuant to Protective Order thru ALA_Ben-Kely_004705_Confidential - Produced Pursuant to Protective Order
 - k. ALA_Ben-Kely_005372_Confidential - Produced Pursuant to Protective Order thru ALA_Ben-Kely_005384_Confidential - Produced Pursuant to Protective Order
 - l. ALA_Ben-Kely_005672_Confidential - Produced Pursuant to Protective Order thru ALA_Ben-Kely_005679_Confidential - Produced Pursuant to Protective Order
 - m. ALA_Ben-Kely_006299_Confidential - Produced Pursuant to Protective Order thru ALA_Ben-Kely_006305_Confidential - Produced Pursuant to Protective Order
 - n. ALA_Ben-Kely_006746_Confidential - Produced Pursuant to Protective Order thru ALA_Ben-Kely_006750_Confidential - Produced Pursuant to Protective Order
 - o. ALA_Ben-Kely_007042_Confidential - Produced Pursuant to Protective Order thru ALA_Ben-Kely_007048_Confidential - Produced Pursuant to Protective Order
71. Letter to Commissioner Steve Sisolak from Aaron Fessler dated March 8, 2017 bates stamped SV02177 to SV02182
 72. Speed Vegas Site Visit Observations bates stamped SV02183 to SV02197
 73. Speed Vegas Safety Inspection Report and Recommendations dated February 2018 bates stamped SV02198 to SV02228
 74. Video entitled "SV02229 – Video 1 from LVPD" in *.mp4 format
 75. Video entitled "SV02230 – Video 2 from LVPD" in *.mp4 format
 76. File entitled "SV02246-SV02402 – Ben-Kely-Clark County Medical Examiner_Redacted"
 77. File entitled "SV02403-SV02423 – Las Vegas Police Department-Subpoenaed Records:
 78. File entitled "SV02594-SV02814 – LVPD Supplement (photos)_09.30.20"
 79. File entitled "ALA_Ben-Kely_007400_Confidential – Produced Pursuant to Protective Order"
 80. File entitled "ALA_Ben-Kely_007417_Confidential – Produced Pursuant to Protective Order"
 81. File entitled "ALA_Ben-Kely_007418_Confidential – Produced Pursuant to Protective Order"
 82. File entitled "ALA_Ben-Kely_007419_Confidential – Produced Pursuant to Protective Order"
 83. File entitled "ALA_Ben-Kely_007420_Confidential – Produced Pursuant to Protective Order"
 84. File entitled "ALA_Ben-Kely_007421_Confidential – Produced Pursuant to Protective Order"

Description of Collision Site

Per the LVMPD Traffic Crash Report, this collision occurred at 14200 South Las Vegas Boulevard, Clark County, Nevada (See Figure 1). The report listed the following roadway conditions:

Surface:	1) Asphalt
Paddle Markers:	1) None
Access Control:	1) None
Roadway Character:	1) Curve and Grade
Roadway Condition:	1) Dry
Total Thru Lanes:	1) One
Roadway Grade:	1) Not Determined
Pavement Markings and Type:	12) None
Roadway Description:	4) One-Way, Not Divided



Figure 1. Google Earth Pro image dated November 4, 2016.

This incident occurred on a closed driving experience road course known as SpeedVegas located at 14200 South Las Vegas Boulevard, Clark County, Nevada. The road course consisted of asphalt materials and had various straight and curved sections. The closed road course is one-way, and access is controlled by SpeedVegas employees. The closed road course is surrounded by desert including the infield. Concrete and tire barriers are installed at various locations around the closed road course. There are run-off areas

located at various locations around the road course. This incident occurred between turn one (1) and two (2) which is located to the south of the straight away located on the west side of the closed road course.

Description of Weather and Lighting

Weather

LVMPD Traffic Crash Report

The LVMPD Traffic Crash report indicated the following weather conditions:

Weather Conditions: 2) Cloudy

National Weather Service

The National Weather Service¹ located at McCarran International Airport recorded the following weather conditions for February 12, 2017:

Time of Reading:	12:56 pm	1:09 pm	1:56 pm
Temperature:	62 degrees	62 degrees	63 degrees
Dew Point:	31 degrees	31 degrees	31 degrees
Humidity:	31%	31%	30%
Pressure:	27.87 inches	27.87 inches	27.84 inches
Wind Direction:	Northeast	North – Northeast	Northeast
Wind Speed:	15 mph	15 mph	21 mph
Wind Gust Speed:	0 mph	0 mph	0 mph
Precipitation:	0.0 inches	0.0 inches	0.0 inches
Conditions:	Mostly Cloudy	Mostly Cloudy	Mostly Cloudy/Windy

Lighting Conditions

LVMPD Traffic Collision Report

The LVMPD Traffic Crash Report listed the following lighting conditions:

Lighting Conditions: 3) Daylight

¹ <https://www.wunderground.com/history/daily/KLAS/date/2017-2-12>

National Oceanic and Atmospheric Administration

The National Oceanic and Atmospheric Administration (NOAA)² reported the following conditions regarding the sun’s position, altitude, and azimuth on February 12, 2017:

Latitude:	35.929005	Solar Declination:	-13.4 degrees
Longitude:	-115.191149	Apparent Sunrise:	06:31
Time Zone:	America / Los Angeles	Solar Noon	11:54:59
Date:	February 12, 2017	Apparent Sunset:	17:20
Time:	01:26:00	Azimuth:	207.79 degrees
Equation of Time:	-14.22 minutes	Altitude:	36.21 degrees

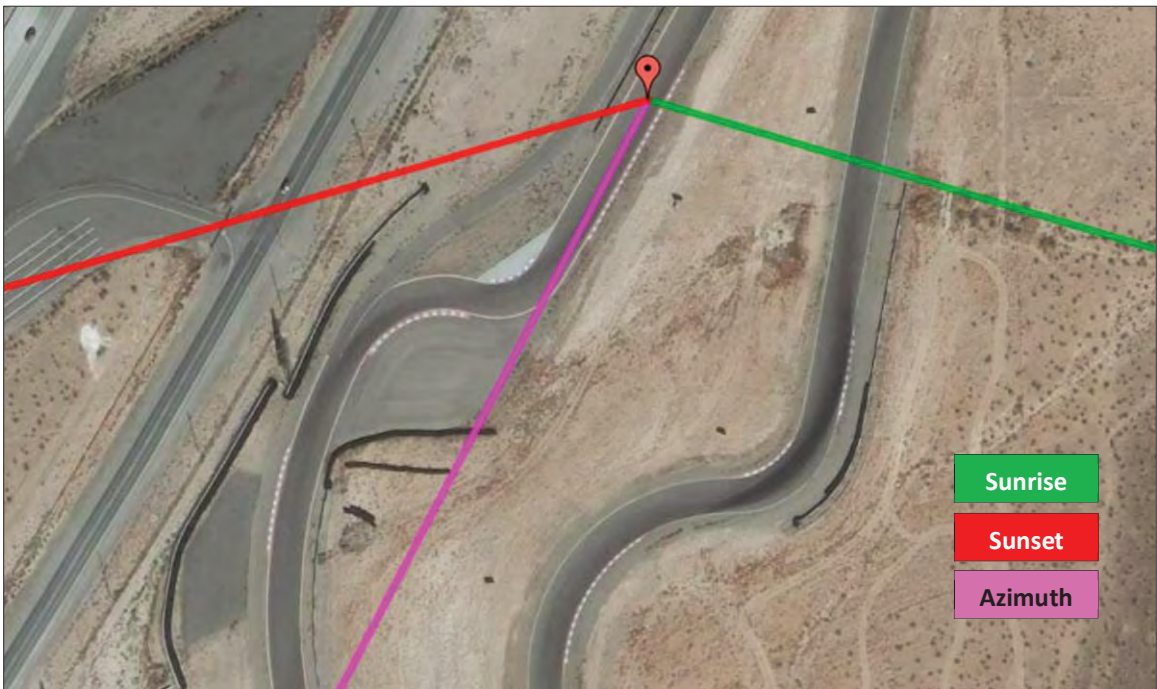


Figure 2. NOAA reported sunrise, sunset, and azimuth position on February 12, 2017.

Description of Subject Vehicles

Vehicle #1

The LVMPD Traffic Crash Report listed vehicle #1 as a 2015 Lamborghini Aventador bearing vehicle identification number (VIN) ZHWUR1ZD3FLA03687. Craig Sherwood was listed as the operator of the

² <https://www.esrl.noaa.gov/gmd/grad/solcalc/>

Lamborghini and Gil Ben-Kelly was listed at the right front passenger. The following information/factors are listed for vehicle #1:

Direction of Travel: 2) South
Highway / Street Name: 14200 S. Las Vegas Boulevard
Travel Lane #: 1
Vehicle Action: 1) Straight
Alcohol / Drug Involvement: 1) Not Involved
Vehicle Factors: 3) Too Fast for Conditions
9) Failure to Maintain Lane
1st Contact: 2) Right Front
Damaged Areas: 1) Front
2) Right Side
3) Left Side
7) Top
8) Under Carriage
Distance Traveled After Impact: 23 Feet
Speed Estimate: (Not Listed)
Speed Limit: (Not Listed)
Traffic Control: 7) No Controls

The LVMPD Traffic Crash Report listed the following events for vehicle #1:

Code #		Description	Collision With Fixed Object	Most Harmful Event
1 st	108	Ran Off Road Right	<input type="checkbox"/>	<input type="checkbox"/>
2 nd	118	Reentering Roadway	<input type="checkbox"/>	<input type="checkbox"/>
3 rd	308	Median Barrier	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
4 th	102	Fire/Explosion	<input type="checkbox"/>	<input type="checkbox"/>

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Figure 3. DSSLIC photograph IMG_0129 taken February 13, 2017.



Figure 4. DSSLIC photograph IMG_0141 taken February 13, 2017.



Figure 5. DSSLC photograph taken February 13, 2017.



Figure 6. DSSLC photograph IMG0318 taken February 13, 2017.



Figure 7. DSSLC photograph take February 13, 2017.



Figure 8. DSSLC photograph IMG_0327 taken February 13, 2017.



Figure 9. DSSLC photograph IMG_0328 taken February 13, 2017.



Figure 10. DSSLC photograph IMG_0328 taken February 13, 2017.



Figure 11. DSSLIC photograph IMG_0911 taken February 13, 2017.



Figure 12. DSSLIC photograph IMG_0947 taken on February 13, 2017.

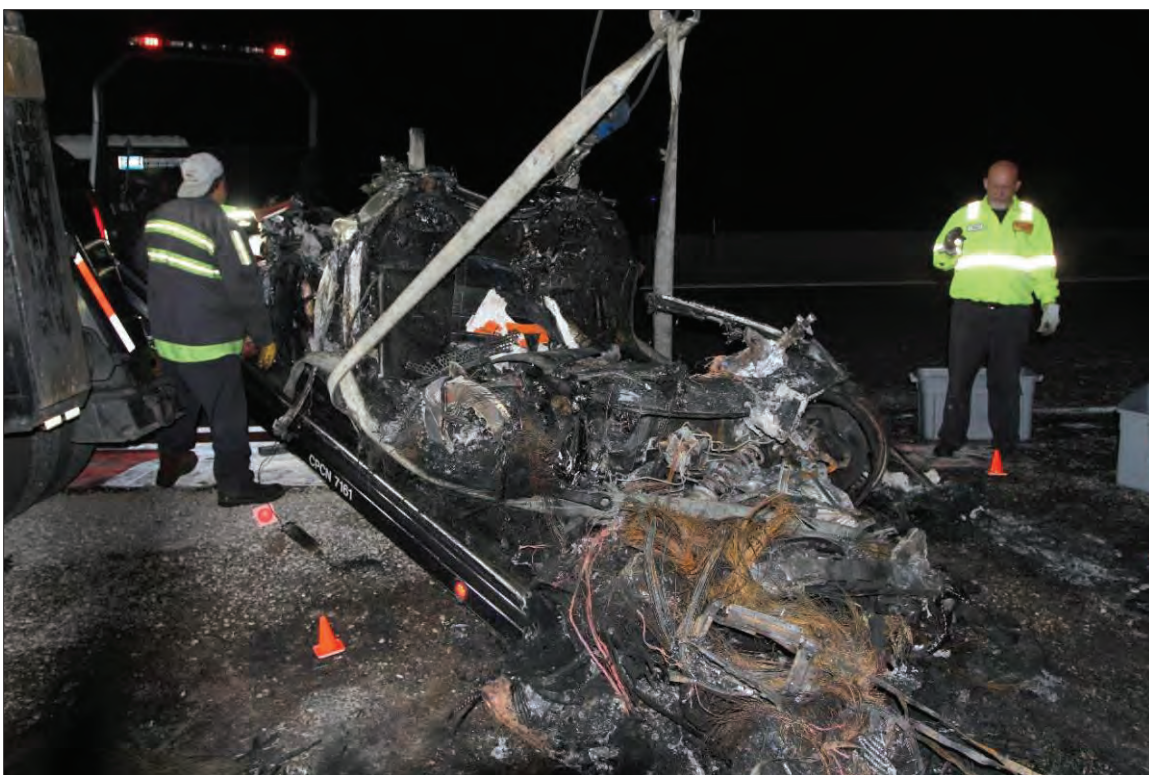


Figure 13. DSSLC photograph IMG_1220 taken on February 13, 2017.



Figure 14. DSSLC photograph IMG_1293 taken on February 13, 2017.

Description of the Collision

LVMPD

The following Description of Crash / Narrative was contained in the State of Nevada Traffic Crash Report:

Description of Crash / Narrative

V1 WAS TRAVELING COUNTER CLOCKWISE AROUND AN ENCLOSED RACETRACK. V1 WAS TRAVELING SOUTHBOUND ON THE STRAIGHTAWAY APPROACHING AN 'S' CURVE. D1 FAILED TO SLOW ENOUGH TO NEGOTIATE THE 'S' CURVE. V1 TRAVELED STRAIGHT OFF THE TRACK ONTO LOOSE GRAVEL UNABLE TO MANEUVER THE FIRST CURVE, THEN CONTINUED STRAIGHT CROSSING BACK OVER THE TRACK PASSING THE SECOND CURVE. V1 LEFT THE TRACK SOUTHBOUND HITTING THE TWO ROWS OF STACKED TIRES AND RAN INTO THE CONCRETE IMPACT BARRIER. UPON IMPACT, V1 EXPLODED. BOTH OCCUPANTS IN V1 SUFFERED FATAL INJURIES UPON IMPACT. V1 LEFT APPROXIMATELY 548 FEET OF YAW AND SKID MARKS PRIOR TO IMPACT.

D1 WAS FROM CANADA.

Clark County Coroner/Medical Examiner

The following Circumstances of Death narrative was contained in the CCCME Report of Investigation:

Gil Ben-Kely

Circumstances of Death:

Per preliminary investigation on 2/12/17 at approximately 1326 hours, the decedent an instructor at Vegas Speed, a luxury car racetrack, was instructing a client on a high-speed drive. The decedent was the restrained and helmeted passenger of the vehicle, a 2015 Lamborghini. He and his client (case #17-1738) were traveling southbound (SB) on the Vegas Speed racetrack driving at an extremely high rate of speed. For unknown reasons, the vehicle veered to the right and then left the racetrack. The front of the vehicle impacted the safety tire wall and then into the jersey wall bursting into flames. Witnesses called 911 and staff attempted to extinguish the flames without success. Clark County Fire Department (CCFD) arrived and suppressed the fire. LVMPD arrived and paramedics found the decedent obviously deceased. I pronounced death on scene at 1605 hours on 2/12/17.

Craig Sherwood

Circumstances of Death:


Per the preliminary investigation on 2/12/17 at approximately 1326 hours, the decedent, who was a client, at Vegas Speed, a luxury car racetrack, was experiencing a high-speed drive. The decedent was the restrained and helmeted driver of the vehicle, a 2015 Lamborghini. He and his driving instructor (case #17-1739) were traveling southbound (SB) on the Vegas Speed racetrack at an extremely high rate of speed. For unknown reasons, the vehicle veered to the right and then left the racetrack. The front of the vehicle impacted the safety tire wall and then into the jersey wall bursting into flames. Witnesses called 911 and staff attempted to extinguish the flames without success. Clark County Fire Department (CCFD) arrived and suppressed the fire. LVMPD arrived and paramedics found the decedent obviously deceased. I pronounced death on scene at 1605 hours on 2/12/17.

This incident occurred while Mr. Craig Sherwood was being instructed by Mr. Gil Ben-Kely on a seven (7) lap driving experience in a 2015 Lamborghini Aventador. The physical evidence shows the Lamborghini lost control at the end of a straight away and began to rotate in a clockwise direction. The Lamborghini continued until it struck a combination tire / concrete barrier where it caught fire. Mr. Sherwood and Mr. Ben-Kely suffered fatal injuries and were pronounced deceased at the scene by responding medical personnel.

Witness Statements

Kyle Weech

SPEEDVEGAS Mail - Track Incident 2-12-2017
3/31/17, 7:13 PM



Track incident 2-12-2017

Kyle W <dubnasty@gmail.com>
To: liza@speedvegas.com
Mon, Feb 13, 2017 at 5:15 PM

To whom it may concern, a statement by Kyle Weech.

On February 11, 2017 I was working at the main customers registration counter for SPEEDVEGAS. I greeted 3 guests for a routine check in process.

The first guest was Mr. Sherwood. he was really excited to drive some exotic cars and generally happy/excited as most guests are.. His check in process was fairly routine. He had prepaid for his experience through some sort of 3 party vendor at his hotel I believe. However he had not received the 10% discount promotion as advertised in some printed material he provided to the 3rd party. Due to this he requested a refund of the 10%. I offered an extra lap in one of the vehicles that he had purchased in exchange for the 10% refund which was agreed upon by Mr. Sherwood.

The second guest by the name of Andrew I believe, which was Mr.s Sherwood's friend/co-worker had a reservation as well. This reservation had Andrew and another friend together for the same package each as Mr. Sherwood. That had not prepaid so I asked if they would like to pay separately or together on one bill. They elected to pay separately. At this point, due to daylight concerns (around 4:15pm to 4:30pm) we sent all 3 guests directly to the instruction room for that portion on the experience. I instructed Andrew and the 3rd guest to return directly to me after the briefing for payment and paperwork otherwise they would not be able to drive.

During said guests briefing the weather turned for the worse and started raining. Our safety crew declared the track unsafe to drive on due to being wet. Current registered guests either reschedule the experience or request refunds at this time. Mr. Sherwood and said friends approached me and elected to reschedule for the next day 2-12-2017.

After that interaction I witnessed all three said guests trying to haggle with one of my managers regarding cars selection and price paid. They requested a free upgrade to the Lamborghini Aventador that was not a part of the purchased package due to the inconvenience of the cancellation due to weather. Matt declined the upgrade due to pricing differences and company policy on the Aventador driving experience. The trio of guests continued to aggressively haggle/pressure Matt into this upgrade. The result of the conversation was that they would return for the paid for/booked experience the following day with no promise of any upgrade.

The following day 2-12-2017, I was not working at the main registration counter however Mr. Sherwood spotted me at the retail counter upon arrival and reminded me of the extra lap deal we made regarding the 10% previously mentioned.

After the incident involving Mr. Sherwood on the track and after the business was closed. Andrew was waiting to speak with the appropriate authorities. Eventually 2 friends/colleagues arrived to be with him. I was mainly speaking to arriving guests at the locked front doors and answering the phone after we had closed for the day. There was many times I could hear the guests conversing as they waited.

At one point I heard Andrew state that him and Mr. Sherwood were watching/videoing each other as they drove. Later as I was offering all three guests something to drink. They inquired asked me some questions.

"Just for answers that might not be available or unknown,"
 "Could we I/we identify what had happened?"
 "He (Mr. Sherwood) has been know to have seizures."

<https://mail.google.com/mail/u/0/?ui=2&ik=eec2f41602&view=pt&cat...fh=15a3a21fa6436899&siml=15e3a2f2e6436899&siml=15a3a5644a91c6ab>
Page 1 of 2

SpeedVegas 00200

SPEEDVEGAS Mail - Track incident 2-12-2017

3/31/17, 7:12 PM

I replied "I have no way of answering that."

Andrew knew there are video systems in the cars and together they wondered if this data might be some sort of answer to said questions. I simply stated "I have no idea if that information is recoverable, I don't know what the situation is at this time."

This was asked by the two friends that arrived to comfort Andrew after the incident.

I didn't have any conversation with said guests after this that I recall at this time.

Liza Jascolt <liza@speedvegas.com>
To: Irene Dudley <irene@speedvegas.com>

Mon, Feb 13, 2017 at 5:56 PM

SPEEDVEGAS

Elizabeth Jascolt, Group Services Manager

C: 725-777-8685

E: elizabeth@speedvegas.com

V: <https://vimeo.com/184230591>
(Quoted text hidden)

<https://mail.google.com/mail/u/0/?ui=2&ik=eec2f47602&view=pt&cat...1h=15a3a2ffa6436899&siml=15a3a2ffa6436899&glnl=15a3a5644a91c9ab> Page 2 of 2

SpeedVegas 00201

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Daniel Alves

Daniel Alves shuttle Driver 2/14/17

On Sunday Feb. 12 2017 I'm doing my Route the Platinum Run. I pull up to Encore Hotel to see if there are any customers waiting there. As I pull up to the Bus Loading zone a Male from Reservations called me saying that he has two customers at Encore Hotel waiting for me. I looked around and saw two guys waving their hands at me coming out of the Encore Hotel. They get into the van at 10:59 am and we proceed to my next stops, Mirage and Ceasers. Andrea was talking on the phone most of the way to Speed Vegas. Craig was playing with his phone. After they got off their phones, I asked them where they are from and they said Toronto. They also said that they were at the track the day before and they got rained out. Then they talked among each other. We arrived at Speed Vegas at 11:25 am. They went inside and I had a customer waiting to go back to his Hotel and I left Speed Vegas. Dropped off customer at the Palms Hotel and did my route. Returned to Speed Vegas with 4 customers to find out that we were closed.

SpeedVegas 00205

Returned all customers to there Hotels and returned back to Speed Vegas at around 2:30 am. Waited at Speed Vegas until Andrew and his Friend / Co-workers one Male and one Female were ready to go back to there Hotels. At around 5:20 pm I left Speed Vegas with Andrew and one Male and one Female Friends / Co-workers. On the way to the Hotels I asked them if Craig was married and they said Yes. Then I asked them if he had children and they said Yes, two. Then they talked among each other about the meeting the are supposed to have that night and break the news to the rest of the Co-workers. Then I asked them what kind of business they are in and they said Real Estate. A few minutes later we arrive at SLS Hotel. at around 6:05 am. Andrew got out and I said that I was sorry for his lost and he had a look of shock. Then I proceeded to Mandalay Bay to drop off the two co-workers. On the way to Mandalay Bay I asked them if Craig and Andrew were close friends and they said that they were pretty close and did a lot of things together. They are the top two


SpeedVegas 00206

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Real Estate Agents in there group. At
around 6:15 pm we arrived at Mandaley
Bay and the two co-workers got out.
I said that I was sorry for there lost
and they said the same thing back to me.
I returned to Speed Vegas at 6:29 pm.


Daniel Alves

SpeedVegas 00207

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Francisco Durban Alvarez-Ossorio

FRANCISCO "FRANK" DURBAN ALVAREZ – OSSORIO: ACCIDENT DAY RECAP

On 02/13/2017 at 6:23 pm, I received a call from Elizabeth (Elizabeth@speedvegas.com – 725-777-8685). I was driving and couldn't answer the call. She left a voicemail. At 6:26 pm, she texted me via SMS. At 6:28 pm, I called her and she asked me to please write the following document, being truthful and providing as much detail as I can remember. Here it is:

SUNDAY - 02/12/2017 at SPEEDVEGAS

I arrived and clocked in a little before 9:00 AM. I prepared myself (gear, radio, etc.) and started cleaning cars with Steve, and other coaches. A little before 10 AM, I took the Mercedes AMG GT-S to warm up. I connected the video system on the trunk and confirmed in channel 3 with Jody the track was green. After warming up the Mercedes, I warmed up other cars as usual.

I coached a few customers after that, and then we had a period of no customers on track. During that period, I remember Strobby standing on the 2nd floor outside watching Alec training in the Blue Shelby and communicating with him via radio providing feedback.

Around 12:20 PM, a couple (husband/wife) with family/friends showed up outside. I introduced myself to both of them and started building rapport. He told me he was a retired pilot/astronaut (Kenneth Ham "Hock") living very close to us in the Anthem community, and that he is working with a local military contractor training new pilots. She told me she was a pilot too. They told me that they had been partying and drinking the night before and that they just wanted to check the track/cars for today and come back soon. I showed them a few cars: Black Ferrari 458, yellow Lamborghini Huracan, and the Mercedes AMG-GTS. We had a great interaction, I mentioned to him if he knew Spanish-American astronaut, Miguel Lopez – Alegria. He replied: "LA", yes, of course, we are friends. I told him about my father being an air-traffic controller and my grandfather a general and a pilot. At the end, he told me: "Frank, you've been great and thanks for the tour and we're definitively coming back. I'll come back with my family and "LA". Also, we just purchased F-5 jets from the Jordanian army for training purposes and I'd like to give you a ride if you want". I replied: "Sir, that would be a dream come true, much appreciated. He finally asked for my contact information.

While they were leaving (around 12:45 PM), Brandon introduced me to customers Andrew and Craig (victim). He told me they visited us yesterday but it was raining. I introduced myself to them and helped Andrew sit in the car for the perfect driving position. Then, I sat next to him and checked the video was on, and the 3 green lights on the phone. The phone showed 5 laps but Andrew told me it should be 7 laps. I double checked with Brandon, who confirmed it was 7 laps with Matt. I asked Andrew a few questions to build rapport like I do with every customer, such as:

"What city are you visiting from?" – "How long are you going to stay?", and finally "Is this the 1st time you do something like this?" – After the final question, the customer replied with a bad

SpeedVegas 00208

attitude: "Why are you asking me so many questions, let's go". I replied: "Well, I need to know what your experience level is so I can help you better". After that, there was a moment of silence and started my safety briefing. We covered hands driving position, how to brake (only on straight line and no tapping), the passing protocol with flashers, how to drive the car (smooth and progressive on the pedals), etc.. I finally recommended him to drive auto which he accepted well.

As soon as the car was out of the parking spot going to the pit lane, Andrew did a quick acceleration, I told him to slow down. Finally, I asked the safety crew to go on the track and we took off. Andrew was a bad driver. He was too aggressive on the gas, and he was tapping the brakes under deceleration on the main straight, which is the opposite of what I told him. Several times, I had to use the brake under braking on the main straight because of that.

Andrew didn't listen very well and kept doing the same things. For customer experience purposes and because I didn't feel in danger (he was aggressive but slow), I let him feel he was in control (I was at all times). This is something the experienced coaches have to do and I am ok with that. I may have helped with the steering wheel correcting in real time which is part of my job and ok with it. At the end of the experience, and while Andrew was taking many pictures with Craig next to the Aventador, I talked to Natalie quietly, who was next to the picture area and told her in Spanish and far away from them: "Natalie, Andrew is the worst customer I've ever had. He doesn't listen, he has a bad snobby attitude, etc." Natalie replied: "Yes, Frank. He has been mean to us too from the checking-in area." Brandon who also was next to us confirmed to me that the day before, he was also rude to Matt as he asked for freebies cause of the rain. Brandon told me that Matt told him he has no control over the rain.

Finally, GIL approached to me and told me: "Franco, I heard this guy you just coached is something else." I replied: "Yes GIL! He doesn't listen, he is aggressive with the gas/brake/steering wheel which is the opposite of what I told him. Be careful please." GIL replied with confidence: "OK, ok, thanks"

Then, I took Craig (victim) out in the Mercedes. I went through the same steps above with Andrew. He was more receptive and humble, still a bad driver but smoother than Andrew. At the end of the experience during the cool down lap, I told him: "I'm sure you did better than Andrew cause you listened to me better and you drove smoother than him" He laughed.

Craig asked me if I was going to coach him in the Aventador. I replied: "YES" Craig and I waited in the picture area for GIL to come back with Andrew in the Aventador. While Andrew and Craig were taking many pictures with the Aventador, I asked GIL how was the coaching with Andrew in the Aventador. He replied: "Franco, he didn't say anything with me because I told him seriously since I sat in the car with him. This car is special, you do as I told you" GIL confirmed also to me he was a bad driver.

SpeedVegas 00209

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Then, Brandon approached and told me: "Frank, Strobby told me that only GIL can drive the Aventador" I replied: "I was cleared by Jimmy to drive it a few days ago". Brandon replied: "That's what Strobby told me. I replied: "OK, no problem, I will talk to him later"

A bus of Chinese guest arrived and they were all over the parking lot. Strobby made a comment via radio about that so I and other coaches were around GIL and Craig in parking spot 1 to clear him out safely out of the parking lot to the track. GIL took around 5 minutes as he was providing Craig feedback inside the car. They finally took off. While the Aventador was on track, only the blue Shelby was on track with Alec training. I went up to the 2nd floor outside to talk to Strobby about me being cleared by Jimmy to drive the Aventador a few days ago. He replied: "Really, I didn't know that, do you fit in the car well?" I replied: "It is tight but I can drive and coach if you need me" He replied: "OK, ok thanks" I replied: "No problem, feel free to do a checkout ride with me anytime as Jimmy did"

Around 1:15 pm and from the booth area, I saw GIL with Craig doing several laps in the Aventador on track, it didn't feel they were going very fast. On the 6th or 7th lap I looked at the end of the straight and saw the dust moving from the left to the right all the way to the wall on the right. I kept looking for 20 – 30 seconds, the red safety truck that normally sits around 60 ft from that wall wasn't there. The car started to release smoke and suddenly caught on fire. I put my radio in channel 3 to listen only. I heard GIL screaming: "Aventador HELP! - I immediately went inside the briefing room and asked Matt to get out immediately. It took maybe 1 minute, maybe more for our safety truck to take off from the car garage area. By the time that happened, the fire went up and stronger. Then, I came back inside to block out the door next to the briefing area, Don blocked the other one. Andrew customer was next to Don and other customers were trying to look through the windows. I looked for cell phones and nobody had the cell out. After blocking the doors for 5 minutes or so, we received orders (Matt) to close doors to customers, process refunds, and evacuate the building closing doors. Once everyone was out the building, the coaches went out to the booth area again. The fire was getting stronger. Firefighters arrived to reduce the fire. Matt took off with the Cayman to the scene. Police, paramedics, CSI, etc. arrived. Matt came back to the parking lot with the Cayman. I asked him: "How is GIL? He replied with tears and looking down: "Frank, he is dead, they are both dead" I started crying and replied: "Safety wasn't there! Safety wasn't there! What the hell? He left to continue helping. I, Don, MJ, Sam, and maybe other coaches stayed outside next to the booth looking at the scene. Brandon was at the gate letting officials in. Firefighters finally stopped the fire; it took 2 or 3 yellow trucks.

Around that time, Darren arrived. I saw him entering with his blue truck on the back gate. Aaron arrived with Kimber later on. Strobby asked for our cell phones and we all cooperated with him. He mentioned how ex-employees knew what was going on. We were called for a meeting with Aaron and Darren in the break room. Aaron entered and said: "Not a good day for the team, I don't know what to say. This is a tragedy. Anyone wants to say anything?" We all stayed looking down for 2 minutes. After that, we were called for another quick meeting in the break

SpeedVegas 00210

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room. Aaron gave updates and we received directions of not talking to the press or post anything in social media until SPEEDVEGAS officially releases a statement. I asked Aaron if we were able to talk to friends/family about the incident and if we are going to know what caused the accident so we can prevent it in the future. He replied YES to both. During the 2nd meeting, Aaron introduced his Pastor and the guys from Clark County to help us cope with the tragic event by talking to us one-on-one. We were given a red book with instructions how to deal with this situation. We were also given copies (7 pages) of the SPEEDVEGAS protocol for this type of situations. Around that time, Trevor showed up crying and we hugged each other.

After that meeting, I called my wife to pick me up. While waiting for her (around 2 hours), I stayed in the building. I went outside and met Kimber around the booth area. We hugged each other and talked about the situation. Sean coach also showed up and talked to him about what happened. A few minutes later, Nathalie (GIL'S daughter) showed up outside joining Kimber, Sean, and I. She started screaming at me: "You have to tell me what happened; you have to tell me what happened!" Earlier, Aaron asked me about Gil's family phone numbers so he could call them; I told him I didn't have them. I looked at Sean and Kimber. Aaron was supposed to call her but he was at the scene with his Tesla and he couldn't yet. I asked Kimber if I was allowed to tell her since Aaron was at the scene. Kimber gave me the ok. I hold Nathalie; she had Shon (GIL'S son) on facetime holding her cell so Shon could see us and hear it. I explained to them that GIL died and what I saw. I told them I saw the dust, the car next to the wall, and then the fire. Shon asked me to take care of Nathalie while she was at SPEEDVEGAS.

Then, we went inside to the break room. Aaron showed up via the garage's door and introduced Nathalie to him. Nathalie asked Aaron to see GIL'S body. Aaron told her that it wouldn't be a good idea. The Clark County guys stepped in to help with the situation. Nathalie started to panic and she was checked by our safety crew. Safety recommended Aaron to call an ambulance for Nathalie as she was breathing abnormally. Aaron agreed. Safety asked me for the SPEEDVEGAS address, so I googled it and provided while Safety was on the phone with the ambulance. My wife texted me she was at SPEEDVEGAS outside. I asked Darren if he needed anything from me at that point. He said no. I hugged Nathalie, told her I had to leave, but that we were going to see each other soon. I exited SPEEDVEGAS around 4:30 PM.

At 7:12 pm, I received an email from Astronaut, Kenneth Ham "Hock I met that day with subject: So sorry brother – with the following body:

"Big Bird, so sorry to hear about your loss today. I'm sure that was a truly horrible accident. After losing many friends in aircraft accidents, I can say I know how you feel. The best thing you can do is support his family.

It was a pleasure to meet you and I hope the accident doesn't affect the business.

SpeedVegas 00211

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All the best, Ken Ham "Hock"

Cell: 832-368-5016

At 9:47 PM, I replied to him:

"Thank you, Ken.

It was a real honor and pleasure meeting you today. The driver was my best buddy there. It was a real tragedy. If you read the news you know what happened.

I will keep you posted and hopefully, we can meet again.

Thanks again."

SpeedVegas 00212

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Jody Zollin

Sunday Feb 12, 2017

I saw the Adventador come on track. The driver was with an instructor who coaches him through his experience. I work the Fire Safety truck with a partner who was Leslie Williams. About 1:00pm my partner and I saw the Adventador coming into turn 1 when it went off the track in the rocks then through the run off area at a high rate of speed. Then the Adventador went straight into the wall and erupted into flames. We immediately responded to the scene which was about 500 feet away. We used every extinguisher on our truck plus 2 extinguishers that were brought out. Total of 7. Purple K = 5 plus to ABC bottles and 2 cold fire bottles. The tires that were along the concrete barrier also caught on fire. In the process of us trying to put the fire out, one of the employee's Matt Denning called 911

SpeedVegas 00213

When the Fire department showed up,
they took over the scene.

Jodi A. Zollin
Jodi A Zollin

SpeedVegas 00214

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Les Williams

SpeedVegas 00223 to SpeedVegas 00224

Les William's Statement

Re: SPEEDVEGAS Accident
Sunday, February 12, 2017

Statement Provided: Wednesday, February 15, 2017

Liza: [not clear audio] ...we're going to just ask some questions so to get a little bit more specific [muffled audio]

(Les: ok)

Aaron: Alright Les, so um, we're here um can you describe to me what, what you saw or what happened?

Les: Well as the car was coming out up here, the driver accelerated faster than normal, so me and Jody sitting between turn 2 and 3 and I told Jody I say 'we need to watch this one 'cause these guys are only going off track 'cause going, being, going here and seeing the cars and how to go around the track I can...there's 2 cars I always watch. And One of them is the Z06 and the other one was this one, since we we got it recently and I was like 'Jody we need to watch this car 'cause this car this guy is going to end up going off track 'cause they way he accelerate. Different people when they drive these cars and accelerate at a certain rate of speed you can just about tell because I'm a very detailed person so I look at just about everything on the track, I can just about tell you just about every turn on this track what's there what should be there and what shouldn't be 'cause I'm just that detailed so I seen them come out hard then they went into the turn 2 and 3 and it was you know faster than normal but it was controllable and then they came around twice, and on the third time down the straight is when the incident happened (Unknown Female: the third lap?) the third lap, it was the very what I'm saying it was the last it was their last it was their last lap, I know they'd went around twice and they was on their third one coming down the straight was their third time and when I seen the car come it didn't make turn 1, when I seen that car come across the apex right here I I thought holler because I the faster they was coming there's no way they they were going to stop that car and not hit that wall so it hit the tires and when it hit the tire the car you could see the car bubble 'cause the [unknown word] when they hit and then it bounced down the wall and burst into flames. Um I couldn't get there fast enough I couldn't get out the [stutters] matter of fact we were Jody was driving the truck, I jumped out of the truck and started I almost started running down there and jumped back in the truck. I just wanted to get there just that quick what um we got there me and Jody jumped out grabbed the bottles um the extinguishers off the back of the truck I grabbed one of them off the back of the truck she grabbed one out of the side compartment I threw the one down that was on the back of the truck 'cause it was it's just water and I grabbed the CO2 the um purple K outta the side and started putting on um putting it on the fire so when that one ranned out and Jody's ranned out we both ran back and got another one but before we did all that when the incident first happened we called Code-4 on the radio Code-4 for us is means there is a big incident on track and we need like Matt, Darren whoever is here that is in position to come out to the track and we shut we shut everything down everything down on track and so all the cars that was there waiting with what if I'm not mistaken that was the only car on track that uh my uh right now my focus is just strictly on that car and I um am thinking that that was the only car on track my uh my memory shot is just kind of shot....

Liza: You said that you tried to get there as quickly as possible (Les: Yeah we right here at the end of this wall here) Now how far was that? (Les: I'll say um that's about uh that's that's honestly about 100 yards I mean it's right at the end of the wall you know umm we got there as quickly as we could and put every fire extinguisher on it and about the time we was fighting it, um Eddy the mechanic came down on the gator with um Strohby

SpeedVegas 00223

and Matt came in the Cayman and Eddy and Strohby they brought 2 more extinguishers with them and they also was trying to spray help put the fire out. The fire was so intense we couldn't I mean well we could only get so close to it we got and I mean it I thought it was either going to burn my face I was just that close trying to get it out you know and we could not we did all we could we used every extinguisher we had and when Matt showed up I called told Matt I said 'call 911' we've still trying to put the put the fire out and I just hollered at him to call 911 I didn't know if anybody had already did or not I was just trying you know we didn't know they was on their way no matter what but um we called we once that we um ran out of fire extinguishers all we could do is just wait and watch and you know wait for um County fire to get here (Liza: How long did you wait?) you know in matter of time when something like this happens it seems like forever you know I could say it took, Oh God, it just I want to say it it 20 or 30 minutes it might've been a little longer or whatever but it just seem like forever when things are happening like that you know so I mean it's just we did everything we could we did everything we could to get it out and get them out and we just couldn't do that (sniffs) (Liza: ...and when the and when it hit the tires and went into the wall, did you hear any voices or anything like that from Gil on the radio or anything?) No ma'am, there was no there was no movement that we could see in the car, I didn't hear anything. From my experience and my background being in the fire department (Liza: mmhmm) I um when you hit that wall like that and and from what I'm seeing on that wall, Gil they probably was gone on impact because the the the as fast as that car was going and as hard as they hit that wall and the bumper hit the way it did and see that car and it's it's I don't believe that they would've been alive after that after that impact but you know, but no, we did not see any movement or hear anything at all in that car. And I uh just him being my our friend our co-worker I just pray to God that he was just that, that he was just taken at that instance and so he wouldn't have to suffer through that you know so but I mean I I just I was but yeah you know we didn't see anything at all – no movement or hear anything

Aaron: Is there any other detail that I might have forgotten to ask you about that you want to mention

Les: Um, one of the things Strohby was dead on he was very helpful he um people was stopping on the side of the road taking pictures and videos and all and he hopped the tires and jumped the fence and get out there and run them off before the cops got here and took over so he was very influent and instrumental in doing that jumping the wall and doing that he was great and um you know but um it so far you know what we did and what me and Jody and with Ed Eddy and Matt and I'd say Strohby that was it man we did all we could to try to save it the best we could and it just wasn't good enough you know we did all we could, but um no that was it man I think uh ...that's it.

Aaron: Ok, thank you, Les

Liza: Thank you

SpeedVegas 00224

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SpeedVegas 00225B

February 13, 2017

On the early evening of February 12, 2017 around 1:00pm. I was on duty with the safety director Jodie Zollin sitting in the fire truck on the passage side. We were located off track approximately between turn 2 and turn 3. I witness the orange 2015 Lamborghini Aventador driven by the client, begin to accelerating at a very rapid speed after leaving the starting line. (area just before entering the track). Jodie cleared the Lamborghini to enter the track, which is a routine daily duty. Because the car had accelerated with such force out of the starting line, I became extremely attentive as it proceeded around the track. After 2 laps of acceleration and deceleration in speed, the car came out of turn 12 and entered the straight-away headed into turn 1. As the car came closer, I saw how rapid the car was going. I then saw the car go at a straight angled path across the rocks in turn 1 then precede across the apex and toward the tires against the wall in turn 2. Once the car hit the tires against the concrete wall, the car burst into flames and bounced down the wall. It is at this time I called a code 4 on the radio (meaning an accident has acquired on the track and everything must stop and no one must enter the track but essential personnel).

We responded immediately within one minute to the scene of the accident. As we approached the scene, I notice no movement or sound from either of the victims and the car was fully engulfed in flames. We parked the fire truck behind the engulfed vehicle at a safe distance. As we exited the fire truck, I grabbed a fire extinguisher from the left compartment and began extinguishing the engulfed vehicle. The safety manager and I used up to 8 fire extinguishers in an attempt to put out the engulfed vehicle. It was to no avail. The fire could not be extinguished with the tool we had, we used all the dry chemical extinguishers we had. I instructed the track manager (Matt) to call 911 via radio. I also instructed Brandon (Pit row employee) to make sure that the gate is open for the fire and rescue to enter when they arrive. At that time, all essential personnel responded to the scene. We did all that was in our power to rescue the 2 victims. But we were unable to extinguish the engulfed vehicle.

Signature



Date

2-13-17

SpeedVegas 00225B

Robert D. Barnard



February 17th 2017

OSHA

To Whom It May Concern

SpeedVegas is a unique facility. It was constructed from a greenfield and designed to meet FIA Level 2 international standards for safety and operation for race facilities, with consideration for its intended use.

I undertook the design and supervised the construction, provided input into the overall site layout, and operations. Emergency planning was developed based upon the NFPA 610 "Guidelines for Emergency and Safety Operations at Motorsport Venues" coupled with over thirty years' of experience of building and operating motorsport facilities up to World Championship standard on two and four wheels.

The facility has operated successfully for nearly twelve months. Improvements have been ongoing since opening and will continue to be made based upon feedback from industry experts like myself and our experienced instructors who have collectively driven thousands of laps of the circuit.

During the brief SpeedVegas closure I have taken the opportunity to review both the physical and operational aspects, and conclude that the facility continues to meet the safety standards above.

I have attached my current CV for your information as to my qualifications.

Robert D. Barnard
Motorsport Consultant

314 King George Loop, Cary, North Carolina 27511
Phone: 912-245-5543
Email: motorsportservicesintl@gmail.com
Skype: robert.barnard9

SpeedVegas 00235

Paul Crifasi

SpeedVegas 00236A

ON 2-4-17 I PAUL CRIFASI
CAME IN TO WORK AT 6:45 AM
TO PUT A PASSENGER BRAKE PETA IN
THE LP-700. AND NEW FRONT + REAR
ROTOR + BRAKE PADS BEFORE I WOULD
LET THE CAR GO ON TRACK..

ON 2-8-17 I HAD PAUL FROM
SPEEDWAY SPORTSCAR'S CAM OUT
TO CHECK THE LP-700 COMPUTER
FOR ANY FAULTS OR CODES IT CAME
BACK ALL OK.


2-17-16

EACH MORNING A VISUAL CHECK OF
EACH CAR BEFORE GOING ON TRACK.

SpeedVegas 00236A

SpeedVegas 00236B

ON 2-4-17 I PAUL CRIFASI
CAME IN TO WORK AT 6:45 AM
TO PUT A PASSENGER BRAKE PISTON IN
THE AVENTADOR/LP700 AND NEW
FRONT + REAR ROTOR + BRAKE PADS
BEFORE I WOULD LET THE CAR GO
ON TRACK..

ON 2-8-17 I HAD PAUL FROM
SPEEDWAY SPORTSCAR'S COME OUT
TO CHECK THE AVENTADOR/LP700
COMPUTER FOR ANY FAULTS OR CODES.
IT CAME BACK ALL OK TO GO ON TRACK.

EACH MORNING A VISUAL CHECK OF
EACH CAR BEFORE GOING ON TRACK.



2-17-17

SpeedVegas 00236B

SpeedVegas 00236C

ON 2-4-17 I PAUL CRIFASI
CAME IN TO WORK AT 6:45 AM
TO PUT A PASSENGER BRAKE PETAL IN
THE AVENTADOR / LP700. AND NEW
FRONT + REAR ROTOR + BRAKE PADS
BEFORE I WOULD LET THE CAR GO ON
TRACK.. ON 2-8-17 I HAD PAUL FROM
SPEEDWAY SPORTCAR'S CAME OUT
TO CHECK THE AVENTADOR / LP700
COMPUTER FOR ANY FAULTS OR CODES.
IT CAME BACK ALL OK TO GO ON TRACK

EACH MORNING ALL CARS GET CHECK OUT.
OIL - BRAKES - TIRES - AIR PRESSURE +
TORQUE WHEEL STUDS



2-23-17

SpeedVegas 00236C

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BEN000278

AFFIDAVIT OF PAUL CRIFASI

State of Nevada }
County of Clark } ss

I, PAUL CRIFASI, being first duly sworn hereby depose and state as follows:

1. I was the head Mechanic at SpeedVegas at the time it acquired the Lamborghini Aventador through the time frame of February 12, 2017. This was a full time position;
2. I have been a mechanic for over 30 years, I have rebuilt cars, rebuilt engines, worked on exotic cars, and worked on race cars;
3. Shortly after the Lamborghini Aventador was acquired by SpeedVegas I changed the brakes from the stock brakes to the Girodisc Steel brakes. These are standard operating brakes on our entire fleet. The reason for the change is that the Girodisc brakes are better suited for our track purposes;
4. I did not receive any complaints from driving coaches relative to the Girodisc brakes in the Lamborghini Aventador. In fact, several coaches advised me that they liked the functionality of those brakes when they drove the Lamborghini on the track. Had there been a complaint, I would have been the appropriate person for that complaint to be reported to. It should be noted that Mr. Durban was not cleared to drive that vehicle and is not a mechanic;
5. The Lamborghini Aventador at issue was not a convertible vehicle. Rather, the Lamborghini had a removable portion of the roof. That removable portion is made of hard material and is not a "soft-top". The hard portion was on the vehicle at the time of the incident in question on February 12, 2017. Attached hereto is a true and correct picture of the Lamborghini Aventador;
6. I understand that Mr. Durban is claiming that there were incidents where brake pads fell off one or more vehicles. I am unaware of any such occurrence, and had it occurred I would have been the mechanic responsible for the repair;
7. The vehicles used by SpeedVegas on the track are regularly and properly maintained.

Further Affiant Sayeth Naught.

Dated this 3 day of April, 2017.

State of Nevada;
County of Clark.

Subscribed and Sworn to before me
this 3 day of April, 2017.

[Signature]
Notary Public

[Signature]
PAUL CRIFASI



BEN000278

Ashley Carrillo

Ashley Carrillo

2/20/17

On Feb. 12, 2017, two men walked in around 12:30 p.m. or so. It was Craig Sherwood along with Andrew, his friend Natalie and I proceeded with our normal check in process, until Andrew spoke up about changing their package. They originally purchased the Italian Faceoff, but insisted on changing the Huracan to the Aventadi ~~Model~~.

I assisted Andrew while Natalie assisted Craig. Andrew kept insisting on the car swap so Natalie & I asked Matt to come over to approve. Matt said no to the request, but then noticed how unsatisfied the two men were so he just had them pay the difference. Craig & Andrew, now satisfied, proceeded with the check in process. I had Andrew sign the waiver then reviewed his order. It was all correct, I handed Andrew a speedpass then explained when & where the next briefing was. Then the two men walked outside while they waited for their briefing class.

SpeedVegas 00308